

**American Bar Association
Section of Environment, Energy, and Resources**

*Dialogue and Workshop:
Preparing Green Lawyers for Practice in a Changing Environment I: Laying the Foundation*

Environmental Law Teachers' Perspectives on Preparing New Lawyers for Practice

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**36th Conference on Environmental Law
Keystone, CO
March 8-11, 2007**

In preparation for the "Preparing Green Lawyers" sessions at the 2007 conference of the ABA Section on Environment, Energy and Resources, a group of full-time environmental law teachers in law schools around the nation reflected on law schools' preparation of environmental lawyers for law practice. This summary paper synthesizes the comments made by each of the law faculty in five major areas of focus: (1) teaching tools and curricula in environmental law education; (2) the role of interdisciplinary education in educating environmental lawyers; (3) the ways in which students' educational experiences influence their career paths; (4) the challenge of ensuring that environmental law practice includes members of underrepresented communities; and (5) collaboration between practicing lawyers and law schools. The authors and contributors hope that this synthesis will help to inform this and future discussions between practicing lawyers and environmental law teachers, and serve as a basis for new research by scholars studying legal education, in order to make legal education as relevant as possible for law students as they enter the profession.

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1) Teaching tools and curricula

Environmental law teachers agree that students should be exposed to a diverse set of teaching tools and learning opportunities in order to prepare them for environmental law practice. “Environmental law” is a wide-ranging field, covering literally dozens of federal and state statutes as well as constitutional and common-law principles on subjects as varied as protection of endangered species, urban air quality, stewardship of public lands, and climate change. An environmental practice can take many forms, including litigation, participation in administrative proceedings relating to enforcement, permitting, and rulemaking, transactional work, various dispute resolution processes, or a combination of these areas. The varied nature of practice types and subject matter areas among lawyers working in the environmental field makes creation of a successful environmental law curriculum a challenging task.

Law schools’ environmental curricula vary widely. Some law schools have developed extremely specialized programs that allow students to take many courses in virtually any subfield of environmental law. Other law schools focus more on broad-based courses, supplemented in many cases by clinical offerings.

Regardless of the particular school’s approach, environmental law teachers first highlight the importance of the traditional curriculum in environmental law in preparing students for practice in this specialty area. The traditional environmental curriculum, including courses in environmental law, natural resources law, land use law, and administrative law, offers a doctrinal framework for understanding basic principles, organizing substantive areas, exploring the relationships and connections between the areas, and generally becoming familiar with and conversant in the field. In addition, an environmental curriculum should build upon the many important and relevant concepts students learn in their first-year and other core doctrinal courses. A solid environmental law curriculum allows students to become familiar with the basic sources of environmental law -- statutes, regulations, and leading case law -- and should ground students in the historical and theoretical evolution of environmental law, from its roots in the common law to current complex regulatory schemes. Regardless of the particular focus, however, a good environmental law class should provide students with the foundational knowledge in the areas noted above.

Second, students studying environmental law should focus on becoming good lawyers, and then move to developing a specialized expertise in environmental law. Therefore, it is extremely important for a student to focus on core lawyering skills and knowledge, such as legal writing and research, contract drafting, and negotiation, along with studying environmental law. This base of knowledge and set of analytical tools provides the foundation for more experiential learning.

Third, in addition to the importance of classroom study, environmental law teachers recognize that engagement in simulations of the practice of environmental law is valuable for students. Experiences such as moot court and trial and appellate advocacy provide the link between the doctrine, statutes, and theory introduced in the traditional classroom setting. Problem-based

classroom exercises, hypotheticals, and interest-based research questions help students to begin to translate cases and doctrine, competing statutory interpretations, and theoretical approaches into frameworks and strategies for reaching particular results. This translation process, in turn, develops research, writing and oral advocacy skills.

Fourth, and perhaps the most important step in the process, clinics and externships, so-called “practical” or “real world” approaches, build on the knowledge acquired in classes and through simulations. Clinics and externships allow students to experience the practice of law through real clients and live disputes. As a result, students learn important practical skills and intricacies not readily apparent in classroom work including relating to clients, fellow lawyers, and decisionmakers, managing a case, observing how strategic decisions and ethical judgments are made, dealing with experts, obtaining relevant information, and facilitating negotiations. In some clinical settings, students also learn to work with materials and professionals from other disciplines. This experience is important in a field that often intersects with science, economics, and policy. Clinics and externships also can provide opportunities to teach students about a range of advocacy tools beyond litigation. These practical offerings provide the transition between “thinking like a lawyer” and “becoming a lawyer.”

Real-client clinics can also help students understand and plan for the areas of practice they might like to pursue. As some teachers involved in this project have pointed out, however, clinical experiences are necessarily limited by the particular matters and clients assigned to each student, and the clinical experience does not necessarily simulate what a graduate might encounter in the real world. The vast majority of lawyers develop either significant subject matter expertise or a real store of practical knowledge well after law school. Nonetheless, environmental law teachers see clinical education as providing an essential experience that cannot be matched in any other setting.

Finally, many teachers noted the value of experience on a law journal. While participation on a student-edited law journal may not, at first blush, provide the same level of practice-oriented skills as other co-curricular options such as clinics or externships, the experience can help students hone their lawyering skills by requiring attention to formal detail as well as exploring an area of law in depth through writing on a self-selected topic. The value of this experience exists whether a particular school publishes an environmental or general law review.

Overall, environmental law teachers believe that the current approaches to teaching and learning are reasonably effective in equipping students with the skills they need. Nonetheless, given the breadth and diversity of environmental practice areas and practice types, as well as the limits to practice experience students can gain even at law schools with robust clinical offerings, students cannot generally leave law school with all the skills they will need to be excellent lawyers. Inevitably and appropriately, students must learn further in a practice context how to practice environmental law. Thus, the role of a solid environmental law curriculum should be to provide graduates with the basic tools necessary to begin and develop a practice in environmental law.

2) Interdisciplinary education

Environmental problems are interdisciplinary in nature. Competing priorities and demands for resources – which inherently cross disciplinary lines – require interdisciplinary and collaborative problem solving to achieve long-term environmental sustainability. Lasting solutions often include elements from various disciplines. Certainly, the problems and policy questions that arise require input beyond just interpretation of case law and statutes.

Commonly, lawyers function as generalists who learn the specifics of science, engineering, or other specialties when necessary to meet the client's need. Thus, each client or project brings new knowledge and challenges. A lawyer should not be expected to be a scientist or an economist as well as legal advisor. In fact, some would say that not having a substantive background in science, for example, can be an asset as the lawyer can then better insist that his or her technical experts speak plain English and communicate scientific information to non-experts. As a result, some of the most successful environmental lawyers do not have technical backgrounds.

Exceptional environmental lawyers, however, are both proficient in disciplines that are regularly applicable to their practice (e.g., air and water quality, hydrology, wildlife biology, toxics) and embrace the unique role an attorney can, and often does, have in resolving environmental disputes. A background in sciences, business or engineering can be helpful to an environmental lawyer who must review technical documents, interview consultants, and translate technical information into understandable terms for a court or other decisionmaking body. Lawyers can often be more effective in achieving solutions for their clients if they develop the ability to engage various disciplines and approaches to a problem. Indeed, the increasingly complex nature of environmental law may demand an interdisciplinary skill set from lawyers. The lawyer has the unique opportunity and an important obligation to facilitate the conversation between the disciplines.

By integrating interdisciplinary work into the curriculum, law schools serve students by creating opportunities to learn how to communicate across disciplinary lines. Law, or science, or politics alone will not solve the environmental problems of our day – the problems call for input from all disciplines. Law school is the perfect opportunity to begin bringing together those ideas and solutions. Studying the economics, history, and policy of particular environmental or natural resources schemes is extremely important and all substantive classes should address these elements in some fashion. Indeed, many of the recent casebooks in our field devote entire sections to these important non-legal issues. Exposure to these issues allows students to more fully understand or appreciate why our environmental laws came to be or what other, sometimes competing, issues are at stake. Additionally, interdisciplinary classes, including courses team-taught with scientists, courses focusing on the environmental needs of businesses, and courses in which graduate students from other disciplines work in teams with law students are very valuable to understanding how environmental law functions in context. It is likely that such courses also lay a foundation for them to work productively with experts in other disciplines in the future.

Despite the universally positive comments of environmental law teachers about the value of interdisciplinary education, it is unclear to what extent law schools actually provide genuine interdisciplinary opportunities to students. Traditional institutional barriers to interdisciplinary collaboration still exist; there is often little incentive for teachers and researchers to collaborate across disciplines. In practically-oriented courses such as real-client clinics, it is often difficult to deal with the logistics of interdisciplinary collaboration. And some courses labeled “interdisciplinary” may not involve real collaboration between disciplines but rather teach each discipline independently even in the same course. It would benefit the field to determine where truly successful, replicable interdisciplinary education has occurred. Where such efforts have been unsuccessful, it would be valuable to investigate the problems and underlying challenges of interdisciplinary education. A systematic examination of interdisciplinary legal education to examine what has been tried and what has worked may yield benefits for law schools, students, and practitioners.

3) The effect of educational experiences on environmental lawyers' career paths

Law teachers agree that students' educational experiences in environmental law have a significant impact on their career paths. Clearly, education provides an important foundation of knowledge and skills for practice, as discussed above. It also helps students identify substantive areas of the law and practice settings that interest them and suit their skills. Law schools can provide important opportunities for students to assess the areas of law that are best suited to their skills and interests. The practice of environmental law is substantively very broad. If law schools provide a broad range of curricular options coupled with opportunities for theoretical and practical experience, students can evaluate various career paths and options before entering the job market.

So, for example, students can determine if their interests lie with a regulatory environmental law practice or a natural resources practice. Students may also be exposed to career paths that they were unaware of before law school, including toxic torts, international environmental issues, environmental justice, etc. Once in practice, a new lawyer may find it difficult to experiment with different areas of environmental and natural resources law. Environmental law practice is also diverse in terms of clients and approaches to practice. Law schools have the opportunity to show students the difference between a litigation and policy-focused practice, to compare public interest, government and private practice in the field, and to explain the opportunities to practice environmental law at the local, state, tribal, national and international levels.

Education also helps students to understand the complexity and multidimensionality of legal and policy problems relating to environmental issues. By providing multiple perspectives on environmental law issues, traditional doctrinal education should enable students to gain a foundation for understanding those perspectives better than in a practice setting in which clients' needs are emphasized. At the same time, clinical education enables students to explore what it is like to represent clients' perspectives in a setting in which those perspectives can be analyzed critically within the framework of the course, and in which the students' work and the clients' needs can be placed in a larger context.

Additionally, some teachers observe that more students come into law school interested in environmental law than actually enter the field when they graduate. This may result from two phenomena, apart from the possibility that they simply found other subjects that interested them in law school. First, the often technical nature of environmental law surprises many students, who may conclude that the practice of environmental law may not be as well-suited for them as they had thought before being exposed to environmental law's legal doctrine and use of science. Second, the nature of the job market in environmental law provides relatively few opportunities for new lawyers in public interest or government practice – and many students, who are attracted to environmental law because of their passion for environmental protection, are less interested in entering private sector environmental law practice.

Overall, environmental law teachers recognize that students' educational experiences can, and often do, shape their future careers. We have a responsibility to ensure not only that students learn the skills, knowledge, and judgment necessary to excel as environmental lawyers, but also that each student has access to information and tools to assess how to begin and continue on a career path that is personally fulfilling and that contributes positively to the legal profession and to our world.

4) The challenge of fostering diversity within the field

Environmental law teachers agree that while gender balance has largely been achieved among students interested in environmental law, there is still a lack of racial and ethnic diversity among students and among environmental practitioners in general. The general lack of ethnic and racial diversity in the environmental law field is a complex and serious issue, requiring efforts on a variety of levels beyond legal education. Moreover, the lack of diversity may mirror challenges facing law schools generally (although at least some environmental law teachers have observed that even as diversity has increased in law schools, it has not increased accordingly in environmental law programs). Nonetheless, law schools' environmental law programs can and should take proactive steps to help promote diversity in the field.

The admissions process plays a critical threshold role in ensuring that law school communities, including environmental law programs, have diverse populations. Without diverse student bodies at law schools, our environmental law programs will not be able to foster diversity in the profession effectively. Accordingly, the first step is to assure that a law school is undertaking steps to attract minority applicants.

Assuming that law schools are attracting minority students, environmental programs must offer classes, discussions, outside speakers, and student groups that address environmental issues that affect minorities such as environmental justice or cultural resources protection. These issues are of great importance to many minority students, and may make the study of environmental law more compelling and relevant to them. Several teachers note that the environmental justice field provides important opportunities to work with groups who are addressing the impact of environmental degradation on minority communities. Courses in environmental justice and externships with organizations with an environmental justice focus have provided students with opportunities to work on issues of particular importance to low-income and minority communities. Native American-focused projects and work relating to the impacts of international development also provide opportunities for students to work on issues of importance to minority communities. Overall, many law schools have developed these opportunities.

Some minority students, however, are less interested in spending their careers working exclusively on environmental issues that specifically affect minority communities. These students want the same opportunities as other students to practice environmental law, beyond and apart from issues such as environmental justice. Law schools need to do more than just offer classes; minority students need to see that there are opportunities for them in the field, including promotions and advancement. To achieve this goal, minority students need role models, mentors, and programs that support minority students interested in environmental law, such as the ABA Section of Environment, Energy and Resources' Minority Law Student Fellowship program. Programs like these are essential to increase professional opportunities for minority law students in the field. But more is necessary. In order for legal educators to assist with this effort, we need to examine the way we recruit students, as well as adjunct and tenured faculty teaching in the field, develop an understanding of how minority students may perceive the study and practice of environmental law, provide examples of minorities that have achieved success in the field, and ask what else we can do to make the study of environmental law more attractive to them.

Environmental law teachers see a real need for improvement in this area. Despite what appears to be a significant intellectual commitment on the part of law schools, practicing lawyers, and environmental law teachers and administrators to ensuring that future environmental lawyers include traditionally underrepresented groups, those groups are still underrepresented in the field.

5) Opportunities for collaboration between practicing lawyers and law schools

Environmental law teachers recognize that involving practicing lawyers in the work of law schools strengthens legal education significantly. Collectively, these teachers have expressed many ideas about fostering collaboration between practicing lawyers and law schools. Law schools also have shared current efforts to involve practitioners in legal education.

First, practitioners help to teach law students in the classroom, by serving as adjunct faculty and by giving lectures, workshops and short courses. Some environmental law teachers believe using environmental law practitioners as adjunct faculty is particularly necessary to keep up with developments in our fast-changing field. In addition, some topics are particularly well-suited to be taught from a practitioner's perspective. Innovative approaches in using practitioners in the classroom include a practical "add-on" component to doctrinal courses in which practicing lawyers help students learn how to integrate legal doctrine into real legal problems, and courses that design student research around questions provided by practitioners at the cutting edge of the field.

Second, practitioners, through formal work in law schools outside the classroom, provide an essential perspective in helping students to learn what environmental lawyers actually do in practice. At various law schools, practicing lawyers serve as mentors to law students, volunteer for moot competitions, give presentations on environmental law careers, and supervise clinic and externship opportunities for students. And of course, by providing summer and during-the-school-year employment and internships for students, practitioners play a crucial role in developing students' education outside the law school.

Third, interaction with practitioners outside classroom and other formal settings provides important opportunities for students to network and to learn about law practice. Law schools make use of other institutions such as State Bars and local Bar Associations to facilitate this interaction, by, for example, encouraging and subsidizing students' attendance at CLE programs and conferences and co-sponsoring career-related and substantive presentations at law schools. Student organizations such as environmental law societies can also provide opportunities for students to collaborate with practicing lawyers.

Finally, law schools make use of practitioners as institutional advisors. At some law schools, practitioners serve on an advisory board; at others, practitioners meet with faculty to discuss current developments in environmental law. Still others have assembled lawyers to consult on potential changes to curriculum or on new proposed programs to get input on what skills and information practicing lawyers believe it would be useful for new attorneys to obtain.

While not all these ideas are implemented at all law schools, law teachers are generally aware of the range of ways in which practitioners add to the law school experience. Few yet-to-be-tried or innovative ideas were identified. It would be useful to brainstorm about the relative value to students and practitioners of law schools' various collaborations with environmental lawyers, as well as about other types of collaboration not discussed here. Developing more open lines of communication between the practicing bar and the academy will serve our educational institutions, our students, and ultimately the practice of environmental and natural resources law.

Conclusion

In this synthesis paper, the authors have identified some of the core issues facing environmental law programs, described how law teachers believe law schools currently address these issues, and

discussed opportunities for improvement. This synthesis may serve as the basis for “scoping” a future assessment of how effective law schools are at preparing new lawyers for environmental law practice. We welcome the opportunity to receive input from practitioners to refine and challenge our assumptions and conclusions, and to help to determine whether we are asking all the right questions. In order to systematically address these issues, follow-up should include a review of existing research as well as new research to test the validity of the opinions and intuitions of law faculty expressed in this paper.