

**Interview with Professor Steven Ferrey, Suffolk University Law School  
Conducted by JHTL Staff Member Douglas Martland, April 2004.**

Steven Ferrey is a Professor of Law at Suffolk University Law School in Boston, Massachusetts. At Suffolk, he teaches Environmental Law, Energy Law, and Contracts. Professor Ferrey recently published *Environmental Law, Examples & Explanations* (3<sup>rd</sup> Edition) and *Law of Independent Power* (21<sup>st</sup> Edition). Professor Ferrey is also the author three other books, including *The New Rules, A Guide to Electric Market Regulation*, published in December of 2000 by PennWell. Professor Ferrey recently discussed with me these recent publications as well as some current hot topics in environmental and energy law.

Environmental Law: Examples & Explanations  
Aspen Publishers, 2004, Paper, ISBN: 0735540136  
\$36.95

Law of Independent Power (Environmental Law Series)  
West Group, 2004. ISBN: 0876326807  
\$422.00

**JHTL: Tell me a little about your recent publication, the third edition of *Environmental Law: Examples and Explanations*.**

**SF:** I'm really pleased with the third edition of *Examples and Explanations*. It is designed as a supplemental text for students in environmental and energy law classes and focuses primarily on explaining the law to students in an understandable fashion. At the end of each chapter there are realistic examples where students can practice applying the law. Also, I've been surprised to learn that some law professors are now using *Examples and Explanations* as their class' primary text and that some consulting firms and environmental professionals have been using it to gain background information in environmental law. Although this was not the anticipated use for the book, I am happy that it is gaining a wider audience.

**JHTL: I know you spent a lot of time updating the case law for this edition. What other major revisions did you make?**

**SF:** In preparing the third edition, I spent a lot of time updating the case law changes and adding a section on environmental equity. One of the new features, though, that I am especially pleased by is the book's expanded coverage of environmental science and ecological issues. Also, in this edition, I really feel like I've covered each of the diverse of fields within environmental and energy law; overall there are 16 distinct fields covered in the text. That being said, because of page constraints, there are some sections within chapters where I cannot go into as much detail as I do in my introductory environmental and energy law classes.

**JHTL: You also recently published the 21<sup>st</sup> Edition of *Law of Independent Power*, can you tell me a little about it?**

**SF:** I'm really excited about the 21st edition of *Law of Independent Power* just published by West Group in March 2004. *Law of Independent Power* is a very different work than *Examples and Explanations*. Its designed primarily for environmental and energy law practitioners, providing thorough coverage of issues surrounding electric power, including practical development strategies, pricing and marketing of electricity, the regulation of electricity, renewable energy projects, environmental regulations of electricity production, and international financing and production of electricity. *Law of Independent Power* is the only non-environmental law title in the West Environmental Law Series, but because the text is so intertwined with environmental law it is included in this series.

**JHTL: You always seem to be busy working on something, whether it is a journal article or a book. What are the “hot” topics that you are working on right now?**

**SF:** In light of the California energy crisis, the 2003 Blackout, dependence on foreign oil, and terrorist threats, electric power and its regulation is now regaining its prominence as a major national issue. In addition, considering the economic and industrial improvements underway in many developing nations and the global nature of greenhouse gas emissions, it is also a major international topic.

In a wired universe, electricity law really is technology law at a fundamental level. Without reliable electric power, the high-tech economy, let alone the general economy, comes to a crashing collapse instantaneously. Its is technology law in “real time.”\_With deregulation, private actors and private contract rights are replacing existing services provided by regulated state monopolies. One topic that I've been doing a lot of work on recently is evaluating whether electricity should be a good under the UCC or a service under the common law. It is important to note that while state UCC statues are relatively uniform, common law precedents vary by state. I've got a law review article being published by William and Mary this spring discussing this. The primary conclusion of this article is existing jurisprudence regarding electricity regulation is off base because it fails to properly evaluate the thermodynamic characteristics of electricity. It is a case of the law not being cognizant of the basics physics that are the reality of electricity.

I've also been doing a lot of research on net-metering. The purpose of net-metering is to provide an incentive for onsite generation, thereby decentralizing electric power production. Basically, it works by allowing a decentralized power producer to connect to the existing transmission grid and benefit by transferring excess power back to the grid. Thus, this provides additional incentives for on-site generation. I've got a law review article being published by Duke this spring dissecting net-metering programs in 38 states and evaluating whether these state programs will survive challenges based on the supremacy clause.

Another topic I've been researching is state-law incentives for renewable energy

projects. Right now, I have an article being published by NYU examining such incentives in fifteen states. Of the states evaluated, most are deregulated. The article evaluates whether the state-law incentives can survive scrutiny under both the commerce clause and the supremacy clause.

Finally, I am also working on an autopsy of the California energy crisis, which tries to analyze what went wrong in California. My research suggests that during the energy crisis, existing distributed generation, with capacity approximately equivalent to the State's energy shortage, was available, but unused. Thus, a solution to California's energy shortage was already in place during the crisis, but because of legal, technical, and political issues, it could not be identified in time to halt the crisis. The State's failure to identify and utilize these existing sources resulted in a \$43 billion dollar debt and a change of political leaders.

**JHTL: Tell me about the book that you are hoping to write this summer comparing renewable energy opportunities in Southeast Asia as the solution to global warming.**

**SF:** The focus of this book is comparative legal analysis of how various Asian government are using renewable energy opportunities available to developing countries to attack global warming from the ground up. Right now, many of the nations in Southeast Asia are beginning or undergoing significant periods of economic development and urbanization. Paramount to both this development and urbanization is electricity. Combined with this economic development, these countries are projected to have significant population growth over the next several decades. Because of these changes, it is anticipated this region will be responsible for up to 60 percent of future greenhouse gas emissions that are warming the planet. Emissions from electricity generating power plants will comprise a majority of this percentage.

In writing the book, I'm suggesting policy makers in these developing countries aided by international organizations and capital can adapt legal and regulatory systems to install renewable energy opportunities now, because once fossil-fuel power plants are installed, they are difficult to abandon. Traditional fossil-fueled power plants are capital intensive, long-term investments. In addition, the transmission infrastructure tends to locate around these facilities. If renewable opportunities are not considered in this round of decision making, it may be unfeasible to reduce the region's projected greenhouse gas emissions in the near future. How we implement technology, on a global scale, is critical.

**JHTL: In researching your book, are you evaluating programs implemented by specific states or just looking at the region a whole?**

**SF:** So far, the primary focus of my research has been evaluating programs in five politically and institutionally diverse nations in the region - India, Vietnam, Indonesia, Thailand, and Sri Lanka.- that have been the first in developing small power production programs (SPPs). The purpose of the book is to evaluate the most successful program features, innovative institutional and regulatory elements, and power purchase agreement

provisions implemented in each of these countries and provide legal metrics and program advice for other countries undergoing similar development. While there are certain elements in common amongst these nations, it is also important to recognize that each State, in developing its own program, must face slightly different circumstances because of the diversity of legal systems and legal norms involved, available fuel supply (hydro, coal, gas, and oil), and local considerations .

**JHTL: What are the big international concerns in the power production in these countries?**

**SF:** Well, there are two pretty big issues - greenhouse gas emissions leading to global warming and the legal issues surrounding international funding of power generating facilities in developing countries– that I intend on covering in the book. Because we already talked a little about greenhouse gas emissions, I'll say a bit more on international financing concerns.

In writing the book, I intend to focus on the different types of risk inherent in financing a power production facility in a developing country, the parties to whom these risks can be allocated, and the mechanisms or financing instruments that can be employed by the parties to reduce this risk. One of the major concerns for organizations, corporations, or countries considering financing power production facilities in developing countries is contract provisions and currency repayment. Contracts requiring financing repayment in local currency, which tends to have a greater inflation rate than international indexes (dollars, Euros, Yen) , may result in the devaluing of existing obligations. This unpredictability or inability to legally establish capital return diminishes international interest in energy financing.

**JHTL: Finally, any advice for students interested in practicing environmental and/or energy law?**

**SF:** Of course. One of the most important things, at least in my opinion, is that students have a passion for the issues involved. Being interested in the issues or being able to relate them to a larger life-interest makes the learning process a lot easier. Besides that, a science background is helpful, but definitely not necessary. Also, the amount of work available in these practice areas tends to ebb and flow depending on the political administration, hot environmental issues, existing laws, and the availability of resources. And for those interested in technology law, these areas of the law are the primary technology issues that power our advanced society.