

April 23, 2020

Training All Law Students and Lawyers for Climate-Competent Representations

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Abstract

Clients need lawyers who are equipped with climate-related knowledge, skills, and capabilities. In changing physical and market conditions, businesses and individuals demand expert guidance on unprecedented volumes of claims as well as complex new and proposed laws, regulations, government programs, and litigation. This need cannot be met by just a few specialists in climate or environmental law addressing siloed transactions and litigation. Instead, clients require most lawyers to think in terms of climate risks, responses, and policies. We must provide these competencies not just by the year 2100, in some communities, and for a few economic sectors. Rather, attorneys should provide climate-competent services now, around the world, and throughout economies and societies. Moreover, lawyers' ethical obligations require us to help governments and disadvantaged individuals pursue justice in the face of climate impacts.

Despite widespread calls to action by clients and professional groups, law schools, programs for lawyers, and bar associations have not stepped up to train all lawyers for practicing in climate-changed conditions. After pointing to impacts in many practice areas, this article presents five approaches for law students and three approaches for practitioners to close the gap on lawyers' climate capabilities.

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Introduction

Visuals help communicate issues. For climate change, charts and pictures often show graphs of rising levels of carbon dioxide in the atmosphere and increasing average temperatures; flooding from sea level rise and record rains; devastation from hurricanes and wildfires; or people sweating and collapsing on hot summer days. Missing are photos of lawyers' work in mitigating and adapting to climate change, such as contracts, trials, securities disclosures, zoning plans, emission permits, legislation, or regulations. Also absent from the climate change gallery are pictures of law school classrooms and attorney education sessions. While undoubtedly less visually striking than a superstorm, lawyers' work is key to addressing climate change. Importantly, climate change pervades attorneys' work and all attorneys need training for climate-competent practices.

To better represent clients and fulfill professional responsibilities, the need for climate-competent lawyers is true now and inevitably will escalate in the future. It would be wrong to frame the challenge as a niche specialty of environmental or "climate change law" applicable only to a few practitioners, clients in limited economic sectors and geographic areas, or isolated matters. Rather, because of its broad impacts in all communities, climate change is influencing a wide range of legal representations. Risks and opportunities related to climate change are reforming legal frameworks in some obvious ways, like incentives for renewable energy projects in public utility regulations and tax laws, and terms of insurance policies and bank loans related to floods and fires. What may be less apparent are the many ways that climate change affects other practice areas, like litigation alleging that corporations misled investors on their exposures to climate change, and even child custody proceedings when environmental conditions increase migration. All lawyers need to get on board the ship of climate-competent practice as the sea level rises.

This article analyzes the training of all law students and lawyers for client-competent practice in three parts. The first part describes the need for client-competent lawyers throughout practice areas, with references to developments in eight less obviously affected fields. Second, there are opportunities to integrate climate change cases and other materials throughout law school curriculum, with specific discussion of five types of courses. Finally, lawyers should be trained on climate skills through practice-focused programs, ethics courses, and bar association support.

1. Need for Climate-Competent Lawyers

Climate change is the greatest threat to life around the globe, and adequate solutions have yet to be adopted by individuals, business organizations, communities, and nations.¹ Governments and courts are responding to climate change with a multitude of complex, multifaceted actions affecting virtually every sector of societies. Recognizing the key roles for legal guidance in this transformation, the American Bar Association in August 2019 urged all lawyers – not just climate, environmental, or energy law specialists -- ‘to advise their clients of the risks and opportunities that climate change provides.’² Yet, most attorneys lack training to practice with climate-related knowledge, skills, and capabilities.³ Clients and societies are suffering because lawyers lack the competency to provide sufficient professional services in a climate-changing world.⁴

Decades earlier in the accumulation of greenhouse gases and their growing harms to human health and welfare, it may have seemed accurate to categorize areas of law into those affected by climate change versus those untouched by climate influences.⁵ Lawyers working in some practice areas and geographic locations were in the frontlines of climate impacts. For example, owners and developers of coastal and riverine properties sought attorneys who could protect their interests as sea levels rose and flooding increased; these attorneys needed to understand some

¹ A. Guterres, ‘Secretary-General’s remarks at opening ceremony of UN Climate Change Conference COP25’ (Dec. 2, 2019) United Nations Secretary-General Statements (available at <https://www.un.org/sg/en/content/sg/statement/2019-12-02/secretary-generals-remarks-opening-ceremony-of-un-climate-change-conference-cop25-delivered>) (Guterres); A. Guterres, ‘Secretary-General Says COVID-19 “Wake-Up Call” Demands Recovery Built on Green Economy, Marking Earth Day 2020’ (Apr. 22, 2020) (‘Climate risks and opportunities must be incorporated into the financial system, as well as all aspects of public policymaking and infrastructure.’) (available at <https://www.un.org/press/en/2020/sgsm20051.doc.htm>); World Health Organization, ‘COP24 Special Report: Health & Climate Change’ (2018) (available at <https://apps.who.int/iris/bitstream/handle/10665/276405/9789241514972-eng.pdf?ua=1>).

² American Bar Association House of Delegates, ‘Resolution 111’ (August 12-13, 2019) at 1 (available at <https://www.americanbar.org/content/dam/aba/images/news/2019/08/am-hod-resolutions/111.pdf>) (ABA Resolution).

³ Memorandum from L. DeHihns, III, Chair, Task Force on Sustainable Dev., to W. Hubbard, President, Am. Bar Ass’n, and A. Brady, Dir., Admin. Div., Am. Bar Ass’n (July 30, 2015) (available at http://greentrack.com/wp-content/uploads/2016/02/ABA_sd_Task-Force-Final-Report_08-2015.authcheckdam.pdf) (ABA Task Force); W. Lavey, ‘Toolkit for Integrating Climate Change into Ten High-Enrollment Law School Courses’ (2019) 49 Env L 513 (Lavey); E. Fisher, E. Scotford & E. Barritt, ‘The Legally Disruptive Nature of Climate Change’ (2017) 80 Modern L Rev 173.

⁴ International Bar Association Climate Change Justice and Task Force Report, ‘Achieving Justice and Human Rights in an Era of Climate Disruption’ (2014) (available at <https://www.ibanet.org/PresidentialTaskForceClimateChangeJustice2014Report.aspx>) (IBA).

⁵ J. Ruhl & J. Salzman, ‘Climate Change Meets the Law of the Horse’ (2013) 62 Duke L J 975, 1008.

trends and causations in shaping land use and infrastructure in national and local laws, and in litigating claims against government entities and insurance companies.⁶ Similarly, lawyers representing companies involved in fossil fuel industries were confronted by proposed changes in regulations and subsidies as well as lawsuits filed by public and private parties.⁷ In contrast, during this era attorneys in most other fields practiced without applying knowledge of the existence, causes, or effects of climate change.

Now, according to the United Nations Secretary General, people around the globe face the need to ‘urgently change our way of life.’⁸ Almost all areas of law must be in the forefront of this change in our way of life. The European Council observed that ‘current changes in the planet’s climate are transforming the world’⁹ and concluded in December 2019: ‘All relevant [European Union] legislation and policies need to be consistent with, and contribute to, the fulfilment of the climate neutrality objective while respecting a level playing field.’¹⁰ Similarly, the International Bar Association in 2014 recognized ‘the legal and institutional reform needed to reduce the impacts of climate change and deal with its consequences’ and that ‘[m]any areas of international law are relevant to the problems raised by climate justice.’¹¹ This means new legal frameworks and climate-affected lawyer competencies that are not limited to what was traditionally viewed as the field of environmental law.

More generally, the World Declaration on the Environmental Rule of Law, issued by the International Union for Conservation of Nature and the World Commission on Environmental Law in 2016, called for broad public environmental legal education as part of the mechanism for

⁶ Urban Law Institute, ‘Climate Risk and Real Estate Investment Decision-Making’ (2019) (available at https://europe.uli.org/wp-content/uploads/sites/127/2019/02/ULI_Heitman_Climate_Risk_Report_February_2019.pdf); E. Deady, ‘Update on the Legal and Planning Issues of Climate Change Facing Florida’ (July 2018) 38 Fla Env & Land Use L Sec Rptr 1, City of Coral Gables (Florida), ‘Legal Considerations Surrounding Adaptation to the Threat of Sea Level Rise’ (2016) (available at <https://southeastfloridaclimatecompact.org/wp-content/uploads/2016/12/Legal-Considerations-Surrounding-Adaptation-to-the-Threat-of-Sea-Level-Rise.pdf>).

⁷ J. Krane, ‘Climate change and fossil fuel: An examination of risks for the energy industry and producer states’ (2017) MRS Energy & Sustainability 4; R. White, J. Hallinan & B. Rayment, ‘Environmental law: Climate change takes centre stage in land and environment court’ (2019) 54 LSJ: Law Society of NSW J. 80.

⁸ See Guterres, above n. 1.

⁹ European Council, ‘Climate change: what the EU is doing’ (2019) (available at <https://www.consilium.europa.eu/en/policies/climate-change/>).

¹⁰ European Council, ‘European Council meeting (12 December 2019) – Conclusions’ (2019) at 2 (available at <https://www.consilium.europa.eu/media/41768/12-euco-final-conclusions-en.pdf>). See also M. Gerrard & J. Dernbach, *Legal Pathways to Deep Decarbonization in the United States* (2019).

¹¹ See IBA, above n. 4 at 34, 62.

addressing climate change, other environmental degradation, and just transitions.¹² While an informed public is fundamental to transforming societies, the public needs the advice and services of capable practicing lawyers. Clients are calling on environmental lawyers as well as attorneys throughout practice areas to represent them on climate-related matters.¹³

That is not to say that every representation and every law is, or soon will be, dominated by climate issues. Rather, climate change is spurring major disruptions throughout practice areas in the issues attorneys should address and the advice they should give.

Beyond the environmental, energy, and land use practice areas, eight less obvious examples of climate-affected legal representations follow.

a. Contracts. Regarding the physical risks to business operations from climate change (such as extreme storms, droughts, heatwaves, and wildfires), attorneys drafting and negotiating contracts to supply products and services should consider climate change in the conditions that constitute *force majeure*, vulnerabilities and remedies for disruptions at locations and to providers, and business interruption insurance. As organizations respond to pressures from customers and investors to reduce their direct and indirect environmental footprints, lawyers need to focus on contractual provisions to quantify, report, verify, and reduce greenhouse gas emissions. Additionally, as governments attempt to mitigate and adapt to climate change, attorneys must evaluate change-of-law provisions in contracts in the context of known or foreseeable actions. Moreover, responses to climate change have led to lawyer-developed contracts for exchanges of renewable energy certificates, carbon credits, and carbon offsets, as well as for third-party accreditation, verification, and brokerage services.¹⁴

¹² International Union for Conservation of Nature and World Commission on Environmental Law, ‘World Declaration on the Environmental Rule of Law’ (2016) at 1, 5 ([World Declaration](https://www.iucn.org/sites/dev/files/content/documents/english_world_declaration_on_the_environmental_rule_of_law_final.pdf)) (available at https://www.iucn.org/sites/dev/files/content/documents/english_world_declaration_on_the_environmental_rule_of_law_final.pdf).

¹³ Advocates for International Development/King’s College London, ‘What lawyers can do about climate change: Workshop briefing paper’ (2017) at 1 (‘The workshop was motivated by the developing reality that “climate change law” is now extending beyond high-level international negotiations, environmental frameworks and legal campaigning to infiltrate daily legal practice and adjudicatory proceedings through a variety of legal sub-disciplines. Climate change is increasingly becoming a fundamental legal disruptor or “whole of legal system” problem.’) (available at <https://www.kcl.ac.uk/law/research/centres/climate-law-and-governance/docs/what-lawyers-can-do-about-climate-change-briefing-paper.pdf>); ABA Task Force, above n. 3 at 2-4.

¹⁴ World Bank Group, ‘Preparing, Procuring and Implementing Climate-Smart PPPs’ (2019) (available at <https://ppp.worldbank.org/public-private-partnership/climate-smart-clean-technology-ppps/preparing-procuring-and->

b. Business Associations. Businesses in all sectors and locations are increasingly finding that climate change materially affects their assets, costs, revenues, strategies, and prospects. Investors and regulators have pressed publicly-listed companies to make climate-related disclosures on their emissions, risks, and plans in their securities filings and through other submissions. Also, attorneys are helping fiduciaries in a wide range of companies consider climate change and apply their reasoned business judgments to such risks and opportunities in making management decisions. In the disruption of markets related to climate change, nearly every business needs legal counsel on how to respond to changing legal incentives and balance stakeholders' interests, including litigation liability risks from their environmental harms and inadequate disclosures.¹⁵

c. Civil and Criminal Litigation. Litigators need climate competency in handling both familiar and novel types of cases. In line with historical types of actions, climate change increases the volume of civil litigation over property damage from disasters, especially insurance claims. When climate change forces migrations and disrupts families, lawyers go to agencies and courts to resolve disputes over property, custody of children, immigrant rights, and other matters. Also, as governments undertake construction projects to strengthen climate resiliency and transition to cleaner energy, other litigation results from disputes over compensation for property rights and environmental impacts. In terms of novel cases, litigators are arguing that environmental impact assessments for projects have not adequately considered greenhouse gas impacts and

[implementing-climate-smart-ppps](#)); Lavey, above n. 3 at 523-30; V. Ulfbeck, A. Andhov & K. Mitkidis (eds.), *Law and Responsible Supply Chain Management: Contract and Tort Interplay* (2019); C. Poncibo, 'The Contractualisation of Environmental Sustainability' (2016) 4 *Eur R Contract L* 335; K. Mitkidis 'Using Private Contracts for Climate Change Mitigation' (2014) 2 *Groningen J Int L* 52.

¹⁵ H. Vizcarra, 'The Reasonable Investor and Climate-Related Information: Changing Expectations for Financial Disclosures' (2020) 50 *Env L Rptr* 10106; Task Force on Climate-related Financial Disclosures, '2019 Status Report' (2019) (available at <https://www.fsb.org/wp-content/uploads/P050619.pdf>); UK Department for Environment, Food & Rural Affairs, 'Environmental reporting guidelines: including Streamlined Energy and Carbon Reporting requirements' (2019) (available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850130/Env-reporting-guidance_inc_SECR_31March.pdf); Australian Securities & Investments Commission, 'Regulatory Guide 228: Prospectuses: Effective disclosure for retail investors' (2019) (available at <https://download.asic.gov.au/media/5230057/rg228-published-12-august-2019.pdf>); P. Hatchwell, 'Corporate lawyers in a climate of change' (2019) *International Bar Ass'n* (available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=82BD7FB4-C46C-4819-A56F-BE9D7F683FA6>) (Hatchwell); U.S. Congressional Research Service, 'Climate-Related Risk Disclosure Under U.S. Securities Law' (2019) (available at <https://fas.org/sgp/crs/misc/IF11307.pdf>); M. Lipton & W. Savitt, 'Directors' Duties in an Evolving Risk and Governance Landscape' (2019) (available at <https://corpgov.law.harvard.edu/2019/09/19/directors-duties-in-an-evolving-risk-and-governance-landscape/>).

governmental climate policies; climate necessity as a defense against criminal charges; rights to a stable climate under constitutions and human rights conventions; corporate liability for inadequate disclosures of climate impacts and risks; liability of fossil fuel companies for contributing to greenhouse gases; governments' statutory and common law obligations to take stronger actions for climate mitigation and adaptation; and other theories.¹⁶

d. **Banking.** Banks are being pressed by market forces and regulators to assess their portfolios in terms of both climate risks and climate impacts. Examples include emissions and land use criteria as well as energy generation and infrastructure projects. Lawyers provide critical analyses of legislative, regulatory, and other risks; draft provisions to limit exposures and uses of funds; review reports and agreements for compliance with loan documents; and shape disclosures.¹⁷

e. **Insurance.** Lawyers are playing important roles in helping the insurance industry meet its obligations to policyholders and adjust coverage in the face of escalating climate-related liabilities and risks. Increased losses of lives and property from extreme weather events and wildfires result in more typical insurance claim processing and resolution of disputes. Moreover, lawyers are litigating and re-drafting policy terms in the context of claims for atypical coverage

¹⁶ J. Setzer & R. Byrnes, 'Global trends in climate change litigation: 2019 snapshot' (2019) (available at http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/07/GRI_Global-trends-in-climate-change-litigation-2019-snapshot-2.pdf); A-S. Novel, 'Climate change: a new subject for the law' (2019) UNESCO Courier (available at <https://en.unesco.org/courier/2019-3/climate-change-new-subject-law>); D. Ricker, 'Lawyers are unleashing a flurry of lawsuits to step up the fight against climate change' (2019) ABA J (available at <https://en.unesco.org/courier/2019-3/climate-change-new-subject-law>) (Ricker); L. Long & T. Hamilton, 'The Climate Necessity Defense: Proof and Judicial Error in Climate Protest Cases' (2019) 38 Stanford Env L J 57; J. Peel & H. Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7 Transnational Env L 37; M. Byrne, 'Climate Crime: Can Responsibility for Climate Change Damage be Criminalised?' (2010) 4 Carbon & Climate L. Rev 278; UN Human Rights Committee, Teitiota v. New Zealand [2020] CCPR/C/127/D/2728/2016; R (on the application of Plan B Earth) v. Secretary of State for Transport [2020] EWCA Civ 214. See also note 24 below.

¹⁷ UN Environment Programme, 'Principles for Responsible Banking: Key Steps to be Implemented by Signatories' (2019) (available at <https://www.unepfi.org/wordpress/wp-content/uploads/2019/07/Key-Steps-to-be-Implemented-by-Signatories.pdf>); Network for Greening the Financial System, 'A sustainable and responsible investment guide for central banks' portfolio management' (2019) (available at https://www.dnb.nl/binaries/ngfs-a-sustainable-and-responsible-investment-guide_tcm46-385984.pdf); Acclimatise, Four Twenty Seven & Climate Finance Advisors, 'Lenders' Guide for Considering Climate Risk in Infrastructure Investments' (2018) (available at https://climatefinanceadvisors.com/wp-content/uploads/2018/01/Investment-Guide_1.8-single-hi-q_17012018.pdf); UN Environment Programme, 'Navigating a New Climate' (2018) (available at <https://www.unepfi.org/wordpress/wp-content/uploads/2018/07/NAVIGATING-A-NEW-CLIMATE.pdf>); Bank of England Prudential Regulation Authority, 'Transition in thinking: The impact of climate change on the UK banking sector' (2018) (available at <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/report/transition-in-thinking-the-impact-of-climate-change-on-the-uk-banking-sector.pdf?la=en&hash=A0C99529978C94AC8E1C6B4CE1EECD8C05CBF40D>).

in connection with climate impacts, like the scope of commercial general liability coverage for companies accused of contributing to climate change. To reduce their exposure to property claims from extreme weather events and wildfires, lawyers for insurance companies filed litigation against governments and electric utilities seeking more resilient infrastructure and damages. Many insurers are revising their product offerings as well as risk management and governance processes relating to climate change risks. Also, insurance regulators around the world are concerned about the climate-related coverage and financial stability of insurers, possibly leading to new regulations and reviews. Finally, sea level rise, heavy rainstorms, and wildfires are causing governments to re-evaluate the scope and cost of such insurance coverage, remedies (including relocation), as well as the roles of the private and public sectors.¹⁸

f. Taxes, Carbon Prices, and Emission Trading Systems. The World Bank Group estimated in 2019 that 20 percent of global greenhouse gas emissions were covered by a carbon price, through 57 initiatives which raised US\$44 billion.¹⁹ The trend is toward more such initiatives and higher carbon prices. Cap-and-trade and other programs aimed at pricing and cutting carbon emissions are complex and evolving; effective counseling requires new knowledge and skills.

Additionally, provisions in tax laws provide incentives for energy efficiency, low-emissions vehicles and energy production, carbon storage in agricultural and forestry practices, and other climate-related actions. These charges and incentives have growing, and should have pervasive, impacts on decisions by companies, other organizations, and individuals. In light of major uncertainties about policy design, market responses, and technological change, lawyers must be competent to shape, apply, evaluate, and adjust these rules, and to aid clients in making and implementing decisions.²⁰

¹⁸ International Association of Insurance Supervisors and Sustainable Insurance Forum, 'Issues Paper on Climate Change Risks to the Insurance Sector' (2018) (available at https://www.insurancejournal.com/research/app/uploads/2018/08/IAIS_and_SIF_Issues_Paper_on_Climate_Change_Risks_to_the_Insurance_Sector_-1.pdf); I. Kornfeld, 'Insurance Coverage for Droughts, Due to Climate Change: The Case for "Loss of Business Income" and "Loss of Use"' (2019) 10 Ariz J Env L & Policy 151; M. Odendahl, 'Unpredictable storms: Attorneys link climate change to insurance policy changes' (Feb. 19, 2019) Indiana Lawyer (available at <https://www.theindianalawyer.com/articles/49501-attorneys-link-climate-change-to-insurance-policy-changes>) (Odendahl).

¹⁹ World Bank Group, 'State and Trends of Carbon Pricing 2019' (2019) at 12 (available at <http://documents.worldbank.org/curated/en/191801559846379845/pdf/State-and-Trends-of-Carbon-Pricing-2019.pdf>).

²⁰ Guterres, above at n. 1 ("To put a price on carbon is vital if we are to have any chance of limiting global temperature rise and avoiding runaway climate change."); European Commission, 'The European Green Deal'

g. Bankruptcy/Insolvency. Worsening environmental conditions have caused increased bankruptcies and insolvencies in various economic sectors and geographic areas. Many businesses served tourists who are now deterred by coral bleaching, snow-free mountains, or algal blooms. Many other enterprises depended on climate-impaired natural resources, such as fish, forests, or agriculture. Other climate-related business failures come from the transition away from fossil fuels, such as some coal mining companies. Moreover, liability for climate-related damages from wildfires led to bankruptcy for a large electric utility in California and will affect many more businesses as well as municipalities. Bankruptcy/insolvency lawyers need to advise clients on changing legal frameworks and options in facing new and emerging market conditions.²¹

h. Family and Immigration Law. Far from being untouched by climate change, families are affected in many ways, and so too is family law. Lawyers represent individuals dealing with widespread and frequent climate-related disruptions to families, such as migration, suicides and mental illness, premature mortality, and disabilities tied to low birth weights. According to the UN Children's Fund and UN Human Rights Council, climate change may be the greatest threat facing the world's children, including impacts of extreme weather and natural disasters, water scarcity and food insecurity, air pollution, vector-borne diseases, and resulting psychological

(2019) at 17 ('Well-designed tax reforms can boost economic growth and resilience to climate shocks and help contribute to a fairer society and to a just transition.') (available at https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf); OECD, Taxing Energy Use 2019: Using Taxes for Climate Action (2019) (available at <https://www.oecd-ilibrary.org/sites/058ca239-en/1/1/1/index.html?itemId=/content/publication/058ca239-en&csp=733ba7b0813af580090c8c6aac25027b&itemIGO=oecd&itemContentType=book>); T. Falcão, 'Taking the Environmental Tax Agenda Forward: How the U.N. Committee of Experts Can Lead the Way' (2018) 89 Tax Notes Int 949; Carbon Pricing Leadership Coalition, 'Report of the High-Level Commission on Carbon Prices' (2017) at 7 (available at https://static1.squarespace.com/static/54ff9c5ce4b0a53deccfb4c/t/59b7f2409f8dce5316811916/1505227332748/CarbonPricing_FullReport.pdf); Lavey, above at n. 3, at 562-67.

²¹ C. Coglianese & D. Walters, 'Whither the Regulatory "War on Coal"? Scapegoats, Saviors, and Stock Market Reactions' (2019) (available at https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3107&context=faculty_scholarship); J. MacWilliams, S. La Monaca & J. Kobus, 'PG&E: Market and Policy Perspectives on the First Climate Change Bankruptcy' (2019) (available at <https://energypolicy.columbia.edu/research/report/pge-market-and-policy-perspectives-first-climate-change-bankruptcy>); G. Dembicki, The Next Financial Crisis Could Be Caused by Climate Change (Jan. 27, 2019) Vice (available at https://www.vice.com/en_us/article/59xpxa/the-next-financial-crisis-could-be-caused-by-climate-change).

trauma.²² In 2018, the UN adopted the Global Compact for Safe, Orderly and Regular Migration, prominently citing climate change and noting the need for assistance from qualified lawyers.²³ Some nations are increasing access to family planning as part of climate adaptation. Additionally, lawyers represent children in asserting fundamental human rights to a sustainable environment and argue for protections of family life to remedy inadequate government actions on climate change.²⁴

In summary, as climate change pervasively affects individuals, businesses, communities, and nations, so too do attorneys in a wide range of representations require knowledge, skills, and competency in climate change to provide the services that their clients need. Environmental lawyers cannot do it all. This short overview described climate-related developments in eight legal practice areas that are not viewed as on the frontlines of climate change, and many other practice areas could be added. While some attorneys could still find some matters to work on that are untouched by climate change, diverse practice areas are being reshaped and many practicing lawyers are immersed in climate-affected representations. It is time for law schools and programs for lawyers to focus more on training climate-competent lawyers. Fortunately, there are several feasible ways to accomplish this transformation, described in the next two sections.

2. Climate-competency training in law schools

There are four goals for climate-competency training in law schools. First, law students should recognize that climate change is already having major impacts on legal representations, and that the ties between climate change and legal work will strengthen. In other words, climate change is an important dimension in practicing law. Next, students should be able to perform legal

²² UN High Commissioner for Human Rights, ‘Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child’ (2017) (available at <https://www.right-docs.org/doc/a-hrc-35-13/>); UNICEF, ‘Unless We Act Now: The Impact of Climate Change on Children’ (2015) (available at https://www.unicef.org/publications/files/Unless_we_act_now_The_impact_of_climate_change_on_children.pdf).

²³ UN, ‘Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration’ (2018) at 9 (available at <https://undocs.org/en/A/CONF.231/3>).

²⁴ K. Grace, *et al.*, ‘Linking climate change and health outcomes: Examining the relationship between temperature, precipitation and birth weight in Africa’ (2015) 35 *Global Env Change* 125; L. Bryant, *et al.*, ‘Climate change and family planning: least-developed countries define the agenda’ (2009) 87 *Bulletin of the World Health Org* 852; *Sacchi v. Argentina*, Communication to the Committee on the Rights of the Child (UN) (Sept. 23, 2019) (available at <https://childreenvsclimatecrisis.org/wp-content/uploads/2019/09/2019.09.23-CRC-communication-Sacchi-et-al-v.-Argentina-et-al.pdf>); *Netherlands v. Urgenda* [2019] ECLI:NL:HR2019:2007; *Juliana v. United States*, 217 F. Supp. 3d 1224 (D. Ore. 2016), *rev’d*, No. 18-36082 (9th Cir. Jan. 17, 2020).;

analyses using basic knowledge of the causes and tools to address climate change. Without attempting to achieve a mastery of climate change, the teaching should enable law students to work with relationships such as that burning fossil fuels in power plants and vehicles increases greenhouse gases; rising levels of greenhouse gases are associated with dangers to human health and property from extreme weather, sea level rise, and poor air quality; and laws and government programs apply tax and energy regulatory incentives to increase the production of cleaner renewable energy. Third, students should be familiar with some of the legal frameworks applied to address climate change. For example, public and private programs provide certificates used to designate tradeable greenhouse gas emission allowances, energy-efficient equipment or buildings, sustainably-sourced forest and food products, or renewable energy. Finally, students should recognize that lawyers need to help their clients and communities mitigate and adapt to climate change. Climate solutions will not be developed and implemented without a wide range of legal services, and law students as well as young attorneys have many opportunities to promote community resilience and climate justice.

A silver lining to the many years of inadequate action on climate change is that there are abundant resources to use in teaching law students. In an article published in 2019, I provided dozens of climate-related cases, other materials, and questions to guide students and class discussions for ten high-enrollment courses in American law schools.²⁵ This approach teaches both the goals of such courses in terms of fundamental competencies in legal principles and analysis, and also develops knowledge, skills, and interest in how climate change affects areas of law.

Climate competencies can be developed in law schools' curricula through cases and other materials used in at least five types of courses: basic, elective, legal research and writing, ethics, and skills for trials, appeals, and transactions. Brief descriptions of these opportunities follow.

a. Basic courses. Professors could use climate-affected cases to teach basic competencies in first-year courses such as contracts, property, civil procedure, torts, and criminal law.²⁶ While certain cases involving railroads or doctors may be 'classic' teaching tools, students could learn the same legal principles, reasoning, and advocacy skills from climate-affected cases.

²⁵ Lavey, above at n. 3.

²⁶ Ibid. at 523-50.

Additionally, seeing the tie between their profession and the greatest challenge to human health and welfare may help some students decide to push through the early intimidation and workload to complete law school. If a jurisdiction lacks cases which specifically address some climate-change impact or government program, decisions involving flooding, fires, pollution, land uses, and other fact patterns could be used along with reports on climate impacts, climate action plans, and climate-related legislation and regulations.

b. Elective courses. As illustrated in the preceding description of developments in various practice areas, professors could use climate-affected cases and other materials in a wide range of law school electives.²⁷ As in basic courses, such materials could be used to teach core information in these subjects as well as knowledge, skills, and capabilities in climate-affected legal work. Additionally, students would appreciate the connections between climate competencies and these specific practice areas. In assignments where students research recent developments, professors should make them aware of opportunities to explore how this practice area is addressing climate change mitigation and adaptation. To illustrate, a course in securities regulation could offer students topics such as regulations and litigation on shareholder resolutions for actions to reduce a company's greenhouse gas emissions, or disclosures of climate risks to a company's physical operations or reputation in securities filings or other public documents.

c. Legal research and writing. A legal writing and research course is typically mandatory in the first semester of law school. The curriculum aims to develop skills using simple fact-pattern scenarios and legal issues. Various appropriate scenarios would lead students to think about climate-competent lawyering. For example, extreme stormwater could cause toxic chemicals stored on one person's property to contaminate a neighbor's property, leading to possible claims against the first property owner, its insurance carrier, and the government entity that maintains stormwater infrastructure. Sea level rise moves shorelines which divided private and public properties, leading to questions about new property lines and compensation for a public taking of private property. As a third scenario, a wind farm on one person's property could disrupt a

²⁷ Ibid. at 550-84.

neighbor's uses and enjoyment of other land, raising potential claims of nuisance and research into property rights and land use regulations.

d. Ethics courses. Training in legal ethics should go beyond topics for practitioners like conflicts of interest and billing clients to encompass lawyers' responsibilities to promote human rights, social justice, and the rule of law.²⁸ Climate change, as well as some responses to it, endanger human rights and disproportionately burden low-income, minority, elderly, young, and disabled people.²⁹ As more broadly recognized in the World Declaration on the Environmental Rule of Law, the 'environmental rule of law should thus serve as the legal foundation for promoting environmental ethics and achieving environmental justice.'³⁰ Ethics courses in law schools should equip students to advance climate justice and an orderly transition to sustainable development.³¹ In 2014, the International Bar Association's Task Force for Climate Justice 'recommend[ed] that the [International Bar Association] integrate climate justice training and courses into its existing platform for legal education.'³² Similarly, the American Bar Association resolved in 2019 that attorneys should 'engage in pro bono activities to aid efforts to reduce greenhouse gas emissions and adapt to climate change.'³³ Ethics courses should inform law

²⁸ J. Beca, 'Teaching Legal Ethics to Law Students: Why, What, How and Who Might Teach?' (2015) 3 Asian J Legal Ed 85; T. Lininger, 'Green Ethics for Lawyers' (2016) 57 *B.C.L.Rev* 61.

²⁹ National Association for the Advancement of Colored People, *Our Communities, Our Power: Advancing Resistance and Resilience in Climate Change Adaptation* (2019) (available at <https://live-naacp-site.pantheonsite.io/wp-content/uploads/2019/04/Our-Communities-Our-Power-TOOLKIT-FINAL.pdf>).

³⁰ World Declaration above at n. 12, at 2.

³¹ A 2015 report published by the International Union for Conservation of Nature concluded that 'climate change must be understood as fundamentally a problem of ethics and justice', but that such considerations are being overlooked and buried with consequent deficiencies in policymaking. D. Brown & P. Taylor (eds.), *Ethics and Climate Change: A Study of National Commitments* (2015) at xvii (available at <https://portals.iucn.org/library/efiles/documents/EPLP-086.pdf>). See also J. Yochim, 'Climate change and a changing profession: What future will we choose?' (Jan.-Feb. 2018) 42 *Am. Bar Ass'n. Bar Leader* (available at https://www.americanbar.org/groups/bar_services/publications/bar_leader/2017-18/january-february/climate-change-and-a-changing-profession-what-future-will-we-choose/) (Yochim):

It's gonna go one of two ways. Either inequality, fear, and despair will take hold, leading to increasingly violent attempts to maintain or grab power and resources, or the rule of law will prevail and we will build humane, universally accessible, geographically specific, and sustainable systems that allow every person the opportunity to meet her or his needs. Change is coming, and it will be chaos and bloodshed or reasoned and managed. Climate change will force civilization change.

If the legal profession does nothing but gaze inward and concern itself with how to keep attorneys gainfully employed, if we in the collective bar do nothing to divert that gaze outward to the world, to those we're supposed to serve, the former scenario may very well play out. (footnote omitted)

³² IBA above at n. 4, at 18.

³³ ABA Resolution, above at n. 2, at 1. See also American Bar Association, *Model Rules of Professional Conduct* (2019); V. Flatt, 'Disclosing the Danger' (2020) 37 *The Env Forum* 38.

students on these professional responsibilities and alert them more generally to the need for climate-competency in practicing law.

e. Trials, appeals, and transactions skills courses. Finally, many law schools offer courses in trials (as well as alternative dispute resolution), appeals, and transactions skills. The fact scenarios for these curricula should reflect the reality that a large and growing portion of lawyers' work is affected by climate change. These courses typically use hypotheticals that have been proven over years of classroom experience, involving medical malpractice, crimes, real estate developments, and other topics. However, the same skills could be developed through climate-affected cases and transactions. More generally, the well-worn paths miss out on training students to appreciate lawyers' roles and challenges in solving the ever-changing problems facing their clients and society.

In summary, law schools need to do more in developing climate-competent practitioners. Courses could provide students with the same core legal knowledge and skills, and simultaneously make them abler to meet the climate-affected needs of clients and societies.

3. Practitioner Programs

Good legal practitioners are lifelong learners. Generally, lawyers learn as needed when a client pays them to handle specific matters. Often, such responsive learning about climate-related conditions, risks, opportunities, and legal frameworks is adequate to provide competent representation. Yet, continuing legal education requirements in several countries emerged from the profession's perception that mandatory ongoing training of lawyers leads to better services to their clients and improves the public's confidence in the legal profession.³⁴ Regardless of whether such training in a jurisdiction is mandatory or voluntary, climate competencies for attorneys are an ideal focus for practitioner education and bar association activities throughout practice areas. This section describes three principles that should guide climate-competency offerings for practitioners.

³⁴ J. Gilbreath, 'Maintaining Competency Among Lawyers: How Far Have We Come?' (2017) 24 *The Catholic Lawyer* 3; Law Commission of India, 'Report No. 266: The Advocates Act, 1961 Regulation of Legal Profession' (2017) at 99, 111 (available at <http://lawcommissionofindia.nic.in/reports/Report266.pdf>); A. Chakraborty & Y. Ghosh, 'Promoting Continuing Legal Education: A Step towards Implementing the Second Generation Legal Reforms for Creating Competent Lawyers in the New Century' (2015) 2 *Asian J Legal Ed* 29.

a. Climate in offerings for particular practice groups. Lawyers are more likely to spend time on offerings targeted to their practice areas as opposed to listening to a general session on climate change. Moreover, attorneys learn more skills and ways to improve their services from similar practitioners than from environmental lawyers, atmospheric scientists, or government officials. The targeted sessions should focus on the climate-affected services that clients need from lawyers in the particular area. A major goal should be to inform such practitioners how to improve their services through knowledge of climate-related laws, cases, plans, and impacts. While a session for employment lawyers (covering the 2019-20 climate-related labor actions at Amazon.com, Inc., Google LLC, and Microsoft Corporation³⁵) or family law practitioners (focused on migration issues like the 2020 UN ruling on climate refugees³⁶) could share some materials with a session for corporate attorneys (focused on disclosure issues such as the 2019 New York court's decision in favor of ExxonMobil Corporation³⁷), most of the materials should be practice specific and delivered by lawyers with strong reputations in the particular areas. As for timing, there is an immediate and ongoing need to strengthen lawyer climate competency. Nevertheless, practitioners' interest in climate training may be higher at different times by practice area, depending on when a prominent lawsuit is filed or decided, a law is proposed or passed to address a specific climate-related issue, an agency issues a notice of proposed rulemaking or final rule that points to climate change impacts, or a climate-related event occurs (such as flooding, fire, or migration).

b. Ethics training should address climate responsibilities for lawyers in diverse fields. Practicing lawyers need to view their ethical obligations to their clients and societies through the lens of climate change. Many attorneys have practiced for years without thinking that their professional responsibilities encompass climate justice and their skills are needed for climate solutions. As described above, the International Bar Association and the American Bar Association urged

³⁵ A. Newcomb, 'Google Workers to Walk Out, Along With Amazon and Microsoft Employees, for Sept. 20's Climate Strike' (Sept. 16, 2019) Fortune (available at <https://fortune.com/2019/09/16/global-climate-strike-protest-google-amazon-microsoft-walkout/>); A. Newcomb, 'More than 350 Amazon employees risk their jobs to speak about climate crisis' (Jan. 27, 2020) Fortune (available at <https://fortune.com/2020/01/27/amazon-employees-jobs-climate-change/>).

³⁶ S. Garcia, 'What a UN ruling could mean for climate refugees' (Jan. 22, 2020) PBS News Hour (available at <https://www.pbs.org/newshour/science/as-cop-25-ends-a-look-at-why-climate-migrants-dont-have-refugee-status>).

³⁷ P. Stevens, 'Exxon found not guilty in New York climate-change securities trial, ending 4-year saga' (Dec. 10, 2019) CNBC (available at <https://www.cnbc.com/2019/12/10/exxon-did-not-mislead-investors-a-new-york-judge-ruled-on-tuesday.html>).

lawyers in many practice areas to study climate justice and engage in *pro bono* activities for climate-affected human rights and climate adaptation.³⁸ Similarly, the World Declaration on the Environmental Rule of Law called for strengthening ‘effective accountability, transparency, ethics, integrity and anti-corruption mechanisms’ as societies confront the multiple dimensions of environmental degradation and harms to disadvantaged people.³⁹ Ethics sessions should inform practitioners on the challenges from climate change in their representations and opportunities for lawyers in their fields to strengthen the resilience of vulnerable individuals, groups, and communities.

c. Each bar association should support climate competency for all lawyers. Worldwide, bar associations should adopt resolutions and publish articles calling attention to developing climate competency for all lawyers and encouraging all lawyers to work toward climate solutions.⁴⁰ Leaders among practicing lawyers in all fields should not view climate competency and climate solutions as the responsibility to be borne solely or even primarily by environmental lawyers. Bar associations should foster climate education and *pro bono* climate engagements for all attorneys. *Pro bono* climate opportunities should cover multiple practice areas. As illustrations, bar associations and other organizations could arrange for multidisciplinary teams of attorneys to advise communities on how to increase climate resilience through laws and programs across sectors, or to counsel disadvantaged people on how to recover from extreme weather events and displacements. In addition to helping communities and individuals, such engagements would raise the attorneys’ climate knowledge and skills.

To summarize these recommendations, lawyer education programs and bar association activities can develop climate competency for practitioners who did not receive such training in their law schools. For practitioners who were fortunate enough to study climate cases and other materials in law schools, lawyer education programs and bar association activities can expand on and update their climate capabilities. These initiatives should connect climate legal issues with the lawyers’ work in their practice areas, and give the participants skills to represent and advise

³⁸ See above at n. 31 and 32.

³⁹ World Declaration above at n. 12, at 2.

⁴⁰ ABA Resolution above at n. 2; Hatchwell, above at n. 15; R. Green, ‘Global migration crisis: Climate change poses “existential threat to small island states”’ (July 25, 2019) International Bar Ass’n (available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=34915DD3-1E22-42A2-9E44-5E1CE3954F93>); Yochim, above at n. 31; Ricker, above at n. 16; Odendahl, above at n. 18.

clients on legal issues related to future climate-related risks and opportunities. Finally, these initiatives should inform practitioners of their professional ethical responsibilities to advance climate justice and sustainability, and foster such *pro bono* engagements.

Conclusion

The climate crisis is harming human communities and natural ecosystems. The destruction and costs will grow. Enhancing climate resilience for individuals, businesses, communities, and nature is not a luxury; it's a necessity. Moreover, enhancing climate resilience is not a task for some younger generation in the future, or just for a few professionals like specialized 'climate change lawyers', infrastructure engineers, and public health officials. Climate solutions depend on a vast number of lawyers throughout practice areas actively working now with clients and government authorities.

Lawyers need to be problem solvers or problem preventers for their clients and societies,⁴¹ especially in facing the greatest challenge to human wellbeing. All our clients and communities – with our capable advice and representation -- must do a much better job in planning for and acting on climate threats now.

While nations have delayed taking sufficient actions on the climate crisis, so too have lawyers delayed in acquiring the knowledge, skills, and capabilities to meet their clients' needs for climate-competent representations throughout practice areas. Rather than developing a few specialists in 'climate change law', the legal profession should recognize that clients need lawyers in all types of representations globally who consider the changing environmental conditions, markets, and legal frameworks. All lawyers need to get on board the ship of climate-competent practice as the sea level rises. Law schools, lawyer education programs, and bar associations have strong opportunities to integrate climate competencies into training law

⁴¹ Yochim, above at n. 31; HM Government, 'The Clean Growth Strategy: Leading the way to a low carbon future' (2017) at 34 (pointing to the UK's strengths in addressing climate change based on expertise in areas such as finance, law, consultancy, software, and data services) (available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700496/clean-growth-strategy-correction-april-2018.pdf); B. McAdoo, S. Press & C. Griffin, 'It's Time to Get It Right: Problem-Solving in the First-Year Curriculum' (2012) 39 Wash U J L & Policy 39; J. Reno, 'Lawyers as Problem-Solvers: Keynote Address to the AALS' (1999) 49 J Legal Educ 5.

students and practitioners. Rapidly developing these capabilities will make the legal profession, our clients, and the world better.