

the YOUNG LAWYER

ABA American Bar Association
Young Lawyers Division

Volume 12 • Number 9
July 2008

The New Math of Legal Education

By Andrew P. Morriss and William D. Henderson

PART TWO OF A TWO-PART SERIES ON THE STATE OF THE PROFESSION. Read part one in the June issue online at www.abanet.org/yld/publications.html.

To understand today's market for law students and lawyers, start with five numbers: 20, 448, 224, 431, and 110,000. Collectively, those five numbers tell a disturbing story that is rapidly approaching a tipping point.

The Council and the Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar have accredited 20 additional law schools since 1990. The expansion of legal education shows no sign of slowing, with several schools currently seeking accreditation and a booming market in non-ABA accredited schools in states such as California. Want further proof that the market for legal education is growing? Since 1987, law school tuition rose 448 percent for in-state residents at public institutions and 224 percent at

private institutions. Law school tuition increases far outpaced inflation generally, as the overall cost of living increased only 77 percent in that same period.

Despite these hefty price increases, legal education today is virtually identical to the legal education of 1987. Most law students spend most of their time in classrooms, discussing cases with professors and their classmates. Beyond the innovations in computers since 1987, there are no new technologies, no new expensive laboratories, and no exotic equipment needed to operate a law school. Today's students may take notes on laptops instead of yellow legal pads, but otherwise a law classroom today with its chalk, blackboards, and books looks almost identical to one in 1987 or, for that matter, 1957.

How are students paying for today's higher tuition bills? Many of them are borrowing a great deal of money. The average amount of law school debt owed at graduation soared 431 percent between 1987 and 2005, from \$16,000 to \$85,000.

Law school is an investment

in what economists call human capital and is one increasingly financed with debt. Is it a good investment? For some students, law school pays handsome dividends. With starting salaries at \$160,000 and above at large New York City firms, even students who borrow \$100,000 or more to attend law school reap substantial economic rewards. But most lawyers do not start at \$160,000; the median starting salary at a two- to 10-lawyer firm is a whopping \$110,000 less than at a Wall Street powerhouse. Moreover, on average, this gap between large and small firm pay tends to widen during the first eight years of legal practice.

The new math of legal education is grim reading for the large numbers of today's law students and new lawyers earning less than they need to meet their loan payments. Getting the numbers right in the future depends on three reforms.

First, prospective law students need better information about the legal marketplace. Law school brochures are filled with glossy pictures of alumni at large law firms. Many law schools fail to provide the complete picture of what their graduates do and how much they earn. People contemplating a \$100,000 or more investment in their careers need accurate information and to be able to compare how graduates with similar credentials at different schools fare in the job market. In their role as the accreditation agency for law schools, the Council and the Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar are in a position to insist that law

schools provide such data to prospective students.

Second, law schools need to demonstrate that they add value. There is little reason for legal education to look the same everywhere, yet the differences in methods among ABA-accredited schools are minute at best. Law schools need to earn their hefty tuition price tags by offering teaching methods that are proven to increase students' human capital and employability. MBA programs have a long history of evaluating the value they add and persuading both employers and prospective students that they are a reasonable investment. In an era with more institutions competing for fewer students, law schools that adopt this approach are more likely to survive. Indeed, because value-added is such a foreign concept for law schools, first movers will reap substantial rewards.

Finally, some corporate law firms need to rethink their elitist business model. Current \$160,000 starting salaries have all the hallmarks of a frothy bubble. Students in the top 33 percent of their classes (sometimes 25 or 10 percent, depending upon the school) start at \$160,000 per year, while students right below that cutoff struggle to find jobs that start at \$60,000 to \$100,000. (Skeptical on this point? See www.elsblog.org.) Surely, legal talent does not have this cliff-like quality. Starting salaries of \$160,000 provide strong disincentives to train and mentor young lawyers. Law firms willing to break the mold have the opportunity to hire some terrific young lawyers right below the traditional grade cutoff and to train and bill them out at a much lower rate. When clients recognize the value in this business model, the rest of the market will follow.

The current trends in tuition and starting salaries at large firms are unsustainable in the long term. In the short term, these trends are leaving more and more law school graduates worse off economically than if they had never attended law school. If law is truly a profession deserving of the privilege of self-regulation, lawyers and law schools need to take steps to address these problems themselves before legislatures, regulators, and courts decide to do it for us.

Andrew P. Morriss is the H. Ross & Helen Workman Professor of Law and Professor of Business at the University of Illinois and can be contacted at morriss@law.uiuc.edu. William D. Henderson is an associate professor of law at Indiana University-Bloomington and can be contacted at wihender@indiana.edu.

WILLS FOR HEROES

In the past year, YLD has partnered with the Wills for Heroes Foundation® to provide free estate planning documents to firefighters, police, and emergency medical workers nationwide.

Since August 2007, YLD has implemented a Wills for Heroes Event at each of its national conferences, and will complete the year with an event in New York City. These events have benefited more than 350 first responders and the Division's involvement has allowed the program to expand into 20 states and Washington, D.C. Those licensed in New York can volunteer to help at the event. Visit www.abanet.org/yld/wills for information.



Earth Jurisprudence

THE FUTURE OF LAW AND THE PLANET

By Judith E. Koons

A notable shift of consciousness is underway in the United States that is calling citizens to integrate ecologically responsible actions into their daily lives. Living lightly on the land means making Earth-conscious choices, such as avoiding the use of water bottles that litter landfills, eating locally, planting trees and water-conserving xeriscapes, using biodegradable and energy-efficient household products (e.g., compact fluorescent light bulbs), and reducing, reusing, and recycling.

Simply adjusting human lifestyles to minimize our impact on the Earth, however, does not address the underpinnings of the law, which allow nature to be subordinated to profit. The effects of our system of jurisprudence are reflected in a paradigm of relentless development by which nature has been exploited to a sometimes irreversible degree. We have entered the largest mass extinction since the age of the dinosaurs 65 million years ago. More than 16,000 species of plants and animals are facing a high risk of extinction. And respected scientists are warning that global warming is reaching a tipping point that, if not reversed, will change the physical geography of the world.

What roles do laws and lawyers play in looming questions about the health and future of the planet?

An emerging field of law called “Earth Jurisprudence” is based on respect for nature and is drawing together lawyers, law professors, students, theologians, scientists, economists, philosophers, and members of indigenous communities to engage in a fundamental rethinking of law for the health of the

comprehensive Earth community. Earth Jurisprudence recognizes the perils facing Earth and her inhabitants and the need to make a marked shift in the way we think about law, governance, and lawyering.

Key principles of Earth Jurisprudence, as authored by Thomas Berry and Cormac Cullinan, among others, include:

- Recognizing that beings, entities, and systems in nature have rights to fulfill their roles within the Earth community: a being has a right to be, a species has a right to habitat, a river has a right to flow without being canalized. Human rights should not be understood to cancel out the rights of species, entities, and

We live not in a time of despair but in an epoch-shifting era of opportunity.

- Widening the moral community from centuries of failed anthropocentricity to include species, ecosystems, and entities in nature.
- Giving life, meaning, and application to an Earth ethic that recognizes humanity as a part of a larger whole and that presupposes that a thing is right to the extent that it preserves the health of the wider Earth community.
- Considering ways to reframe the law of property to reflect the health of the land.
- Infusing into Western law the landed wisdom of indigenous communities.
- Shifting into ecosystem-based governance approaches that support particularized knowledge, collaboration of interests, counting of ecosystem services, and adap-



tive management practices to reflect interconnections among ecosystems, people, and governance.

How can young lawyers help advance these principles? The call to participate in Earth Jurisprudence may be vocational or personal. Some practical legal applications of Earth Jurisprudence are:

- Revitalizing the ancient public trust doctrine to safeguard nature.
- Reformulating the notion of community land trusts

to recognize that collective ownership imparts usufructory rights—rights to use, not destroy the land.

- Broadening the principles of standing to acknowledge the justiciability of the interests of beings, entities, and systems in nature.
- Expanding guardian ad litem concepts to support human representation of threatened species and ecosystems.
- Adopting the precautionary principle (the standard that requires precautionary measures to be taken when an activity raises a threat of harm to the environment, even if the scientific understanding of the cause is incomplete) as the basis for local, state, regional, national, and international environmental policy.
- Imbuing international law with protection for biodiversity through such measures as the Biodiversity Protocol.
- Safeguarding biodiversity and food security on the national level, e.g., revising food and drug regulations to require the labeling of products containing genetically modified organisms.

- Revising corporate codes to recognize the goal of conducting business in a manner that is environmentally responsible.
- “Greening” law offices, court systems, government offices, law schools, work places, transportation systems, building standards and operations, and corporate practices.

We live not in a time of despair but in an epoch-shifting era of opportunity. The early twenty-first century is a season of rapid transition from environmental destruction to ecological consciousness. Consider the differences that would arise out of moving from a human-centered to an Earth-centered jurisprudence. The great work of this generation of young lawyers includes guiding the changes in law to support mutually enhancing relations among all parts of the comprehensive Earth community.

Judith E. Koons teaches professional responsibility and jurisprudence at Barry University School of Law in Orlando, Florida, and is the chair of the governing committee of the Center for Earth Jurisprudence. Contact her at jkoons@mail.barry.edu. For more information on this emerging field of law and its authors see www.earthjuris.org.

READY RESOURCES

- What Every Real Estate Attorney Needs to Know about Environmental Law session at 2008 Annual Meeting, New York, Aug. 8 (sponsored by YLD) www.abanet.org/yld/annual08/.
- Basic Practice Series Programming at Fall Meeting of Section of Environment, Energy & Resources, Sept. 17-20, Phoenix (cosponsored by YLD) www.abanet.org/enviro/fallmeet/2008/bps.shtml.
- Environmental Career Paths for Young Lawyers and Law Students (Free Podcasts/MP3 Downloads) www.abanet.org/enviro/programs/teleconference/0708/careerpaths/home.shtml.

The War on Global Warming Creates Career Opportunities

By David A. Cetola

Everyone has heard of global warming—the rise in temperature of the Earth's atmosphere attributable primarily to human activities such as the combustion of fossil fuels and deforestation. But are you aware that impending regional and proposed national programs designed to address this problem offer new opportunities for young lawyers in the emerging climate change industry?

Most developed nations agreed to set mandatory time lines to reduce greenhouse gas emissions (GHGs) by ratifying the international Kyoto Protocol, which established programs to address global warming. The Bush administration decided not to bind the United States to a mandatory timetable, citing both the potentially disastrous effect it might have on the

U.S. economy and an unwillingness to participate if rapid-growth countries such as China and India would not similarly commit.

In the absence of a federal regulatory program to reduce GHG emissions, 10 states in the northeast and mid-Atlantic region developed the Regional Greenhouse Gas Initiative (RGGI), which goes into effect in 2009. RGGI established a network of individual cap-and-trade programs to regulate carbon dioxide (CO₂) emissions from power plants within each member state. RGGI's cap-and-trade program set an overall limit on CO₂ emissions (the "Cap") permitted across the region during a three-year compliance period. Each member state is assigned a portion of the Cap based on such factors as its past emissions levels, electricity consumption,

and population. Every year, each state will distribute its allowances (one allowance equals one ton of CO₂ emitted) through an auction system. Individual power plants can buy, sell, and trade the allowances in the open market.

RGGI looks to be only the beginning of GHG emissions regulation, as a national program may be on the horizon. In October 2007, the America's Climate Security Act (ACSA) was introduced; it proposes a national cap-and-trade program that encompasses the regulation of the five primary GHGs (not just CO₂). Its aim is to achieve a 70 percent reduction (from 2005 levels) in GHG emissions nationwide by 2050. In December 2007, ACSA was approved by the Senate Committee on Environment and Public Works, becoming the first comprehensive global warming bill to make it through a committee of Congress.

With GHG emissions reduction regulations, and the cap-and-trade programs they create, exciting opportunities open for young lawyers. They include:

- **Allowance purchase and trading:** Regulated entities will need counsel during the purchase of allowances in the auction market, and the purchase and trading of allowances on the secondary market. It is anticipated that financial institutions, environmental groups, and non-regulated sources will also participate in the marketplace for allowances.
- **Renewable energy project investment:** Due to added costs associated with emission regulation and the ability for regulated entities to obtain offsets to satisfy a percentage of their compliance obligation, such entities will look to invest in emission reduction and renewable energy projects, requiring counsel in the development, permit, and offset certification process for these projects.
- **Due diligence:** Potential lenders, investors, and business partners will require increased due diligence prior to entering into transactions

with regulated entities.

- **Enforcement:** When dealing in any regulatory framework, violations can and will occur requiring assistance of counsel.

With RGGI's impending implementation and a national program seemingly on the horizon, it is clear that GHG emissions regulation will only grow from here. Only time will tell how effective these programs are at achieving their goals; however, as regulations get phased in, work groups within firms and regulatory agencies will also need to grow in order to meet the legal needs that the programs create. With this expansion come unique and challenging career opportunities for young lawyers eager to develop along with the emerging climate change field.

David A. Cetola is an associate at McRoberts, Roberts & Rainer, LLP in Boston, focusing in environmental litigation and land use regulation. He is a member of the ABA's Environment, Energy & Resources Section, and Young Lawyers Division. Contact him at dcetola@mcrobertslaw.com.

SKI CLE Keystone Resort
Feb. 26-Mar. 1
University of Denver Sturm College of Law

Save the Date!
FEB 26 - MAR 1, 2009

For more information, please contact the DU Law CLE Office at cle@law.du.edu or visit us online at www.law.du.edu/cle.

 **KEYSTONE**

YLD CALENDAR & CONFERENCES

AUG. 7-10, 2008	2008 ABA YLD ANNUAL MEETING NEW YORK, NY Find updated information on YLD events at www.abanet.org/yld/annual08 <ul style="list-style-type: none">■ YLD offers public service, education, and debate opportunities.■ CLE and Professional Development: YLD will sponsor four CLE programs specifically for young lawyers and cosponsor other relevant ABA programs.■ YLD Assembly: The national voice of young lawyers, where critical work and practice issues are debated. YLD officers for 2009 will be elected. Learn more about the Assembly at www.abanet.org/yld/assembly
AUG. 28, 2008	DEADLINE FOR OUTSTANDING YOUNG LAWYER AWARD www.abanet.org/yld/awards/oyla/oyla.shtml
SEPT. 10-13, 2008	THE FUNDAMENTALS TRACK OF THE ABA SECTION OF LABOR AND EMPLOYMENT LAW 2ND ANNUAL CLE CONFERENCE DENVER, CO www.abanet.org/labor/lel-annualcle/09/labor-cle08.html
SEPT. 17-20, 2008	BASIC PRACTICE SERIES PROGRAMMING AT THE SECTION OF ENVIRONMENT, ENERGY AND RESOURCES FALL MEETING PHOENIX, ARIZONA www.abanet.org/environ/fallmeet/2008/bps.shtml
OCT. 2-4, 2008	2008 ABA YLD FALL CONFERENCE SAN DIEGO, CA www.abanet.org/yld/fall08/
MAY 14-16, 2009	SAVE THE DATE ABA YLD SPRING CONFERENCE NEW ORLEANS, LA

Visit the ABA YLD Calendar for additional information:
www.abanet.org/yld/meetings.html



AMERICAN BAR ASSOCIATION
YOUNG LAWYERS DIVISION
321 N. Clark Street
Chicago, IL 60610-4714
www.abanet.org/yld

NON-PROFIT
ORGANIZATION
U.S. POSTAGE
PAID
AMERICAN BAR
ASSOCIATION

the YOUNG LAWYER

THE YOUNG LAWYER IS PROVIDED FREE TO ALL ABA YOUNG LAWYERS DIVISION MEMBERS.

Volume 12
Number 9
July 2008

YLD Chair—Justin Goldstein
Editor—Hope Caldwell
Issue Editor—Kristi L. Bergemann
Assistant Issue Editor—Crystal H. Clark
Managing Editor—Lori Lyons
Art Director—Kelly Book

THE YOUNG LAWYER [ISSN 1090-6878] is published eleven times a year, by ABA Publishing for the Young Lawyers Division, American Bar Association, 321 N. Clark Street, Chicago, IL 60610. Nonmember annual subscriptions: \$29.95. The views expressed herein are those of the authors and not necessarily those of the American Bar Association, its Young Lawyers Division, or the employers of the authors. Copyright © 2008 American Bar Association. THE YOUNG LAWYER comprises a registered trademark of the American Bar Association. All rights reserved.

Visit *TYL* online at www.abanet.org/yld/publications.html.

E-Discovery A SURVIVAL GUIDE FOR NEW LAWYERS

By David R. Cohen and Lynn Reilly

You have been assigned to a major new litigation matter. The senior partner has just informed you that she is entrusting you with the client's document collection and production, including e-discovery. What do you do now?

1. Panic. When you have a big problem, the first step is to admit it. Managing the record preservation, collection, review, and production process can be one of the most difficult, complicated, expensive, and thankless jobs in any litigation matter. It is a perilous area where pitfalls are plentiful, mistakes are frequent, and the possibility of sanctions is real. And when things go awry, as they often do, who do you think will be blamed? In the recent and noteworthy *Qualcomm* decision, even junior associates

initially were found to be subject to sanctions for "monumental" discovery violations—though they were likely not the decision makers and likely would have had little ability to contradict partners' instructions. *Qualcomm Inc. v. Broadcom Corp.*, 2008 WL 66932 (S.D. Cal. Jan. 7, 2008).

2. Take a deep breath. You may have drawn the short straw, but now you must turn this into an opportunity to prove yourself. If you handle this right, you could be a hero. In order to make that happen, make this project your number one priority and plan to spend most of your time on it. Do not compound the problem by pushing this difficult assignment to the back of your desk or trying to pass along the work to an unfortunate parale-

gal. You have to take responsibility—and there is no time to lose.

3. Assess the project. Fact gathering will be an ongoing process, but at the outset you need to understand the basics:

- What is the litigation all about? Understand the pleadings and the types of documents that are potentially relevant.
- Is an effective legal hold already in place? If not, immediate action must be taken. Parties have an obligation to preserve potentially relevant evidence as soon as litigation is reasonably anticipated. Be sure to track and document, in detail, your legal hold efforts and all other preservation steps you take.
- What can you learn about the court that may impact e-discovery? Are there applicable e-discovery rules in the jurisdiction (as there are in federal courts and some state courts)? Are there any local rules about e-discovery or does the presiding judge have particular practices he or she likes to follow?

- Who is opposing counsel and have they yet served requests for production? Are opposing parties likely to face discovery challenges comparable to those your client faces? If so, this circumstance often leads to negotiation and reasonable accommodations. Or is this a case with a discovery imbalance (e.g., a class action or individual plaintiff) where one side will have most of the leverage and little incentive to agree to limits?

4. Gather expertise. Understanding the law of e-discovery is not enough; you will also need practical advice and assistance. Find out if your firm has an e-discovery guru or practice group, e-discovery/litigation support specialists, or paralegals who frequently are involved in the process. If your firm does not have in-house e-discovery resources, you owe it to yourself and your client to get partner approval to bring in outside expertise, in the form of a knowledgeable consultant and/or special e-discovery counsel. Beware of relying solely

on the advice of the same e-discovery vendors whose profits depend on your choices.

Your next critical steps are to understand e-discovery (including the terminology), make a preliminary plan, educate the partners, and manage the process (including containing costs.) For details on these steps, read part two of *E-Discovery* in the July issue online at www.abanet.org/yld/publications.html.

David Cohen is a partner in the Pittsburgh office of Kirkpatrick & Lockhart Preston Gates Ellis and co-chair of the firm's e-Discovery Analysis & Technology (e-DAT) Practice Group. Lynn Reilly is a staff attorney in the firm's Seattle office and e-DAT Group. Contact them at david.cohen@klgates.com and lynn.reilly@klgates.com.

READY RESOURCES

- E-DISCOVERY FROM THE WAR ROOM! Program presented by the Tort, Trial & Insurance Section (cosponsored by YLD), Aug. 8, 2-5 p.m., at the Annual Meeting, Hilton New York. www.abanet.org/yld/annual08/details.shtml.