Clean Energy and Sustainable Development

by Mohamed T. El-Ashry,
Senior Fellow, UN Foundation

(Delivered as the acceptance speech at the Elizabeth Haub Environmental Diplomacy Award Ceremony at Pace Law School on March 8, 2005)

Pursuing a more sustainable global future is less a matter of cost than of conscience, commitment, and cooperation. Humanity, greater in number and more economically active with each passing day, is increasingly playing havoc with Earth’s natural systems. Our actions are giving rise to a multitude of critical threats: the degradation of soils, water, and the marine resources essential to food production; health-endangering air and water pollution; global climate change that is likely to disrupt weather patterns and raise sea levels everywhere; the loss of habitats, species, and genetic resources that are damaging ecosystems and the services they provide; and the depletion of the ozone layer.

The sorry state of the planet and of sustainable development is not because of lack of international attention. In fact, since 1992, the response of the international community to the challenges of environment and sustainable development included four international conferences, four ministerial summits, four international environmental conventions, two protocols, adoption of the Millennium Development Goals (MDGs) and promises for additional finance to help achieve them, and establishing a new financial entity—the Global Environment Facility (GEF).

On the face of it, these are remarkable achievements. But despite all the high-powered gatherings, agreements, and commitments, little progress has been achieved in improving the environment and in pursuing sustainable development. Global environmental trends continue to be negative and the promise of significant financial resources to address the challenges of environment and development has not materialized. The gap between rich and poor within and between countries continues to widen; 90 million people are added to our global village every year, mostly in developing countries; one person in three still lacks adequate fresh water; greenhouse gases are steadily increasing; ecosystems that are critical for human survival continue to be undermined; and land degradation threatens food security and livelihoods in many regions, especially Africa. It is ironic that as the evidence for environmental degradation becomes more convincing, the political will for action becomes weaker or lacking.

The gap between rich and poor and the inequality of our world can also be gleaned from a satellite photo of the Earth at night. The gap becomes more convincing, the political will for action becomes weaker or lacking.

The gap between rich and poor and the inequality of our world can also be gleaned from a satellite photo of the Earth at night.
shown that the kind of energy and the way it is used are important determinants of the degree of sustainability achieved.

Last month, in its report “Energy and Sustainable Development,” the International Energy Agency (IEA) said: “No matter how we define sustainable development, current systems of energy supply and use are clearly not sustainable in economic, environmental, or social terms.” In the “business as usual” scenario, the IEA shows that, in the absence of new policies by governments and international financial institutions, the world’s energy needs will be almost 60 percent higher in 2030 than they are now. And as you might have guessed, CO$_2$ emissions will also increase at about the same rate.

Clearly, continuing along the current path of energy development is not only incompatible with sustainable development objectives, but it also means that the world’s vulnerability to supply disruptions will increase as international trade and competition expands.

Recognizing that decisions taken now will be decisive for a transition towards a sustainable energy future, world leaders gathering in Johannesburg for the World Summit on Sustainable Development (WSSD) concluded that eradicating poverty is an indispensable requirement for sustainable development and called for a substantial increase “with a sense of urgency” of the global share of renewable energy in the total energy supply.

There is a broad consensus that the substantial expansion of renewable energy is a win-win proposition for developed and developing countries alike; it provides opportunities for poverty eradication and for satisfying the energy needs in rural and remote regions; it helps generate employment and local economic development opportunities; it helps curb global warming and contributes to the protection of human health caused by air pollution; and it enhances energy security through reliance on domestic energy sources such as biomass, hydro, wind, solar, and geothermal.

At the same time, clean energy is one of the key elements for simultaneously achieving the Millennium Development Goals for eradicating poverty and hunger, achieving universal primary education, promoting gender equality, improving health, combating communicable diseases, and ensuring environmental sustainability.

In this regard, the IEA’s “business as usual” scenario shows that the number of people without modern energy services in 2015 will be only fractionally smaller than in 2002. Alternatively, in a scenario where the MDGs’ poverty target is assumed to be met, modern energy services are provided to an additional one-half billion people in 2015. That is estimated to cost about $200 billion, which suggests that, at current policy and financial commitments, the poverty reduction target is highly unlikely to be met.

It is clear that current energy policies by governments and international institutions have not contributed in a significant way to sustainable energy or to improving access to energy services. At the same time, the gap between financial needs and available resources for energy development has widened since the commitments of Rio in 1992. Both ODA and Foreign Direct Investments (FDI) have declined in the last decade.

Last year, as a follow-up to Johannesburg’s Plan of Implementation, and in anticipation of CSD 14/15 deliberations on energy in 2006 and 2007, two major international conferences on clean energy and development were convened in Europe. In June, Germany convened Renewable Energies 2004, which I had the honor to facilitate, and in December, the Netherlands convened Energy for Development 2004. Both conferences, which included ministers and high-level representatives from governments, international institutions, the private sector, and civil society, agreed on a number of policy recommendations for advancing the transition to sustainable energy systems and to increasing access to energy services.

Allow me to highlight some key policy recommendations based on the experience of the GEF in funding renewable energy projects in developing countries, as well as from the two European conferences. These policy recommendations recognize the diversity among countries and regions and the fact that no single policy instrument can ensure solutions for every application, sector or subsector, sociopolitical situation, or country. They include: (1) developing coherent policies that support the development of markets for clean energy technologies; (2) removing barriers and leveling the playing field for clean energy and renewables by internalizing external costs and by phasing out energy subsidies that distort markets; (3) establishing regulatory and legal frameworks in developing countries and reducing regulatory uncertainty in order to encourage private investment; (4) strengthening the human and institutional capacity required to transform energy markets in developing countries and establishing the conditions for attracting private investment for clean energy; (5) developing ways for channeling microfinance to support the extension of access to clean energy for the rural poor; and (6) establishing clear objectives and targets for clean energy, especially renewables, in the portfolios of international financial institutions like the World Bank and the Regional Development Banks.
Besides the need for a substantial increase in the use of clean and renewable energy technologies, the technical and economic potentials of improving energy efficiency are enormous. In a number of countries, energy efficiency can be the most economic way to meet the growing demand for energy services. The IEA estimates the overall potential of cost-effective energy efficiency gains in developing countries at 30–45 percent, which could result in major economic and developmental benefits.

I would be remiss if I did not mention the GEF in the context of building markets and removing barriers to renewable energy, and in contributing to improving the lives of the poor in rural areas of the developing world. The GEF, which I have had the honor to chair since its establishment in 1991, is playing a leading role in partnership with governments, international institutions, the private sector, and NGOs in expanding the introduction of renewable and clean energy technologies in developing countries. Its clean energy portfolio has grown to more than $1.8 billion in grants that has leveraged more than $9 billion in public and private finance in 50 countries.

From the beginning, we recognized the importance of renewable energy for sustainable development, particularly in rural areas that are not and will not in the foreseeable future be connected to a grid. The productive use of renewable energy in rural areas helps raise incomes and improve health. Pumping water for irrigation, power for drying crops, energy for cottage industries, and lighting in schools and hospitals are some of the important applications of renewable energy for rural and remote areas.

Through more than 110 projects, the GEF deals with problems hampering the transformation of markets for renewable energy, i.e., the lack of supportive policy frameworks, inadequate financing for installations or supporting businesses, lack of technical capacity, and lack of awareness and trust in the technologies by users and utility companies.

Over the past 14 years, the GEF has been an equity owner, has loaned money on commercial and sub-commercial terms, has initiated microfinance schemes, has provided contingent financing for project preparation and investment, has mitigated renewables-specific project risks, and has ventured into the area of credit guarantees.

But GEF resources, even with the cofinancing it leverages, are too small relative to the size of the investments we are discussing here. The GEF can only help demonstrate new thinking and new ways for advancing the agenda of clean energy, and hopefully, through large public and private investments, GEF efforts will be scaled up and replicated many times over.

In closing, let me say that the global transition to renewable and other clean energy technologies is inevitable, not because fossil fuel supplies will run out, but because the costs and risks associated with the use of these supplies will continue to increase relative to those of renewable energy. Costs will increase as the environmental effects of fossil fuel use are incorporated into the costs of energy and as the cheapest reserves are depleted. Costs will also increase as a result of political instability as we have witnessed in the last year or so. In addition, in the case of oil, as supply remains the same or shrinks and demand continues to grow, the price of oil can only go in one direction—up.

I am not naive enough, however, to believe that renewables will become the dominant source of energy in the next decade or two. I believe fossil fuels will remain at the core of world energy supply through most of the first half of this century. However, we need to act now on the interconnected fronts of clean energy and climate change—not in a draconian way but through a framework, a strategy, if you will. There is no shortage of good ideas—there is a shortage, however, in political will. We need to act now because developing new ideas and major shifts in our technological world requires time scales on the order of 20 years or more.

Sustainability also means that we get serious about dealing effectively with climate change. New measurements released last month, based on nine million temperature and salinity readings from the world’s oceans, provide the most compelling evidence yet that man-made climate change is underway and point to a more dramatic and sudden climate change in the future. The Kyoto Protocol was only intended as a first step and, by itself, will not materially alter the state of greenhouse gases in the atmosphere. We must act decisively to cut emissions in the short-term while new research and development help improve the efficiency and cost of renewable energy and carbon sequestration technologies. Also no long-term solution can be achieved without the active participation of the United States and major developing countries like China, India, and Brazil.

Finally, let me say that, with a gross world product exceeding $30 trillion and growing, the world can pursue sustainability to great advantage if it wants to. And the main driver of sustainable economic development as we all know is sustainable energy. Achieving such a secure and sustainable energy future, however, requires bold policy actions, enhanced investments, and genuine cooperation at the national and global levels. And above all, it requires a longer-term view and political will.

Mohamed T. El-Asbry is a senior fellow with the UN Foundation. He served as chief executive officer and chairman of the Global Environment Facility (GEF) from 1994 to 2003. He also served as chairman of the GEF during its Pilot Phase (1991–1994). Prior to joining the GEF, he served as the chief environmental adviser to the president and director of the Environment Department at the World Bank, as senior vice president of the World Resources Institute (WRI), and as director of Environmental Quality with the Tennessee Valley Authority. He has held teaching and research positions at Cairo University, Pan-American-U.A.R. Oil Company, Illinois Geological Survey, Wilkes University, and the Environmental Defense Fund. El-Asbry received his BS with honors in 1959 from the University of Cairo and PhD in geology in 1966 from the University of Illinois. This March El-Asbry received the Elizabeth Haub Prize for Environmental Diplomacy. The prize was established by the International Council of Environmental Law (ICEL) and Pace University in 1998. It is awarded for a particular practical accomplishment in a specific instance or a new idea or diplomatic initiative, leading to progress in the field of international environmental law and policy.

Reflections
Laura Bucher's (3L) outstanding performance at the Legal Aid variety show revealed her natural talent and enthusiasm for Pace Law School. Performing in front of a large audience is not something that comes easy for many students; Bucher is the exception. Prior to law school, she studied drama and religion at Vassar College. She moved from Kentucky to Brooklyn, New York, where she waited tables, bartended, and taught yoga while also performing in several Off-Broadway plays. She starred in *Hamlet*, An Elizabethan Salon, Gaslight, and The Criminals.

A devoted vegetarian, Bucher joined several environmental groups at Pace, sparking her interest in environmental law. "I am not really a 'granola person,' but I enjoy the outdoors, hiking, and eating organic food," says Bucher, who spent seven years pursuing acting and eventually realized she wanted to do more to help the environment. She came across an LSAT book at a local bookstore and began to look into a legal career. Bucher decided that law school would be the perfect place to learn the skills needed to effectuate environmental change.

Pace campus life enabled Bucher to become an active student leader in the Environmental Law Society (ELS) and Public Interest Legal Scholarship Organization (PILSO). "The student body and the environmental program foster a close-knit supportive environment," says Bucher. As the rules and bailiffing vice chair of the National Environmental Law Moot Court Competition board, Bucher coordinated the student bailiff program and answered competitors' questions. She was also selected to serve as articles editor for the 2005–2006 *Pace Environmental Law Review*.

In just two short years, Bucher has gained a wide variety of hands-on legal experience and explored several environmental courses. "I really enjoyed my Animal Law and Energy Law classes, which keep my course load interesting," she says. Last summer, Bucher participated in Pace's Washington, D.C. Externship Program working as a legal intern at the National Wildlife Foundation. Throughout the spring term, Bucher participated in the Federal Judicial Extern Honors Program clerking for Judge Janet Hall in the District of Connecticut, Bridgeport. This summer she is serving as a legal clerk at the Conservation Law Foundation in Vermont.

**Fighting the Good Fight**

by Elana Roffman '05

Today students have offices in the Environmental House, located a few hundred feet from the main campus of Pace Law School, but when Robert F. Kennedy Jr. founded the clinic in 1987, only a few desks in the basement of Preston served as home. The clinic has undergone several changes since then, namely the addition of codirector Karl Coplan in 1994. What has not changed is the role of the clinic as an educational tool at Pace as well as its importance to local public interest groups, primarily Hudson Riverkeeper, Inc.

The Pace Environmental Litigation Clinic, Inc. serves as a law firm to nonprofit environmental organizations that are seeking representation in public citizen lawsuits and state actions. Under the direction of Kennedy and Coplan, the clinic takes on federal and state claims as well as local proceedings, allowing the students to obtain a variety of legal experiences. All clients must sign a waiver acknowledging that a law student, under a student work order, will tend their legal services. Coplan describes the clinic as a firm; however, he points out that rather than being partners dictating the work to associates, Kennedy and Coplan expect students to take responsibility for their own cases and their development. Each student plays an integral role in the handling of the lawsuits that the clinic is litigating.

Each week Coplan, Kennedy, and students meet for a three-hour case review, with Hudson Riverkeeper usually in attendance. Alex Matthiessen, Riverkeeper's executive director, can be found sitting in the basement of the E-house with Riverkeeper's investigator, Basil Segos, and other members of the Riverkeeper team. During these three hours the Riverkeeper cases that students are responsible for are developed and reviewed. (Hudson Riverkeeper also employs its own team of attorneys who work on their own cases as well as supervise students on certain matters.) It is during these sessions that other organizations can request help from the litigation clinic; taking the client confidentiality rules seriously, Riverkeeper leaves when discussing potential or actual cases involving other clients.

Every semester, 10 students enroll in the clinic, which involves a class element as well as the clinical experience. The class is a two-semester program consisting of a pre-trial during the spring semester and trial preparation during the fall semester. The conclusion of the class is a trial in December of each year, based on an old clinical case, where students have five weeks to prepare, file papers, and argue.

Clinic students have won major victories against New York City and lost long drawn-out battles against Suffolk County. Along the way, it turns out these memorable experiences are more about the experience than the outcome. As Coplan points out, part of his job is to help the students understand that their job is to "fight the good fight" and by doing their job that they are making public the important environmental issues of our time.

Being a part of the clinic is a badge of honor at Pace, and it is recognized among lawyers around the country as a program that prepares its students for the practice of law because its students are in fact practicing law. It is a safe place for students to learn the law and use the skills that they are developing to be active in the legal community. Students who graduated years ago and students participating in the program today can always find something to talk about, be it cases that have been ongoing since 1987, the fear of the first brief or court experience, the frequent all-nighters, or what pizza toppings are favored during case review.

Theodore Roosevelt said, "I recognize the right and duty of this generation to develop and use our natural resources, but I do not recognize the right to waste them, or to rob by wasteful use the generation that comes after us." The clinic embraces the job of protecting our resources from waste to ensure a safe future for generations to come. In the spirit of the walking the walk, Kennedy drives a Toyota Prius, and, in good weather, Coplan's commute consists of kayaking across the Hudson River and biking to and from White Plains each day.
**Harkin Awarded Bosch Fellowship**

by Emily N. Masalski '05

After spending a year as a Fulbright scholar in Germany, Nicole Harkin '05 returned to the United States, ready to embark on her final year at Pace. During her Fulbright experience, she traveled, studied, and interned with the Ministry of Justice where she dealt with the extradition of criminals to and from Germany.

“Germany is full of energy and excitement. I enjoyed my time in Berlin so much that I knew I wanted to return upon graduation,” says Harkin. She applied for the Robert Bosch Foundation Fellowship, whose purpose is to build transatlantic relations and promote understanding between Americans and Germans. Each year, the Bosch Foundation in Stuttgart selects 20 Americans between the ages of 23 and 34 to spend nine months in Germany.

The fellowship committee interviewed 44 candidates for 20 positions. “All of the candidates spent an entire day interviewing in New York City,” says Harkin. “It was interesting because the interview was set up like a panel in which each candidate could hear what the others had to say.”

The toughest question Harkin had to answer involved whether the swastika should be outlawed in Europe. She explained to the committee that “outlawing a symbol gives the opposition a symbol to rally around.” Having recently visited the new Native American Museum, she related her surprise at seeing the swastika on Native American museum pieces. “Banning the symbol will not change people’s attitudes,” she says.

Harkin will have an opportunity to gain in-depth knowledge of a different political, economic, and cultural environment while examining the proposed German Freedom of Information Act as a senior fellow at the German Bundestag, or parliament. She hopes to also work at a law firm lobbying on this issue. Germany and Luxembourg are the only countries in the EU without a FOIA law.

She will also attend three intensive seminars that provide fellows with opportunities to meet and talk with representatives of government, international businesses, cultural organizations, and universities.

“I am excited to see where this next adventure will take me in my legal career and in life,” Harkin says. “Initially, I wanted to become a paleontologist but calculus got the best of me. My Pace Law legal education definitely provided me with the tools necessary to achieve my dreams.”

**Clinic Experience Leads to Career Opportunities**

by Emily N. Masalski ’05

“You look pretty smart and you’re not into trouble,” the character and fitness examiner said. After her interview, Stephanie Haggerty ’04 walked away with a sense of relief. The character and fitness interview was the last hurdle to becoming a practicing attorney in New York. Haggerty is admitted in New York and New Jersey.

Haggerty is currently working as an associate at Kirkpatrick & Lockhart Nicholson Graham LLP on a wide range of environmental matters. “I have jumped feet first into my career and work with very hardworking and intelligent people,” says Haggerty, who drafts complaints, environmental permits, motions, and briefs pertaining to CERCLA and New Jersey state statutes and regulations.

In 1997, Haggerty graduated cum laude with a BS in environmental and forest biology from the State University of New York College of Environmental Science and Forestry in Syracuse.

While pursuing her master’s degree in entomology at the University of Georgia, Haggerty compiled and analyzed data regarding the impact of the logging industry on macroinvertebrates, amphibians, and stream geomorphology in the Pacific Northwest. After graduating summa cum laude, Haggerty decided to pursue a law degree and environmental certificate at Pace. “I was attracted to the broad curriculum and variety of opportunities outside of the environmental law field,” says Haggerty. “The flexibility of programs would enable me to market myself to a wide range of employers. The outstanding scholarship program was also an important factor in choosing to attend Pace.”

Haggerty attributes much of her recent success to the Pace Environmental Litigation Clinic experience. “When I first started the clinic, I decided to take a lighter course load in order to focus on my case assignments,” says Haggerty. “I found that the two semesters were extremely worthwhile.” As a clinic student, Haggerty handled the Daskammer Power plant case and filed a suit to compel the New York State Department of Environmental Conservation to review their permit. She also drafted and filed a complaint regarding improper sewage treatment plant discharge. “The clinic helped me truly understand the interplay between clients, the law, and the courts,” Haggerty says. “The clinic definitely prepared me for fast-paced law firm life.”

Haggerty emphasized the importance of Pace environmental faculty and summer employment experiences. “Students should take advantage of every opportunity that they can at Pace. The environmental faculty are always willing to offer career advice,” Haggerty said. During her 1L summer, Haggerty participated in the Washington, D.C. Environmental Externship Program as a legal intern for the Natural Resources Defense Counsel. As a 2L, she was a law clerk at the U.S. Department of Justice, Region 2, Environmental Enforcement Division in Washington, D.C.

Haggerty dedicated her free time as an Environmental Law Society executive board member and vice chair of the National Environmental Law Moot Court Competition board. She also served as a research and writing editor for *Pace Environmental Law Review* and graduated cum laude in 2004.
Pace Honored by the American Bar Association

For Distinguished Achievement in Environmental Law and Policy

The Environment, Energy, and Resources Section of the American Bar Association (ABA) honored Pace with its annual Distinguished Environmental Achievement Award at the annual ABA Meeting in Chicago, August 5-7. The award recognizes individuals, organizations, or programs that have distinguished themselves by contributing significant leadership in improving the substance, process, or understanding of environmental law or policy. At the ABA Awards ceremony, John Quarles received the individual lawyer award, and Pace Law School received the institutional award.

Environmental Law Programs
1978–2005

1978 Environmental law program created • Environmental Law Society chartered
1982 Pace Environmental Law Review established • Center for Environmental Legal Studies founded by Nicholas Robinson, former Congressman Richard L. Ottinger, and Donald Stever • Pace became one of 14 universities to join the IUCN • LLM program in environmental law approved by the American Bar Association
1987 Energy Project founded by Richard L. Ottinger • Environmental Litigation Clinic created • Clinic directors included Robert F. Kennedy Jr., Steven Solow, and Karl Coplan
1989 First National Environmental Law Moot Court Competition launched
1993 Land Use Law Center founded by John Nolon
1994 Land Use Law Center establishes model program with President Clinton’s Council on Sustainable Development
1996 JJD program in environmental law approved by the American Bar Association
1997 Washington, D.C. Externship Program established
1998 First issue of Journal of the Pace Center for Environmental Legal Studies published • Comparative Environmental Law course with National University of Singapore launched
1999 First Elizabeth Haub Award for Environmental Diplomacy presented
2000 The David Sive environmental litigation files donated to the Pace Law library • Comparative Brazilian Law course developed • Joint degree program launched with Yale University’s School of Forestry & Environmental Studies (JD/Master of Environmental Management)
2002 Joint degree program launched with Bard College (JD/Master of Science in Environmental Policy) • Pace signs MOU with Rio de Janeiro Attorney General’s Office to jointly sponsor the Brazil Comparative Law course • Pace cosponsored the first meeting of the IUCN Academy of Environmental Law in Shanghai • Land Use Law Center developed National Land Use Law Library • FIPSE exchange program with Brazilian law students established
2003 Pace Law School opened David Sive Manuscript Collection • Pace cosponsored North American Conference on the Judiciary and Environmental Law • Land Use Law Center launched “Nation on Edge Project”
2005 Pace edited “UNEP Training Manual on Environmental Law” • Pace hosted National Association of Environmental Law Societies (NAELS) conference: “Mixing Zones—Where Law School Meets the Real World” • UN Environmental Diplomacy course created • Pace honored by the ABA for Distinguished Achievement in Environmental Law and Policy

Energy Project Update
Harvesting Wind Energy as a Potential Cash Crop for Rural Landowners

by Fred Zalcman

Rural areas throughout New York offer some of the best wind resources in the northeast. Encouraged by state and federal financial incentives, developers are actively prospecting for sites on which to erect wind turbines that convert wind into electricity. In order to tap these resources, wind developers must enter into legal arrangements with owners of the property underlying proposed wind turbines and associated infrastructure (e.g., access roads, substations, etc.). These legal arrangements typically take the form of easements and land leases rather than outright purchase of property.

Many rural landowners view wind energy as a potential new “cash crop” that affords them the opportunity to supplement and diversify farm income. However, private landowners approached by wind developers may be reticent to enter into long-term lease agreements out of concern that they lack the knowledge or bargaining power to adequately protect their interests.

In order to reduce this hurdle to wind development, the Energy Project published Harvesting the Wind. Written from the vantage point of the landowner, the guide covers the issues that most frequently arise in the context of a long-term lease or easement associated with a wind development site.

The guide highlights the many issues that the landowner should be cognizant of before entering into such an arrangement, including:

• Agreements applicable to various stages of project development;
• Royalty payment amounts and structure;
• Preserving the right to farm and other compatible uses;
• Impact of leases on farm conservation program subsidies and tax consequences;
• Legal liability; and
• Contract term and termination.

The guide also provides a number of helpful contracting tips and resource information.
Land Use Law Center Update

by Jessica Bacher

New Real Estate Law Institute Launched

The Land Use Law Center recently created the Real Estate Law Institute to study and advance the role that real estate law and lawyers play in urban revitalization, affordable housing, job creation, and the development of livable communities. The institute conducts research, sponsors training, and leads public-issues discussions in the area of real estate transactions, finance, regulation, and development. Attorneys, developers, property managers, title insurance executives, brokers, and other industry leaders advise the institute.

Publications


Conflict Resolution

The center conducts a nationally recognized four-day course that teaches local land use leaders how to use land use law, conflict resolution, and community decision-making techniques to accomplish sustainable community development. Participants include local elected and appointed officials, developers, private sector leaders, environmentalists, and others with a stake in how local land is used and conserved. After conducting 20 rounds of training, the center is franchising organizations in other regions and states to conduct the program. The first out-of-state programs were held in Connecticut this spring.

Land Use Law Database

The center maintains an extensive Gaining Ground Information Database (www.landuse.law.pace.edu) of federal, state, and local laws and best management practices in the field of land use law. This library is intended to be easily accessible by academics, practitioners, and laypeople. It allows users to search by topic, geographical area, locality, and type of information.

International Land Use Work

The center is working with partners in six Latin American nations to assist them in creating a legal system capable of promoting sustainable development. The center set out to identify and work with partner institutions in Mexico, Costa Rica, Ecuador, Brazil, Chile, and Argentina. Each partner in turn identifies a network of change agents in its country and develops a program for involving this network in learning about and disseminating best management practices primarily to land use leaders at the community level. The program’s priority is to work with communities experiencing crises or challenges regarding the sustainable use of the land.

Jessica Bacher graduated from the University of Florida with highest honors in 1999 with her BS in marketing and a minor in environmental studies. She received her JD summa cum laude from Pace Law School in 2003 along with a certificate in environmental law. She graduated first in her class in both institutions. While in law school, she published two scholarly articles in professional law journals on the topic of using land use law to preserve barrier islands. Bacher was one of the first graduate fellows at the Land Use Law Center and is currently a staff attorney there in charge of innovation and research. She coauthors a regular land use feature in the New York Law Journal.

Dean Emeritus Ottinger Briefs UN Diplomats on Energy Issues

On May 12 at United Nations headquarters in New York, world-renowned experts in sustainable development and energy law, Richard Ottinger, Pace Law dean emeritus; Mohamed El-Ashry, UN Foundation; and Adrian Bradbrook, University of Adelaide, Australia, discussed key energy and climate issues and briefed UN correspondents. El-Ashry delivered his presentation on “Energy, Sustainable Development and MDGs.” Adrian Bradbrook and Richard Ottinger introduced the Cambridge University Press’s leading publication The Law of Energy for Sustainable Development (2005), which they coauthored and coedited. A UN representative made closing remarks and discussed plans for “Parliamentarian Forum on Energy Legislation and Sustainable Development.”

Each speaker outlined key issues for energy and climate change that should be featured in the forthcoming deliberations of the Commission on Sustainable Development (CSD 14 & 15).

The complex challenge of sustainable energy development was highlighted at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992 and is discussed throughout Agenda 21. Agenda 21 highlights the fact that current levels of energy consumption and production are not sustainable, especially if demand continues to increase. It stresses the importance of using energy resources in a way that is consistent with the aims of protecting human health, the atmosphere, and the natural environment. Countries agreed at both CSD-9 and the World Summit on Sustainable Development (WSSD) that stronger emphasis must be placed on the development, implementation, and transfer of cleaner, more efficient technologies along with the expansion of the role of alternative energy sources.
As I peered out from the airplane window, I saw a massive expanse of untouched lush forest. Just as I thought to myself how remarkable it is that such large areas of forest still exist in this world, we started to fly over an area that had been completely clear-cut, with barely a tree standing. I looked back towards the forest and it looked like a green island standing in an agricultural desert. It occurred to me that the only reason that forest was still standing was because of environmental law. At this moment, I realized that I had not helped to organize a typical law course. I knew that the law students were going to be given the rare opportunity to be on the ground surrounded by the problems that law is supposed to fix.

After we disembarked from the plane and took a bus across the border into Argentina, we met our friends from the forest. Nearly 50 butterflies gathered to welcome our group of 18 law students and professors to an area that is under urgent threat of further destruction—the Argentine subtropical forest. Once we boarded our prestigious means of transportation—a very large jungle truck—we took a two-and-a-half-hour drive down a dirt road through Iguazú National Park to Yacutinga Jungle Lodge, which maintains a private 570-hectare reserve of subtropical forest. I couldn’t help but smile in admiration of the natural wonders surrounding us. We traveled for an hour and a half through dense forest. Suddenly the forest disappeared, just as our guides Corino and Marcella told us that we were exiting the park; the forest was almost entirely clear-cut for farmland. We traveled another 45 minutes until we came upon another area of lush forest—the private reserve at Yacutinga Lodge. That night the local indigenous children from the Guaraní tribe sang spiritual songs for the Earth, welcoming us to their homeland. Over the three days we spent in Yacutinga, we hiked through the forest and saw 600-year-old trees and marvelous wildlife, ate incredible homegrown food, planted endangered trees, and viewed the Milky Way each night before we sat down to our campfire. We lived without electricity or phones and we all bonded and made lasting friendships from the experience. Our lives were touched personally from being there.

From Forest Destruction toward Forest Restoration and Sustainability

Beyond the personal experience, we were given the rare opportunity to learn about this region firsthand. The Iguazu Falls region harbors more than 400 species of birds, 420 butterfly species, 2,000 species of plants, and an immeasurable amount of insects, mammals, and reptiles. According to the World Wildlife Fund, the largest threat to biodiversity in the region is forest fragmentation and degradation due to expansion of large- and small-scale agriculture. Poverty remains a major struggle as the native forest is being converted into large-scale pine plantations, pasture for cattle ranching, and small-scale tobacco and yerba mate plantations. Unsustainable and illegal exploitation of wildlife is one of the few remaining trees that eagles can perch on to hunt, the eagles have virtually disappeared and the monkeys have begun to overpopulate. Yacutinga has been working on a reforestation project with guests planting trees and other flora native to the area. As well, Yacutinga is also working on sustainable development initiatives involving yerba mate plantations, capybaras, the local rural population, and indigenous tribes.

Where Reality Meets the Law

From the red dirt roads of Yacutinga, we flew to São Paulo for the Law for a Green Planet Institute conference, “Landscape, Nature, and Law.” As we each filed through the conference doors with red mud from the jungle still on our shoes, we walked in to the first panel, which featured Dinah Shelton from George Washington University. She began her discussion on “Global Legal Instruments and Jurisprudence on Landscape, Nature, and Culture.” She discussed the need for environmental and human rights instruments to address the interplay between lands, nature, and culture as a means of directly impacting the conservation of landscapes. For example, she discussed UNESCO’s World Heritage Convention, which recognizes both cultural and natural heritage of outstanding universal value. I remembered that roughly 270,000 hectares (667,185 acres) of the Upper Parana Atlantic Forest of the Iguazu Falls region was protected by UNESCO. Because UNESCO sought to protect the landscape, it did not recognize the borders between Brazil, Argentina, and Paraguay. To preserve the falls and the subtropical rainforest surrounding them, UNESCO declared Iguazu National Park (Argentina) and Foz do Iguacu National Park (Brazil) Natural Heritage of Humanity in 1984 and 1986, respectively.

Without UNESCO, the green island I saw from the plane would have disappeared amidst the rest of the agricultural desert. It prevented the massive destruction of some of the last remaining forest. However, protecting a landscape by declaring a park is only one step in the process. It does not deal with the other pressing issues of the local community, such as poverty. When we were on the ground, I saw the need for local land use planning and sustainable development initiatives as other important steps in the process that must be used together to halt continued on page 9
The Second Colloquium of the IUCN Academy Environmental Law and Related Meetings

The IUCN Academy of Environmental Law, chaired by Pace Law Professor Nicholas Robinson, convened its second annual Colloquium on October 4, 2004, in partnership with the University of Nairobi. A three-page special feature about the colloquium in the Daily Nation welcomed the 150 participants, including 112 law professors representing 57 law faculties in 40 different nations. UN Secretary General Kofi Annan sent a written message to the colloquium, in which he noted that “environmental law has a special role to play” in addressing how urban and rural land uses can foster sustainable development, and urged the law professors to “help national and local authorities devise legal regimes that enhance sustainable development instead of hindering it.” Wangari Maathai, founder of the Green Belt Movement and Kenya’s assistant minister of the environment, formally opened the colloquium. She spoke eloquently of the need to protect forests and to secure watersheds, without which cities like Nairobi would lack adequate water.

Akio Morishima of Japan delivered the colloquium’s hallmark Distinguished Lecture on Environmental Law, reflecting upon the fundamental challenges still to be resolved in the maturation of the field of environmental law. Over the four days of the colloquium, scholars, legal experts from UN-HABITAT; and other specialists presented 54 original papers examining legal measures to integrate environmental and social factors into spatial development planning—to improve environmental impact assessment; to reform design and planning of human settlements of all sorts (including refugee camps, the urban slums that are home to two billion people worldwide, and rural, suburban and city centers); to empower local authorities in their land use and natural resources management; to ensure access to justice in land use disputes, and to strengthen the judiciary.

On a one-day field trip to Kitengela, all participants examined land use disputes involving customary law and legal claims of a Masai community living and tending their livestock within an 8,600-acre area of land that falls along a migration corridor for wildlife that live a part of the year in Nairobi National Park. Adjacent urban and industrial development, including attempts to sell part of the community’s traditional lands for housing, prompted the Masai to take up arms to defend their lands. Disputes were settled peacefully, through innovative public and transparent “leases” with 117 family units, each being compensated for services for migratory species crossing over their unfenced lands. The threatened subdivisions sales were cancelled, and other new legal tools, such as easements in gross, are in preparation to further protect both community lands and wildlife corridors. The Wildlife Foundation, Kenya Wildlife Services, and environmental law specialists from Nairobi cooperated to sustain the Masai community’s livelihood, protect wildlife, and shift land use development to more appropriate sites.

The colloquium proceedings, edited by Nathalie Chalifour, University of Ottawa, Canada; Patricia Kameri-Mbote, University of Nairobi; Iyme Lin Heng, National University of Singapore; and John R. Nolon, Pace University, will be published by the Cambridge University Press.

Brazilian Environmental Law continued from page 8

Pace students, professors, and staff at Foz do Iguazu, Brazil

and prevent environmental degradation and poverty. As I sit in my office, I look down to the red dirt on my shoes and I feel like they are covered in the war paint of environmental lawyers; I am honored to be entrusted with the duty to fight for justice in these precious landscapes and the countless species and cultures that live within them.

This 2-credit Comparative Environmental Law course analyzes and compares the environmental law regimes of the United States and Brazil. This course is mainly conducted in Brazil over a two-week period from late May to early June. It builds the capacity of students to assess environmental laws of both countries and encourages them to consider national policies that place or fail to place particular importance on environmental quality. Each year, the Rio de Janeiro City Attorney’s Office hosts the course and students attend seminars conducted by prominent scholars and attorneys in Brazil. Students also participate in field trips to witness for themselves the fragile yet crucial ecosystems of Brazil. Students are required to write a research paper comparing some aspect of the environmental laws in both Brazil and the United States and is taught by David Cassuto from Pace Law and Arlindo Daibert from the Rio City Attorney General’s Office.

Morocco

Lee Paddock, along with Marcia Mulkey of Temple University Law School, organized a workshop on “Compliance and Enforcement” at the IUCN World Conservation Congress in Marrakech, Morocco. Almost 200 environmental enforcement officials from 60 countries attended the triannual conference.

Thailand


Australia


The issues addressed by leading experts and judges included the evolution of the “public trust” doctrine, the question of scientific uncertainty and the role of the “precautionary principle,” the use of international norms in domestic courts, the impact of decisions rendered by international trade arbitration panels on state and provincial courts, the judicial response to concerns about environmental justice, developments in the law involving biotechnology, and sentencing in environmental criminal cases. More than 40 judges along with representatives of Environment Canada, Mexico’s national environmental agency, and the Commission on Environmental Cooperation compared how these and other issues are handled in Australia, Belgium, Canada, Egypt, England, Mexico, as well as several of the states in the United States.

Nicholas A. Robinson, who recently chaired a similar symposium in Bangkok, Thailand, in November, said, “It is one more sign of globalization that national judges are meeting together for the first time in each region. The growing volume of environmental problems worldwide has magnified the role that courts must play in addressing the environmental rights of the public. This is the first time state and federal judges from Canada, Mexico, and the United States have met together on this topic. We share the same air pollution, weather patterns, migratory species, and patterns of water pollution. NAFTA has made North America one free-trade zone. We cannot afford to have inconsistent judicial practices in the courts of North America. This symposium will identify ways courts can harmonize their practices in the complex and growing field of environmental law.”

Among the many highlights of the program were: a discussion by Judge Abner Mikva, former Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, on one of the key NAFTA trade panel decisions involving environmental issues for which he served as a member of the three-person arbitration panel; remarks by Sir Robert Carnwath, Lord Justice of Appeal for England and Wales and a founding member of the new European Union Forum of Judges for the Environment, on the judiciary as a key arbiter in the process of defining what constitutes “sustainable development;” and a challenge to judges from Justice Paul Stein from the New South Wales, Australia, Court of Appeals and Chair of the International Union for the Conservation of Nature’s Commission on Environmental Law (CEL) Specialist Group on the Judiciary, that what is demanded of them “is the capacity and the will … to ensure that the Rule of Law prevails and our fragile environment is better protected.”

Proceedings from the Symposium are available at www.law.pace.edu/environment and several of the presentations will be published as articles in an upcoming edition of the Pace Environmental Law Review.

Environmental Leaders Explore New Tools for Environmental Management

In February 2005, Pace Law School hosted a meeting of the Multi-State Working Group (MSWG) on Environmental Performance that focused on how to choose the best tools to solve environmental problems. More than 40 participants attended the program that featured presentations from the EPA, nonprofit organizations, and several businesses. Lee Paddock was recently named to the Board of Regents for the MSWG’s Policy Academy on Environmental Management Tools. The Policy Academy’s mission—through education, dialogue, and research—is to develop and provide information on credible and effective environmental management systems and other public policy tools that can be used in the pursuit of improved environmental performance and sustainability.
Pace Hosts the 2005 NAELS Conference

by Patricia Maher '05

Every year, the National Association of Law Societies (NAELS) holds a conference to bring together students and professionals from the environmental law and policy communities to learn, network, collaborate, and share information. This year, I served as chair of the Pace Organizing Committee for the conference. Recognizing that parlaying our environmental law educations into successful careers is where the rubber hits the road, we themed the conference, “Mixing Zone: Where Law School Meets the Real World.” Eric Schaeffer, Director of the Environmental Integrity Project, delivered the opening keynote address. Schaeffer famously resigned from his position as Director of the EPA’s Office of Regulatory Enforcement by authoring a widely read article called “Clearing the Air: Why I Quit Bush’s EPA.” Schaeffer’s energy and inspiring tenacity set the tone for the conference.

The conference showcased panels that hailed from Yale, Georgetown, Cornell, Bard, Vermont, Widener, the New York Attorney General’s Office, the ABA, NRDC, Environmental Law Institute, and other private and nonprofit organizations. Pace Law Professors Jeffrey Miller, Karl Coplan, Sean Nolan, Richard Ottinger, and Nicholas A. Robinson lead inspiring and stimulating discussions on key issues in environmental law including: 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 and its role in stimulating more sustainable land use patterns; and globalization, trade, poverty and the environment. Professors Ann Powers and David Cassuto were also integral to the conference’s success by hosting and introducing speakers.

One of the most exciting elements of the conference was the diverse group of students in attendance. The conference drew close to 100 participants from over 20 law schools. Students came all the way from Louisiana, Arkansas, Florida, Illinois, Indiana, Texas, California, and Tennessee. For those of us stuck in a regional environmental mind-set, the conference was a wonderful opportunity to gain first hand knowledge of the nature and impact of environmental problems on people in other parts of the country. Moreover, we had the opportunity to spend time with law students of different backgrounds while allowing them to experience our great city.

The conference concluded with a green bus tour in the Hudson Valley lead by John Cronin, director of the Academy for the Environment at Pace University and the nation’s first full-time riverkeeper. The tour stopped at environmental law landmarks and Cronin talked about the environmental battles waged (and won!) from his personal experience. The tour ended at the historic Hotel Thayer for a banquet dinner and a lecture by Richard Lazarus. The exciting talk was based on his forward-looking new book, The Making of Environmental Law, and earned a standing ovation.

As an organizer and attendee, I think the conference achieved its multifaceted and ambitious goals. The conference inspired and motivated the newer faces in environmental law and the dynamic pioneers who blazed trails for us; and it provided a platform to educate, connect and mobilize the next generation of environmental lawyers.

Sunstein Calls for Narrowing of Precautionary Principle

Cass Sunstein, the Karl N. Llewellyn Distinguished Service Professor of Jurisprudence at The University of Chicago Law School, presented “Irreversible and Catastrophic: Global Warming, Terrorism and Other Problems” as part of the 11th Annual Lloyd K. Garrison Lecture on Environmental Law on April 25. His presentation addressed the Precautionary Principle and the problem of global warming in the context of the Catastrophic Harm Precautionary Principle.

Sunstein eloquently articulated the idea that because risks are on all sides of social situations, it is not possible to be globally “precautionary.” In order to build a margin of safety in all decision making, any precautions will themselves create hazards of one or another kind. Some risks are potentially irreversible and catastrophic, and for such risks, it seems sensible to take extra precautions.

Sunstein recommended that the Precautionary Principle might be refined as the Irreversible Harm Precautionary Principle or the Catastrophic Harm Precautionary Principle. When a harm is irreversible, and when government lacks information about its size and likelihood, it makes sense to purchase an “option” to prevent the harm at a later date. The idea results in the Irreversible Harm Precautionary Principle. And when probabilities cannot be assigned to catastrophic outcomes, it is sensible to avoid the worst-case scenario. This idea produces the Catastrophic Harm Precautionary Principle.

A member of the University of Chicago’s Department of Political Science, Sunstein graduated magna cum laude from Harvard Law School in 1975. After graduation, he clerked for Justice Benjamin Kaplan of the Massachusetts Supreme Court and Justice Thurgood Marshall of the United States Supreme Court. Before joining the faculty of The University of Chicago Law School, he worked as an attorney-adviser in the Office of Legal Counsel of the U.S. Department of Justice.
Esty Demands Legitimacy of International Policy Processes

It is a big mistake for us to grant any validity to international law, even when it may seem in our short term interests to do so. Because over the long term, the goal of those who think that international law means anything, are those who want to constrict the United States.”—John Bolton, U.S. State Department.

Daniel C. Esty began his Kerlin Lecture presentation with this quote, emphasizing that same criticisms of lack of effect and legitimacy come from both sides of the political spectrum. Esty teaches environmental law and policy at Yale University, holds faculty appointments in both Yale’s Environment and Law Schools, and also serves as the Director of the Yale World Fellows Program. The lecture, “Bringing Administrative Law to Bear in Global Environmental Governance,” took place on November 4, 2004.

Esty examined how a number of environmental problems from climate change to biodiversity loss to depletion of the fisheries in the world’s oceans are inescapably international in scope. Pollution does not stop at borders; there are tremendous issues of international spillovers of international harms of transboundary externalities. He commented that the well-established logic of public goods provision argues for a policy response to these issues that is global in scale.

Esty focused on the great deal of hesitancy about “global governance” and explained that we need to bring administrative law to the international domain. He argued that in addition to doubts about the political accountability of decision makers at the global scale, the legitimacy of international policy processes is undermined by the lack of basic elements of administrative law. Esty suggested that the well-established elements of good governance and public decision making that have emerged on the domestic scene—including transparency, disclosure of financial interests on the part of decision makers, the identification of those engaged in lobbying, creation of an “administrative record,” a structured process of identifying policy alternatives—need to be adopted as the foundation for legitimate global-scale governance in the environmental realm and more broadly.

“We need a system that produces outcomes at relatively low costs, with minimal burdens, in a timely way. We should ask our institutions of an international scale the same of what we ask the bureaucracies at the national scale. When those standards of performance, accuracy, and timeliness are not being met, we should step in and improve the efficiency of the system,” Esty concluded.

Esty is the author or editor of eight books and numerous articles on environmental policy issues and the relationships between the environment and trade, competitiveness, globalization, security, international institutions, and development.

Van Rossum Receives Inaugural Robinson Environmental Award

Pace Law School environmental alumni, faculty, staff, and students joined in honoring Nicholas Robinson in the establishment of a new award in his name on March 17. The Nicholas A. Robinson Environmental Award will be presented annually in honor of Robinson’s tremendous achievements as the Gilbert and Sarah Kerlin Distinguished Professor of Environmental Law, founder of the Pace Law School’s environmental law program, and chair of the Commission on Environmental Law of the International Union for the Conservation of Nature (IUCN). The award was established to recognize significant contributions to environmental law by a Pace Law School graduate.

Maya K. van Rossum ’92 was the inaugural recipient of the award. Van Rossum serves on a number of the region’s committees, including the Delaware River Basin Commission’s Toxic Advisory Committee and Water Quality Advisory Committee and the Lower Delaware River Wild & Scenic Management Plan Committee and Advisory Committee. She has also served on Pennsylvania’s Citizen Volunteer Monitoring Panel, as well as New Jersey’s Stormwater Focus Group. Van Rossum was invited to testify before the U.S. House Committee on Resources concerning Wild and Scenic designation for the Lower Delaware River in 2000, and has published articles on environmental law in the Vermont Environmental Law Review and the Virginia Environmental Law Journal. She has received a number of other awards for her work including the Advocacy Award from the Association of New Jersey Environmental Commissions, the Touchstone Award, the Water Bearer Award for Environmental Excellence, and the Robert P. Doherty Ribbon of Green Award.
State Attorneys General as Environmental Watchdogs

Pace’s Center for Environmental Legal Studies presented the Seventh Annual Professors Workshop, held in conjunction with the National Environmental Law Moot Court Competition, on February 25. Designed for environmental law professors who accompany their teams to the competition, this year’s workshop, “The Role of Attorneys General in Protecting the Environment,” was a dialogue with two prominent officials, Connecticut Attorney General Richard Blumenthal and New York Attorney General Eliot Spitzer. The wide-ranging discussions explored the role of state attorneys general in pursuing environmental litigation, especially in a multi-state context.

Attorney General Blumenthal, the longest-serving attorney general in Connecticut history, had brought important antitrust and consumer protection cases prior to joining forces with Spitzer and other Northeast attorneys generals in lawsuits against Midwest power plants to reduce the air pollution responsible for acid rain and smog in the Northeast. In a similar vein, Spitzer has gained national prominence for his investigations of conflicts of interest on Wall Street that have been the catalyst for dramatic reform in the nation’s financial services industry. But for the environmental community, his championing of laws to regulate air pollution has been his most notable activity. Two of the latest suits brought by the state attorneys general challenge the failure of the Environmental Protection Agency to adequately enforce air pollution laws. The first takes the agency to task for allowing power plants to replace themselves on a piecemeal basis without having to comply with regulations governing new sources. The most recent seeks to force the Bush administration to regulate the discharge of carbon dioxide, a greenhouse gas that contributes to global climate change, from power plants. Both are crucial enforcement efforts, which could lead to substantial reductions in air pollution and adverse health effects. Discussion focused not only on the suits, but on the extent to which failure to enforce the laws causes the costs of pollution to be born not by the polluter, but by the public at large.

Also participating in the dialogue with the professors was Peter Lehner, chief of the New York Attorney General’s Environmental Protection Bureau and one of the chief architects of the state’s litigation strategy.

Visiting Scholars at the Center for Environmental Legal Studies

Ramesh Mysore, is a professor at the National Law School of India in Bangalore, where he teaches environmental and international law. Mysore received a Fulbright Post-Doctoral Fellowship and hopes to establish a National Environmental Law Academy at his university upon his return. He holds an LLM in international law and has taught for 23 years.

Nguyen Phuc Thuy Hien is a lecturer at HCMC University of Law in Ho Chi Minh City, where he teaches environmental and international law. Hien received a Fulbright Visiting Scholarship and intends to study “Legal Protection of the World Heritage [areas] in the Context of Tourism Protection in Vietnam.” Hien holds a BA in English from Hanoi University of Foreign Language Studies, an LLB in Economic Laws from HCMC University of Law, and an LLM from the University of Groningen.

Cao Mingle holds an SJD and is a professor at Southwest University of Political Science and Law in China, director of the university’s environmental law center, and associate editor-in-chief of the university’s law journal. He received a one-year scholarship from the China Scholarship Council to research comparative environmental law between the United States and China.

Razim J. Isayev holds a BA and MA from Baku State University and is currently a doctoral candidate from Baku State University. He came to Pace Law School in 2004 on a Junior Faculty Development Program (JFDP) Fellowship funded by the State Department. He is a visiting scholar and is conducting research on energy law at Pace’s Energy Project. Prior to his arrival at Pace, he had been teaching international law at Baku State University and was an instructor at University of Azerbaijan. In Azerbaijan, Isayev is also a lawyer with the pharmaceutical company Odlar Yardu-95 Ltd. He also worked for the Ministry of Education of the Azerbaijan Republic, Department of Control, Legal Standards on the Educational System from 1995 until 1998. His areas of concentration are international law, law of oil and gas, conflict law, and business transactions, comparative law, and environmental law.

Clarification from GreenLaw 8, No. 1

In the cover article “Pace Law School Opens Sive Manuscript Collection,” the story failed to clarify the role of David Sive in the Scenic Hudson case. The lawyers to be credited with the Scenic Hudson I decision are Lloyd Garrison and Albert Butzel. Sive was the attorney for the Sierra Club and a number of other environmental groups in the second round of hearings before the Federal Power Commission, as well as the appeal to the Second Circuit in Scenic Hudson II, where the court affirmed the granting of the permit by a 2-1 decision with Judge Oakes dissenting.
How It All Began: A Profile of Nicholas A. Robinson

by Emily N. Masalski ’05

Stepping into the environmental suite (i.e., the E-Suite) for the first time can be a remarkable experience for a first-year law student. It is the one inspiring place on campus where each of the environmental law faculty members has had an amazing idea or environmental thought. The E-Suite is also where students meet with Nicholas Robinson, one of the founding faculty members of the Law School. Throughout the past 25 years, Robinson has built a strong foundation for Pace’s nationally recognized environmental law program.

Robinson attended Brown University, where he studied history and international relations. During his free time, he enjoyed the outdoors, camping, and chaired the conservation committee of the Brown-Pembroke Outing Club. Robinson had a strong interest in government and decided to pursue a legal education at Columbia University School of Law. As a 2L, he was an active member of the Sierra Club and worked for David Sive, Esq., who was litigating to stop the development of a highway in the Hudson Valley. As a 3L student, he attended the first national conference on environmental law during Earth Year and became the first student appointed to the Legal Advisory Committee of the President’s Council on Environmental Quality. Upon graduation, Robinson clerked for Honorable Morris E. Lasker (SDNY). He worked at the Park Avenue law firm of Marshall, Bratter, Green, Allison, and Tucker from 1974 to 1983 and wrote a monthly environmental law column published in the *New York Law Journal*. His monthly column eventually drew the attention of Dean Fleming, Pace Law School’s first dean.

In 1977, Dean Fleming contacted Robinson because Pace students had requested an environmental law course and he needed an adjunct or full-time faculty member to teach it. At the time, there were only 10 faculty members at Pace Law. Robinson agreed to come to Pace on the condition that he could develop an environmental law program. In January of 1978, Robinson and Jay Carlisle joined the faculty, in the school’s third semester of operations.

Once Robinson was a member of the faculty, he developed a proposal for an environmental law program. Pace faculty supported the program proposal; however, funding was needed to make it happen. Robinson recruited a second professor, Donald Stever, to teach property and environmental law courses. Students also joined the push for an environmental program by chartering the second student organization on campus, the Environmental Law Society. ELS’ first hash was an Earth Day party to bring awareness of environmental issues to the Pace community.

In 1982 there was a strong need for a prestigious publication that solely addressed environmental legal issues, which resulted in the establishment of the *Pace Environmental Law Review* (PELR). Initially, the publishing funds for PELR were raised outside of the law school, due to budgetary constraints. Robinson met with a publisher that initially funded the publication. As time passed, Pace bought back the rights from the publisher and now all PELR publications are done in-house. PELR’s readership continues to grow as it has developed a national reputation.

As the demand for environmental law continued to grow, Robinson recruited former Congressman Richard L. Ottinger to join the faculty as the third environmental law professor. Ottinger’s passion for clean energy developed into the Pace Energy Project. Several students, consultants, attorneys, and economists were hired to help the Energy Project publish Environmental Costs of Electricity (OCEANA) in 1990. Today, the project is at the cutting edge of energy law reform.

Around the same time that CERCLA was passed by Congress, Pace approved a Master’s in Environmental Law Program. More than 50 attorneys immediately enrolled in the LLM program. Robinson recruited William Syle from Texaco to coordinate the LLM program and also teach property and torts. In 1982, Robinson, Ottinger, and Stever also founded the Center for Environmental Legal Studies, the first specialized center in the law school, which secures grants for research and assists in the development of various environmental publications. An environmental externship program, which places students at various state environmental agencies, was also incorporated into the environmental law curriculum.

In 1983, Robinson took a leave of absence from the Pace faculty to become deputy commissioner and general counsel for the New York State Department of Environmental Conservation in Albany under the Cuomo administration. Robinson returned to Pace in 1985 and embarked on the next great Pace accomplishment. He met with John Cronin and one of Pace’s LLM students, Robert F. Kennedy Jr., to develop plans for the Environmental Litigation Clinic. Initially, the clinic had begun as a rotation of environmental law faculty members supervising student attorneys. However, the faculty quickly realized that running a clinic was a full-time job. In 1987, the clinic opened for business in the basement of Preston Hall with Kennedy and Steven Solow serving as full-time clinic directors.

Robinson recruited Stever and Jeffrey G. Miller to the environmental law faculty. In 1989, Miller became the adviser to the first student-run National Environmental Law Moot Court Competition (NELMCC). Robinson and Miller wanted to incorporate a historic nature appreciation component into the competition and contacted John Hulsey, a contemporary Hudson River School landscape painter, to design the award. Each year, the NELMCC winner receives a print of Hulsey’s “Storm King Mountain” painting and the original resides at the winning law school for the year it won the competition.

As Stever left Pace to resume life at a law firm, Robinson returned to the “recruitment business.” Pace also needed another property law professor and John Nolon was a prime candidate. Initially, Nolon ran the Land Use Law Center right out of his office. Robinson said, “The center was run the same way the environmental program started out of mine ten years before.” Eventually, a house on Crane Avenue opened up and the Land Use Law Center had a new home. Nolon kept the center alive by establishing an outside stream of funding through various foundations and served as director until 2003.

When Nancy Long left Pace to care for her family, Miller and Robinson recruited Ann Powers to succeed her. In 1996, Pace estab.
James Hyer ’05 had his article “Stewardship of New York State Cemeteries” published in 31 Westchester Bar Journal 38 (fall/winter 2004). His work covers law not yet evaluated in any secondary legal reference, and makes a useful contribution to the understanding of historic preservation law in New York. Hyer prepared his paper in Robinson’s Historic Preservation Law seminar.


Lee Paddock had his article “Strategies and Design Principles for Compliance and Enforcement” published as part of the Seventh International Conference on Environmental Compliance and Enforcement in Marrakech, Morocco, in 1 International Network for Environmental Compliance and Enforcement 67 (2005).

Ann Powers was a panelist at the Fifth Goddard Forum at Pennsylvania State University on April 5, 2005. The forum, “Putting the Market to Work for Conservation: An In-Depth Examination of Traditional and Nontraditional Market-Based Mechanisms for Achieving Environmental Improvement,” brought together national experts in law and economics to examine the use of market mechanisms in a variety of environmental contexts. Mechanisms such as air and water pollutant trading, wetlands and habitat banking, and transferable development rights have been employed to address pollution, land and biodiversity conservation and enhancement, and global warming. There are, however, limitations on such approaches, and more traditional regulatory efforts may sometimes be preferable. Powers analyzed the water pollutant trading program established by Connecticut to address nitrogen pollution in Long Island Sound, discussing the unusual legal steps employed by the state to comply with federal law, the factors that have so far contributed to the success of the program, and those which might present difficulties in the future or prevent the program from serving as a national model. The presentation drew on her scholarship in the area of pollutant trading. See The Current Controversy Regarding TMDLs: Contemporary Perspectives—“TMDLs and Pollutant Trading” online at www.vje.org/articles/Powers.html; “Reducing Nitrogen Pollution on Long Island Sound: Is There a Place for Pollutant Trading?” 23 Columbia Journal of Environmental Law. 137 (1998), www.law.pace.edu/environment/envpublications.html. She has observed the Connecticut program since its inception when she served on the Long Island Sound Ad Hoc Nitrogen Trading Task Force.

A Profile of Nicholas Robinson continued from page 14

lished the first SJD program in the nation. Robert Goldstein was the first SJD candidate and eventually became Director of Pace’s Environmental Programs. Pace has published three books based on SJD candidate research. Each SJD student continues to be very successful. Today, Marco Olsen serves as dean at Universidade Federal do Espirito Santo Departmento de Direito in Brazil; Goldstein is General Counsel to Riverkeeper; and Nada Al-Duaij is a professor of law at Kuwait University. Several Fulbright scholars, among others, pursue their research doctrine at Pace.

Pace University began to restructure the White Plains campus and eventually moved all undergraduate students to the Pleasantville campus. The transition opened up an entire building—the E-House, which is now the home of the Pace Energy Project and the Pace Environmental Litigation Clinic, as well as a museum of the environmental law and history of the Hudson River.

Robinson may travel around the world from Kuwait to Cairo to Sydney, but he always makes time available to supervise student independent research, edit scholarly papers, and offer career advice to students. The Pace environmental law program has made great strides in the last 25 years. There is much room for growth and resources to sustain the growth. Perhaps in a few years the E-Suite and E-House will be named after a generous benefactor.
During the fall 2005 semester, Pace Law School, in conjunction with the Yale School of Forestry and Environmental Studies, will offer a new course in environmental diplomacy. The course will be taught by adjunct professor Roy S. Lee, PhD, a senior official in the office of the UN, Legal Advisor, and expert in international public law.

The course will address various aspects of environmental diplomacy including the negotiation of multilateral environmental agreements (MEAs), decisions under or related to the MEAs, and multilateral decisions in international organizations. Students will attend intergovernmental meetings on environmental issues at the United Nations headquarters one day each week. Lee will also conduct a weekly seminar in which students will learn about multilateral decision-making, evaluate the negotiation processes, and assess the substantive environmental issues under debate or negotiation. Lastly, each student will prepare a research project analyzing the substantive scientific and legal issues in an agenda item, debate, or negotiation, as a briefing for possible use as an aide memoir for the diplomats involved in the negotiations being observed.

United Nations headquarters