

ROUNDTABLE THREE
ENVIRONMENTAL LAW EDUCATION: PREPARING FOR
ENVIRONMENTAL PRACTICE

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I. HOW CAN NEW STRATEGIES FOR ADDRESSING EMERGING
ENVIRONMENTAL ISSUES BE INCORPORATED INTO THE LAW SCHOOL
CURRICULUM?

Dean Osofsky:

First of all, I just wanted to say a big thank you to all of you for including me in today's dialogue and putting together this really interesting series. I've gained so much from hearing everybody's insights. I think when we start talking about new strategies for addressing environmental issues to be incorporated into the law school curriculum, in many ways the first question is how do we want to envision a law school and its role within a university?

Many of you have heard me say before, I think we are in a moment of profound social change in which technology, globalization, the importance of crosscutting knowledge, and the need for progress on diversity, equity, and inclusion are foundationally changing the practice of law and the nature of legal services. All of those changes have profound implications for access to justice, social and racial justice, and the environmental issues that we are talking about here. The intersectional crises of the past two years—a global pandemic, racial justice reckoning, and deep polarization in our society—have in many ways only hastened these transitions and exacerbated inequality.

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These transitions are not new, but they are accelerating as a consequence of our pivots. And I think they should cause us to ask whether law schools can be less siloed from their universities, because fundamentally, the emerging, knotty environmental problems that so many of us work on are not just law problems. One of the profound challenges for law right now is that it often struggles to regulate fast-moving science and technology. There are many dimensions to this problem, which Professors Wendy Wagner and Holly Doremus, among others, have analyzed insightfully in their scholarship. But one aspect that we could help address in law schools is that people making law and policy sometimes do not understand science and technology very well and people working on science and technology often do not fully understand the regulatory environment.¹

And so, the first piece of my answer to your question is that part of the strategy law schools should take in addressing emerging environmental issues is about developing an environmental curriculum that is more deeply embedded in their universities. That can be through interdisciplinary opportunities and joint degrees. Northwestern Pritzker Law's Center for Law, Business, and Economics, for example, brings together experts across disciplines to address energy and climate change issues.² Its Master of Science in law program trains

¹ Professors Wendy Wagner and Holly Doremus have both extensively analyzed the interface with law and science. See, e.g., Wendy Wagner et al., *Misunderstanding Models in Environmental and Public Health Regulation*, 18 N.Y.U. ENV'T L.J. 293 (2010) (exploring misperceptions of computational models in regulation); Holly Doremus, *Scientific and Political Integrity in Environmental Policy*, 86 TEXAS L. REV. 1601–53 (2008) (analyzing issues of scientific integrity and political integrity). Dean Osofsky has analyzed these issues in the context of climate change together with Professor Jacqueline Peel. See JACQUELINE PEEL & HARI M. OSOFSKY, *CLIMATE CHANGE LITIGATION: REGULATORY PATHWAYS TO CLEANER ENERGY?* 249–63 (2015, Cambridge University Press); Hari M. Osofsky, *The Intersection of Scale, Science, and Law in Massachusetts v. EPA*, 9 OR. R. INT'L L. 233 (2008) reprinted in *ADJUDICATING CLIMATE CHANGE: STATE, NATIONAL, AND INTERNATIONAL APPROACHES* (William C.G. Burns & Hari M. Osofsky eds., 2009).

² *Northwestern University Center on Law, Business, and Economics*, NW. PRITZKER SCH. OF L., BUSINESS, & ECON., <https://www.law.northwestern.edu/research-faculty/clbe/> (last visited May 22, 2022).

STEM professionals on the interface of law, business, and technology,³ and it also has interdisciplinary courses, joint degrees, and concentrations.⁴ And we have important opportunities at this moment of transition to build on our longstanding interdisciplinary strengths. In order to foster new collaborations, I established an Associate Dean for Innovation and Partnerships soon after arriving and the law school is working across the University and with external stakeholders to develop new partnerships, including on environmental, energy, and climate change issues.

When I was a dean at Penn State, we explored the innovation that could result from breaking down the silos between law and other disciplines, which was assisted by my being dean of both Penn State Law and an interdisciplinary international affairs school. The Center for Energy Law and Policy that we launched intentionally brought in the full breadth of disciplines from across the university, in addition to all sorts of stakeholders and in its work.⁵ The law, policy, and engineering initiative that we developed, and the new masters in engineering that will contribute to it, included environment and energy as a key aspect.⁶ I think that we have to be very collaborative across our law schools and universities and with external stakeholders in order to solve these problems.

A secondary piece of that is about technology and, in particular: How should we be using technology in our legal classrooms

³ *Master of Science in Law*, NW. PRITZKER SCH. OF L., <https://www.law.northwestern.edu/academics/degree-programs/msl/> (last visited May 22, 2022).

⁴ *Law and Technology*, NW. PRITZKER SCH. OF L., <https://www.law.northwestern.edu/academics/curricular-offerings/law-technology/> (last visited May 22, 2022); *NUvention*, NW. FARLEY CTR. FOR ENTREPRENEURSHIP & INNOVATION, <https://farley.northwestern.edu/academics-resources/nuvention/> (last visited May 22, 2022); *Environmental Law*, NW. PRITZKER SCH. OF L., <https://www.law.northwestern.edu/academics/curricular-offerings/concentrations/environmental/> (last visited May 22, 2022).

⁵ See *About the Penn State Center for Energy Law and Policy*, PENN STATE CELP, <https://celp.psu.edu/about-us/> (last visited May 8, 2022) (outlining Penn State Center for Energy Law and Policy's interdisciplinary approach to science, law, and policy).

⁶ See *Law, Policy, and Engineering*, PENN STATE, <https://www.lpe.psu.edu> (last visited May 8, 2022) (proposing comprehensive master's program designed to bridge disconnect problem between science, law, and policy).

and practice? Northwestern Pritzker Law's Law and Technology program and Penn State Law's Legal-Tech Virtual Lab both have been experimenting with ways of doing so.⁷ Some of these technological issues are not environmentally specific. But, for example, the manner in which artificial intelligence (AI) powered tools are going to be used in legal practice will influence the way our students will practice environmental law, but also can provide opportunities for what we do in our classroom. One technology experiment we were in the process of launching a pilot for at Penn State Law as COVID-19 hit—and it got delayed as a consequence—is how could we bring immersive technology into the legal classroom? I particularly think about this in the environmental and energy context. For instance, I found it profoundly useful to go visit a fracking site. We could virtually take our students to a fracking site, to a power plant, or to a microgrid in ways that could really help them understand the technology that they will be interacting with in this field. I hope to move this pilot forward at Northwestern as we emerge from COVID-19.

And that is intertwined with the third piece of it, which is that all of these speak to the need for multimodal problem-solving. We need to teach our students multimodal problem-solving skills both in the way we teach experientially and doctrinally.

And our field has to think really long and hard about how we work together strategically to make progress on diversity in our profession and how we make sure that we are dealing with profound inequity and justice issues. I was so thrilled, for example, to see that the Biden Administration appointed energy justice expert Shalanda Baker as Senior Advisor in the Office of the Secretary of the U.S. Department of Energy.⁸ But we all have work to do in this space to think about how we improve diversity of faculty, students, and

⁷ See *Legal Technology*, PENN STATE L., <https://pennstatelaw.psu.edu/penn-state-law/legal-technology> (last visited May 2, 2022) (highlighting Penn State Law's Legal-Tech Virtual Lab, an opportunity for law students to learn legal technology programs and skills); *Innovation Lab: Law and Technology Demos*, NW. PRITZKER SCH. OF L., <https://www.law.northwestern.edu/student-life/events/innovation-lab/> (last visited May 22, 2022).

⁸ *Shalanda H. Baker*, U.S. DEP'T OF ENERGY, <https://www.energy.gov/person/shalanda-h-baker> (last visited May 8, 2022).

practitioners in the environmental field, and how we make sure that justice issues get centered in our environmental work.

Professor Kang:

What I see emerging is a more ambitious framework for defining environmental problems, a vision that encompasses social and economic justice as part of environmental law issues. This significant change comes as a result of a convergence of at least three movements or developments: a year of intense reflection over centuries-long racial injustice;⁹ the economic challenges that have developed as a result of the pandemic;¹⁰ and the deepening climate crisis¹¹ that's the impetus

⁹ See Jennifer D. Roberts, *Pandemics and Protests: America Has Experienced Racism Like This Before*, BROOKINGS (June 9, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/06/09/pandemics-and-protests-america-has-experienced-racism-like-this-before/> (examining historical cycles in public outrage against systemic racism after pandemics in 1919 and 2020); Alisa Chang et al., *Summer of Racial Reckoning*, NPR: AMERICA RECKONS WITH RACIAL INJUSTICE, (Aug. 16, 2020), <https://www.npr.org/2020/08/16/902179773/summer-of-racial-reckoning-the-match-lit> (documenting a new civil rights movement addressing consistent and systemic racial injustice rising in the United States); Juliana M. Horowitz et al., *Amid National Reckoning, Americans Divided on Whether Increased Focus on Race Will Lead to Major Policy Change*, PEW RSCH. CTR. (Oct. 6, 2020), <https://www.pewresearch.org/social-trends/2020/10/06/amid-national-reckoning-americans-divided-on-whether-increased-focus-on-race-will-lead-to-major-policy-change/> (asserting that many Americans are concerned about systemic racism, but a smaller percentage is convinced that new movement will inspire policy change).

¹⁰ See LAUREN BAUER ET AL., TEN FACTS ABOUT COVID-19 AND THE U.S. ECONOMY 7–16 (Brookings: The Hamilton Project ed., 2020), https://www.brookings.edu/wp-content/uploads/2020/09/FutureShutdowns_Facts_LO_Final.pdf (documenting economic impacts of COVID-19 on the U.S. economy, including effects on business development and revenue, unemployment and labor shortages, and food and housing insecurity); Eduardo L. Yeyati & Federico Filippini, *Social and Economic Impact of COVID-19* 4–9 (Brookings: Glob. Econ. & Dev., Working Paper No. 158, 2021), <https://www.brookings.edu/wp-content/uploads/2021/06/Social-and-economic-impact-COVID.pdf> (evaluating three stages of COVID-19's impact on the global economy, including macroeconomic impacts, governmental fiscal status, and slow economic recovery from lockdowns).

¹¹ See generally IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE,

for conceiving the Green New Deal.¹² And, so specifically, take the new Environmental Justice for All Act being introduced in Congress right now.¹³ It establishes what is essentially a just transition fund to support communities and workers transitioning away from fossil fuel development or dependent industries.¹⁴ The Act also calls for cumulative impact analysis for clean air and clean water permitting,¹⁵ recognizing what clients of clinics like ours have said for decades—we don’t breathe one pollutant at a time.¹⁶ It sort of conceives a different vision of the Clean Air Act and the Clean Water Act.¹⁷ Another example of a more expansive view of what environmental law implicates is the Biden-Harris Administration’s approach to

<https://www.ipcc.ch/report/ar6/wg2> (last visited June 15, 2022) (presenting key findings of the IPCC’s Sixth Assessment Report and noting increased climate hazard risks since the last report). See also Jeffrey D. Sachs, *The Deepening Crisis: When Will We Face the Planet’s Environmental Problems?*, SCI. AM. (Sept. 1, 2010), <https://www.scientificamerican.com/article/the-deepening-crisis/>; Seth Borenstein, ‘Code Red’: UN Scientists Warn of Worsening Global Warming, AP NEWS (Aug. 10, 2021), <https://apnews.com/article/asia-pacific-latin-america-middle-east-africa-europe-1d89d5183583718ad4ad311fa2ee7d83> (guaranteeing that the climate crisis and its impacts will continue to increase because of global warming).

¹² See Jarrell Dillard, *Ocasio-Cortez, Progressives Push Anew for Green New Deal*, BLOOMBERG (Apr. 20, 2021) <https://www.bloomberg.com/news/articles/2021-04-20/ocasio-cortez-progressives-push-anew-for-green-new-deal> (documenting the Green New Deal’s goals, including net-zero greenhouse gas emissions, investments to reduce pollution, and environmental justice impacts of climate change).

¹³ See generally Environmental Justice for All Act, H.R. 2021, 117th Cong. (2021), <https://www.congress.gov/117/bills/hr2021/BILLS-117hr2021ih.pdf> (addressing environmental justice impacts on communities of color and prohibiting further disparate impacts through new enforcement mechanisms).

¹⁴ *Id.* at §§ 28–29.

¹⁵ *Id.* at § 7.

¹⁶ See Press Release, World Health Org., 9 out of 10 People Worldwide Breathe Polluted Air, but More Countries Are Taking Action (May 2, 2018), <https://www.who.int/news/item/02-05-2018-9-out-of-10-people-worldwide-breathe-polluted-air-but-more-countries-are-taking-action> (asserting that 90 percent of the global population breathes in ambient and household pollutants); Taylor McNeil, *The Toxic Air We Breathe*, TUFTS UNIV: TUFTS NOW (Sept. 20, 2018) <https://now.tufts.edu/articles/toxic-air-we-breathe> (asserting that ultrafine particles called “particulate matter” cause most pollution-related health risks in humans).

¹⁷ See H.R. 2021, *supra* note 13, § 7 (amending the Clean Air Act and Clean Water Act to define “cumulative impacts” and creating enforcement mechanisms to further environmental justice principles).

environmental justice (referred to as EJ at times in this discussion) and recognizing that addressing it doesn't just require tinkering at the edges; it's a systemic problem that requires systemic solutions.¹⁸ In particular, the Biden-Harris Administration is looking at multiagency collaboration.¹⁹ In light of these developments, it wouldn't be at all surprising to see changes being proposed in housing, jobs, education, and transportation policy, as all of those things address environmental injustice; potential solutions call for unparalleled opportunities.²⁰ What

¹⁸ See Press Release, White House, What They Are Saying: Biden Administration Lays Out Path to Reach Justice40 Goal: Earns Praise from Administration Officials, Environmental Justice Leaders, Advocates, and Congressional Leaders (July 21, 2021), <https://www.whitehouse.gov/ceq/news-updates/2021/07/21/what-they-are-saying-biden-administration-lays-out-path-to-reach-justice40-goal-earns-praise-from-administration-officials-environmental-justice-leaders-advocates-and-congressional-leaders/> (outlining Justice40, an executive program facilitating collaboration between federal agencies, state agencies, and local communities on environmental justice issues); Memorandum from Shalanda D. Young, Active Director Office of Management & Budget et al. on Interim Implementation Guidance for the Justice40 Initiative (July 20, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf> (presenting President Biden's commitment to Justice40 to ensure environmental justice, economic development, and opportunities for disadvantaged communities); Helen H. Kang, *Looking Toward Restorative Justice for Redlined Communities Displaced by Eco-Gentrification*, 26 MICH. J. RACE & L. 23 (2021) [hereinafter Kang, *Looking Toward Restorative Justice*].

¹⁹ See Press Release, White House, Fact Sheet: A Year Advancing Environmental Justice (Jan. 26, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/26/fact-sheet-a-year-advancing-environmental-justice/> (explaining the Biden Administration's commitment to developing policies to address negative health, environmental, economic, and climate effects on disadvantaged communities by involving a broad range of federal agencies, including the Environmental Protection Agency, Department of Labor, Department of Interior, and Department of Health and Human Services).

²⁰ See, e.g., *AB 3121: Task Force To Study and Develop Reparation Proposals for African Americans*, ROB BONTA: ATT'Y GEN., STATE OF CAL. DEP'T OF JUST., <https://oag.ca.gov/ab3121> (last visited May 22, 2022). The task force examined environmental racism as an aspect of the study to develop proposals. *AB 3121 Task Force To Study and Develop Reparations Proposals for African Americans: Meeting Notice and Agenda*, STATE OF CAL. DEP'T OF JUST. (Oct. 2021), <https://oag.ca.gov/system/files/media/task-force-notice-agenda-101221-101321.pdf>. See also Sammy Roth, *Why Communities Fighting for Fair Policing Also Demand Environmental Justice*, L.A. TIMES: CLIMATE & ENV'T (June 4, 2020),

I really push for in my article, *Looking Toward Restorative Justice for Redlined Communities Displaced by Eco-Gentrification*, is that what we once thought was unrealistic, restorative justice, appears to be on the menu.²¹ A side note: a recent report from the Lancet Commission evaluating the Trump era actually recommends legislative action to compensate Native Americans, Native Hawaiians, Puerto Ricans, and African Americans for the wealth denied and confiscated from those groups in the past.²²

So what does this mean for us teachers? It means that we need to change our concept of what environmental law really is. In some ways, our textbooks will need to be rewritten. In your first Emerging Environmental Law Curriculum Workshop, on the Essential Environmental Law Curriculum, Professor Steph Tai spoke about open-source textbooks.²³ That's such a great idea to make environmental law courses affordable to students who can't afford textbooks. These open-source textbooks could be designed to recognize this emerging expansive vision of environmental law. Or as a first step in the next semester, at least design one lecture exploring the question of what environmentalism really means in the twenty-first century.

Professor Jaffe:

To pick up on what both Hari and Helen were saying, the interdisciplinary nature of it may be what defines how we think about environmental law and environmental law teaching going forward. I think about it primarily from the clinician perspective, and it's interdisciplinary in at least two different ways. First, there are interdisciplinary opportunities outside of the law school but across a university setting. For instance, right now I've got our clinic students

<https://www.latimes.com/environment/newsletter/2020-06-04/why-communities-fighting-for-fair-policing-also-demand-environmental-justice-boiling-point>.

²¹ Kang, *Looking Toward Restorative Justice*, *supra* note 18.

²² Steffie Woodhandler et al., *Public Policy and Health in the Trump Era*, 397 LANCET 705, 719 (2021).

²³ See Keith Hirokawa et al., *Roundtable One: The Essential Environmental Law Curriculum*, 46 VT. L. REV. 552 (2022) (discussing a conversation between Professor Tai and Dean Kronk Warner on the value of open sources for students in compendiums to major casebooks and exercises).

working on a historic preservation case with two different groups of graduate students in the architecture school—one looking at health impact assessments, another looking at more traditional historic preservation issues.²⁴ Getting the architecture and law students working together is absolutely what legal teaching should be about, because that’s what practice is going to look like. As an environmental lawyer, you are going to need to know how to work with expert witnesses and other non-legal partners or clients. There’s no reason to wait until after you graduate from law school to begin developing the skills to be successful in those kinds of collaborative environments.

And, second, there are interdisciplinary opportunities within the law school itself. When I was a law student, if you wanted a career in environmental law you took a traditional environmental law survey class covering Clean Air Act, Clean Water Act, Endangered Species Act, NEPA sections.²⁵ But now, if you’re working on a Clean Air Act case, you’re also thinking about zoning issues.²⁶ And you need to be mindful of how this interacts with local government law. And you’re thinking about—and this is certainly true if you read Hari’s textbook on energy law—public utility commissions and public service commissions and how these issues come to the fore.²⁷ So it is no longer enough to enter the workforce with just administrative law and environmental law under your belt. You also need to be conversant in a wide array of legal topics that might come up if you’re working at an environmental nonprofit and trying to identify legal tools to address the environmental concerns created by an existing coal-fired power

²⁴ Mike Fox, *Historic Designation Boosts Clinic’s Efforts to Save Schoolhouse*, UVA TODAY (June 10, 2021), <https://news.virginia.edu/content/historic-designation-boosts-clinics-efforts-save-schoolhouse> (discussing collaborations with Professor Schaeffer Somers in the schools of architecture and medicine, Professor Genevieve Keller in the school of architecture, and Professor Cale Jaffe in the school of law).

²⁵ See generally Robert Percival et al., ENVIRONMENTAL REGULATION: LAW, SCIENCE & POLICY (2d ed.1996) (providing an example of a text Professor Jaffe used as a law student).

²⁶ See generally Kevin Perron, *Note: ‘Zoning Out’ Climate Change: Local Land Use Power, Fossil Fuel Infrastructure, and the Fight Against Climate Change*, 45 COLUM. J. ENV’T. L. 573, 577 (2020) (analyzing whether climate change mitigation sufficiently justifies local zoning law and whether “zoning out” ordinances can withstand legal challenge).

²⁷ Lincoln L. Davies, et al., ENERGY LAW & POLICY (3d ed. 2022).

plant. You've got to think about your advocacy in a very cross-cutting way in terms of just the legal issues, let alone engineering and other disciplines.²⁸

II. WHAT SKILLS WILL THE NEXT GENERATION OF ENVIRONMENTAL LAWYERS NEED TO BE PREPARED FOR PRACTICE?

Professor Kang:

I had just said that the vision of environmental law really is broadening. And maybe this is not contrary, but the other trend that's been in the works for quite a while now is the specialization that's required to practice environmental law. Cale mentioned environmental lawyers in the U.S. who are specializing in the PUCs or FERC or in other highly specialized fields. So, my answer to this question about the skills that we need to teach our next generation relates to that, as well as the broadening vision of environmental law. And there are, I think, two essential skills. The first is the skill of learning how to learn. The clinic is really a place where we teach this skill. The skill is as important as ever because of what I talked about, both highly specialized and, at the same time, broad knowledge that we environmental lawyers actually have to gain.²⁹ We can't teach every

²⁸ See, e.g., *About the Project*, SUSTAINABLE FERC PROJ., <https://sustainableferc.org/about-the-project/> (last visited May 10, 2022) (describing how the Sustainable FERC Project's advocacy works to expand clean energy resources on the grid and eliminate carbon pollution in the U.S. power sector); TRIP POLLARD, S. ENV'T L. CTR. SUSTAINABLE COMMUNITIES: BUILDING FOR THE FUTURE OF THE GREATER RICHMOND REGION 2 (2010), https://www.southernenvironment.org/wp-content/uploads/legacy/publications/Sustainable_Richmond_042010_Final.pdf (exploring potential government policies to promote sustainable communities, including reducing regulatory barriers and providing incentives).

²⁹ See YALE L. SCH. CAREER DEV. OFF., ENVIRONMENTAL LAW (2018), https://law.yale.edu/sites/default/files/area/department/cdo/document/cdo_environmental_law_public.pdf (explaining types of law that environmental lawyers generally practice, including regulatory, transactional, litigation, and public policy advocacy); *Environmental*, WHITEMAN OSTERMAN & HANNA LLP, <https://www.woh.com/practice-areas/7/Environmental-Practice-Group/> (last visited May 8, 2022) (asserting that because no attorney can master all aspects of environmental law, attorneys specialize in specific fields and should be familiar with key federal and state regulations on issues outside their areas of expertise).

skill in our doctrinal or experiential courses, but we can and do teach how to learn what you don't know: problem-solving skills—identifying the actors and causes of a problem, potential solutions, alternatives, weighing the benefits and costs, and advising clients on issues that don't have “2+2=4” answers. By the way, we had a very nice moment yesterday in the clinic when a student said, “I thought I wasn't really ready to work on cases, but I see now that I'm very ready.” That's partly because we throw them in with guidance and they're learning the skill of how to learn. They're teaching themselves in these very complicated cases that we bring in our clinics how to master terms they've never heard, technologies they've never heard about, and so on. That was a very nice moment.

The second skill that I want to talk about is something environmental clinics generally don't teach, but traditional legal services or anti-poverty law clinics do teach: the skill of deep listening and what that involves.³⁰ More and more clinics are developing environmental justice cases and even environmental justice programs.³¹ Students have demanded that clinics bring environmental justice cases, even in traditional natural resource law clinics—particularly in the last year, as a result of racial reckoning.³² Outside

³⁰ See Helen H. Kang, *Respect for Community Narratives of Environmental Injustice: The Dignity Right To Be Heard and Believed*, 25 WIDENER L. REV. 219, 253 (2019) [hereinafter Kang, *Respect for Community Narratives*].

³¹ See Seema Kakade, *Environmental Law Clinics not Only Persevere but Flourish in 2020*, JD SUPRA (Feb. 3, 2021), <https://www.jdsupra.com/legalnews/environmental-law-clinics-not-only-8783376/> (explaining growing number of clinics have begun focusing on environmental justice cases, specifically energy justice, food access, and cultural competency); Rick Mullin, *The Rise of Environmental Justice*, CHEM. & ENG'G NEWS, <https://cen.acs.org/environment/pollution/rise-environmental-justice/98/i32> (Aug. 28, 2020) (discussing environmental racism and growing awareness of this problem following COVID-19 outbreak and killing of George Floyd); Kang, *Respect for Community Narratives*, *supra* note 30, at 254 n.133.

³² See Kelsey Landis, *Environmental Law Students Are Behind a Movement to Protect Underrepresented Communities*, INSIGHT INTO DIVERSITY (June 24, 2019), <https://www.insightintodiversity.com/environmental-law-students-are-behind-a-movement-to-protect-underrepresented-communities/> (highlighting students' significant role in environmental justice clinic cases and the change they bring for underrepresented communities through legal expertise). See also Cydnie Golson &

academia, large environmental groups are increasingly incorporating public health and environmental justice into their dockets,³³ which is really great because the need is great.³⁴ But there is a potential trap because doing environmental justice work doesn't just involve announcing that you're suddenly now open for business for environmental justice. Rather, it involves developing really deep relationships with the client communities that we want to represent.³⁵ To give you an example, Marianne Engelman-Lado (who just left for

Jasmyn Noel, *How Students Are Leading Environmental Justice Initiatives on Grounds*, UNIV. VA.: UVA SUSTAINABILITY (June 24, 2021), <https://sustainability.virginia.edu/how-students-are-leading-environmental-justice-initiatives-grounds> (describing environmental justice initiatives at the University of Virginia and important role students play in making sustainability spaces more safe, equitable, and dynamic).

³³ See Alejandro C. Perez et al., *Evolution of the Environmental Justice Movement: Activism, Formalization and Differentiation*, 10 ENV'T RSCH LETTER 1, 9 (2015) (concluding legal advocates are better positioned to incorporate other fields, like public health, geography, sociology, and medicine in confronting environmental damages for vulnerable populations); Robert J. Brulle & David N. Pellow, *Environmental Justice: Human Health and Environmental Inequalities*, 27 ANN. REVIEWS PUB. HEALTH 103, 103–04, 111, 116 (2006) (arguing for integration of environmental inequality and its health impacts in research on health disparities and finding that many civil rights and community organizations have begun to address environmental issues such as toxic contamination, locally unwanted land uses, unsafe and substandard housing, and natural-resource extraction).

³⁴ See *It's Time for Public Health to Prioritize Environmental Justice*, NAT'L NETWORK OF PUB. HEALTH INSTS. (Apr. 8, 2021), <https://nnphi.org/its-time-for-public-health-to-prioritize-environmental-justice/> (stating environmental justice is a public health priority and encouraging public health professionals and organizations to address inequalities produced by unfair environmental practices); *Addressing Environmental Justice to Achieve Health Equity*, AM. PUB. HEALTH ASS'N (Nov. 5, 2019), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2020/01/14/addressing-environmental-justice-to-achieve-health-equity> (describing environmental injustice as a human rights issue and arguing that a health policy should encompass social, economic, and political factors and include affected communities in the process).

³⁵ MILAN GLOB., THE ROLE OF RELATIONSHIPS AND TRUST-BUILDING IN ENVIRONMENTAL JUSTICE AND PROTECTION (2021), <https://cpb-us-w2.wpmucdn.com/u.osu.edu/dist/7/61579/files/2021/12/TrustbuildingEnvironmentalJusticeReport.pdf> (discussing how strong relationships can be helpful when addressing water access and food security issues and providing ways to achieve these relationships); Kang, *Respect for Community Narratives*, *supra* note 30, at 254–60.

the Biden Administration and worked at Yale first and then Vermont Law School), when she developed her EJ clinic at Yale, she spent about a year, I believe, developing relationships.³⁶ As for Golden Gate University's clinic, we have decades-old relationships and an understanding of the clients' or the community's racial history, redlining practices, and the consequences those practices have had on land use and public health. For example, in San Francisco, there were redevelopment efforts in the 1960s that displaced Black residents into another area that was also redlined.³⁷ And now, because of mega-developments happening there, Black residents are being displaced again.³⁸ An understanding of all this history, and understanding our own biases toward people without economic means and toward people of color—those are areas where clinic directors and staff may actually have more to learn than some of our students. Students nowadays are quite savvy about racial injustice and inequality.³⁹ Some of us began our legal careers in civil rights law, and that helps, but I think that we need to recognize that EJ requires deep work from clinic directors.

Professor Jaffe:

I absolutely agree. Just to underscore what Helen said about teaching the skill of listening, or deep listening as she referred to it, it's absolutely something that is an essential legal skill for students going out into the world. It's also an essential skill if you're a clinic director or staff clinician and you're just trying to build those relationships with your students or community partners. In our pre-session, this group

³⁶ Anna Merriman, *Vermont Law School Launches Environmental Justice Clinic*, VALLEY NEWS (Dec. 15, 2019), <https://www.vnews.com/Vermont-Law-launches-Environmental-Justice-clinic-31262306>.

³⁷ See Kang, *Looking Toward Restorative Justice*, *supra* note 18.

³⁸ *Id.*

³⁹ Alexi N. Freeman & Lindsey Webb, *Positive Disruption: Addressing Race in a Time of Social Change Through a Team-Taught, Reflection-Based, Outward-Looking Law School Seminar*, 21 U. PENN. J. L. & SOC. CHANGE 121, 123–24 (2018), (arguing to implement a race-focused course (CRRS) in law school curriculum as approved by students); Mary Wood, *Law Students Play 'Vital Role' in Report on Ways to Reduce Racial Inequities in State*, UVA TODAY (Feb. 12, 2021), <https://news.virginia.edu/content/law-students-play-vital-role-report-ways-reduce-racial-inequities-state> (detailing how students played a vital role in recommending policy changes to reduce racial inequities in Virginia).

talked about some of the challenges that clinicians face as they wade into politically contentious issues. One way to insulate yourself from some of the criticism while wading into those controversies is to make sure you're doing your due diligence through listening. I'll share one anecdote that was especially useful for me. Our clinic is working on an EJ-related case involving a historic African American school that was built in the early 1900s and is currently threatened by a proposed landfill project. In February 2020, shortly before the pandemic put the brakes on in-person client meetings, our clinic caravanned to Cumberland County to tour the two-room schoolhouse and meet with former students and leaders of the AMMD Pine Grove Project.⁴⁰ Following that meeting, I had a back-and-forth email exchange with Muriel Miller Branch, President of the AMMD Pine Grove Project.⁴¹ I had misreported one detail of the school's history; she corrected me. I apologized for my error and told her, "I pledge to keep listening." Branch then responded with a message that continues to inform all of my attorney-client relationships:

The most powerful words spoken in this entire thread are, "I pledge to keep listening." That's all my community has ever asked, to be heard, to be valued and to have equal access to resources. We don't mind doing the work, but when our two centuries of hard work is overshadowed and/or devalued, it is incumbent upon me, as one of the community's storytellers, to correct the record. Thank you for giving my community that platform.⁴²

⁴⁰ *About Us*, AMMD PGP, <https://www.ammdpinegroveproject.com/about-us> (last visited May 10, 2022) (describing the AMMD Pine Grove's Project objective "to protect, restore, and repurpose Rosenwald Pine Grove Elementary School" as a cultural center in Cumberland County).

⁴¹ Sydney Trent, *An Educational Haven for Black Children During Segregation Makes Endangered Places List*, THE WASH. POST (June 3, 2021), <https://www.washingtonpost.com/history/2021/06/03/endangered-historic-places-list-pine-grove-virginia/> (describing President Branch's motivation and efforts to save Pine Grove Elementary, one of the most endangered historic places of 2021).

⁴² Redacted email from Muriel Miller Branch to Cale Jaffe (June 3, 2020) (on file

Dean Osofsky:

If there's anything I have taken away from almost five years as a dean and my prior work, it is that people need to feel heard and inclusive leadership is incredibly important. I honestly believe that emotional intelligence is probably 90 percent of the skill needed in so many jobs.⁴³ I just want to put a fine point on a couple of things that both Helen and Cale said. As a dean, I have gone around and talked to practicing lawyers a lot about what it means to give them prepared lawyers to employ. And the number one thing that they feel like people lack coming out of law school are problem-solving skills. By that, they mean a combination of deep listening, emotional intelligence, cultural competence and a whole set of other things, but it is also about, how do they approach a problem when it comes up? How do they break down the problem areas?

For environmental lawyers, I think specific scientific and technical knowledge can help with problem solving. I ran a joint degree program at Minnesota before I was a dean, and an important part of my leadership at both Penn State and Northwestern has focused on interdisciplinary partnerships, research, and education.⁴⁴ I have seen students gain great value from getting a STEM degree together with their J.D., for instance if they wanted to go into toxics.

I completely agree with everything Helen and Cale said about community-based relationships. Part of why the deep listening to clients is so important is that different clients have varying needs.

with Professor Jaffe) (unredacted email protected as confidential by attorney-client privilege and work-product doctrine).

⁴³ Dean Osofsky has found TRAVIS BRADBERRY & JEAN GREAVES, *EMOTIONAL INTELLIGENCE 2.0* (2009) to be a particularly helpful resource.

⁴⁴ During her deanship at Penn State, Dean Osofsky made numerous joint hires and the law school built many new interdisciplinary partnerships, including with the College of Medicine, College of Engineering, College of Earth and Mineral Sciences, Institute for Computational and Data Sciences, Rock Ethics Institute, and Institutes of Energy and the Environment. *Innovative Legal Education: Legal Education for a Changing Society*, PENNSTATE LAW, <https://pennstatelaw.psu.edu/penn-state-law/innovative-legal-education> (last visited May 22, 2022). At Northwestern, Dean Osofsky established an inaugural Associate Dean of Innovation and Partnerships to explore new opportunities for interdisciplinary collaboration. *New Leadership Appointment at Northwestern Pritzker Law*, NW. PRITZKER SCH. OF L. (Jan. 4, 2022), <https://news.law.northwestern.edu/professor-sarah-lawsky-appointed-vice-dean/>.

Addressing environmental justice and energy justice problems requires multiple types of law and legal strategies, including among others, civil rights, torts, environmental, and energy law.⁴⁵ There are different legal areas involved, and so part of what our students need to practice in that space is legal knowledge beyond environmental law. For example, community leaders like Jamez Staples in North Minneapolis have worked to address the fact that clean energy jobs were not coming to North Minneapolis because there was no training facility that would allow people to get those jobs within an hour of this neighborhood.⁴⁶ Our University of Minnesota students thought through a different set of legal issues when a community in Northern rural Alaska wanted help developing a solar ordinance. Or in the aftermath of BP's Deepwater Horizon, when a lot of the things that were initially coming out were not EJ-focused enough, our class provided an extensive report on those issues to the Commission.⁴⁷ So I think it is also about teaching our students the skills of listening to clients to understand the problem and then exploring the different types of applicable law. The kinds of things that matter to clients, which should drive the work, are going to vary in a context specific way.

⁴⁵ CLIFFORD VILLA ET AL., ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION (3d ed. 2020); Hari M. Osofsky, *Learning from Environmental Justice: A New Model for International Environmental Rights*, 24 STANFORD ENV'T L.J. 71 (2005).

⁴⁶ For more recent efforts to address this issue, see Andrew Hazzard & Sahan Journal, *Minnesota Clean Energy Jobs Rebounded—but Workers of Color Need More Opportunities*, ENERGY NEWS NETWORK (Aug. 27, 2021), <https://energynews.us/2021/08/27/minnesota-clean-energy-jobs-rebounded-but-workers-of-color-need-more-opportunities/> (detailing how a lack of training centers for clean energy causes a lack of these jobs for people of color); Yasmine Askari, *North Minneapolis Renewable-Energy Training Center to Get a Boost from the State*, MINNPOST (May 7, 2021), <https://www.minnpost.com/environment/2021/05/north-minneapolis-renewable-energy-training-center-to-get-a-boost-from-the-state/> (explaining how community member planned to build community training center to increase jobs).

⁴⁷ Dean Osofsky and her students produced an article that emerged from that work. Hari M. Osofsky et al., *Environmental Justice and the BP Deepwater Horizon Oil Spill*, 20 N.Y.U. ENV'T L. J. 99, 110 (2012) (analyzing how first response to BP oil spill lacked environmental justice concerns).

III. WE'VE BEEN TALKING ABOUT BOTH CRITICAL SKILLS, LIKE PROBLEM SOLVING, AND CRITICAL ISSUES, LIKE INCORPORATING SOCIAL EQUITY AND INTERDISCIPLINARY WORK. WHAT IS THE ROLE OF CLINICS AND EXPERIENTIAL EDUCATION IN INTEGRATING THOSE CRITICAL SKILLS AND ISSUES IN LEGAL EDUCATION?

Professor Jaffe:

From the perspective of a director of a clinical class and program, I'll say that one of the challenges that clinics have faced historically, or at least that clinical law faculty are certainly acutely aware of, is that clinics are resource intensive programs.⁴⁸ While you're running a clinic class, you may have or need an additional budget for things like expert witnesses to assist with your cases. So the cost of teaching your class might be higher than a traditional large lecture class. And yet you've got a seminar-sized class, or at least a smaller number of students, rotating through the clinic. Some have assumed that the cost of running a clinical program would be prohibitively expensive, but the data simply does not bear that out.⁴⁹

Still, how do we justify putting resources into these clinical programs? Are they really worth all that investment? Obviously, my view is absolutely. Part of the reason it's so important, especially now, is because of the confluence of a public interest, public service mission of the university, and the pedagogical mission of training lawyers for the future. At the beginning of every academic year at the University

⁴⁸ To say that clinics have faced these challenges "historically" is to acknowledge that the debate over the value of clinical legal education is not new. *See, e.g.*, Mark V. Tushnet, *Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 GEO. WASH. L. REV. 272, 273 (1984) ("When faculties feel pressure to reduce budgets or to restrain rates of increase, they look first to, and often not beyond, the clinical curriculum. The reason given is clinical education's unusually high cost. In making budgetary decisions, however, the relevant figure is not cost but the cost-benefit ratio. Yet, observing that clinical education is expensive says nothing about the cost-benefit ratio. Indeed, defenders of clinical education can make a good cost-benefit case . . .") (footnote omitted).

⁴⁹ Robert R. Kuehn, *Universal Clinical Legal Education: Necessary and Feasible*, 53 WASH. U. J.L. & POL'Y 89, 96 (2017) ("Empirical evidence shows that clinical education can be provided to all law students without additional costs to those students. In fact, many schools have been successfully—and economically—providing such clinical experiences to all their students for years.").

of Virginia School of Law, we'll have a public service event for the clinics, experiential programs, externships, pro bono, etc., to grab anyone else that might be interested in learning about these and bring them together. We've got a 1L class of about 300 in a typical year, and we get about 35–50 people to show up to this event each year.⁵⁰ However, the last three years it has been well over 100 people. We've had to move it to one of the largest rooms in the law school because it's packed out the door. Students coming to law school in the last couple of years are particularly interested in public service and public engagement, which we're seeing through greater interest and competition within our Law and Public Service program.⁵¹ And clinics are the perfect vehicle for addressing that desire to participate in public service while also helping students with the traditional task of learning to think like a lawyer. Law students don't want to wait three years to begin work on the issues they care about; they want to begin on day one. Clinical and experiential programs are essential for combining both the public service piece and the pedagogical piece.

Dean Osofsky:

With two clinicians here, I think the way I can add value on this question is talking about quasi-clinical courses. I am an unusual doctrinal faculty member because of what convinced me to go into legal academia. I had been practicing civil rights law with a focus on environmental justice at Center for Law in the Public Interest. I spent a year in China as a Yale-China Legal Education Fellow teaching US civil rights law and collaborating to start a labor law clinic at Sun Yat-

⁵⁰ See generally *Facts and Statistics*, UNIV. OF VA. SCH. OF L., <https://www.law.virginia.edu/facts-and-stats/overview> (last visited Apr. 29, 2022); *University of Virginia Law School Overview*, U.S. NEWS, <https://www.usnews.com/best-graduate-schools/top-law-schools/university-of-virginia-main-campus-03162> (last visited Apr. 29, 2022).

⁵¹ See *Program in Law and Public Service*, UNIV. OF VA. SCH. OF L., <https://www.law.virginia.edu/academics/program/program-law-and-public-service> (last visited May. 9, 2022) (indicating that the University of Virginia's School of Law Program in Law and Public Service holds 25 slots open for first-year fellows and up to five slots for second-year fellows).

sen University,⁵² which was the law school's first clinic and was launched in the second year of clinical legal education in China. 9/11 happened my first day of teaching civil rights in China, which really impacted my experience. Because I started my career with those experiences, when I entered doctrinal teaching, it was important to me important to teach classes in which we did projects for NGOs and government because I thought it could help make a difference in the world and support student learning. I thought rather than do a simulation, let's do something that actually helps an NGO or a governmental organization in the class. It is better learning for the students, because when you are working with real clients, it is different than a simulation—things evolve and get complex sometimes. And so from the very beginning of my academic career, when I was a junior professor at Whittier Law School, I started doing this work with Earthjustice, for example, where we were helping them with environmental rights reports.⁵³ And then my classes at the University of Oregon worked with the Western Environmental Law Center and at Washington and Lee worked with the Southern Environmental Law Center, helping those organizations bring climate change litigation into their environmental practices. At the University of Minnesota, I taught a number of energy and environmental justice project-based classes, as well as a civil rights and social justice project-based course. I think it is important to encourage doctrinal faculty to do that kind of teaching, and it is incredibly important to support and build clinics. When I was at Penn State, we were extremely grateful for a million-dollar gift from Katie Moussouris through the Pay Equity Now Foundation to start the Anuncia Donecia Songsong Manglona Lab for Gender and Economic

⁵² Sun Yat-sen University, ATCHINA, <http://www.at0086.com/zhshu/college.aspx?c=491> (last visited May 22, 2022).

⁵³ For an example of these reports, see *Earthjustice Presents 2004 'Human Rights and the Environment' Report to UN*, EARTHJUSTICE (Apr. 6, 2004), <https://earthjustice.org/news/press/2004/earthjustice-presents-2004-human-rights-and-the-environment-report-to-un>. Dean Osofsky also assisted Earthjustice and CIEL on the petition to the Inter-American Commission on Human Rights on behalf of the Inuit Circumpolar Conference claiming that the U.S. failure to adequately address climate change violated their rights.

Equity to advance gender equity through litigation and other projects.⁵⁴ At Northwestern, the Bluhm Legal Clinic's more than 20 clinics within 13 centers, including its Environmental Advocacy Center, make an important impact on society while teaching our students.⁵⁵

But there is a space in which NGOs need help that is not necessarily like traditional litigation help, and that work might not be a perfect project for a litigation clinic. So, these other experiential courses doing that policy work occupy an important space in the environmental law curriculum. For example, one of my favorite class projects was for the American Wind Energy Association. They were having problems around elevator standards for wind towers. As wind towers get taller, they need elevators and it costs a lot more if you have to meet public elevator standards.⁵⁶ So my students worked with them to look at how you make elevator law. I learned a lot about elevator law, and it turns out that how you do it varies a lot from state to state. My students created a guide for the American Wind Energy Association of who to contact, what kind of law applies, and what is the process for all of these different things related to wind tower elevators. That is not really a traditional clinic project, right? But it really helped the American Wind Energy Association advance environmental goals. I think there is real value to building more of those kinds of experiential, project-based opportunities into our broader curriculum.

Professor Kang:

There are standard answers about why clinics matter—students learn by doing and find meaning in the clinic, and different learning modalities in the clinic work reach students that may not have found

⁵⁴ *About*, MANGLONA LAB, <https://www.manglonalab.org/about> (last visited May 22, 2022).

⁵⁵ *Bluhm Legal Clinic*, NW. PRITZKER SCH. OF L., <https://www.law.northwestern.edu/legalclinic/> (last visited May 22, 2022).

⁵⁶ Kathie Zipp, *Long Overdue: A National Standard for Wind Tower Service Lifts*, WINDPOWER ENG'G & DEV. (Mar. 5, 2012), <https://www.windpowerengineering.com/long-overdue-a-national-standard-for-wind-tower-service-lifts/> (describing the problems with elevators in wind towers meeting the same standards and requirements as building elevators).

their place in doctrinal law school classes.⁵⁷ Students disaffected by the 1L curriculum find meaning in the clinic.⁵⁸ Students discover values and identities and discover dealing with uncertainties in the law in the clinic. Students have the opportunity in clinics to scaffold the skills they've learned in 1L and 2L. These are all valid parts of legal education. I'd like to emphasize two things special about environmental clinics. Environmental clinics, possibly even more so than legal service clinics, offer opportunities for students to lead and manage really complex cases that even senior associates in environmental law firms wouldn't be entrusted to lead.⁵⁹ Students argue really big cases in the trial courts, appellate courts, and even the U.S. Supreme Court, as well as before agency decisionmakers. For instance, when the City of San Francisco attempted to demolish Candlestick Park, where the 49ers and the Giants played, without

⁵⁷ See generally Colleen F. Shanahan et al., *Measuring Law School Clinics*, 92 TUL. L. REV. 547, 549 (2018), (concluding that clinics effectively prepare law students for real world practice); Stephen R. Miller, *Field Notes from Starting a Law School Clinic*, 20 CLINICAL L. REV. 137, 152 (2013), https://www.law.nyu.edu/sites/default/files/upload_documents/Stephen%20Miller%20-%20Field%20Notes.pdf (explaining importance of different learning methods provided in clinic).

⁵⁸ See *What Is a Law School Clinic Like? Students Explain*, NEW ENG. L., <https://www.nesl.edu/blog/detail/what-are-law-school-clinical-programs-really-like-students-explain> (last visited Apr. 27, 2022) (explaining how much students enjoyed clinic experience and how it prepared them for their legal careers); Deborah N. Archer, *Open to Justice: The Importance of Student Selection Decisions in Law School Clinics*, 24 CLINICAL L. REV. 1, 5 (2017), https://www.law.nyu.edu/sites/default/files/upload_documents/Deborah%20Archer%20--%20Student%20Selection%20in%20Clinics.pdf (detailing how law students benefited from clinic experience).

⁵⁹ See, e.g., *Environmental Advocacy Clinic*, VT. L. SCH., <https://www.vermontlaw.edu/academics/clinics-and-externships/environmental-advocacy-clinic> (last visited Apr. 27, 2022) (providing the types of cases that VLS's environmental advocacy clinic students work on); *Abrams Environmental Clinic*, U. CHI. L. SCH., <https://www.law.uchicago.edu/clinics/environmental> (last visited Apr. 27, 2022) (describing how Abrams Environmental Law Clinic works to solve some of Chicago's most pressing environmental problems); *Environmental Law Clinic*, STAN. L. SCH., <https://law.stanford.edu/environmental-law-clinic/#slnav-people> (last visited Apr. 27, 2022) (describing the types of cases Stanford's Environmental Law Clinic has worked on).

notifying residents,⁶⁰ students presented arguments to the planning department.⁶¹ And we prevailed in getting the city to use a different method of demolition that wouldn't cause so many problems for a community that was already suffering from too much particulate matter pollution.⁶² And then the more interesting skill to me that clinics provide is the "room to fail." And what I mean by that is that students fail at a task or sometimes they don't even come through with a task for whatever reason; or they are fabulous writers who take a clinic course and discover that persuasive writing is quite different. When they really fail—hopefully mid-semester with time to course-correct—I think that's an opportunity, actually. I don't love failure, but when it happens, it's a unique opportunity for them to learn something they won't forget. If you fail and learn, students won't forget that experience and what made them actually recover. I love that aspect of clinical learning, and it happens almost every semester. I like to say that the clinic is where we want you to fail—"I'm glad you failed" because that really creates room for learning.

Professor Jaffe:

That's such a great point about the room to fail. That's also one of the scariest things about teaching a clinic. You feel like you're driving a car from the back seat and you want them to steer, but you're really nervous. You're jumping forward. I say this as the parent of a

⁶⁰ Lisa Fernandez, *Demolition of Candlestick Park Underway; New Development To Replace Old Stadium*, NBC BAY AREA (Feb. 4, 2015), <https://www.nbcbayarea.com/news/sports/demolition-of-candlestick-park-underway-new-development-replacing-stadium/114347/>; Lauren Hepler, *New Legal Challenge Revives 'Huge War' over Hunters Point's Toxic Legacy*, S.F. CHRON. (Jan. 25, 2021), <https://www.sfchronicle.com/local/article/New-legal-challenge-revives-huge-war-over-16257916.php>.

⁶¹ See, e.g., Letter from Golden Gate University School of Law's Environmental Law and Justice Clinic to Sarah Jones & Joy Navarette, S.F. Planning Dep't (Nov. 18, 2014), <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1029&context=eljc> (discussing why community residents should be involved in the decision making about demolishing the stadium because it directly impacts their air quality and health).

⁶² See Kang, *Respect for Community Narratives*, *supra* note 30, at 258–59.

16-year-old who just got her license in February and hit a deer two weeks later. She's fine and the car is finally out of the body shop.

The other point that I wanted to touch on in terms of the role of clinics is a value they provide to students, especially those coming straight through from college. Traditional academic training, from grade school through college, can lead students to focus on their own goals. In a traditional setting, the academic project is focused on what the student gets out of it. If the student doesn't do well—if they blow off a paper, for example—that's unfortunate but it's just their bad grade and no one else's. No one else is impacted. But clinics force students to get involved in academic projects where there are a lot of other people relying on you. If you miss a deadline, it is not just the student's failure—it is *our* team's failure if things go poorly. It's our client who suffers.

I teach another class, Professional Responsibility in Public Interest Law Practice,⁶³ and the standard conception of legal ethics that students have to learn shares something with the principal-agent concept⁶⁴—that it's not your case, it's not your brief that you're working on, it's not your oral argument you're preparing for. It's the client's brief, the client's argument, their voice. You're just helping them get their voice out there. Getting students—who've been students all the way since they were in kindergarten up through until they get to a law school program—to stop thinking about how they are doing in an academic class and get them to realize: oh, it's no longer about me, it's about my role in helping somebody else.

Dean Osofsky:

It is so important that we create a culture in our courses and in our law schools more broadly in which we encourage experimentalism. Now, of course, with clients, we always have to be careful to provide

⁶³ *Professional Responsibility in Public Interest Law Practice*, UNIV. OF VA. SCH. OF L.: COURSES, <https://www.law.virginia.edu/courses/view/121819294> (last updated May 6, 2022) (listing Professor Jaffe as the instructor for Section 1 of the course in Fall 2021).

⁶⁴ GEOFFREY C. HAZARD, JR. ET AL., *THE LAW AND ETHICS OF LAWYERING* 16–20 (6th ed. 2017) (discussing role-differentiated morality and the Standard Conception of legal ethics).

them with competent legal service.⁶⁵ But I think more broadly, when we try new things, we have to be open to them failing or facing challenges. Who knows how that idea I had about immersive technology is going to work in the classroom. There probably will be glitches. And part of how we advance things is by being open to piloting things, open to trying things when we don't know quite how they'll work and then learning from our experiments.

Dean Rushlow:

From my time directing a clinic at VLS,⁶⁶ I totally agree that the clinic is supposed to be the safe space where students can try and fail. I'd much prefer they fail in the clinic than in their externship or summer job, where employer goals will likely come before educational goals. The clinic is supposed to be the place where it's safe for students to try things and evolve to a point where they'll then be able to handle this work when they do ultimately go to an externship or to their first job.

IV. HOW CAN WE TEACH STUDENTS TO AFFECT CHANGE IN AN INCREASINGLY POLARIZING WORLD AND OFTEN INTRANSIGENT LEGAL SYSTEM?

Dean Osofsky:

This is crucial because finding pathways to bipartisanship, to people working together across difference, is really crucial to moving things forward and it is not as impossible as it looks. Jackie Peel and I

⁶⁵ *Rule 1.1: Competence*, AM. BAR ASSOC., https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/ (last visited May 2, 2022).

⁶⁶ Dean Rushlow directed Vermont Law School's Environmental and Natural Resources clinic. She also directs the Environmental Law Center. *Jennifer Rushlow*, VT. L. SCH., <https://www.vermontlaw.edu/directory/person/rushlow-jennifer> (last visited May 20, 2022); Press Release, *Jennifer Rushlow to Lead Vermont Law School's Environmental Law Program* (Aug. 9, 2018) (reprinted in VTDIGGER), <https://vtdigger.org/2018/08/09/jennifer-rushlow-lead-vermont-law-schools-environmental-law-program/>; *Accomplished Attorney and Innovative Advocate To Lead Nation's Top Environmental Law Program at Vermont Law School*, LAW.COM (Aug. 8, 2018), <https://www.law.com/legalnewswire/news.php?id=819120>.

did some research work on this issue in our piece called *Energy Partisanship* a few years ago.⁶⁷ And we have been looking at different ways to build on it since. What we found was, first of all, that it is so crucial to recognize—and I also found this in my one-on-one work, I’ll give an example from when I was in rural Virginia as well—that it is not just about providing people with more information. I think sometimes people think that if you just tell people enough information, they will agree with you. And, you know, I have seen people shake their heads. I think the last year certainly reiterated that this might not always be a successful strategy. It is about understanding who people trust. How are they framing the world? And are there ways in which people’s framing can actually come together in a meaningful way?⁶⁸ What we found was, substantively, when there is real economic alignment with environmental goals, you tend to see Republicans and Democrats moving forward together.⁶⁹ For example, Tesla received criticism in the 2021 election, but after it became very successful, Republican leaders wanted the battery factory in their state.⁷⁰ Republican governors in high wind energy capacity states are supportive of wind energy.⁷¹ There are these places where you can find those win-wins. Another place where we saw this a lot was in the aftermath of disaster. It is temporary, but when disaster strikes, you tend to see people from both parties come together, like after Superstorm Sandy or other major storm events.⁷² We also found that scaling down really matters. Local elections often are often less partisan and sometimes do not even list parties on the ballot. And local land use policy can get really practical.⁷³ We also found, interestingly enough, that you can sometimes find those win-wins with corporations

⁶⁷ Hari M. Osofsky & Jacqueline Peel, *Energy Partisanship*, 65 EMORY L. J. 695 (2016) (advocating for an increase in energy regulations through partnerships in the Executive Branch, state and local governments, and private sector).

⁶⁸ *Id.* at 710–16.

⁶⁹ *Id.* at 724–35.

⁷⁰ *Id.* 732–34.

⁷¹ *Id.* 729–31.

⁷² *Id.* at 736–47.

⁷³ *Id.* at 750–58.

because of their incentive structures around economic risk, though of course corporations in this space are a really diverse group.⁷⁴

To give a couple quick examples of the roles that I think law schools and universities can play in fostering this—when I first came to Penn State, I got asked to lead forward a pilot project for our Center for Energy Law and Policy on methane emissions regulation of unconventional oil and gas, which was one of the most contentious energy issues in Pennsylvania at the time.⁷⁵ What we did was we brought people into a room together—leaders from industry, major environmental NGOs, Republicans and Democrats—and reframed the question for them. We asked them: if you took the latest science and technology coming out of Penn State and elsewhere, how could you come up with better regulations? Could you come up with regulations that were actually better for both environment and industry in this space? The conversation wasn't always constructive, but it was a lot more constructive than it had been in Harrisburg. As universities, we can play this convening role to have people come together and have constructive dialogue across difference, which is extremely important in our society right now and desperately needed.⁷⁶

I'll share one other example from when I was working on climate change in rural Virginia. Everywhere I have worked, I've occasionally encountered climate skeptics and I always could tell from the look someone got on their face when they heard I was working on climate change—again, trying to use those emotional intelligence skills—that they were a climate skeptic. And what I found worked every single time—I never had it not work—was to say, you know, climate-change science is complex. There are things about which we have greater certainty, and things about which we have less certainty. There is a lot of certainty about the big picture, but these things that we care about, like “will these emissions right here, right now, cause these impacts at particular place and time,” that is where the

⁷⁴ *Id.* at 782–92.

⁷⁵ *Managing Methane Emissions from Unconventional Oil and Gas Operations*, PENNSTATE CTR. FOR ENERGY L. & POL'Y, <https://celp.psu.edu/methane/> (last visited May 22, 2022).

⁷⁶ *Id.*

uncertainty is often higher.⁷⁷ But the bottom line is, if you think that there is some risk that climate change is happening, then we have to think about how we manage the risk. And once I reframed it as a risk-management exercise, every single climate skeptic was willing to have a conversation with me. This circles back to where I started, which is that I think quoting alarmist things at climate skeptics does not actually move them. But if you acknowledge the complexity of science, something that everybody intuitively knows about climate change science, and then can get into a real conversation with knowledge about the science itself and the state of the science, it actually can often move people along.⁷⁸

Professor Jaffe:

I had an article on melting polarization on climate change politics, which I went back and looked at recently, and it feels a little Pollyannaish, to be honest, in terms of bridging political divides.⁷⁹ I think where I've moved on the issue, regarding what we teach students how to cross these divides, builds on exactly what Hari's talking about in terms of getting down to a more local level or at least a state level. An idea I'm hoping to build out into a longer article next summer is on state-centric environmentalism.⁸⁰ In other words, let's not get caught

⁷⁷ For a summary of consensus climate change science, see CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS, IPCC SIXTH ASSESSMENT REPORT (2021), <https://www.ipcc.ch/report/ar6/wg1/>. For a discussion of the continued progress in Climate Science, see P.A. Arias et al., 2021: TECHNICAL SUMMARY, in IPCC SIXTH ASSESSMENT REPORT, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS 47–52 (2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_TS.pdf.

⁷⁸ See Osofsky & Peel, *Energy Partisanship*, *supra* note 67, at 710–16.

⁷⁹ Cale Jaffe, *Melting the Polarization Around Climate Change Politics*, 30 GEO. ENV'T L. REV. 455, 488 (2018) (“The ‘Trump moment’ therefore gives environmental advocates the chance to challenge political conventions and break through the intense polarization and partisanship that has blocked progress on global warming in recent years.”).

⁸⁰ See Cale Jaffe, *Federalism and Environmental Advocacy*, REGULATORY REV. (July 23, 2020), <https://www.theregreview.org/2020/07/23/jaffe-federalism-environmental-advocacy/> (summarizing the Supreme Court's recent decisions on state-centric environmental regulations); see also *Power Mapping Your Way to Success*, UNION OF CONCERNED SCIENTISTS (Apr. 2018),

up in whether we're going to pass the Waxman-Markey bill and have all the energy go to that, as was the focus in 2009.⁸¹ But instead, think what can we do at the state or local level where politics are not so deeply entrenched.

One way I try to do that from a clinical perspective, in terms of practicing state-centric environmentalism with our students, is I take a concept from the advocacy world called power mapping. If you know anyone who grew up in grassroots advocacy, they know all about power mapping, which is the basic idea that if you want to affect change on a given issue, you first need to figure out who is the decisionmaker that can actually give you the victory you need.⁸² And then what are the spheres of influence that can influence that decisionmaker? I think of it in terms of a bridge-building exercise—we want to work on an issue, so who do we need to bring into the discussion? Well, we need to talk to this particular staff person at the Army Corps of Engineers, but we also need to talk to this community group that's feeling left out and make sure that they are part of the discussion. I haven't come up with a good term—for right now I'm calling it legal power-mapping with my clinic students, but it's not so much legal as it is community power-mapping. It is a way to actually get the change that our client wants without driving a wedge. It's a matter of figuring out who needs to be at the table.

https://www.ucsusa.org/sites/default/files/attach/2018/07/SN_Toolkit_Power_Mapping_Your_Way_to_Success.pdf (describing power mapping as a visual exercise that helps identify levers and relationships one can use to gain access and influence over a target).

⁸¹ Jaffe, *Melting the Polarization Around Climate Change Politics*, *supra* note 79, at 491–94 (2018) (discussing the Waxman-Markey bill); See Ryan Lizza, *As the World Burns: How the Senate and the White House Missed their Best Chance To Deal with Climate Change*, *NEW YORKER* (Oct. 11, 2010).

⁸² See, e.g., Nate Ela, *Urban Commons as Property Experiment; Mapping Chicago's Farms and Gardens*, 43 *FORDHAM URBAN L. J.* 247, 254–55 (2016) (“One, power mapping, is an analytical tool familiar to organizers for social change. This form of mapping traces relations of power in order to identify pressure points by which organizers might influence those relations.”).

Professor Kang:

Oh, I love what you said—bridge making, power mapping. It sounds like a great exercise to do in a clinic in any case. I do have an example of a collaboration. This is a collaboration between parties that don't traditionally get along: community advocates and polluters. There is a community group called the West Oakland Environmental Indicators Project.⁸³ West Oakland is a historically redlined community, and the community group collaborated with polluters.⁸⁴ A port in West Oakland, which is a significant source of pollution,⁸⁵ the regional air district, the City of Oakland, and state agencies had to produce one of the first “community air emissions reduction plans,” which the California Air Resources Board approved under a state statute that's just entering its implementation stage.⁸⁶ We're helping

⁸³ *West Oakland Environmental Indicators Project: Building Resilient Communities*, W. OAKLAND ENV'T INDICATORS PROJ., <https://woeip.org> (last visited May 22, 2022).

⁸⁴ See CalEPA, *Redlining and Environmental Injustice in California*, POLLUTION & PREJUDICE (Aug. 16, 2021), <https://storymaps.arcgis.com/stories/f167b251809c43778a2f9f040f43d2f5> (noting that West Oakland suffers from bay flat odors and smoke and grime from railroad shop and local industry); Laura Klivans, *West Oakland Environmental Justice Leaders on What's Changed, What Hasn't in the Neighborhood*, KQED (Apr. 28, 2020), <https://www.kqed.org/science/1962832/west-oakland-environmental-justice-leaders-on-whats-changed-what-hasnt-in-the-neighborhood> (noting that heavy industry and discriminatory policies like redlining in West Oakland have exposed residents, mostly people of color, to more pollution than other Bay Area neighborhoods); see also OWNING OUR AIR: THE WEST OAKLAND COMMUNITY ACTION PLAN—VOLUME 1: THE PLAN, W. OAKLAND CMTY. ACTION PLAN STEERING COMM. (2019), baaqmd.gov/~media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en.

⁸⁵ *The Seaport Logistics Complex Story*, OAKLAND SEAPORT, <https://www.oaklandseaport.com/development-programs/seaport-logistics-complex/the-seaport-logistics-complex-story/> (last visited Apr. 29, 2022).

⁸⁶ See *Community Air Protection Program*, CAL. AIR RES. BD., <https://ww2.arb.ca.gov/capp> (last visited Apr. 29, 2022) (explaining that the California Air Resources Board (CARB) established the Community Air Protection Program, which focuses on reducing exposure in communities most impacted by air pollution); see also *Community Air Protection Program; 2020 CARB Board Update*, CAL. AIR RES. BD., <https://ww2.arb.ca.gov/our-work/programs/resource-center/ab-617-implementation> (last visited Apr. 29, 2022) (summarizing overall progress on CARB's Community Air Protection Program).

the group with the implementation part, but we did not help the group with the front part, the collaboration. I actually was very skeptical at first about the collaboration, which all began many years ago, even before this new law came into effect. And that's the acorn that grew into an oak tree. The participants had worked together previously under a grant given by U.S. EPA called, "Ditching Dirty Diesel."⁸⁷ So, they started working with EPA Region 9's Environmental Justice Office, the regional air district, and some of the polluters. That process built relationships, which carried over to this new project. And the air district, from what I hear, assigned as reading Richard Rothstein's book, *The Color of Law: A Forgotten History of How Our Government Segregated America*, and the parties had a third-party facilitator who oversaw these collaborations. It's sort of a mini "truth and reconciliation" in some way. I want to write about a truth and reconciliation process that's needed for environmental justice communities. I just recently heard that somebody is actually engaged in a truth and reconciliation effort as it relates to environmental law.⁸⁸ So anyway, that's a really wonderful example of a collaboration.

Professor Rosenbloom:

Before I go to the next question, Tim Duane, I wanted to just check in with you.⁸⁹ We've been talking a lot about local governments and land use and planning. Earlier in the discussion, you had a couple of points that that were made in the chat box. Did you want to put those out to the floor at all before I go to the next question?

⁸⁷ See *National Grants: Diesel Emissions Reduction Act (DERA)*, EPA (Mar. 19, 2021), <https://www.epa.gov/dera/national> (noting that EPA planned to award about \$46 million in competitive grant funding under the Diesel Emissions Reductions Act National Grants Program).

⁸⁸ Deborah McGregor, *Reconciliation and Environmental Justice*, 14 J. GLOB. ETHICS 222 (2018), <https://philpapers.org/rec/MCGRAE>.

⁸⁹ Tim Duane is a Professor at University of San Diego School of Law with areas of expertise in climate change, environmental law, and public lands. *Timothy Duane*, U. SAN DIEGO SCH. OF L., https://www.sandiego.edu/law/faculty/biography.php?profile_id=5700 (last visited Apr. 29, 2022).

Professor Duane:

I spent 18 years on the faculty at Berkeley in the planning program, and what I found were two things. One is that we had graduate students who all had really good professional experience, many with relationships to some of the NGOs that are working in this space. And so they were an incredible resource. They typically had an older median age and much more experience than typical law students. And the second is that making that connection to the organizations is essential so that you're not coming to them with a problem that they might have an interest in, but rather they're coming to you with a problem that you can help solve because they're grounded in the communities and they're actually going to be able to help identify something that's really useful to them. And then you could have, as Helen was suggesting, ongoing long-term relationships. But the groundwork for that has to happen well, well, well before you take on the project, you have to have the personal relationships, but also help to frame what the problem is so that your students are actually working on something that that has direct relevance and is grounded in that group. The problem of failure is to some degree mitigated because the group has already identified what the problem is and they own it, too. So if you don't solve the problem in the same way, it's not just you coming in and promising something you couldn't deliver, but they're actually part of it. Thanks.

Professor Jaffe:

Yeah, I see environmental clinics, in particular, do that because environmental law is so resource intensive. A lot of clinics end up having a long-term partnership with the sort of boots-on-the-ground environmental NGOs. I was an attorney at the Southern Environmental Law Center (SELC)⁹⁰ before I joined the faculty at UVA, and I still work with SELC on a lot of our clinic projects. They can help us have those long, deep roots with a community on an issue because they've been there for a long time. Other clinics work with organizations like

⁹⁰ *About Us*, S. L. ENV'T CTR., www.southernenvironment.org (last visited May 9, 2022) (describing the center as a nonprofit and nonpartisan organization that advocates for and protects the right to clean air, water, and livable climate).

NRDC⁹¹ or Earthjustice, and you can leverage that community partner not just for the legal work that they bring you, but for those deep community connections that they've been developing.

Professor Duane:

I think it's critical to not go to the legal NGOs necessarily. Planning students and planning faculty and related fields have relationships with a lot of organizations, and they're not litigation machines. They're grassroots community organizing. They're dealing with some environmental justice issue. But they could use legal help the same way the American Wind Energy Association could use it on elevators. It's not necessarily about litigation. It's about framing what kind of change we need to have in the local land-use code so we can deal with this problem or the like. It would expand the breadth of the types of problems we teach our students about—which our students really will encounter in the real world—as compared to the ones that we might get from going to groups that primarily litigate.

Dean Osofsky:

I was just going to agree with that as well. I really appreciate the emphasis that you are both giving to client-driven and community-driven work. I think interdisciplinary projects in these courses are extremely important for learning problem solving. Circling back to where I started—we had a project at the University of Minnesota, for example, in which our clients were exploring the idea of creating green space over a highway, which can make a positive difference by decreasing community impact from the highway pollution in addition to creating green space.⁹² That was a project in which it was incredibly important for those communities to be involved, but also one in which

⁹¹ *Environmental Protection Clinic*, YALE L. SCH., <https://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/environmental-protection-clinic> (last visited Apr. 29, 2022) (explaining the NRDC's partnership with the Yale Environmental Protection Clinic, which started in 2022).

⁹² See Gary Fuller, *How Greener Streets Can Lead to Healthier Cities*, GUARDIAN (Nov. 5, 2021), <https://www.theguardian.com/environment/2021/nov/05/how-greener-streets-can-lead-to-healthier-cities> (explaining how redesigning towns to prefer walking and cycling can address the climate crisis, air pollution, and urban noise while improving health through daily exercise).

the law students needed to talk to the design students and engineers. At Northwestern, our Innovation Lab provide opportunities for students to learn team-based interdisciplinary problem solving.⁹³ The PILOT lab at Penn State—Policy Innovation Lab of Tomorrow—which is the first center within its Law, Policy and Engineering Initiative, similarly takes this approach.⁹⁴ For so many problems, you need to bring law together with another discipline. For example, law and engineering interface in our efforts to address many environmental issues, emerging biotech, or autonomous vehicles. The list is long.

Dean Rushlow:

I would love to jump in on this, too, and push back a little bit to the idea that that environmental NGOs can be a proxy for relationships with communities. Cale, I know you and I have a similar background, having worked in regional NGOs. And this isn't meant as shade to any particular NGO. But just having been in that world, I know that those groups are equally guilty—if not more so—of parachuting in and kind of imposing their agenda on a community.⁹⁵ My experience with some of those NGOs is that they are not the model for developing relationships and letting those relationships and clients

⁹³ *Course Details*, NW. PRITZKER SCH. OF L., <https://www.law.northwestern.edu/academics/curricular-offerings/coursecatalog/details?CourseID=1717> (last visited May 22, 2022); *How Northwestern Law's Innovation Lab Teaches Students to Think Differently*, NLA NEWS (Jan. 23, 2018), <https://news.law.northwestern.edu/how-northwestern-laws-innovation-lab-teaches-students-to-think-differently/>; *NUvention*, FARLEY CTR. FOR ENTREPRENEURSHIP & INNOVATION, <https://farley.northwestern.edu/academics-resources/nuvention/> (last visited May 22, 2022).

⁹⁴ *Pilot Lab Policy Innovation Lab of Tomorrow*, PENN STATE L. POL'Y & ENG'G, <https://www.pilotlab.org> (last visited Apr. 29, 2022); *Interdisciplinary Education and Research at the Forefront of Societal Needs*, PENN STATE COLL. OF ENG'G, <https://www.lpe.psu.edu> (last visited Apr. 29, 2022).

⁹⁵ See Lauren Durand, *Are NGO Agendas Dictated by Western Assumptions?*, E-INT'L RELS. (Sept. 26, 2012), <https://www.e-ir.info/2012/09/26/are-ngo-agendas-dictated-by-western-assumptions/> (noting that NGOs have always been imperialistic despite their altruistic motives); see also Juan D. Gomez-Quintero et al., *International Development's Hidden Agenda: Towards a Latent Modernization of "Traditional" Societies*, OPEN ACCESS LIBR. J. (Nov. 2014) 2 (explaining that NGO workers often have subconscious hidden agendas).

determine the pathway forward. There's a lot to be said for relationships with those NGOs, and I'm in favor of it—we have several of them at VLS.⁹⁶ But it's something to be cautious about.

Professor Jaffe:

That's a great point. I remember seeing some polling on environmental issues, on which messengers were considered trusted sources of information. And I was disheartened to find out that environmental NGOs had relatively low scores in terms of being a trusted source of information.⁹⁷ And other community stakeholders, local farmers, were perceived as more trustworthy.⁹⁸ So you're right, environmental NGOs need to own that fact that—for a variety of reasons, some of their own doing, some certainly not their own doing—they aren't necessarily seen as a trusted source of information in some situations.

Dean Osofsky:

To me, this goes to Helen's point about deep listening. For example, if we are going to meaningfully help coal communities with economic development, there has to be deep listening rather than external organizations with ideas for what that would look like for that

⁹⁶ See *U.S.-Asia Partnerships for Environmental Law*, VT. L. SCH., <https://www.vermontlaw.edu/academics/centers-and-programs/us-asia-partnerships-environmental-law> (last visited Apr. 29, 2022) (describing the VLS clinic that works with NGOs on environmental governance in Asia); *Environmental Advocacy Clinic*, VT. L. SCH., <https://www.vermontlaw.edu/academics/clinics-and-externships/environmental-advocacy-clinic> (last visited Apr. 29, 2022) (noting that the clinic gives students the opportunity to represent the National Wildlife Federation, a conservation NGO).

⁹⁷ ROBERT BONNIE ET AL., UNDERSTANDING RURAL ATTITUDES TOWARD THE ENVIRONMENT AND CONSERVATION IN AMERICA 22, Fig. 12 (Duke Nicholas Inst. for Env't Pol'y Sols., 2019), <https://nicholasinstitute.duke.edu/sites/default/files/publications/understanding-rural-attitudes-toward-environment-conservation-america.pdf> (noting that “Environmental advocacy groups (like Sierra Club, NRDC)” were seen by only 13% of survey respondents as a trusted source of environmental information).

⁹⁸ *Id.* (noting that Local “farmers/ranchers” were seen by 34% of survey respondents as a trusted source, the highest rated category).

community. I think we see lots and lots of examples in different contexts of this need.

Professor Jaffe:

On the coal community just transition work, I serve on Virginia's Coal and Energy Commission, which is sort of a legislative advisory commission.⁹⁹ Most of the members of the commission are not from urban centers or the environmental community. They're from the Coalfield Region of the Commonwealth and fossil-fuel related industries. Virginia's landmark clean energy law—the Virginia Clean Economy Act—is set to transition the state to a 100% zero-carbon electricity grid by 2050.¹⁰⁰ Support for the law was built in much of the state by talking about it as a win-win. That the law would help grow the economy and make a meaningful stride towards tackling climate change. So we're going to grow renewable energy jobs, we're going to grow energy efficiency jobs, and we're going to get to zero carbon by 2050.¹⁰¹ But the message is a harder sell in the Coalfield Region, where the bill was not seen as win-win for Coalfield communities. It was perceived, I think wrongly, as attacking their industries, leaving them out to dry.¹⁰² There are nonprofits like Appalachian Voices that are working very earnestly on what's often called a “just transition” for

⁹⁹ *Coal and Energy Commission*, COMMONWEALTH OF VA., DIV. OF LEGISLAT. SERVS., <http://dls.virginia.gov/commissions/cec.htm> (last visited Apr. 29, 2022); see VA. CODE ANN. §§ 30-188, 30-189 (2021) (empowering Virginia Coal and Energy Commission to study coal as an energy resource and promote energy resources other than petroleum).

¹⁰⁰ See VA. CODE ANN. § 30-188 (explaining that non-legislative citizen members should include Commonwealth citizens who represent interests identified with production and conservation of coal, natural gas, and energy); Virginia Clean Economy Act, H.B. 1526 (Va. 2020).

¹⁰¹ Virginia Clean Economy Act, H.B. 1526 (Va. 2020) (replacing voluntary renewable energy portfolio program with a mandatory program requiring Dominion Energy Virginia and American Electric Power to produce electricity from 100% renewable resources by 2045 and 2050, respectively).

¹⁰² See M.J. Mcateer, *Clean Slate: Power Utilities, State Government Looks to Carbon-Free Future*, VA. BUS. (Aug. 30, 2021), <https://www.virginiabusiness.com/article/clean-slate/> (noting that coal field businesses in Virginia will have to stop providing power to Virginia unless they employ renewable energy certificates under Virginia's comprehensive legislation).

fossil-fuel dependent towns.¹⁰³ But there's some skepticism of just transition work, I think in part because they don't trust the messenger. Maybe the right answer is, I don't know, I can do a better job of sitting and listening.

V. YOU WERE TALKING ABOUT ALL THESE REALLY INTERESTING AND EXCITING WAYS TO INCORPORATE A VARIETY OF ISSUES AND SKILLS INTO THE CLASSROOM AND INTO THE CLINICS. I'M WONDERING, IS IT SORT OF GROUNDED IN WHAT YOU'RE SEEING IN TERMS OF YOUR STUDENTS' POSTGRADUATE CAREER PATHS? ARE YOU SEEING A CHANGE COMPARED TO EARLIER IN YOUR CAREER IN TERMS OF WHAT STUDENTS ARE DOING AND WHAT ISSUES THEY'RE TACKLING AND HOW THEY'RE TACKLING THEM?

Professor Kang:

Part of the problem is that environmental law graduates are not able to get that that first environmental job without two years of experience. I'm seeing that more and more law firms or large environmental organizations require two years.¹⁰⁴

Dean Rushlow:

I wish that more students that want to go into environmental law and need that first job would become public defenders and prosecutors. I think that often gets dismissed because they think they

¹⁰³ *A New Economy for Appalachia*, APPALACHIAN VOICES, <https://appvoices.org/new-economy/> (last visited May 5, 2022).

¹⁰⁴ See, e.g., *Careers for Attorneys: Open Opportunities*, FOX ROTHSCHILD LLP, <https://www.foxrothschild.com/careers-for-attorneys/open-positions> (last visited Apr. 29, 2022) (advertising for associate positions with at least two to four years of experience); *Attorney Positions*, COLE SCHOTZ P.C.: CAREER OPPORTUNITIES, <https://www.coleschotz.com/career-opportunities> (last visited Apr. 29, 2022) (advertising for associate positions for two to four years of experience); *Full or Part-Time Employment*, THE MO. BAR: JOBS FOR MO. LS., https://mobar.org/site/content/Lawyer-Resources/Job_Space/Full_or_Part-time_Employment.aspx?hkey=3f8bc385-bf81-4a33-b3f0-6c737ca5b893 (last visited Apr. 29, 2022) (advertising for associate positions for two to four years of experience); *Current Openings*, WIGGIN & DANA, LLP: CAREERS AT WIGGIN, <https://www.wiggin.com/careers-at-wiggin/current-openings/> (last visited Apr. 29, 2022) (advertising for associate positions for two to four years of experience).

don't want to do criminal law. First of all, there is room for criminal law in environmental law, and I think that's something a lot of students don't know, actually. But regardless of whether they ultimately practice criminal law or not, what a great way to get litigation experience—you would have so much to show for yourself coming from those jobs. I have on rare occasions had colleagues that did that, but it seems to be so rare that students go that route and yet there are jobs to be had there.

Dean Osofsky:

For the most part, I agree with the concern about the experience, though I would say that many of the environmental jobs that that require bar passage don't look that different than they did a decade ago. Our graduates go to environmental organizations, government, et cetera. Where I think we are seeing more evolution is in the area of what are known as “JD advantage jobs.” There are many jobs in which legal knowledge is helpful, but a JD or bar passage is not needed. Northwestern's Master of the Science of Law provides STEM professionals with education at the interface of law, science, and business that helps them progress in their current jobs or go into jobs where they can help bridge law and STEM.¹⁰⁵ I think that, to the extent that there is an evolution going on that we really need to think about, it is in that space--areas where legal knowledge is valuable to professional paths, but we are not necessarily preparing students for a traditional law job. And what does it mean to prepare students for that, whether they are JD students going to JD advantage jobs or master's students who are using their legal knowledge to be more informed scientists or engineers?

Professor Jaffe:

I tell students that if they know what they want to do, they might need to be flexible either geographically or temporally. So in other words, if they want to practice environmental law with a

¹⁰⁵ See *Master of Science in Law*, NW. PRITZKER SCH. OF L., <https://www.law.northwestern.edu/academics/degree-programs/msl/> (last visited Apr. 29, 2022) (explaining that the Master of Science in Law curriculum focuses on intersection of law, business, and technology).

nonprofit organization in the Southeast, then they need to recognize that it could be a multi-year timeline until they get that job doing exactly what they want. If they want to practice environmental law with a nonprofit tomorrow and they don't care where it is, then that's great. They have to be willing to go literally anywhere in the country to get that job. So either temporally or geographically, they are best served if they have some flexibility coming out of law school.