

**AMERICAN BAR ASSOCIATION**

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**Memorandum**

To: William C. Hubbard, President  
Alpha M. Brady, Director, Policy Administration Division  
Cc: Paulette Brown, President-Elect  
From: Lee A. DeHihns, III  
Chair, Task Force on Sustainable Development  
Date: July 30, 2015  
Re: Task Force Final Report

Attached is the Final Report of the ABA Task Force on Sustainable Development. The Task Force members have worked hard during the two years that the Task Force has been in existence. The report describes our key accomplishments and contains a number of recommendations as required by the Policy and Procedures Handbook - *regarding the involvement of the ABA in implementing sustainable development matters worldwide.*

I want to thank the members of the Task Force for their efforts and the staff of the Section of Environment, Energy and Resources for their operational and technical support. Special thanks also go to Immediate Past President James Silkenat and President William Hubbard for their support and wise counsel throughout this journey.

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Attachment

# FINAL REPORT OF THE AMERICAN BAR ASSOCIATION

## TASK FORCE ON SUSTAINABLE DEVELOPMENT

July 30, 2015

This report both summarizes what the Task Force has accomplished during its two years of operation and makes recommendations to the ABA on various sustainable development matters. Consistent with its mission, the report describes the paths the ABA should follow in this area of law.

The report also follows the statement in the ABA Policy and Procedures handbook for 2014-2015, which says that the Task Force shall “(a) review and make recommendations regarding the involvement of the ABA in implementing sustainable development matters worldwide, (b) make periodic reports to the Board of Governors, as well as (c) submit recommendations with reports to the House of Delegates, as appropriate.”

Finally, this report builds on, and to some extent modifies, the first-year report issued by the Task Force on July 31, 2014.

### **I. SUSTAINABLE DEVELOPMENT AND THE WORLD IN WHICH WE PRACTICE LAW**

#### **A. UNDERSTANDING SUSTAINABILITY IN CONTEXT**

Sustainability is a framework for decision-making based on promotion of environmental protection, social justice, and economic/financial responsibility at the same time, with the overall objective of promoting human well-being for present and future generations. The framework is intended to apply to a wide variety of decisions, including but not limited to those involving climate change. Sustainability is intended to address two significant and related problems—widespread environmental degradation, including climate disruption, and large-scale extreme poverty. The root causes of these problems, in turn, are understood to be unsustainable patterns of production and consumption as well as a very large and still growing population.

While environmental, social and economic pillars are at the core of every sustainability discussion, the term is used in slightly different ways in different contexts. At the international level, sustainable development provides a strong emphasis on the needs of less developed countries. In the business world, the term is usually “sustainable business practices” or the “triple bottom line”—implying that the traditional single economic bottom line must now be reconciled with social and environmental considerations. At the community level, sustainability is used to describe local approaches that focus on quality of life, including “smart growth” in land use planning. In the financial sector, sustainability thinking and activity are organized around the label “ES&G” (Environment, Social and Governance), a combination that equates to the three pillars of sustainability. In all of these settings, moreover, the term includes but is broader than the “rule of law” and “good governance.”

Although progress toward sustainability has been much too slow—and we are in some ways further away from sustainability than we were two decades ago—there are a growing number of bright spots. These include agriculture, manufacturing, technology, community planning and development, business and industry, government, education, building construction, forestry, engineering, and law. In each of these areas, there are dedicated practitioners who have thought deeply about what sustainability means in different contexts and why it is attractive, and whose day-to-day job is to make it happen, fix what doesn't work, and improve results. Some of these practitioners have also shown that legal tools, the legal profession, and the rule of law can make important contributions and are an integral component of efforts to achieve sustainability, especially by promoting good governance.

Relatively recent developments include the emergence of “public benefit corporations,” the dramatic growth of public sustainability reporting by businesses and other organizations, the rise of socially responsible investing, the rapidly increasing use by colleges and universities of the Sustainability Tracking, Assessment and Rating System, and the decision of Stanford University to no longer invest in coal. At the international level, the 2012 United Nations Conference on Sustainable Development endorsed the “Sustainable Energy for All” challenge, which is intended to expand access to energy to 1.4 billion people who are not now served by modern energy, while not increasing (and hopefully decreasing) environmental impact. The conference also launched a process to establish Sustainable Development Goals, which are intended to replace the Millennium Development Goals, international goals for improving human health and wellbeing that are set to expire in 2015.

## B. OPPORTUNITIES AND CHALLENGES FOR LAW AND LEGAL PROFESSION

Sustainable development in the United States is anchored in, but not limited to, the nation's conservation, environmental and land use laws. The National Environmental Policy Act of 1969 (NEPA), in fact, declared sustainable development to be national policy even before the term sustainable development was coined. NEPA declares a national policy “to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. § 4331(a). Environmental, conservation, and land use laws provide a baseline of environmental protection and employ many of the tools and much of the vocabulary of sustainable development (e.g., integrated decision-making, precaution, planning, public information and public participation).

But these laws do not directly address the large ecological footprint (energy, water, resources, biodiversity and land) of the United States. Nor do they directly address a great many laws that have historically been used to foster economic development—laws that have the effect of encouraging, supporting, and even rewarding environmental degradation. In some instances, existing laws may even encourage behavior that is at odds with sustainable development. Finally, these laws may not yet provide an adequate framework to fully integrate sustainable development principles when addressing emerging threats.

Sustainability is a growing part of law practice, and in virtually every practice area. Sustainability is affecting, or will affect, tax law, insurance, banking, finance, real estate

development, environmental and energy law, among other fields. It also involves a wide range of knowledge and skills, including litigation, commercial transactions, client counseling, advocacy before governmental agencies and other bodies, and legislative drafting. The conscientious practice of law, with an eye toward sustainability, can make important contributions to furthering its goals. Lawyers can contribute significantly in ensuring that their clients and collaborating entities, whether courts, government agencies, businesses, civil society organization, or private individuals, are aware of sustainability concerns and behave consistently with laws and regulations promoting sustainability. A sustainability-aware practice of law can thus help shape behavior as well as laws and regulations that are supportive of sustainable development.

Clients—including business and industry clients, as well as nongovernmental and governmental clients—have become increasingly engaged in sustainability, with growing sophistication and more intensive commitment, and often in response to (or to advocate, prepare, or anticipate) government regulation. As clients move in this direction, they increasingly expect their lawyers to have the knowledge and skills to advise and support them. Law firms that have positioned themselves to take advantage of the growing development of renewable energy, for example, are being rewarded in the market. Such knowledge and skills are also increasingly important for lawyers representing environmental groups; community and citizen organizations; and local, state, tribal, and national governments. This is particularly true because legal issues, disputes, and problems are increasingly framed by sustainability concepts and objectives.

Corporate sustainability efforts in particular have been growing in scope and intensity over the past few years. In translating the broad objectives of sustainability into specific practices, businesses are guided to a growing degree by private systems of governance. These include sustainability-related codes of organizational behavior, including the CERES (Coalition for Environmentally Responsible Economies) Principles, the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the Global Reporting Initiative standards on sustainability reporting, and the International Chamber of Commerce's Charter for Sustainable Development. Still another development is the creation of private standards and certification systems for specific activities, such as green building and sustainable forestry.

Business motivations include, but are not limited to, a desire to gain competitive advantage by seizing market opportunities and reducing costs in a more resource-constrained world. In addition, businesses are motivated by core values such as corporate social responsibility, integrity and community engagement. They are also responding to demands from their customers, shareholders, and the communities in which they operate. Yet businesses are also driven by the growing translation of the sustainable development framework into public law. This includes new or modified domestic laws that move toward sustainability, and new or modified international and foreign law rules that move toward sustainability. Perhaps the major force driving new or modified laws—and the possibility of new or modified laws—is climate change. These drivers also have the potential to propel the private sector toward innovative non-regulatory approaches to sustainability.

Law organizations are responding to these client motivations in two different ways. The primary sustainability focus of the leading firms and organizations now is on greening their

operations. Basic environmental sustainability objectives include using less paper, reducing electricity consumption, reducing energy use associated with travel, and generating less waste. Some firms are following in the footsteps of their corporate clients by extending their policies to include social sustainability—including employee health, workforce diversity, pro bono legal work, and charitable contributions for social programs in the community, as well as adherence to professional standards of ethics.

More than 300 law organizations participate in the ABA-EPA Law Office Climate Challenge, under which they reduce paper use, use renewable energy, and/or become more energy efficient. Many leading firms have also endorsed and are implementing the CERES-supported ABA SEER Sustainability Framework for Law Organizations, which explains the firm's commitment to economic, social and environmental responsibility. Some are also regularly reporting their sustainability performance to the public. Firms and other law organizations that engage in these and other practices are often motivated in part by a sense of social responsibility due to the enormous challenges of climate change and sustainability. But there are also business development reasons; clients want attorneys who are conversant in sustainability concepts, sustainability is a marketing opportunity for the firm, and firms want to act in a way that supports their environmental or sustainability practice group. In addition, sustainability is a powerful way to attract and keep new lawyers.

Beyond greening their internal operations, firms and other law organizations have a growing recognition that sustainability requires lawyers to have the requisite knowledge and skills. Many lawyers are concluding that the lack of sustainable development knowledge and skills means they will not be able to provide clients with all of the services that clients need.

Lawyers are already doing legal work related to sustainability in a wide variety of contexts—including but not limited to compliance with, and implementation of, environmental and land use laws; climate change; finance; corporate public reporting, business management; private sustainability governance (e.g., certification programs); human rights; diversity; and pro bono representation.

Their direct contributions have also included shaping efforts to strengthen good environmental governance in international fora, such as the 2012 United Nations Conference on Sustainable Development (Rio+20); the World Bank's Global Forum on Law, Justice, and Development; and the United Nations Global Compact. They have also included efforts in other national legal systems through legal capacity-building and training efforts funded by USAID, the State Department, the World Bank, and many other entities. New tools, processes and institutions are increasingly needed, and legal issues arise across the board as they emerge or evolve.

Going forward, lawyers will need to become involved in a broad range of sustainability issues. Younger lawyers, who represent the future of the legal profession, often understand these issues better than the lawyers who would hire them. The transition to sustainability in both governmental and private sector decision making is inevitable, and will profoundly affect the legal profession.

## C. ABA'S RESPONSE TO DATE

### 1. ABA Resolutions

The American Bar Association House of Delegates has enacted and approved 13 resolutions dating back to 1991 that have continuously reaffirmed the commitment of the ABA to sustainable development. These include, perhaps most prominently, a 2003 resolution that, among other things, “urges all governments, lawyers, and ABA entities to act in ways that accelerate progress toward sustainability.” This resolution (A108) was prompted by the ABA’s participation in the World Summit on Sustainable Development (WSSD), in Johannesburg, South Africa in 2002. The resolution also encourages “governments, including U.S. federal, state, local, tribal, and territorial bodies, as well as businesses, nongovernmental organizations, and other entities, to promote sustainable development, including by adopting and implementing appropriate measures with respect to their own facilities and activities.”

The concluding sentence in the report accompanying the 2003 resolution captures the ABA’s current position very well: “This resolution is important to the ABA because it positions the ABA to play a significant role in the United States and internationally in supporting efforts to achieve sustainable development, including through partnerships with governments and other entities.”

Indeed, the report accompanying the ABA House of Delegate’s 2003 resolution made clear that sustainability is important not only to environmental lawyers but all lawyers:

Applying sustainable development from a legal perspective means understanding, developing, and applying legal mechanisms that are relevant to the complex relationships among economic, social, and environmental priorities. This suggests a cross-functional approach...that integrates a variety of legal specialties, including environmental, labor, property, tax, corporate, finance, international trade, and risk management.

More recent resolutions have built on the foundation of the 2003 resolution, elaborating on the ABA’s commitment to sustainability. For example, in 2008, the ABA House of Delegates urged “the United States government to take a leadership role in addressing the issue of climate change through legal, policy, financial, and educational mechanisms. . . .” The report for the climate change resolution explained that climate change presents not only environmental risks but economic, security, and social risks. The report stated: “To foster sustainable development, the United States should play a leadership role in addressing climate change.”

At its 2012 Mid-Year meeting, the House of Delegates adopted a resolution that endorsed the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The OECD guidelines call on companies to “[c]ontribute to economic, social and environmental progress with a view to achieving sustainable development.’

In 2013, the House of Delegates adopted Resolution 105 on sustainable development. According to Lee DeHihns, who spoke on behalf of the resolution before the House of Delegates, “the 2013 resolution should build on the concepts described in the 2003 resolution, and update the area with new policy developed since then, reflect the Rio+20 report, and add in

activities by other entities that the ABA can collaborate with,” including such entities as the World Bank, the World Business Council for Sustainable Development, the State Department, and the International Society of Sustainability Professionals.

Most recently, in February 2014, the House of Delegates passed Resolution 102B, establishing ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor.

## 2. Section of Environment, Energy, and Resources (SEER) Activities

The ABA participation in WSSD in 2002 and the House of Delegates resolution in 2003 triggered a decade of ABA sustainability activities, especially within SEER. Upon return from Johannesburg, SEER leadership saw the need to reinvigorate and restructure the committee responsible for climate change and sustainable development issues. Now known as the Climate Change, Sustainable Development, and Ecosystems Committee (“CCSDE”), it has effectively raised sustainability awareness and literacy in the practicing environmental bar through a wide range of SEER activities, including webinars and Quick Teleconferences, panels at major SEER conferences, a special issue of *Natural Resources & Environment*, and dedicated sustainability roundtables.

The CCSDE committee has also coordinated a section-wide sustainability initiative. It has forged alliances with other ABA entities (including the Section of International Law, the Asia Law Initiative, and the late Standing Committee on Environmental Law) to present ABA perspectives to external organizations, including the U.S. Department of State. In November 2005, at American University Washington College of Law in Washington, D.C., the Committee held the first national conference for lawyers on climate change.

The ABA, in partnership with U.S. Environmental Protection Agency (EPA), created the ABA-EPA Law Office Climate Challenge, a program to encourage law offices to conserve energy and resources, as well as reduce emissions of greenhouse gases and other pollutants. The ABA-EPA Law Office Climate Challenge, which originated in SEER, was endorsed by the ABA House of Delegates in 2009.

The Section also developed the ABA SEER Sustainability Framework for Law Organizations, in which a law organization commits to take steps over time toward sustainability.

SEER continues and is expanding a variety of sustainability activities that it initiated after the 2003 resolution was adopted. SEER now offers conference participants the option of purchasing carbon offsets to account for the carbon impact of their travel. Carbon offsets help pay for methane recovery, wind energy, or other projects through Native Energy, a carbon offset provider (<https://donate.americanbar.org/environ>).

The additional conference fee for carbon offsets also helps fund the One Million Trees Project. Since the One Million Trees project began in 2009, SEER has sponsored plantings at each of its major events, and more than 50,000 trees have been planted. In addition, many of SEER’s award programs include sustainability as a specific criterion in the judging of award applications.

SEER's International Environmental and Resources Law Committee (IERLC), Environmental Disclosure Committee (EDC), and Marine Resources Committee (MRC), issued a joint newsletter in May 2015, entitled *Sustainability, Supply Chains, Corporate Social Responsibility (CSR)*. This excellent newsletter stated that, "[i]n response to regulations around the globe, companies around the world are investing in sustainable energy, analyzing their supply chains, and reporting CSR information." The newsletter explained ways in which companies are using this information to "identify ways to improve the environmental aspects of their supply chains, determining when it may be possible to use less harmful chemicals and identifying processes where it may be possible to minimize waste."

### 3. Section of International Law (SIL) Activities

The Section of International Law is also involved in a wide variety of sustainability-related activities. These include, but are not limited to:

- Ongoing commitment to the International Legal Resource Center in collaboration with the United Nations Development Program.
- Rule of law activities, as supported by the Section Support Fund through the ABA Fund for Justice and Education, which implement numerous short- and long-term legal capacity-building projects around the world.
- Partnership in the Global Forum for Law, Justice, and Development (described more fully below), a "new, dynamic and innovative initiative spearheaded by the World Bank Legal Vice Presidency with the support of client countries, think-tanks, regional and international organizations, international financial institutions, and civil society organizations. The Section serves as an Intellectual Partner providing in-kind contributions (providing assistance peer reviews, research, publications, knowledge, trainings and/or seminars) on a number of thematic topics," including sustainable development. See <http://ambar.org/globalforum>.
- Development and implementation of ABA policy on the UN Guiding Principles on Business and Human Rights.
- International Legal Exchange Program (ILEX).
- Corporate Social Responsibility Committee.

The Section of International Law's October 2014 Fall meeting in Buenos Aires, Argentina and its Spring meeting in April 2015 in Washington D.C. both had program agendas replete with programs relating to human rights and sustainable development topics. From our communications with the Section's leadership team and SIL we anticipate that the Section will continue to devote substantial energy and time to sustainable development topics in the future.

### 4. ABA Special Committee on Section, Division, and Forum (SDF) Coordination

The ABA Special Committee on Section, Division, and Forum (SDF) Coordination, launched in 2012 (in part supplanting the Standing Committee on Environmental Law) and led by John Milner, serves as a coordinating mechanism across the various ABA entities as related to environmental, energy, and natural resources issues. Among its functions, it promotes ABA-wide information sharing and communications to increase awareness of the various SDF programs, activities, and initiatives. It also provides recommendations on potential deliverables for



collaborative multi-SDF action and facilitates implementation of those deliverables. SEER provides administrative and logistical support to the SDF Coordination Team.

In support of its work, the SDF Coordination Team established a Sustainability Subcommittee, co-led by Renee Dopplick (Section of International Law), and Joel Visser (Section of Administrative Law and Regulatory Practice), during 2012-2013 and by Renee Dopplick and Heather Haney (Section of Science & Technology Law), during 2013-2014. The Sustainability Subcommittee studies relevant issues and makes reports and recommendations for deliverables for coordination with, and implementation by, multiple SDFs. The Subcommittee developed a proposal for a webinar on sustainable energy law in the United States and a proposal for a new online resource center focused on renewable energy and energy efficiency.

Twelve SDFs have participated in the Sustainability Subcommittee since its launch: Section of Antitrust Law; Section of Administrative Law and Regulatory Practice; Business Law Section; Section of Environment, Energy, and Natural Resources; Section of Intellectual Property; Section of International Law; Section of Litigation; Section of Public Utility, Communications and Transportation Law; Section of Real Property, Trust, and Estate Law; Section of Science & Technology Law; Solo, Small Firm and General Practice Division; and the Forum on the Construction Industry.

The SDF Coordination Team also formed a Greenhouse Gas Subcommittee, led by Roger Martella (SEER). The Subcommittee organized and implemented three webinars related to U.S. Supreme Court review and decisions on the authority of the EPA to regulate greenhouse gases. The webinars were cosponsored by the Environmental Law Institute and the DC Bar Association. The SDF Coordination Team work on sustainable development matters should be added to the successor SOC entity recommended in part III.A should it get approved.

#### 5. Other ABA Sections/Committees

A variety of other ABA Sections and Committees are also engaged in sustainability activities. These include the following:

- The ABA's Law Practice Management Section provides online resources for "the sustainable law firm."
- The Section of State and Local Government Law and the Section of Real Property, Trust and Estate Law, are producing books, teleconferences, and other information on a variety of sustainability topics.
- Markus Funk and U.S. District Judge Virginia Kendall are co-Chairs of a Corporate Social Responsibility, Trafficking & Supply Chain Task Force in the Criminal Justice Section.
- The Business Law Section has a Corporate Social Responsibility Law Task Force, chaired by Ashley Walter.
- The Business Law Section's Corporate Governance Committee has a Subcommittee on Sustainability Initiatives and Related Governance Matters that is co-chaired by Nancy S. Cleveland and Katayun Iris Jaffari.

#### 6. The ABA Task Force on the ABA's International Role

ABA president Laurel Bellows requested incoming SOC (Section Officers Conference) Chair and former SIL Chair Mike Burke to chair a Task Force looking at the ABA's International Role. This Task Force is to examine, and make recommendations on, the following issues:

- Participation by ABA representatives, and funding of such representatives, at meetings of international bar associations;
- Coordination of the ABA's international activities;
- Identification and strategic development of the ABA's international relationships;
- The ABA's engagement in memorandums of understanding;
- Interplay among Sections with international committees and standing committees with international agendas; and
- Preparing the President and President-Elect on international issues and possible international travel.

Sustainability issues are potentially within the scope of this list. The Task Force can review and make recommendations on other international issues identified by it as important to the ABA's overall international operations and goals.

#### 7. The ABA at Rio+20

The ABA approved a delegation to participate in the United Nations Conference on Sustainable Development in Rio de Janeiro in June 2012, which was held 20 years after the original Earth Summit. Among other things, the ABA delegates blogged from the conference to provide updates and insight into developments in real time. The Rio+20 conference was the largest gathering yet to address the future of the planet, with representatives of 172 countries, including 108 heads of state and government, coming together over 12 days of negotiations. Since 1997, the American Bar Association has been an NGO (nongovernmental organization) with Special Consultative Status with the United Nations. In the past, the ABA has sent delegations to a number of UN conferences.

#### 8. World Bank's Global Forum on Law, Justice, and Development

The ABA Section of International Law established a partnership in 2012 with the World Bank to create and support the Global Forum on Law, Justice, and Development, an innovative initiative to provide an online knowledge repository and collaboration to connect a range of stakeholders from various disciplines and backgrounds with the overarching goal of improving sustainable development outcomes. The Global Forum aims to better integrate law and justice considerations in the development process, facilitate capacity-building initiatives to improve legal and judicial institutions, and support the sharing of legal solutions to sustainable development challenges. Stakeholders include client countries, regional and international organizations, international financial institutions, private businesses, think-tanks, academia, and civil society organizations. See <http://www.globalforumljd.org>.

The Global Forum currently has more than 150 partners, including the UN Secretariat and the UN Environment Program (UNEP). The Global Forum seeks to create a centralized cloud-based knowledge repository, provide tools for ongoing education and training, leverage social media for ongoing collaboration, and develop online forums for interactive discussions and the sharing of documents.

The majority of the Global Forum’s work and information exchange across the broad range of stakeholders largely occurs through participatory processes conducted within Thematic Working Groups and their “Communities of Practice.” Each of those groups determines its own priorities and work programs. Task Force members are involved in the planning committees for three of the Thematic Working Groups: Thematic Working Group on Environmental and Natural Resources Law (Lee Paddock, Co-Chair, Renee Dopplick) and its Community of Practice on Sustainable Energy (Lee Paddock, Co-Chair, Renee Dopplick); Thematic Working Group on Law and the Economy, and its Community of Practice on “Public-Private Partnership” (Ira Feldman, Renee Dopplick); and Thematic Working Group on Empowerment and Equity for Diverse Communities (Lelia Mooney, Co-Chair). Additional Thematic Working Groups include: “Justice and Rule of Law Reform,” “Governance and Anti-Corruption,” “Law and the Economy,” “Health and Counterfeit Medicines,” “Compensatory Measures in International Government Procurement Contracts,” “Information Society and Cybercrime,” “Mass Atrocities Prevention,” and “Alternative Dispute Resolution.”

#### D. MISSION OF TASK FORCE

American Bar Association (ABA) President James Silkenat established the Task Force to review and make recommendations on the involvement of the ABA in implementing sustainable development matters throughout the world. ABA President William Hubbard continued the Task Force for a second year. The Task Force focused on ways that the ABA can provide leadership, nationally and internationally.

The Task force was comprised of 20 members, including lawyers and non-lawyers representing relevant ABA entities, the U.S. EPA, the United Nations, other multinational organizations and non-governmental organizations (see Appendix). The Task Force was asked to:

1. Provide a real world perspective both from Task Force member activities within their own organizations as well as their participation in the other sustainability-related initiatives;
2. Identify roles for lawyers to play to both educate the key decision makers and find ways to advance the tenets of sustainable development;
3. Review and make recommendations regarding the involvement of the ABA in implementing sustainable development matters world-wide; and
4. Submit recommendations with reports to the House of Delegates, as appropriate.

#### E. THE TASK FORCE PROCESS

The Task Force began work during the ABA's 2013 Annual Meeting and has made substantial progress since that time. The Task Force had an in-person meeting in Washington, DC in October 2013 as well monthly conference calls each month when in-person meetings were not held. Action Plans were developed during the October 2013 meeting and Task Force members were assigned to work on various items. The major accomplishments are described later in this report.

It became apparent very quickly that a great deal of work was well underway within the ABA on the work embraced by the Task Force's mission. As a result, the Task Force had success coordinating and collaborating with other ABA SDFs doing work in this area. We were, in effect, a convening authority. Support was enlisted from the SOC Chairs and Chairs-Elect with the support SOC Chair Mike Burke. There was active participation by many entities, including SEER, SIL, the Business Law Section, the State and Local Government Section, and the Governmental Affairs Office (GAO).

The Task Force requested the SEER Committee on Climate Change, Sustainable Development, and Ecosystems for suggestions on what recommendations should be included in this report. In response, Committee chairs Margaret Peloso and Shannon Broome asked William Blackburn to create a working group to develop recommendations. The members of the working group included Cynthia Brown, Carmen Calzacorta, Carolyn Kaplan, Michael Kerstetter, Jennifer Mott, Gigi Nikpour, Brett Slensky, Mary Ellen Ternes, and Jameson Tweedie. Many of the recommendations in this report originated with their effort.

## II. ACCOMPLISHMENTS

The 2013 House of Delegates resolution on sustainable development "urges all...ABA entities to act in ways that accelerate progress toward sustainability." To carry out this resolution, the Task Force has accomplished the following:

- **Online Resource Center.** The first accomplishment of the Task Force was to create an online Resource Center that is dedicated to provide, on an ongoing basis, sustainable development tools, links, and other information for lawyers and law organizations ([http://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/sustainable\\_development\\_task\\_force/resources.html](http://www.americanbar.org/groups/leadership/office_of_the_president/sustainable_development_task_force/resources.html)).<sup>1</sup> The Resource Center has been useful to the full range of lawyers and law organizations. The Resource Center is intended to eventually be capable of allowing ABA members to undertake online discussions on various sustainability issues relevant to ABA, and to archive those discussions for future reference. The Resource Center has been supplemented and updated consistently. After the Task Force sunsets, efforts will be made to keep the Resource Center current.
- **Practitioner's Guide.** The Task Force is planning the publication of a practitioner's guide to sustainable development law, both in the form of an online compendium of

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<sup>1</sup> The Environmental Law Association at George Washington Law School has committed to help maintain the Resource Center.

existing writings and a book. The Task Force has developed a compendium of 15 categories of legal issues we believe that lawyers in the sustainability arena will encounter during their practice. The book project has advanced to the stage of a chapter outline; a formal book proposal will be submitted in the near future.

- **Education and Awareness.** The Task Force secured a Presidential Showcase Program at the 2015 Annual Meeting on August 1, 2015. The Program is entitled, *Practicing Sustainability Law: Advising Clients Who Are Increasingly Focused on Sustainability*. The scheduled program is a true Presidential Showcase, because it includes opening remarks by President William Hubbard and Immediate Past President James Silkenat. Lee DeHihns is scheduled to moderate the program.
- **Cooperation and outreach.** The Task Force:
  - a. Participated in the 2014 and 2015 ABA Day at the UN, and deeper relationships were formed with the UN's work on the 2015 Sustainable Development Goals, the UN Global Compact, and the World Bank's Global Forum on Law, Justice and Development.
  - b. Worked closely with the Business Law Section's effort to implement Resolution 102B (ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor), which was adopted in February 2014. We participated with the Section's model principles task force and its leadership team to make sure that the efforts of our task force and its task force align. The website and Resource Center for the model principles task force was modeled after the sustainable development task force website and we have contributed to its content during its creation.
  - c. Worked with a number of non-ABA entities to form relationships that recognize the role for ABA lawyers in sustainable development. Examples include the relationships formed with the US Environmental Protection Agency (EPA) as it implements its 2014-2018 Strategic Plan and with the White House's Council on Environmental Quality (CEQ) as it oversees implementation of E.O. 13693 (March 19, 2015) (superseding E.O. 13514 (October 5, 2009)), which sets sustainability goals for federal agencies.
  - d. Also worked closely with State Bar associations such as the Oregon Bar's Sustainable Future Section, whose mission statement ("supports sustainability within the Oregon legal profession and the practice of law through (1) educational programs, (2) examination of the integration of law and sustainability, and (3) dialogue about the needs and interests of future generations") coordinates well with what the Task Force is doing.
  - e. Participated in a roundtable on April 8, 2014 on "The Intersection of Rule of Law and Sustainable Development," with keynote remarks by ABA President James Silkenat.

- f. Contributed to the Winter 2015 issue of the Section of International Law publication, *International Law News*, which was devoted entirely to United Nations Post-2015 work on Sustainable Development Goals (SDGs).<sup>2</sup> A key part of the issue was the December 12, 2014 letter from ABA President William C. Hubbard to UN Secretary-General Ban Ki-moon. In the letter, President Hubbard offered to the United Nations the ABA's support in the UN's efforts to adopt and implement the SDGs. The ABA's role with the SDGs was a topic of ABA Day at the UN held on April 27, 2015. There was specific dialogue between the ABA and the United Nations offering further assistance from the ABA.
  - g. Had several of its members meet in mid-June 2015 with Mr. Thomas Gass, Assistant Secretary General of Policy Coordination and Interagency Affairs, in the United Nations Department of Economic and Social Development. The SDGs are expected to be adopted by the United Nations General Assembly in September 2015. Mr. Gass has indicated that he will work closely with the United Nations team and the ABA team to find opportunities for the ABA to assist the United Nations in implementing the SDGs.
  - h. In May 2015 the Sandra Day O'Connor College of Law – Arizona State University (ASU) held its first *Sustainability Conference of American Legal Educators*. SEER sponsored a *Roundtable Discussion: Sustainability in Legal Education* on May 9, 2015. The interactive dialogue on Sustainability in Legal Education was convened by the Task Force in cooperation with the ASU conference organizers. Two Task Force members, Ira Feldman and John Dernbach, lead a discussion on law school experiences with existing courses and curricula, thoughts on identified needs, or ideas for new approaches. Those discussions are incorporated in the later section on Legal Education.

### III. RECOMMENDATIONS AND FUTURE AGENDA

#### A. STRENGTHENING ABA'S ABILITY TO PROVIDE LEADERSHIP

The Task Force considers the following recommendations foundational for any sustainable development effort by the ABA.

1. *The American Bar Association should establish a permanent infrastructure for integrating sustainability within the ABA over the long term. This infrastructure should function in a transparent, collaborative way that connects historical programmatic silos, engages the entire organization and membership, and conveys the ABA's ethic for economic, social and environmental responsibility.*

*Having the Task Force operate as a body with members appointed by the ABA President elevated the effort above any one section or other ABA entity in order to accomplish its mission. The specific proposal is to create a committee within the Section Officers Conference (SOC). This structure would have the advantage of*

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<sup>2</sup> See [http://www.americanbar.org/publications/international\\_law\\_news/2015/winter.html](http://www.americanbar.org/publications/international_law_news/2015/winter.html).

*crossing Sections, Divisions, and Forums (SDF) lines just as other SOC committees do now and would also allow for a smooth transition for those section members now working on or with the Task Force. Based on work to date, the committee members would include the Business Law Section (BLS), the Section of International Law (SIL), the Section of Environment Energy and Resources (SEER), the Center for Human Rights (CHR), and Rule of Law Initiative (ROLI). While CHR and ROLI are not normally part of SOC leadership, both could be easily integrated. Sustainable Development work already well underway by a number of ABA sections would be ideally managed and supervised through the SOC structure of leadership and the use the staff available to the SOC. This infrastructure should include the following:*

- A one or two-page written statement of ABA's vision and values on sustainability relevant to the legal profession. The statement should be used to guide the ABA's overall sustainability efforts, both internal and external.*
- A leadership team with a clear description of responsibilities. The leadership team should include those ABA members who were the core team working on the Task Force. The leadership team should guide the development and implementation of the recommendations contained in this report and establish priorities. To promote coordination, integration and deployment, this team should include, at a minimum, representatives from appropriate ABA sections and other entities, including environment and energy, law practice management, pro bono, diversity, human rights/individual rights, labor, community development, administrative law and regulatory practice, professional responsibility, real property, business law, young lawyers, and international law, as well as from ABA administration. The SOC structure should have 2-3 members appointed by the ABA President as necessary to supplement those appointed by the SOC and other ABA entities.*
- An ABA-wide program of annual awards for exemplary sustainability efforts by lawyers, law organizations, and others.*
- Issuance of an annual report on ABA's progress toward achieving sustainability based on the recommendations of this Task Force as well as those contained in the 2013 HOD resolution.*
- Issuance of an annual report on international, national, state, tribal, and local law-related developments on sustainable development.*
- Learning and information sharing on best sustainability practices with state, local, tribal, and territorial bar associations.*
- Maintaining and enhancing the Resource Center, making it prominently accessible from the ABA homepage and the homepage of relevant ABA sections and other entities.*

2. *The ABA should continue to revitalize, update, and/or expand participation in existing sustainability initiatives, and make sure that human rights issues are properly addressed.*
3. *The ABA should adopt the SEER Law Organization Sustainability Framework for its headquarters.*
4. *The ABA should be actively engaged in appropriate national and international efforts and initiatives to foster sustainable development, including but not limited to the United Nations Sustainable Energy for All initiative; the World Bank's Global Forum on Law, Justice, and Development; the United Nations Global Compact, and the UN effort to establish and implement Sustainable Development Goals. The ABA should establish appropriate partnerships with governmental, intergovernmental, and nongovernmental entities as part of this effort.*
5. *The ABA should entertain proposing resolutions to the House of Delegates to support the United Nations Sustainable Development Goals (SDGs) that are scheduled for adoption by the General Assembly in September of 2015. Although the scope of the resolutions will depend on what the UN does. However, based on prior resolutions adopted by the House of Delegates in the sustainable development arena following UN action, similar resolutions would be proper for entertainment at the 2016 Midyear or Annual meetings.*
6. *Regardless of the future successor structure, the ABA should appoint additional representatives to the existing appointed representatives to the United Nations to specifically advise the UN Economic and Social Council to focus on the ABA's new commitment to assist in implementation of the SDGs. This appointment would be justified based on President William Hubbard's Dec. 12, 2014 letter to the UN Secretary General, which promised that the ABA would actively work toward a successful outcome of the SDGs once adopted in September 2015. The new representatives described here should have the necessary UN grounds passes to allow them ready access to the appropriate UN offices.*

## B. ISSUES TO BE CONSIDERED IN THE FUTURE

The 2013 House of Delegates resolution identifies three additional areas where greater effort is needed to foster sustainable development: legal education, lawyers, and government. The three issues below have all been worked on but have not been fully implemented. If a successor entity is created, the Task Force recommends that the successor entity adopt and implement them in some form. If a successor entity is not created, the Task Force nevertheless recommends that the ABA consider these recommendations, and adopt and implement them in some form.

### Legal Education



The 2013 resolution “encourages law schools, legal education providers, and others concerned with professional development to foster sustainability in their facilities and operations and to help promote a better understanding of the principles of sustainable development in relevant fields of law.” In furtherance of that, the Task Force has considered the following proposals:

1. *The ABA should identify specific areas of knowledge and practice skills that current lawyers and law organizations should possess in order to assure the basic understanding of sustainability needed for the competent practice of law in the 21<sup>st</sup> century. As part of such an effort:*
  - a. *The ABA should identify both skills and knowledge of sustainability that are critical as well as useful for the competent practice of law*
  - b. *The ABA should support the development and distribution of law school curricula that teach skills and knowledge needed for sustainability.*
  - c. *The ABA should encourage and support interdisciplinary approaches to legal education for sustainability.*
2. *The ABA should consider the feasibility of supporting or assisting in the development of clinics, practicums, and policy programs providing a range of sustainability related services at law schools. Such clinics should include transactional legal support for relevant small domestic and international sustainability projects of a scale that would otherwise not receive in-house or law firm legal support.*
3. *The ABA should provide assistance, information, and training to lawyers and law organizations on appropriate sustainability issues (including, for example, information on how to respond to client surveys and inquiries about law firm sustainability programs and training on private sustainability governance, human rights, and supply chain management).*
4. *The ABA should consider endorsing the development of sustainability education and certification programs (via law schools or CLE providers) that would enable lawyers who have taken a specific number of hours of sustainability-related courses to obtain a certificate.*
5. *The ABA should monitor and publicize on an ongoing basis the sustainability tools and programs that are now in place and are being developed by various ABA sections and other entities, including identification of these tools and programs on the Resource Center.*
6. *The ABA should continue and enhance existing educational programs, webinars, conferences, and publications concerning sustainable development.*
7. *The ABA should work with the IUCN Academy of Environmental Law to identify models for sustainability legal education from around the world and share syllabi and other relevant information.*

8. *The ABA should work with the American Association of Law Schools to encourage and promote sustainability education in law schools.*
9. *The ABA should consider development of, or participation in the development of, a certification or evaluation program for law organization sustainability performance.<sup>3</sup> The ABA should also consider developing such a program for law schools, in partnership with the American Association of Law Schools.*
10. *The ABA should consider creating a prize for the best student-written law article on sustainability issues, to be published in an ABA magazine.*
11. *The ABA should review the UN Global Compact's Principles for Responsible Management Education (PRME) initiative to determine whether any of those Principles have value for inclusion in the above legal education proposals. The Six Principles of PRME are inspired by internationally accepted values, such as the United Nations Global Compact's Ten Principles, and provide an engagement structure for academic institutions to advance social responsibility through incorporating universal values into curricula and research. They seek to establish a process of continuous improvement among institutions of management education in order to develop a new generation of business leaders capable of managing the complex challenges faced by business and society in the 21st century.*
12. *The ABA should consider adopting many of the legal education practices of the Oregon State Bar's Sustainable Future Section. The Section provides various educational supports to lawyers and law students in continuing legal education programs, newsletters, and law office tools. The Section also provides technical support to the Bar and to law firms concerning their sustainability efforts, and a platform to engage lawyers in discussing sustainability related topics.*

## Lawyers

The 2013 House of Delegates resolution “urges all ...lawyers...to act in ways that accelerate progress toward sustainability.” A key charge to the Task Force is to “[i]dentify roles for lawyers to play to both educate the key decision makers” and “find ways to advance the tenets of sustainable development” A major purpose of the Task Force, of course, is to provide resources and tools for lawyers. The Resource Center and the practitioners guide to sustainable development law, described above, are among those resources and tools. In addition, the Task Force considered the following recommendation, among others:

*The ABA should identify specific areas of knowledge and practice skills that lawyers and law organizations should possess in order to insure that a basic understanding of sustainability is included in the competent practice of law in the 21<sup>st</sup> century.*

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<sup>3</sup> The Law Firm Sustainability Network, a U.S. based nongovernmental organization, is now developing such a program.

## Governments

The 2013 House of Delegates resolution “urges all governments...to act in ways that accelerate progress toward sustainability.” In furtherance of that, the Task force considered the following proposals:

- 1. The ABA should consider specific ways to support the U.S. Environmental Protection Agency’s focus on sustainability in its new strategic plan.*
- 2. The ABA should also work with the U.S. Environmental Protection Agency to identify potential opportunities for pursuing sustainability in both the public and private sectors, including ways of promoting collaboration and innovation.*
- 3. The ABA should consider ways of educating governments about the opportunities and added value that sustainability provides.*

## **IV. CONCLUSION**

As a result of two years of work, the Task Force has recognized the legal community has been noticeably absent from meaningful participation in many sustainability “communities of practice.” The Task Force has worked to change that dynamic. The development of an ABA baseline of activity to assess and identify needs and opportunities for such involvement has been productive, but it is not complete.

We worked to seek commitments to sustainability activities and began to educate ABA members on the legal and economic importance of sustainability issues. We also began to take full advantage of the experiences of non-ABA Task Force members through briefings to the Task Force and inclusion of these non-ABA Task Force members in our work. We used the networks of Task Force members to invite selected government, business and NGO leaders to attend Task Force meetings/calls to enhance the Task Force deliberations and refine the Task Force’s recommendations. In the days and years to come, the challenge and the opportunity is to fully realize sustainability in the practice of law and in the operations and activities of the American Bar Association.

## Appendix

### Sustainable Development Task Force Roster 2013-2015

**Lee DeHihns**, Senior Counsel, Alston & Bird LLP, Task Force Chair, Atlanta, GA (Chair)

**John Cruden**, President, Environmental Law Institute (ELI), Washington, DC (resigned January 2015 to accept U.S. Department of Justice position)

**John Dernbach**, Distinguished Professor of Law, Widener University Law School, Harrisburg, PA

**Renee Dopplick**, ACM Public Policy Office, Co-Chair, SIL International Energy and Natural Resources Committee, Washington, DC

**Alexandra Dapolito Dunn**, Executive Director & General Counsel, Environmental Council of the States, Washington, DC

**Ira Feldman**, President and Senior Counsel, Greentrack Strategies, Bethesda, MD

**Linda Fisher**, DuPont, Vice President - Safety, Health & Environment and Chief Sustainability Officer, Wilmington, DE

**Amy Fraenkel**, Principal Office, Mainstreaming, Partnerships and Outreach, Convention on Biological Diversity, Montreal, QC

**Eileen Gauna**, Dickason Professor, University of New Mexico Law School, Albuquerque, NM

**Mayor George Heartwell**, Grand Rapids, MI.

**Shelia Hollis**, Partner, Duane Morris LLP, SEER HOD Delegate, Washington, DC

**Howard Kenison**, Partner, Lindquist Vennum, Denver, CO

**Roger Martella**, Partner, Sidley & Austin, Washington, DC

**Lelia Mooney**, Partners for Democratic Change - Co-Chair ABA International Section UN & International Institutions Coordinating Committee, Washington, D.C.

**Leroy Paddock**, Associate Dean for Environmental Studies, George Washington Law School, Washington, DC

**Ann Powers**, Professor, Center for Environmental Legal Studies, Pace Law School, White Plains, NY

**Carol Ann Siciliano**, Associate General Counsel, Cross-Cutting Issues Law Office, US EPA, Washington, DC

**Robert F. Van Lierop**, Vice Chair of the Steering Committee on Sustainable Development of the International Organization for South-South Cooperation, New York, NY

**Mike Wallace**, Managing Director, BrownFlynn, South Pasadena, CA

**Tseming Yang**, Professor of Law, Santa Clara Law School, Santa Clara, CA