

## SUSTAINABLE FUTURE SECTION

### How Sustainability is Transforming the Practice of Law

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#### Dick Roy

(Sustainability and the Legal Profession)

**1. Goal of sustainability.** The societal goal of sustainability is grounded in awareness that we live at a time of advanced ecological degradation caused by human development. Natural systems, which sustain all life, the human population, and economic activity, are stressed. For example, major underground water tables of the earth are being depleted well beyond their natural recharge rates.

A classic formulation for environmental impact of human development is the IPAT formula developed by Stanford scientist Paul Ehrlich and others in the 1970s:

$$\text{Impact} = \text{Population} \times \text{Affluence} \times \text{Technology}$$

Two words in this formula are defined to have a special meaning: "Affluence" is the average per capita consumption (or the energy and resources required to support one human). "Technology" is a technology factor – the environmental impact in generating the average per capita consumption.

**2. Definitions of sustainability.** The internationally accepted definition of sustainable development is taken from a 1987 report commissioned by the UN World Commission on Environment and Development (known as the Brundtland Report):

*Sustainable development is meeting the needs of the present without compromising the ability of future generations to meet their own needs.*

Drawing on language from the Brundtland report, the Oregon legislature adopted its own definition (in ORS 184.421) of sustainability including a local emphasis on community objectives:

*"[S]ustainability" means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.*

**3. Northwest sustainability movement.** The modern environmental movement arose in the late 1960s, blossomed in the early 1970s, and was mainstreamed by 1980. The practice of environmental law emerged in the 1970s in response to federal and state laws and regulations, and by 1980 had become a recognized practice area within large law firms and specialized practice groups.

Earth Day 1990 (20<sup>th</sup> anniversary of first Earth Day) elevated public interest in sustainable practices. In the early 1990s, private Oregon businesses like The Collins Companies and Norm Thompson became early leaders in the emergent sustainability movement. Soon public agencies followed, public interest burgeoned in organic and locally grown food, the U.S. Green Building Council developed its LEED certification program, and the sustainability movement began moving into mainstream Northwest culture.

The sustainability movement promoted *voluntary* personal and business practices to reduce impact on the earth. Although this thrust was aligned with the work of many businesses and some professions, like architecture, it offered no obvious legal hook for the legal profession.

**4. Application of sustainability principles.** A common metaphor for sustainability is the three legged stool: Economy, Equity, and Ecology. In business this is often expressed as pursuing the triple bottom line: Profit, People, and Planet.

Although the societal goal of sustainability is grounded in concern about ecological degradation, in the application of the three-legged stool the ecological leg is not given equal weight. For example, a

publicly traded corporation must give primacy to increasing sales and profits. Another complicating factor is that the three legs of the stool are analytically apples and oranges. This means that any application of the three-legged stool is highly subjective and greatly influenced by the bias of those involved.

**5. Legal profession takes notice.** During 2006, Al Gore heightened public awareness about climate change through *An Inconvenient Truth*. About that time the America legal profession began paying greater attention to sustainability on several fronts. By 2007 the activity level was vibrant in comparison to the prior 15 years of development of the sustainability movement:

### 2006

Jan Focus groups with 47 Oregon lawyers consider role of lawyers.  
May Oregon Lawyers for a Sustainable Future (OLSF) forms.  
Sept OLSF posts four tools for the sustainable law office on its Web site.

### 2007

Jan DLA Piper (international firm) issues press re commitment to protect earth.  
Feb Arnold & Porter (Washington D.C.) follows with a major press release.  
Feb OSB *Bulletin* contains cover article, *The Case for Going Green*.  
Mar ABA launches the ABA-EPA Climate Challenge.  
Apr Stoel Rives announces its new sustainability policy.  
Jul Tonkon Torp adopts its new sustainability policy.  
Sept Massachusetts Bar appoints a task force to develop its Eco-Challenge.  
Nov Nixon Peabody announces first law-firm "Chief Sustainability Officer" in the U.S.

### 2008

Mar California Bar appoints a State Task Force on Sustainable Practice.  
Sept California Bar approves Eco-Pledge and Sustainability Policy (not implemented).  
Nov OSB Board of Governors appoints a Sustainability Task Force.  
Nov Legal Marketing Assn releases major report, *How Green is My Law Firm?*

### 2009

Oct OSB Sustainability Task Force recommends new bylaw and OSB section.  
Oct OSB Board of Governors adopts bylaw and approves new section.

### 2010

OSB Sustainable Future Section gets underway.

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### Max Miller and Mark Morford

(Law Office – Practice and Operations)

*The speakers will discuss a series of questions about the impact of sustainability on their firms.*

#### Initiation.

- How did sustainability first enter into discussions within the firm?
- Was there an individual champion?
- What was the initial response of partners to the idea of addressing sustainability?

#### Firm operations.

- How did the firm get interested in more sustainable operations?
- Was it a top-down or bottom-up development?
- How did the firm organize around this goal? Were there key constituencies that needed to be involved?
- Does the firm have written policies or procedures regarding sustainability?
- How did partners, associates, staff react to increased emphasis on sustainability?

### **Practice of law.**

- How was sustainability incorporated into the practice of law?
- What were some of the issues considered?
- Is sustainability a practice area? An industry group? A marketing strategy? Something else?
- How did the firm organize practice elements around sustainability?
- How does the firm present itself to clients and the public with respect to sustainability?

### **Firm culture.**

- How has sustainability affected the culture of the firm?
- How has it impacted morale of lawyers and staff?
- Have you noticed a generational divide with respect to sustainability?
- Has sustainability been a factor in attracting and hiring of associates? Staff?
- What mechanisms does the firm use to train new and existing employees about sustainability?
- What have been some of the downsides in implementing sustainability initiatives?

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**Dan Rohlf**  
(Law School)

Although not a new concept in the law, sustainability has recently risen in prominence in the legal profession. Incorporating sustainability into legal education – as well as increasing the practice of sustainability within law schools themselves – presents a variety of challenges.

### **Wrestling with sustainability.**

A key issue facing law schools is whether to employ a “pervasive method” approach in incorporating sustainability into the curriculum – i.e. adding relevant sustainability issues into existing courses – or to create new courses on sustainability and the law.

- Pervasive pros:
  - Allows many students to get wide exposure to sustainability issues
  - Potentially allows for in-depth exploration of specific legal aspects of sustainability
- Pervasive cons:
  - Perpetuates disjunctive nature of sustainability law
  - No comprehensive view of sustainability
- Comprehensive pros:
  - Pedagogically more effective
  - Substantial student interest; good marketing
- Comprehensive cons:
  - Perception as “environmental” may limit student interest/exposure
  - School resource limitations
  - No established teaching materials/syllabi

### **Law school curriculum.**

Oregon law schools have embraced sustainability as an element of their curricula and marketing. Schools generally appear to employ the pervasive method of incorporating sustainability into their classes, with some movement toward a limited number of specialized courses or practical skills opportunities.

### **Student interest and involvement.**

Student interest in issues involving sustainability is generally strong, with particular focus on prominent issues such as climate change and renewable energy. New student organizations focusing on sustainability have particularly focused on practical applications, both at the schools themselves and in law and business practices.

### **Difficulties in addressing sustainability.**

Challenges in addressing sustainability in legal education mirror difficulties in defining sustainability itself. Uncertainties exist as to sustainability's theoretical and practical outlines.

Lewis and Clark's initial class focusing on sustainability devoted considerable time and discussion to whether Sustainability Law is a discrete legal field and body of law – or should be a discrete legal field and body of law – and discussed the outlines of this field assuming it does (or should) exist. Students and faculty developed the following six categories of Sustainability Law: (1) Business & Sustainability; (2) Greening the Built Environment; (3) Resources & Ecosystem Services; (4) Information & Accountability; (5) Carbon Cycle & Climate; and (6) International Law & Comparative Study.

### **How has the law school changed?**

Lewis and Clark College and the Law School have taken a variety of steps to make their own operations more sustainable. Institutional efforts center primarily around green building. Student-led initiatives have focused on day-to-day operations and resource use, such as a policy recently adopted by the faculty to regulate paper usage. Academia is struggling to deal with certain issues, particularly carbon-intensive travel.

### **What the future holds?**

A very good question....

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### **Program Reference Materials (available electronically, upon request to [dewhite@stoel.com](mailto:dewhite@stoel.com) ).**

1. Model Law Office Policy of Oregon Lawyers for a Sustainable Future (OLSF)
2. OLSF Sustainability Guidelines for Operation of a Law Office
3. Summary of ABA-EPA Climate Challenge
4. Sustainability bylaw of the Oregon State Bar (October 2009)
5. OSB Sustainability Task Force recommendations for a new Sustainable Future Section (October 2009)
6. Tonkon Torp Two-Year Recap 2001 (from early firm sustainability team)
7. Stoel Rives Sustainability Policy April 2007
8. Stoel Rives Sustainability P2 Certification Program Description
9. Stoel Rives Sustainability P2 Certification Program Evaluation Results
10. Tonkon Torp Sustainability Policy July 2007
11. Tonkon Torp Sustainability Accomplishments April 2008 (from firm sustainability team)
12. "Why Corporations and Businesses Need Sustainability Lawyers" by Max Miller from *Sustainability*, February 2009
13. "The Case for Sustainability," Oregon State Bar Bulletin, February/March 2007
14. Lewis & Clark Law School course, Sustainability in Business and Law
15. Lewis & Clark Law School Report to the OLSF Law-Sustainability Task Force, January 15, 2008
16. University of Oregon Law School Green Business Initiative
17. Willamette University College of Law, Certificate Program in Sustainability Law

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### **Invitation to join the new Sustainable Future Section**

The Sustainable Future Section (SFS) publishes a quarterly newsletter, offers programs to members at a discount, maintains a website (to be activated in May), and sponsors an annual awards program for leadership among individual lawyers and law offices. Other initiatives are under consideration, and SFS seeks input from lawyers at this early stage. To join SFS, log onto the OSB Website, click "Join Sections" on the left menu, enter your bar number, and click "Add/Change Sections."