Pace Law School Opens Sive Manuscript Collection

Files donated by a prominent environmental lawyer become part of the school’s research collection

The Pace Law School Library opened the David Sive Manuscript Collection, an Environmental Law Archive, on April 13, 2004. It contains the most significant litigation files of pioneer environmental attorney David Sive, who litigated such landmark environmental cases as Scenic Hudson Preservation Conference v. Federal Power Commission and Citizen’s Committee for the Hudson Valley v. Volpe.

Sive was a major force in establishing environmental law as a separate field of law. A founding partner of Sive, Paget & Riesel, P.C., in New York City, he filed numerous environmental suits that established important precedents in environmental law before the creation of the U.S. Environmental Protection Agency or passage of most of the federal environmental statutes. Sive has often been referred to as the “Father of Modern Environmental Law.”

Sive helped found and has served on the governing boards of the Natural Resources Defense Council, the Environmental Law Institute, Friends of the Earth, and the New York State Environmental Advocates. He began the Environmental Law Committee of the Association of the Bar of the City of New York. The New York State Bar Association recognized Sive’s work in awarding him the coveted Root-Stimson Award.

Documents from a number of Sive’s significant cases are collected in the manuscript collection, including the 1965 “Storm King Mountain Case.” In that case, the Federal Power Commission granted an order licensing Consolidated Edison Company of New York to build, operate, and maintain a pumped storage project along the western bank of the Hudson River. This would have required the pumping of millions of gallons of water from the Hudson River and construction of a large reservoir atop Storm King Mountain. The Scenic Hudson Preservation Conference, the Town of Cortlandt, and the Town of Yorktown sought judicial review of the licensing order and orders related to the practicability of underground transmission lines, and of installing a fish protection device on the inlet pipe. The court set FPC’s orders aside and recognized Scenic Hudson as having standing as “aggrieved” parties.

Access to the manuscript collection is limited to persons using the documents for educational purposes and scholarly research. Some documents may not be available for viewing because of attorney-client privilege. For further information or to obtain access to the collection, please contact Jack McNeill, associate director, Pace University School of Law Library, at (914) 422-4414.
A Message from Pace Law School’s Incoming Dean

As the incoming dean of Pace University School of Law, I am proud of our school’s commitment to environmental legal education. Our faculty and staff for more than 20 years have strived to create one of the deepest and most diverse environmental law programs in the world.

Professors Nicholas Robinson, Jeffrey Miller, and Ann Powers have developed a rich environmental curriculum that now includes more than 25 classes. They also are responsible for creating the nation’s premier environmental law moot court competition with more than 70 schools competing each year. Professors John Nolon and Sean Nolon have created an innovative Land Use Law Center that is a national leader in working with local communities on sustainable land use issues and in land use dispute resolution. Professors Karl Coplan and Robert Kennedy lead our highly regarded Environmental Litigation Clinic in which students represent the Hudson Riverkeeper and other organizations in preserving the natural resource heritage of the region. Dean Emeritus Richard Ottinger and Fred Zalcman guide one of the world’s preeminent energy law programs, with Fred focusing on renewable energy, energy efficiency, and distributed heat and power issues for the region and Dick concentrating on international legal regimes that promote sustainable energy programs.

But what really excites me are the possibilities for the future, many of which are already on our doorstep.

We are working closely with the Yale School of Forestry and Environmental Studies—one of our joint degree program partners—to launch an externship program at the United Nations. Our Land Use Law Center is in the middle of an important project together with the University of San Diego called “Nation on the Edge,” which is examining the land use law issues associated with areas of recurrent natural disasters such as floods, fires, and hurricanes. The center has also recently branched out into the field of international comparative land use law. Our Energy Project will soon expand to address the critical national security and environmental problems raised by the country’s continuing reliance on fossil fuels. Professor David Cassuto is building on our ties with Brazil to construct a program that will allow students to experience first hand some of the most important environmental issues in the world.

We will also be hosting several important events over the next two years: in December 2004, a North American Symposium on the Judiciary and Environmental Law co-sponsored with the International Union for the Conservation of Nature (IUCN) and the United Nations Environment Programme; in March 2005, the National Association of Environmental Law Societies annual meeting; and in October 2006, the IUCN Academy of Environmental Law’s Fourth Annual Worldwide Colloquium.

This is an exciting time for the Pace Environmental Law Program, and I am pleased to be part of the effort.

Stephen J. Friedman

Meet the New Dean of Pace Law School

Stephen J. Friedman became dean of the School of Law on July 1, 2004. Prior to that he was a senior partner at Debevoise & Plimpton LLP, where he served as cochairman of the firm’s corporate department from 1993 to 2000. Before he rejoined Debevoise in September 1993, Friedman was executive vice president and general counsel of the Equitable Companies Incorporated and its subsidiary, the Equitable Life Assurance Society of the United States. Before joining Equitable in 1988, Friedman was executive vice president of the E.F. Hutton Group Inc. (1986–88) and a partner at Debevoise.

Friedman also has served as a commissioner of the Securities and Exchange Commission (1980–81), deputy assistant secretary of the Treasury for Capital Markets Policy (1978–79), special assistant to the U.S. Maritime Administrator (1964–65), and law clerk to Justice William J. Brennan Jr. of the United States Supreme Court (1963–64).

Friedman is chairman emeritus of American Bal-}

GreenLaw is published biannually. To minimize our use of paper, and for easier access for our readers, GreenLaw is also available in an electronic version (pdf format). To add your name to our electronic distribution list, please contact lpaddock@law.pace.edu.
The phrase "environmental accountability" is closely associated with enforcement programs. The phrase "accountability" can encompass a wide range of mechanisms that expose the environmental behavior of organizations and individuals to the public, creating either a legal obligation to improve environmental behavior or a stronger sense of responsibility to better manage activities that have environmental impacts.

Although enforcement and compliance assistance programs are key aspects of our nation's environmental laws, it has been clear for several years that these programs by themselves cannot assure the kind of outcomes needed to ensure full implementation of our environmental laws. There are simply too many activities, engaged in by too many people, at too many scales to rely on enforcement and compliance programs as the sole or even the principle tool for holding regulated parties accountable for their environmental behavior. As a result, government agencies, environmental organizations and others must utilize a much wider range of techniques to hold organizations accountable for their environmental behavior. The opportunity for the public to participate in environmental permit proceedings could be an important element of environmental accountability but, unfortunately, most existing public participation techniques do little to enhance accountability. Earlier, more interactive and more authentic public participation is a critical aspect of strengthening environmental accountability and ensuring better environmental outcomes.

This country has built a massive environmental regulatory system over the last three decades that has relied heavily on enforcement to hold regulated entities accountable for their environmental behavior and to ensure adherence to the laws adopted at the federal, state and local level. This deterrence approach is premised on the idea that "decisions regarding compliance are based on self-interest; businesses comply when the costs of noncompliance outweigh the benefits of compliance." As Michael Stahl, a senior Environmental Protection Agency (EPA) official, observed:

The traditional strategy of regulated compliance programs has been to create and maintain a presence in the regulated universe, which could identify and correct violations and deter others from violating laws and regulations. This strategy viewed complete coverage of the regulated universe and uniform enforcement of the law as overreaching goals. However, as the number of environmental laws expanded it became obvious that a "full coverage" model for enforcement was not possible, even if it were desirable. No environmental agency has the enforcement resources to implement the full coverage model across the entire regulated universe.

Because of the limitations of the full coverage model, environmental agencies have increasingly turned to more collaborative methods of assuring compliance, first focusing on compliance education aimed at helping regulated parties better understand what they needed to do to comply and technical assistance programs that gave regulated parties the technical knowledge to comply. More recently, government agencies have developed a series of voluntary programs designed to encourage voluntary compliance, such as the EPA's environmental audit program that provides penalty waivers in cases where a regulated entity establishes an environmental management system, conducts periodic environmental audits, and promptly reports and corrects any violations identified in the audit. EPA programs like Project XL and its Performance Track endeavor to encourage compliance and beyond compliance behavior through establishing environmental goals, better public reporting, expanded public participation, and the use of environmental management systems in return for a more flexible approach to regulation. These "cooperative-based" approaches are premised on a different view of behavior than the deterrence model. Cooperative-based compliance rests on the view that corporations are not solely economic actors interested in maximizing profits, but that they are also influenced by civic and social motives, and generally inclined to comply with the law.

In reality, most enforcers use a hybrid strategy that includes elements of both coercion and cooperation. Government enforcers and others have increasingly realized that motivations beyond coercion—resulting from enforcement through the regulatory system—must be utilized to achieve compliance. They have begun to see that values (both organizational and individual) and economics (both incentives and disincentives) may play an important role in driving compliance. This understanding has resulted in a broad range of new environmental programs that have emphasized the collection and dissemination of data. These data become the basis for educating both the public and regulated entities themselves about the extent of emissions and the impact those discharges have on the environment. Better information is the seedbed for evolving environmental values.

Similarly, the country has turned more often to economic mechanisms to drive environmental behavior because well-designed economic instruments can more efficiently allocate the cost of regulation and because properly designed economic instruments can take advantage of the embedded motivation to make or save money by applying entrepreneurial skills. The sulfur dioxide cap and trade program designed to deal with acid rain issues under Title IV of the Clean Air Act provides a classic example of this approach. The act places a cap on emissions of sulfur dioxide from electric power generating facilities and allocates the permitted level of emissions among all of the regulated plants based on a formula developed by Congress. The facility owners are then free to buy or trade emission allowances so long as they hold one allowance for each ton of sulfur dioxide emitted in a calendar year. This allows facilities that can efficiently reduce emissions to make or save money by reducing emissions and selling allowances to others for whom the cost of emissions reduction is higher.

The trading program stimulated significant innovation in the way that power plant emissions are controlled and constrained emissions below the required cap. This was accomplished without any significant enforcement because of the combination of the economic incentives for reducing emissions, the requirement for continuous emissions monitoring for all stacks and substantial automatic penalties if a utility does not hold one allowance for each ton of emissions generated during the year. As environmental issues and programs have become more pervasive and complex, government agencies, nongovernmental organizations and corporations themselves have developed a wide range of mechanisms to increase awareness about environmental activities and stimulate improved performance, at least in part in recognition of the need to rely on a broader range of behavioral motivators beyond the regulatory system or to avoid the transaction costs associated with regulatory systems. These mechanisms include:
• Mandatory public reporting of emissions data such as discharge monitoring reports under the Clean Water Act¹⁴ and the Toxics Release Inventory under Emergency Planning and Community Right-to-Know Act.¹⁵
• Voluntary emissions data reporting under programs such as the Global Reporting Initiative¹⁶ developed by the Coalition for Environmentally Responsible Economics and the Tellus Institute, both nongovernmental organizations (NGOs), that encourages public reporting on environmental information about organizations using a standard reporting format.

• Government-sponsored environmental leadership, voluntary emissions reduction and reporting programs such as the Environmental Protection Agency’s (EPA) Performance Track or the State of Michigan’s “Clean Corporate Citizen” program.¹⁷

• Government policies that encourage environmental auditing, reporting violations found through the environmental audits to government agencies and prompt correction of violations in return for penalty waivers, such as U.S. EPA’s Incentives for Self-Policing and the Minnesota Environmental Improvement Act.¹⁸

• The International Standards Organization’s voluntary environmental management system standard—ISO 14001—designed to encourage companies to adopt formal management systems that assess the environmental aspects of their businesses, set goals for reducing environmental impacts, train employees on how to achieve the goals and track progress in meeting the goals.¹⁹

• Public access to emissions data, often arrayed by geographic coordinates, in systems such as EPA’s Envirosfacts²⁰ or Windows to My Environment²¹ databases and Environmental Defense’s “Scorecard” database.²²

• Public access to enforcement data such as EPA’s Enforcement and Compliance History Online (ECHO) database.²³

• Mandatory public involvement procedures that allow citizens to participate in permitting and enforcement decisions, including public comment periods, public meetings, and public hearings.

• Funding to provide citizens and citizen organizations with access to technical experts such as the Superfund Technical Assistance Grants (TAG) program²⁴ and EPA’s Technical Outreach Services for Communities (TOSCS) program.²⁵

• Government sponsored enhancements to public involvement procedures including early notice of permit applications, dispute resolution opportunities including mediation and community dialogues, and neighborhood meetings.

• Voluntary corporate sponsored community involvement opportunities such as community advisory panels.

• Voluntary corporate responsibility standards such as the CERES Principles²⁶ developed by an NGO in response to the Exxon Valdez oil spill and “Responsible Care,” the self-governance code developed by the industry-based American Chemistry Council.²⁷

While each of these mechanisms is designed, at least in part, to enhance public accountability for environmental outcomes, they are rarely used in systematic way. Each mechanism, much like each of our environmental statutes, was developed to address a specific problem, not as an element of a comprehensive strategy to enhance public accountability in a way that would maximize environmental outcomes.

Government agencies have, in the last few years, begun to use a systems approach for their enforcement and compliance programs. For example, the United States Environmental Protection Agency and few states have developed compliance management systems to identify priorities, allocate resources and determine which compliance tool—education, technical assistance or enforcement—to use in any particular set of circumstances.²⁸ They are, in Professor Malcolm Sparrow’s vernacular, trying to “pick important problems and solve them”²⁹ by using a “problem-solving strategy [that] picks the most important tasks and then selects appropriate tools in each case, rather than deciding on the most important tasks and picking the tasks to fit.”³⁰ However, this system approach has not extended to the broader range of accountability mechanisms.

Using the full range of accountability tools more systematically—creating an environmental accountability system similar to, but much broader than the compliance management system now used by the EPA—could significantly improve the effectiveness of environmental programs and improve environmental results. This will require government agencies, environmental organizations and others concerned with environmental progress to more carefully analyze how the various accountability mechanisms can be linked in a more strategic fashion.

The preceding article is part of a more extensive article, “Environmental Accountability and Public Voluntary.” Reprinted by permission from Pace Environmental Law Review (summer 2004).

FOOTNOTES

1. ENVTL. L. INST., BEYOND ENFORCEMENT: ENFORCEMENT, COMPLIANCE ASSISTANCE, AND CORPORATE LEADERSHIP PROGRAMS IN FIVE MIDWESTERN STATES 7–12 (2003) [hereinafter BEYOND ENFORCEMENT]
3. Id. at 60.
5. BEYOND ENFORCEMENT, supra note 1, at 10.
9. RECHTSCHAFFEN AND MARKELL, supra note 2, at 67; BEYOND ENFORCEMENT, supra note 1, at 15.
10. RECHTSCHAFFEN AND MARKELL, supra note 2, at 81.
30. Id. at 131.
Vast vistas of water and unusually shaped mountains and terrain. City landscapes dotted with concentrations of small homes. Red earth sprinkled with cactus and lush trees. Gorgeously colored macaws shouting and flying above in the skies. Farm-lands filled with strangely humped, white, and thin Brahma cows who stare you in the eye as you pass them. Steel white industrial buildings fill the city streets. People with European and ancient Indian faces grace the cities and land.

These are the most memorable images from my recent trip to Brazil for Pace Law School’s Comparative Environmental Law class. The class began immediately following the spring semester with a day of in-class lectures about Brazilian government (it is a Civil Code-based system), its constitution (which has been changed eight times since its inception in 1824) and history. This year, we were fortunate to have instruction by a Brazilian LLM student, Roseane Cerbino, in conjunction with Professor David Cassuto, who accompanied us to Brazil.

The student group was comprised of seven female students ranging in age from 24 to 44. Few of us knew one another; however by the end of the ten-day excursion, we were all good friends, intimately familiar with each other’s quirks, likes and dislikes and senses of humor. Furthermore, none of us knew what lay ahead of us. However, by the end of the trip, all of us were very pleasantly surprised.

The trip began with an overnight flight to Rio de Janeiro. Rio is a spectacularly beautiful city surrounded by ocean beaches and tall uniquely shaped mountains. The first morning that we arrived, we briefly visited Ipanema beach, located within two blocks of our hotel. At the beach we were accosted with vendors, selling everything from shrimp on a skewer to itsy bitsy bikinis. And of course they offered Brazilian’s national cocktail, the caipirinha, which is made with one of Brazil’s most plentiful crops, sugar cane. Following the beach, we convened with the rest of the group, which included several Pace environmental law professors and non-Pace speakers who were asked to speak at the upcoming conference and headed with our host, Arlindo Daibert, to see some of Rio’s most interesting sites. We visited the Christ statue, Corcovado, which sits on top of a mountain in the middle of Rio. We traveled to the top via a precarious, but thrilling, train that we all hoped had recently had its brakes checked. From this mountaintop, we saw not only the enormous statue, but we were also treated to one of the most breathtaking vistas of Rio’s lands and waters. What a beautiful city! Later, we visited the botanical gardens, which wowed us with its tremendous royal palm trees and beautiful orchids.

The following two days were spent in conferences, where we listened to Brazilian and American environmental professionals speak about citizen suits, their respective constitutions and programs that are working to monitor and improve the environmental state of the two countries. The evenings were spent chatting and eating in churrascarias, Arlindo’s rooftop terrace and the bar in which the famous bossa nova song “The Girl from Ipanema” was written. The Rio trip ended with a tour of one of Rio’s ubiquitous favelas and beaches. Favelas are Brazilian shanty towns constructed by destitute migrants who traveled from the rural lands outside of Rio to the city of Rio in order to get jobs and make a better life for themselves and their families.

We then flew off to Bonito, which means “beautiful” in Portuguese. This name is quite suitable for the vast open terrain, reminiscent of the prairies in our home country. The land was dotted with various animals, including the white Brahma cow, which is a thinner and humped version of the American cattle. In Bonito, we were escorted to our various activities by a very perky, funny, and likable man named Vladir, who was an ancestral German from Southern Brazil. He energetically led us to an ancient cave containing a pool of blue water, the color of which is found only in the most mystical and magical lands of our imaginations. He also swam with us in waterfalls, rafted in the Formosa River and snorkeled in the Sucuri River while cappuccino monkeys and wild boar looked on from the riverbanks. Our last stop in Bonito was to a macaw sanctuary where we saw these breathtaking multicolored birds flying and calling about an enormous sinkhole reminiscent of a miniature Grand Canyon. We also saw quick-moving ants, which I affectionately noted moved much faster than their human Brazilian counterparts.

Our last stop was in Sao Paolo, where we saw our own Professor Nicholas Robinson receive an honorary award from the Law for a Green Planet Institute. At the conference there were talks by European environmentalists who explained Europe’s efforts to preserve the environment. During lunch, some of us walked around this rather industrialized and hectic city.

In all, the trip was very enjoyable, unique and educational. My appreciation for the Brazilian culture, landscape and people has undoubtedly escalated, and frankly, I cannot wait for my next visit to this wonderful and interesting country.
Life and Law in Germany

By Nicole Harkin

As far as I can tell after a year as a Fulbright fellow in Germany, the main goal of the Fulbright program is for us to leave Germany loving it. I do so for all of the small and not so small differences between our cultures. For example: Germans do not use a top sheet, rather preferring to use a duvet cover. Germans eat their largest meal of the day at lunch. For breakfast and dinner they eat fresh bread without preservatives as open-faced sandwiches topped with everything from cheese to hard-boiled eggs to Nutella (a chocolate hazelnut spread). At Christmas, most families have real candles on the trees. The toilets have two settings: large flush or small flush. They prefer to buy mineral water to tap water, carrying all of the bottles home from the store and then back to the store to redeem their deposits. All roads have sidewalks and a bike lane. People shop downtown rather than at the mall. Most people rent their apartments rather than own. Germans are world renowned for their love of separating their garbage: compostable, brown glass, plastics, containers with deposits, paper.

My affinity for Germany has increased with the number of cities I have moved to. I have lived in Bonn, Berlin, and now Cologne. I worked originally at the International Union for the Conservation of Nature (IUCN). While there I primarily conducted research relating to my Fulbright project. I sought to analyze the differences between German and U.S. attitudes towards the environment. After a lot of reading and thinking, I concluded that, as one might expect, people are the same everywhere. People seek the easiest and cheapest way to live. Therefore, if recycling is easy and cost effective, people will participate in the programs. In Germany, the government seems to have done a great job of marrying these two concepts. However times are changing in Germany, where more and more people want cars or houses with some land rather than public transportation and apartments in the cities. After five months in Bonn, I felt like I had learned what I could from the situation and decided to move to Berlin. Because I am a graduate student, I was not required to attend classes at the university. This made my move to Berlin much easier. I lived in an area in northeast Berlin called Prenzlauerberg. My apartment was in the former eastern part of Berlin. While living there I fell in love with the city. There was always so much going on, lots to see and do. And the city is cheap: my apartment including utilities was 280€ a month. My monthly transit card was 64€. There must be 25 different movie theaters in Berlin showing movies from all over the world. And there are cafes on every street where you can sit and read the day long.

While living in Berlin I worked on a huge postcard project. I walked all over the city looking for stencil graffiti. In all German cities there is a lot of graffiti, most of which is simply done with a can of spray paint. However, there are other exemplars that are much more artistically done. These are the graffiti for which I was looking. After many hours on foot, I must have at least 300 pictures of this type of graffiti. A German friend of mine, who is a graphic artist, laid the postcards out and I have printed 500 sets of 30 postcards—which I am selling to pay for my last year of law school!

Moving to Berlin was a boon for my German as well, as I spoke a lot more German while there. And thankfully so, as at the beginning of June I moved back to the west to Cologne. Where I worked for the German Federal Ministry of Justice in their international criminal law division. The office consists of around ten people total including three lawyers and four paralegals. The lawyers are responsible for seeking the extradition of criminals residing in other countries or responding to requests from other countries for the extradition of criminals currently residing in Germany. I am still feeling my way around here but the people are very nice. We have a coffee break together in the mornings and afternoons and we all go to lunch together.

We often make fun of European work hours in the U.S., but as far as I can tell the Europeans are on to something. Six weeks of vacation means that you can really get a break from working or help a loved one when they are sick without feeling guilty. Working 38 hours a week means you can enjoy a coffee outside at a cafe for a few hours in the evening before the sun goes down. However, all of the Germans I know, work a lot and very hard while doing so. But when they are on vacation, they leave the cell phone, pager, and computer at home. They seem to understand that life at work can and will go on without them.

Living in Germany has taught me many lessons, not the least of which is patience. But the greatest gift of my time here has been the opportunity to contemplate an alternative way of living. I feel like I have finally been given time to think: be it thinking about the environment, graffiti art, or international criminals.
I remember being seven years old, big-eared and planted at the holiday dinner table in awe of my great-uncle Pete’s meandering stories. He lamented our family hardships in World War II (“Oooh, the lines for food were brrrrad!”). He relived his too-short Broadway career (ending with a robust song from South Pacific). He spoke of distant cousins with lost dreams of minor league baseball, the endless beauty of my great-aunt and her sisters and the best way to build a table. It mattered little what Uncle Pete said. He kindled my senses. He told good stories. And I listened. Not surprisingly, I chose to major in English and philosophy/religion—different words for “stories”—at Bates College. My favorite literature centered on the experience of the witness, whether in holocaust Germany, the racist South, or the natural beauty of the West. I listened for nuggets of those things that drew me to Uncle Pete’s stories: the love of life, the respect for others and nature, the appetite for justice. The philosophies that grabbed me preached action-based and rule-based ways to live life. Complex terms and confusing logic filled many of these books, but the lives of awesome people like Ghandi, King, and Bonhoeffer exemplified their meaning.

I entered a master’s program in ethics at Harvard to pursue philosophy and religion in a more rigorous context. I entertained thoughts of pursuing a doctorate and, one day, teaching. But, after a couple of years study, something happened. I lost track of the story. Theories inundated the experience of the individual. Instead of focusing on the narratives of life, my studies had shifted to grand, impersonal themes. Those things that drew me to Uncle Pete’s stories—laughter, loss, and faith—faded into technical terms.

When my graduate studies overwhelmed me with theory, the law attracted me. I saw (and still see) in the law the ability to mix the theoretical with the practical. Most importantly, the law provides the opportunity to listen to stories. From a client in dire need of assistance to an emerging point of law, the law is filled with narratives. So, I chose to study the law to be that big-eared kid sitting around the family dinner table listening to the story and doing my best to live out the morals.

Why I Chose Law School

By Janice Dean

To an environmental activist like me, law school wasn’t a natural progression, and I knew little of subjects like contracts or torts. In San Francisco I worked with David Brower, a veteran environmentalist who believed there should be a link between activists and policy makers. Law school forged that link for me. Through working on campaigns to keep nuclear waste out of Indian lands and dioxin out of the San Francisco Bay, I was involved with environmental justice issues. Environmental justice (EJ), the confluence of environmental law and civil rights, addresses the idea that low-income and minority communities bear a disproportionate burden of environmental hazards. My undergraduate research at Berkeley focused on the application of the Superfund law to Native American lands, and following graduation, I researched policy implementation measures for the first piece of environmental justice legislation signed in California while working for then-Governor Davis. After working with EJ issues for a few years as an activist and advocate, I decided to go back to school.

The most remarkable thing about law school is how surprisingly relevant I find all of my classes to be, even those without an apparent link to environmental issues. Civil rights, land use, and even tort law offer remedies to environmental and EJ problems. I’ve chosen to keep my curriculum broad and to learn the things that good attorneys should know; yet throughout the last two years I’ve had countless opportunities to interact with environmental issues in ways I didn’t expect. I had the unique opportunity to work on David Sive’s archives, reading original briefs and correspondence for landmark cases such as Storm King. In one of Professor Sive’s files, I found a 30-year old letter from David Brower. I suspect if I returned to my old San Francisco office and looked around, I’d find the corresponding letter from Professor Sive!

Environmental justice continues to be my focus here at Pace. I focused my law review comment on the use of supplemental environmental projects to mitigate environmental harm in low-income and minority communities, a project that put me in touch with attorneys who litigate EJ cases at the Department of Justice, EPA, and in the advocacy community. At my first summer internship at New York Lawyers for the Public Interest, I submitted formal comments on behalf of low-income and minority communities in the Bronx and Brooklyn as part of the World Trade Center Redevelopment Commission’s environmental impact statement scoping process, outlining concerns for solid waste disposal in EJ communities.

Two-thirds of the way through law school, I am amazed at how quickly time is passing and at how much I still have to learn. My second summer found me again working with high-level nuclear waste issues at the Natural Resources Defense Council in Washington, D.C., monitoring senate votes and writing passages for briefs. It seems I’ve come so far only to end up in the same place: public interest lawyering is activism, but with a pen, instead of a picket sign.
History of Change: The Land Use Law Center

The Land Use Law Center is dedicated to fostering the development of sustainable communities and regions through the promotion of innovative land use strategies. Through its many programs, the center offers lawyers, land use professionals, citizens, and developers assistance that enables them to achieve sustainable development at the local and regional level. It provides opportunities for students at Pace Law School to gain in-depth, practical experience that allows them to become excellent practitioners serving private, public, and non-governmental clients.

Historical Background of the Center

After working for several years in the area of land use law, Professor John Nolon saw major land use issues occurring in the suburbs of New York City in 1993. He observed many conflicts between environmental issues and development such as affordable housing, traffic congestion, and urban sprawl. As a result, Nolon created the Land Use Law Center with the vision that it would become a resource for the whole Hudson River Valley, from the Bronx border to Columbia County, as well as complement the environmental curriculum at Pace. The Land Use Law Center was formed with a $25,000 seed grant from Pace Law School and a $65,000 grant from Ciba to work with President Clinton’s Council on Sustainable Development. In 1994, Nolon began a study for President Clinton’s Council on Sustainable Development in order to assess the sustainability of the area. He conducted a parsalization study to project land use patterns for 50 years. The study showed that within 50 years, if left to current land use patterns, the then 70 percent open space would diminish to 30 percent. This clearly demonstrated what Nolon was observing—that there were major zoning and land use issues that had to be dealt with quickly.

After these beginning studies, Nolon rapidly expanded the center to begin altering the negative land use patterns demonstrated in the study.

Student Involvement

The Land Use Law Center started as a student-oriented center, involving a large group of students in a way that would benefit local communities. The center now offers externships, internships, and guided research seminars. Fifty student research papers have been published in the center’s 10-year existence. Student participation has tripled since the Land Use Law Center’s inception. Students assist community officials with their land use law questions and enable the center to produce information in an extremely accessible manner. Student involvement has enabled the center to assemble land use laws into a cogent framework, publish a guidebook for local officials, and run workshops. With the help of students, the center has written three books on land use topics for a national audience, all published by the Environmental Law Institute, and 12 guidebooks on specific land use issues.

Professors from the center also offer students a selection of related courses in land use, real estate, and environmental law as well as seminars and courses dealing with issues of land use, advanced property, real estate transactions and finance, historic preservation, water law, coastal law, and a variety of environmental law topics related to the use and transfer of real property. Currently there is a seminar in the new area of urban redevelopment law.

Land Use Law Training Programs

Another major focus of the Land Use Law Center is leadership training. The center offers four-day land use training programs for local government officials. The program created a curriculum-training manual specifically geared towards adult learning. The training programs encourage local legislative bodies, planning boards and zoning boards to create predictable, fair, and efficient land use decision-making processes. In addition, the training programs teach community leaders how to utilize land use law and strategies, conflict resolution, and community decision-making techniques in order to facilitate sustainable community development.

Under the guidance of current director, Sean Nolon, the leadership training program is spreading to communities outside of New York into nearby states such as Connecticut. The goal is to make these training programs available to as many different communities as and many different states as possible.

National Land Use Law Library

The National Land Use Law Library is an online database, where local and state officials, nongovernmental organizations, and citizens groups can easily find and reference local land use laws from all around the country. Currently, the library contains more than 300 of the most innovative examples of local strategies formally adopted by local law in each of the 50 states. The goal is to expand the library to an international database, citing local land use laws from around the world. During the IUCN Academy of Environmental Law conference in Nairobi, John Nolon was assigned the duty of collecting the various land use laws being used by the countries participating in the conference. These laws will be put into the database so that NGOs, state, and municipal groups may easily find them.

With all of the initiatives, the Land Use Law Center and its students, faculty, and staff are busy, working together for the common purpose of improving land use techniques and one community at a time. The philosophy of the center is that most environmental issues must be resolved at the local level. It is the combination of all the small efforts of these communities that makes the most progress towards more sustainable development patterns throughout the world. With its continual expansion, the center is striving to bring to the forefront of this change.
The New York State Public Service Commission voted in September to adopt a renewable energy policy designed to increase the proportion of electricity generated from renewable resources sold to consumers in New York State to at least 25 percent by 2013. This new initiative resulted from research, comments, and recommendations made by the Energy Project through the Renewable Energy Technology and Environment Coalition.

The Renewable Portfolio Standard (RPS) Program is forecast to reduce statewide air emissions of nitrogen oxide (NOx) by 6.8 percent, sulfur dioxide (SO2) by 5.9 percent, and carbon dioxide (CO2) by 7.7 percent, with a greater proportion of emission reductions expected in New York City and Long Island.

A major commission objective in implementing the RPS Program is to sustain a market for renewables without perpetual dependence upon government-mandated subsidies. It designed the RPS Program in a manner that relies upon a successful and thriving voluntary green power market to contribute at least one percent of the overall 25 percent goal.

The commission instituted its proceeding to explore and develop a Renewable Portfolio Standard in February 2003, at which time the Pace Energy Project became actively involved in developing this RPS policy. Many states have commenced RPS initiatives and comparable RPS Programs are in place in the United Kingdom, Denmark, Germany, the Netherlands, and Japan.

In January 2004, Riverkeeper initiated a citizen suit against two of the world’s largest oil companies for the largest oil spill in an urban environment. For more than half a century, 17 million gallons of oil have been seeping beneath Greenpoint, Brooklyn, courtesy of ExxonMobil, ChevronTexaco, and other oil companies. The oil has spread over approximately 55 acres in an underground plume. This plume is slowly seeping into Newtown Creek, a tributary of the East River. Though ExxonMobil has operated a remediation facility at the plume’s Meeker Avenue discharge point since the mid-1990s, an alleged unabated and unpermitted discharge from the same plume has developed from a bulkhead on the property of Peerless Importers, a wine and spirits distributor.

Representing Riverkeeper and individual plaintiffs, the clinic filed a complaint on May 18, 2004, under the Clean Water Act for failure to obtain a permit for the discharge into Newtown Creek, and under the Resource Conservation and Recovery Act for imminent and substantial endangerment resulting from waste disposal. The relief sought is for ExxonMobil to remedy the leaking bulkhead on the Peerless property and for ExxonMobil to complete its remediation of the plume.

From March 17 to 20, 2005, the Pace University School of Law Environmental Law Society (ELS) will host the annual National Association of Environmental Law Societies (NAELS) Conference. The conference will serve to bring together students and professionals from the environmental law and policy communities to learn, network, collaborate, and share information. Some of the key topics for this year’s conference include: the evolving role of environmental litigation clinics; the role of law, lawyers, and law students in creating a climate friendly energy policy; the growing role of local environmental law in stimulating more sustainable land use patterns; and globalization, trade, poverty, and the environment.
Nairobi Conference Explores International Environmental Law

The IUCN Academy of Environmental Law’s second colloquium was held in Nairobi, Kenya from October 4 to 8, 2004. This colloquium explored the various national regimes used to regulate land use, identify their similarities and differences, and allow reflection on the complex cultural, ideological, and historical factors that explain these similarities and differences. The colloquium also provided an opportunity to explore national similarities and differences regarding the topic of development and settlement patterns and how they are shaped.

Some of the key lectures included legal challenges to reshape land management for sustainable development, ethical considerations in land stewardship, land use, and access to justice. Panel topics included integrating environmental and human rights within spatial development planning; environmental land use legal issues in agriculture, forestry, and other natural resources issues; enhancing effectiveness of EIA in land stewardship; case studies in the law of sustainable urban redevelopment; local authorities and the management of land resources; biodiversity, land use and environmental law; integrated coastal management; law reform for sustainable land use management; and environmental tribunals as a tool for promoting sustainable land use. There was also an excursion to the Kitengela Wildlife Migration Corridor.

The agenda covered a number of critical developments in environmental law and addressed several emerging issues that judges will face over the next few years. Expert commentators teamed with experienced judges to present each topic. The agenda included the evolving role of the public trust doctrine, standards of proof, scientific uncertainty and the precautionary principle, the relationship between international trade panels and national courts in the environmental field, the growing issue of environmental justice, the use of international agreements and norms in national decision-making, access to courts, and the emergence of new issues involving genetically modified organisms, intellectual property rights, invasive and exotic species, and biological diversity.

How to Join the IUCN Academy of Environmental Law

The International Union for the Conservation of Nature (IUCN) Academy of Environmental Law is the first global learned society dedicated to advancing knowledge of environmental law through a network of law schools and their professors. After five years of preparation, the academy was launched in 2003 in order to coordinate legal studies and innovative research into how environmental law can best address environmental problems around the world.

Membership in the academy is open to all universities that meet the admission criteria; there is no limitation on the number of universities per region or per country. IUCN invites participation of university law faculties, individual professors of environmental law, organizations and institutions concerned with the progressive development of environmental law and legal education, as well as donors, to participate in the IUCN Academy of Environmental Law. Individual law professors may also apply to become associates of the academy. An application for membership to the academy may be obtained by contacting academy@iucn.org.

Pace Cosponsors North American Conference on Judiciary and Environmental Law

From December 6 to 8, 2004, the New York State Judicial Institute, Pace University School of Law, the United Nations Environment Programme (UNEP), and the International Union for the Conservation of Nature and Natural Resources (IUCN) held a North American symposium on Judiciary and Environmental Law at the New York State Judicial Institute in White Plains, New York. The event was cosponsored by the Commission for Environmental Cooperation (CEC), the National Judicial Institute of Canada and the ABA Section of Environment, Energy, and Resources.

The symposium was one in a series of international conferences addressing the changing demands on the judiciary resulting from the rapid development in the field of environmental law. The principal audience for the symposium was state and provincial judges from the United States, Mexico, Canada, and the Caribbean. International participants included Sir Robert Carmath, CVO, Lord Justice of Appeal for England and Wales; Chief Justice Mambouh Marice and Deputy Chief Justice Omar Sherif of the Supreme Constitutional Court of Egypt; and Justice Charles Gonthier of the Supreme Court of Canada.

The agenda covered a number of critical developments in environmental law and addressed several emerging issues that judges will face over the next few years. Expert professors presented at this colloquium will publish the edited research papers presented at this colloquium and will release the IUCN Academy’s study from the first and second colloquiums.
Spotlight on John Nolon, First Director of the Pace Land Use Law Center

John Nolon comes to work with a smile on his face simply because he loves what he does. For him, to find an area of practice that you care about deeply is the major ingredient for happiness in legal practice.

Nolon first came to Pace Law School in 1986 as an adjunct teaching real estate transactions and advising the then-active Real Estate Law Society. He was hired as a full professor in 1988 to teach property, land use, environmental, and real estate law courses. He founded the Land Use Law Center in 1993 as a method of engaging students in exploring innovative methods of using land use law to solve environmental, housing, and economic development problems and to advocate for those strategies to be adopted by local governments, state agencies, the real estate industry, environmental groups, and their attorneys.

He received his BA from the University of Nebraska and his JD from the University of Michigan. After law school, he joined the Peace Corps in Guatemala where he learned about and practiced community development law. His experience in the Peace Corps fueled his curiosity for how the law can be used to create land development patterns that are economically efficient, environmentally sound, and equitable. He received the Reginald Heber Smith National Award for community development, which supported his work in Westchester on housing and community development projects. In 1974, Nolon created the Housing Action Council, served as its Director for 15 years, spun off a dozen not-for-profit housing development groups, and practiced law privately. Together, the groups he helped create have developed or rehabilitated several thousand homes for low and moderate-income households. Most are still in existence today, working to address the region’s growing crisis in affordable housing.

When asked what his goals are for his future, Nolon is quick to come up with a list. His first goal is to become a better teacher because he values his impact on students when demonstrating to them how the law can be used to resolve tensions and problems in society. His second goal is to continue writing and researching, something he comes in early every day to do. He recently discovered and popularized the advent of local environmental law and is currently researching innovations in the fields of affordable housing and urban redevelopment law. His research also involves comparative land use law studies in other countries and using land use law to regulate building and rebuilding in disaster prone areas.

Nolon’s third goal is to influence and support as many law students and young attorneys as he can, particularly the interns and staff working with the Land Use Law Center and the related centers and programs of the school.

Nolon enjoys working with local communities in the Hudson River Valley and noting how their land use innovations gradually are adopted by their neighbors. He loves interacting with students and being an enthusiastic student and practitioner of the law. His ultimate goal is to pass that approach to the law along to his students.

accolishments

In Print

Nada Y. Al-Duaij, SJD ’03

Robert J. Goldstein, SJD ’01

John Nolon and Jessica Bacher, JD ’03


Honors and Awards

Janice Dean ’05
Dean placed first in the annual New York State Bar Association Environmental Law Essay Contest. The competition is designed to challenge law students to analyze the environmental issues confronting us today. She received a $1,000 prize for her essay, “Remembering the Forgotten Community: Community-Based Supplemental Environmental Projects and Environmental Justice,” which will be published in *New York Environmental Lawyer*.

Robert Goldstein, SJD ’01
Previous director of the Center for Environmental Legal Studies at Pace, Professor Goldstein began teaching property at Whittier Law School in the fall semester of 2004.

Christopher Rizzo, JD ’01
Rizzo received his JD with an environmental law certificate from Pace in 2001 and served as a legal intern at the Pace Environmental Litigation Clinic. On August 3, 2004, he was appointed the tenth Menapace Fellow at the Municipal Art Society of New York. Rizzo was previously an associate in the environmental department of Cole, Schotz, Meisel, Forman and Leonard in New Jersey, and specialized in urban land use issues. During his two-year term as Menapace Fellow, Rizzo will serve as the society’s in-house legal counsel and work on pending issues including the protection of landmarks and historic resources, open space preservation, and brownfields redevelopment.

Nicholas Robinson