

Sustainable Development in Law Practice: A Lens for Addressing All Legal Problems

*John C. Dernbach**

Table of Contents

Abstract	2
Introduction.....	2
I. Methodology	10
II. How These Lawyers Understand Sustainability	12
III. What Sustainability Lawyers Do	19
A. Subject Matter and Clients.....	20
B. Types of Legal Work	22
IV. Dynamics of Attorney-Client Conversations on Sustainability	27
A. When Clients Raise Sustainability Issues with Attorneys	27
B. When Attorneys Raise Sustainability Issues with Clients	30
C. What Attorneys Say in Sustainability Conversations	34
V. Personal and Professional Qualities of Lawyers Doing Sustainability Work.....	38
A. How They Became Interested in Sustainability.....	39
B. Most Essential Personal and Professional Characteristics for Sustainability Work	43
C. Most Rewarding Aspects of Sustainability Work.....	46
D. Least Enjoyable or Most Frustrating Aspects of Sustainability Work	50
VI. Future of Sustainability in Law Practice.....	53
A. Roadblocks.....	54
B. Jobs in Sustainability and Law	57
Conclusion	61
Appendix: Sustainability in Law Practice Questions for Lawyers	63

* John C. Dernbach is Commonwealth Professor of Environmental Law and Sustainability at Widener University Commonwealth Law School and Director of its Environmental Law and Sustainability Center. He was a member of the American Bar Association Task Force on Sustainable Development. His e-mail is jcdernbach@widener.edu.

This Article began as part of the author's work with the American Bar Association Committee on Climate Change, Sustainable Development, and Ecosystems. Maggie Pelosi, Lynn Bergeson, and Frank Friedman, among others, helped formulate the questions about sustainability in the practice of law that are used in this Article. Thanks to Melissa Scanlan, Ingrid Andersen, and John Kitchen for guidance and help on qualitative research; to Widener Commonwealth law students Bo Bucher, Austin Langon, and Marc Prokopchak for research assistance; and to Widener Commonwealth law librarians Brent Johnson and Ed Sonnenberg for additional research assistance. Special thanks to Kathy Yorkievitz for guidance and assistance on several aspects of this project. Thanks also to Chris Robinette and to the participants in workshops at Arizona State University and Vermont Law School. Finally, thanks to Peter Appel, Bill Blackburn, Scott Breen, Don Brown, Lee DeHihns, Ira Feldman, Steve Miano, and Mike Vandenberg for comments on an earlier draft.

ABSTRACT: Sustainable development is a normative conceptual framework for integrating economic development, social wellbeing, and environmental protection in decision-making. While it is widely recognized that lawyers have an important role to play in advancing sustainable development, and while a growing number of lawyers describe themselves as doing sustainability work, it is less clear what they actually do. That is an impediment not only to achieving sustainability, but also to law students and lawyers who would like to direct or redirect their legal careers in that direction.

This Article, which is based on structured interviews with 26 lawyers who practice or have practiced law related to sustainability, provides a first assessment of what this work actually entails. It describes what these lawyers understand sustainability or sustainable development to mean—both as defined and as applied. These lawyers tend to see sustainability as a lens for productively addressing all legal problems, and for helping clients make better decisions. It explains who their clients are and what they do for them, and provides insight into the dynamics of attorney-client conversations related to sustainability. It describes key personal and professional qualities of these lawyers—how they became interested, and what they like and do not like about doing work related to sustainability. Finally, by exploring what these lawyers see as obstacles to sustainability and where the jobs are in sustainability-related law, it sheds light on the future of sustainability in law practice.

INTRODUCTION

Sustainable development is becoming increasingly important to lawyers.¹ A small but growing number of lawyers describe themselves as doing work related to sustainability or sustainable development. Many lawyers or law firms engaged in the private practice of law identify their practice area using sustainability language.² Sustainable development is a growing part of law practice in nearly every practice area and involves many different skills.³ As the final report of American Bar Association (ABA) Task Force on Sustainable Development concluded in 2015, the “transition to sustainability in both governmental and private sector decision making is inevitable, and will profoundly affect the legal profession.”⁴ The transition toward sustainability in the legal profession is also both reflected in and encouraged by a wide variety of

¹ AMERICAN BAR ASSOCIATION TASK FORCE ON SUSTAINABLE DEVELOPMENT, FINAL REPORT 2 (July 31, 2015), http://www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/resources/final_sdtf_ab_a_annual_08-2015.authcheckdam.pdf. According to the Task Force: “Sustainability is affecting, or will affect, tax law, insurance, banking, finance, real estate development, environmental and energy law, among other fields. It also involves a wide range of knowledge and skills, including commercial transactions, client counseling, litigation, advocacy before governmental agencies and other bodies, and legislative drafting.” *Id.* For an overview of this activity, see John C. Dernbach et al., *The Growing Importance of Sustainability to Lawyers and the ABA*, TRENDS (ABA Section of Environment, Energy, and Resources), July/August 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2316264.

² See *infra* notes – to __ and accompanying text.

³ AMERICAN BAR ASSOCIATION TASK FORCE ON SUSTAINABLE DEVELOPMENT, FINAL REPORT, *supra* note 1, at 2.

⁴ *Id.* at 4.

activities involving sustainability in law schools, including but not limited to courses, scholarship, facilities, and community service.⁵

Sustainable development is a normative conceptual framework for integrating development (which includes not only economic development but also social development, and is based on peace and security) with environmental protection in decision-making.⁶ It is premised on principles of basic equity—that each human being is entitled to a certain quality of life and that the minimum conditions for human quality of life should be maintained from generation to generation. Sustainability is intended to address two significant and related problems—widespread environmental degradation, including climate disruption, and large-scale extreme poverty.⁷ The framework applies to a wide variety of decisions, including but not limited to those involving climate change.

Sustainable development is reflected, but only partially, in U.S. conservation, environmental and land use laws. The National Environmental Policy Act of 1969 (NEPA), in fact, declared sustainable development to be national policy even before the term sustainable development was coined. NEPA declares a national policy “to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”⁸ Environmental, conservation, and land use laws provide a baseline of environmental protection and employ many of the tools and much of the vocabulary of sustainable development (integrated decision-making, precaution, planning, public information and public participation).⁹ But these laws do not directly address the large ecological footprint (energy, water, resources, and land) of the United States.¹⁰ They do not directly address a great many laws that have historically been used to foster economic development—laws that have the effect of encouraging, supporting, and even rewarding environmental degradation and unsustainable development.¹¹ Nor do these laws fully

⁵ John C. Dernbach, *The Essential and Growing Role of Legal Education in Achieving Sustainability*, 60 J. LEGAL EDUC. 489 (2011).

⁶ John C. Dernbach & Federico Cheever, *Sustainable Development and Its Discontents*, 4 TRANSNAT’L ENVTL. L. 247, 256-61 (2015); John C. Dernbach, *Sustainable Development as a Framework for National Governance*, 49 CASE W. RES. L. REV. 1, 8-32 (1998). Peace and security provide a foundation for development; without peace and security, development is difficult or impossible.

⁷ WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 28-37 (1987).

⁸ 42 U.S.C. § 4331(a).

⁹ See, e.g., RICHARD N.L. ANDREWS, *MANAGING THE ENVIRONMENT, MANAGING OURSELVES: A HISTORY OF AMERICAN ENVIRONMENTAL POLICY* (2d. ed. 2006) and RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* (2004) (both describing the development of environmental law and policy and explaining the use of these principles and ideas in its development).

¹⁰ UNIVERSITY OF MICHIGAN CENTER FOR SUSTAINABLE SYSTEMS, U.S. ENVIRONMENTAL FOOTPRINT (2016), http://css.snre.umich.edu/css_doc/CSS08-08.pdf (describing in detail U.S. consumption of resources and explaining that it would take five earths to supply the resources needed for the entire world’s population if it consumed resources at the same level as the average American).

¹¹ See, e.g., Justin Gillis, *Global Warming’s Mark: Coastal Inundation*, N.Y. TIMES, Sept. 4, 2016, at 1, 22 (“The federal government spends billions of taxpayer dollars in ways that add to the risks [of sea level rise], by subsidizing local governments and homeowners who build in imperiled locations along the coast.”); Michael Lewyn, *How Government Regulation Forces Americans Into Their Cars: A Case Study*, 16 WIDENER L.J. 839 (2007) (case study of land use and zoning in Jacksonville, Florida); Dernbach, *Sustainable Development as a Framework for National*

address existing threats, particularly climate change.¹² Finally, environmental and conservation laws do not directly or fully address the social dimensions of sustainable development, which include but are not limited to poverty, food security, public health, and human rights.¹³

Sustainable development has nonetheless influenced the development and implementation of law in a variety of ways and contexts, including brownfields redevelopment,¹⁴ smart growth,¹⁵ public access to information,¹⁶ recycling,¹⁷ biodiversity conservation,¹⁸ and green building.¹⁹ Indeed, the U.S. Environmental Protection Agency (EPA) has increasingly integrating sustainability into the implementation of the laws it administers.²⁰ These changes are not limited to traditional environmental law. Energy law is being transformed by a great many federal, state, and local laws that foster greenhouse gas reductions; renewable energy; energy efficiency and conservation in buildings, transportation, and industry; and distributed energy.²¹ A variety of longstanding business reporting and disclosure requirements, including those administered by the Securities and Exchange Commission, are now being applied to greenhouse gas emissions, working conditions, and the environmental and social impacts of activities in a company's supply chain because investors and the public now deem these things material to the

Governance, *supra* note 6, at 67-68 (summarizing different types of legal obstacles). See also Parts V(D) and VI(A) *infra*, in which lawyers describe various legal obstacles to sustainable development.

¹² See, e.g., Jody Freeman & Andrew Guzman, *Climate Change and U.S. Interests*, 109 COLUM. L. REV. 1531 (2009) (explaining the strong case for U.S. action based only on U.S. self-interest).

¹³ G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Oct. 21, 2015). Among the sustainable development goals contained in this agenda are Goal 1 ("End poverty in all its forms everywhere"), Goal 2 ("End hunger, achieve food security and improved nutrition and promote sustainable agriculture"), Goal 3 ("Ensure healthy lives and promote well-being for all at all ages"), and Goal 4 ("Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all").

¹⁴ Joel Eisen, *Brownfields Development: From Individual Sites to Smart Growth*, in AGENDA FOR A SUSTAINABLE AMERICA 57 (John C. Dernbach ed. 2009).

¹⁵ Patricia Salkin, *Land Use: Blending Smart Growth with Social Equity and Climate Change Mitigation*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 14, at 349.

¹⁶ Carl Bruch et al., *Public Access to Information, Participation, and Justice: Forward and Backward Steps Toward an Informed and Engaged Citizenry*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 14, at 459.

¹⁷ Marian Chertow, *Municipal Solid Waste: Building Stronger Connections to Jobs and the Economy*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 14, at 335.

¹⁸ A. Dan Tarlock & Andrew Zabel, *Biodiversity Conservation: An Unrealized Aspiration*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 14, at 269.

¹⁹ Stuart D. Kaplow, *Can Green Building Law Save the Planet?* 3 U. BALTIMORE J. LAND & DEV. 131 (2013).

²⁰ U.S. ENVIRONMENTAL PROTECTION AGENCY, FISCAL YEAR 2014–2018 EPA STRATEGIC PLAN (2014), http://www2.epa.gov/sites/production/files/2014-09/documents/epa_strategic_plan_fy14-18.pdf (identifying "cleaning up communities and advancing sustainable development" as one of EPA's five goals and "working toward a sustainable future" as one of four cross-agency strategies); NAT'L RESEARCH COUNCIL, COMMITTEE ON INCORPORATING SUSTAINABILITY IN THE U.S. ENVIRONMENTAL PROTECTION AGENCY, SUSTAINABILITY AND THE U.S. EPA (2011) (recommending that EPA adopt a sustainability strategy and take other actions to incorporate sustainability into its programs).

²¹ GLOBAL CLIMATE CHANGE AND U.S. LAW (Michael B. Gerrard & Jody Freeman eds., 2d ed. 2014) (comprehensive description of federal and state laws); Steven Ferrey, *Solving the Multimillion Dollar Constitutional Puzzle Surrounding State "Sustainable" Energy Policy*, 49 WAKE FOREST L. REV. 121 (2014) (describing five different types of state energy laws that are "the primary pillars of sustainable energy policy in the United States"—net metering, renewable portfolio standards, renewable system benefit charges, carbon/greenhouse gas regulation, and feed-in tariffs).

company's profitability.²² The investigation by state attorneys general and the Securities and Exchange Commission into whether Exxon misled the public and investors about climate change raises significant economic, environmental and social questions.²³ To a growing degree, many forms of private law or governance are being employed to foster sustainability, in lieu of public law, including certification, auditing, labeling, and reporting programs, which tend to be enforced through a variety of contractual and related arrangements.²⁴

Three assessments of U.S. sustainability activity track the real but limited progress that this country has made. The first, published in 2002, concluded that there had been little progress, but that in "virtually every area of American life, a few people and organizations are exercising leadership for sustainability."²⁵ The assessment was based on contributions by more than three dozen experts, representing a wide range of perspectives and disciplines from universities, nongovernmental organizations, and the private sector. The second, published in 2009, and based on the work of essentially the same set of contributors, found that the U.S. "has made significant progress since 2002 in at least six areas: local governance, brownfields redevelopment, business and industry, higher education, kindergarten through 12th grade education, and religious organizations."²⁶ The third and most recent review was published in 2012, and was based on the contributions of 51 experts from a variety of fields.²⁷ While the United States had made "some progress" over the past two decades, the 2012 assessment found, the "sustainability destination is now farther away than it was" two decades ago, largely because of climate change.²⁸ The basic challenge, the report emphasized, is "accelerating the transition to sustainability."²⁹ The review continued:

Yet there is nonetheless an emerging sustainability movement in the United States. It includes dedicated practitioners in a wide variety of fields who have

²² Matthew Morreale, *Corporate Disclosure Considerations Related to Climate Change*, in GLOBAL CLIMATE CHANGE AND U.S. LAW, *supra* note 21, at 205; Nancy Cleveland et al., *Sustainability Reporting: The Lawyer's Response*, BUSINESS LAW TODAY, Jan. 2015,

http://www.americanbar.org/publications/blt/2015/01/04_pike.html (explaining what corporate clients can and should report publicly about their sustainability activities).

²³ Bradley Olson & Aruna Viswanatha, *SEC Probes Exxon Over Accounting for Climate Change*, WALL ST. J., Sept. 20, 2016, <https://www.wsj.com/articles/sec-investigating-exxon-on-valuing-of-assets-accounting-practices-1474393593>; Paul Barrett & Matthew Philips, *Can ExxonMobil Be Found Liable for Misleading the Public on Climate Change?* BLOOMBERGBUSINESSWEEK, (Sept. 7, 2016, 5 AM), <https://www.bloomberg.com/news/articles/2016-09-07/will-exxonmobil-have-to-pay-for-misleading-the-public-on-climate-change>;

²⁴ Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129 (2013); Errol Meidinger, *Environmental Certification Systems and U.S. Environmental Law: Closer than You May Think*, 31 ENVTL. L. REP. (Envtl. L. Inst.) 10,162 (2001).

²⁵ John C. Dernbach, *Synthesis*, in STUMBLING TOWARD SUSTAINABILITY 2 (John C. Dernbach ed. 2002).

²⁶ John C. Dernbach et al., *Progress Toward Sustainability: A Report Card*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 14, at 16.

²⁷ JOHN C. DERNBACH ET AL., ACTING AS IF TOMORROW MATTERS: ACCELERATING THE TRANSITION TO SUSTAINABILITY (2012).

²⁸ *Id.* at 9.

²⁹ *Id.* (subtitle).

thought deeply about what sustainability means in different contexts and why it is attractive, and whose day-to-day job is to make it happen, fix what doesn't work, and improve results. They are engaged in a wide variety of fields, including agriculture, energy, manufacturing, technology, community planning and development, business and industry, government, education, building construction, engineering, and law.³⁰

Within the field of law, attorneys are making their offices run more sustainably, most obviously by reducing their environmental footprint, and by using sustainable development concepts and ideas to help clients solve or address specific issues.³¹ More than 300 law organizations participate in the ABA-EPA Law Office Climate Challenge, under which they reduce paper use, use renewable energy, and/or become more energy efficient.³² Bar associations in California,³³ Pennsylvania,³⁴ and Massachusetts³⁵ have developed, and encouraged the use of, similar guidelines. Lawyers for a Sustainable Future, a nonprofit organization with roots in Oregon that is now becoming a national network of lawyers, has developed a set of tools to improve the sustainability activities within a law office.³⁶ The Law Firm Sustainability Network, a nonprofit organization made up of law firms as well as legal departments of major corporations, has launched an "American Legal Industry Sustainability Standard (ALISS), an online benchmarking tool that lets law firms perform self-assessments on their environmental sustainability practices."³⁷ Many leading firms have also endorsed and are implementing the Sustainability Framework for Law Organizations, which was developed by the

³⁰ *Id.* at 9-10.

³¹ Lawyers can also play other roles. These include 1) working through bar associations and other organizations to encourage sustainable development in other sectors of the economy, and 2) working to change legal frameworks to encourage or enable sustainable development. Although these latter two roles may help clients address specific problems, they are not the primary focus of this article.

³² American Bar Association, ABA-EPA Law Office Climate Challenge, http://www.americanbar.org/groups/environment_energy_resources/public_service/aba_epa_law_office_climate_challenge.html (last visited Feb. 27, 2016) (explaining and describing program); American Bar Association, Partners and Leaders, http://www.americanbar.org/groups/environment_energy_resources/public_service/aba_epa_law_office_climate_challenge/partners_leaders.html (last visited Feb. 27, 2016) (listing more than 300 firms and other law organizations as "partners and leaders").

³³ State Bar of California, Voluntary State Bar of California Lawyers Eco-Pledge and Voluntary Law Office Sustainability Policy (2008), *available at* <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=oXNUX4LH33o%3D&tabid=233> (last visited Feb. 27, 2016).

³⁴ Pennsylvania Bar Association, Pennsylvania Lawyers United for Sustainability (PLUS) Program, <http://www.pabar.org/public/sections/envco/plusprogram.asp> (last visited Feb. 27, 2016).

³⁵ Massachusetts Bar Association, Green Guidelines, <http://www.massbar.org/for-attorneys/lawyers-eco-challenge/green-guidelines> (Feb. 27, 2016).

³⁶ Lawyers for a Sustainable Future, Welcome, <http://www.sustainablelawyers.org/> (last visited Feb. 27, 2016) (providing links to tools on sustainability policy, sustainable practices, building management, tenant improvements, events and retreats, and green lunches).

³⁷ Law Firm Sustainability Network, ALISS Has Launched, <http://www.lfsnetwork.org/> (last visited Feb. 27, 2016).

ABA Section on Environment, Energy, and Resources.³⁸ The framework provides a structure for progressively greater law firm commitment to economic, social and environmental responsibility.³⁹

Still, the existing literature on sustainable development does not tell us exactly what these lawyers actually do when they are assisting clients. While there are many stories in magazines, newspapers, and online about lawyers who do work related to sustainability,⁴⁰ there has thus far been no effort to systematically assess what they do. That is the basic question this Article attempts to answer. The answer matters because accelerating the transition to sustainability requires more and better sustainability choices, including legal choices; the use of law on behalf of sustainability; and visionary and supportive governance.⁴¹ Accelerating the transition also requires the participation of all significant parts of society, including lawyers.⁴² If the lawyers who are doing work related to sustainability are actually helping to accelerate the transition, then it would be of real value to know what they do, how they do it, and why. Because these lawyers are a distinct minority of all practicing lawyers, and because there is growing understanding of the importance of sustainable development, it is highly likely that a great many other lawyers and lawyers-to-be would consider doing this kind of work if they knew how to do it, or better understood what this work entails, both personally and professionally. At the same time, many lawyers who are doing sustainability work on behalf of their clients may recognize some of their own experiences and approaches in the stories of other lawyers who are working on sustainability, and appreciate that more lawyers are doing this kind of work than they may have believed.

As a growing number of law schools provide sustainability training for law students, moreover, it behooves them to know what lawyers engaged in sustainability work actually do. Greater understanding of what sustainable development in law practice actually means will improve both teaching and learning. It is also consistent with growing recognition of the need to provide students with the skills and knowledge they will need in the practice of law, including

³⁸ American Bar Association, Law Firm Sustainability Framework, http://www.americanbar.org/groups/environment_energy_resources/public_service/model_law.html (last visited Feb. 27, 2016).

³⁹ *Id.* For an excellent summary of what some of the leading law firms are doing on sustainability under this framework, see William R. Blackburn, *The Sustainability Strategy*, ENVTL. F., Mar./Apr. 2011, at 34.

⁴⁰ See, e.g., Richard J. Sobelsohn, *Law Firms Adopt Sustainability to Stay Sustainable*, N.Y. L.J., Dec. 28, 2015, <http://www.newyorklawjournal.com/id=1202745732909/Law-Firms-Adopt-Sustainability-to-Stay-Sustainable?slreturn=20160807074144>; Stuart Kaplow, *Lawyers' Opinions Matter in Green Building Transactions*, GREEN BUILDING LAW UPDATE (July, 12, 2015), <http://www.greenbuildinglawupdate.com/2015/07/articles/leed/lawyers-opinion-matters-in-green-building-transactions>; Christine Bader, *Corporate Lawyers Can Be More Than Naysayers-in-Chief*, THE ATLANTIC, (May 8, 2015), <http://www.theatlantic.com/business/archive/2015/05/corporate-lawyers-social-responsibility/392474/>; Bob Langert, *Are Lawyers the Enemy of Sustainability Execs*, GREEN BIZ (April 6, 2015, 1:45 AM), <https://www.greenbiz.com/article/are-lawyers-enemy-sustainability-execs>; Thomas Bourne, *Why Lawyers Have a Part to Play in Sustainable Development*, THE GUARDIAN, Feb. 16, 2012, <https://www.theguardian.com/sustainable-business/blog/sustainable-business-development-law>.

⁴¹ ACTING AS IF TOMORROW MATTERS, *supra* note 27, at 229-84.

⁴² *Id.* at 285-300.

the importance of training lawyers to practice law in new and challenging contexts.⁴³ In a 2013 resolution, the ABA House of Delegates—the policy-making body for the organization—urged “all governments, lawyers, and ABA entities to act in ways that accelerate progress toward sustainability,” and called on “law schools, legal education providers, and others concerned with professional development to foster sustainability in their facilities and operations and to help promote a better understanding of the principles of sustainable development in relevant fields of law.”⁴⁴

The answer also matters for a more basic reason. Although it has been more than 20 years since the United Nations Conference on Environment and Development first endorsed sustainable development, and adopted an international strategy and set of principles to realize it,⁴⁵ the term is still subject to misunderstanding and skepticism. This is true in spite of—and also perhaps because of—the adoption by the United Nations General Assembly in 2015 of Sustainable Development Goals for the world.⁴⁶ Understanding what practicing lawyers actually say and do about sustainable development in the context of specific client situations sheds light on what the term means in practice, and the extent to which it actually adds value.

This Article systematically examines what lawyers in the sustainability arena actually do. It is based on qualitative research, a form of social science research that can provide insight into how particular people understand what they do.⁴⁷

Part I of this Article describes the methodology used in the research. Essentially, the research involved structured telephone interviews based on 13 questions. The 26 lawyers interviewed have all spent a considerable part of their professional lives doing work related to sustainability. They were chosen from a much larger pool of lawyers who do this work. The rest of this Article—Parts II through VI—describes and analyzes their answers, explanations, and stories.

Part II explains the interviewees’ understanding of sustainable development and sustainability. (Unless the context indicates otherwise, the two terms are used interchangeably in this Article.) Most understood one or more widely applied shorthand definitions of sustainable development. Many focused on its long-term time horizon, or importance of reducing overall

⁴³ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 202 (2007) (“The calling of legal educators is a high one: to prepare future professionals with enough understanding, skill, and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizen’s loyalty; that is, to uphold the vital values of freedom with equity and extend these values into situations as yet unknown but continuous with the best aspirations of our past.”).

⁴⁴ American Bar Association House of Delegates, Resolution 105 (2013), http://www.americanbar.org/content/dam/aba/administrative/office_president/2013_hod_annual_meeting_105.authcheckdam.pdf.

⁴⁵ U.N. Conference on Environment and Development, Agenda 21, U.N. Doc. A/CONF.151.26 (1992), <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>; U.N. Conference on Environment and Development, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1, 31 I.L.M. 874 (1992), <http://www.unep.org/documents.multilingual/default.asp?documentid=78&articleid=1163>.

⁴⁶ G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Oct. 21, 2015). See also Economic and Social Council, Progress towards the Sustainable Development Goals: Report of the Secretary-General, U.N. Doc. E/2016/75 (2016) (one-year report on progress toward these goals).

⁴⁷ See *infra* Part I.

negative impacts. At the same time, they tended to be more interested in how those concepts and principles apply to their clients. They also tended to emphasize the environmental aspects of sustainability more than the social aspects.

Part III provides an overview of what these lawyers do. The primary subject matter of the work performed by these lawyers varies considerably, and includes environmental law, climate change and clean energy law, corporate law, land use and development law, sustainable infrastructure finance, and corporate social responsibility and human rights. Their clients are also diverse, including developers, banks, multinational corporations, start-up businesses, nongovernmental organizations, and federal, state, and local governments. These lawyers also perform a wide variety of types of legal work—not only counseling but also transactional work, litigation, advocacy, and drafting.

Part IV explores the dynamics of the attorney-client conversation on sustainability. Many said that their clients come to them for sustainability-related legal work precisely because they specialize in the kind of legal work that is being sought. This part then addresses the converse question—the circumstances under which attorneys raise sustainability issues with their clients. Some believe they have a fiduciary duty to explain risks and opportunities related to sustainability when a sustainability approach would benefit the client. Some lawyers raise sustainability related questions and suggestions based on what the client seems to care about, and to the extent that the client is interested. Others have developed standard questions, programs, and tools related to sustainability, and share those with clients when relevant.

Part IV also examines what attorneys say in those conversations. The essential starting point, of course, is whatever law may be applicable to the client's situation; sustainable development is sometimes required or encouraged by law, but often it is not. Beyond that, many said, the next requirement is understanding what the particular client needs and wants, rather than preaching to the client about sustainability. Other attorneys described the importance of framing a conversation with clients in terms of risks and opportunities related to sustainable development, even when clients are not focused on those risks and opportunities.

Part V explores the personal and professional qualities of the attorneys who are doing this work. It begins by examining how these lawyers became interested in sustainability. A few say they have always been interested or became interested prior to law school. Some became interested as a result of their work in environmental law. Others were exposed to sustainable development concepts through specific workplace or community experiences. For some, these experiences showed them that they were not doing what they wanted to do, and led them to move their careers more in the direction of sustainable development.

This part then examines the most essential personal and professional characteristics for sustainability work. While many of the most essential skills of a lawyer practicing law relating to sustainability are the same as those of a good lawyer, these lawyers emphasized six characteristics that overlap with, and extend beyond, basic legal skills. These characteristics are: expertise in, and even passion for, sustainability; ability to listen well; open mindedness,

curiosity, and creativity; good problem solving skills; patience; and an ability to think big picture and long term.

Part V then discusses what these lawyers find most enjoyable about their work and what they find least enjoyable or most frustrating. In explaining what they most enjoy, they identified the achievement of specific and positive results, success in explaining a sustainability project or proposal to a skeptical or uniformed client, the intellectual challenge of the work, and their ability to work with likable and talented people. In explaining what they find least enjoyable, they identified clients that did not understand or support sustainability; public opposition based on ideology, misrepresentation, or ignorance; the slow pace of progress, particularly on energy and climate change; and legal barriers to sustainability.

Part VI addresses two questions about the future of sustainability in law practice. The first is about the greatest obstacles to sustainability. These lawyers identified public opinion as a major obstacle, including failure to understand both the underlying problems and what sustainable development means. The other major obstacle they identified is legal—not only laws that obstruct progress but the absence of an effective legal structure that guides and supports sustainable development.

Part VI also explores present and future employment in law related to sustainability. Many said that legal jobs related to sustainability are everywhere, but they are not ordinarily labeled as such. Rather, these lawyers said, sustainability is or should be a critical part of all legal work. Many identified specific workplaces or subjects that are particularly amenable to sustainability-related legal work. A common piece of advice these lawyers stated for those who want to enter the field is: Find some particular subject matter or legal field that is of interest, master both that subject matter or field as well as its sustainability aspects, and create a sustainability job based on that. At the same time, some lawyers said there is little or no sustainability work.

The sustainability-related legal work described in this Article varies considerably in its scope and ambitiousness; some if it is about more sustainable ways to comply with existing laws, some of it may simply be a new label for work they have always done, and some if it is about helping companies, businesses, and governments achieve much more ambitious environmental, social, and economic goals. But for all of these lawyers, sustainable development provides a perspective and framework for making better decisions. Understanding how this perspective and framework is applied in the real world practice of law provides insights into the role of law and lawyers in achieving a sustainable society.

I. METHODOLOGY

This Article is based on interviews with 26 practicing lawyers who identify themselves as having spent a substantial part of their career doing sustainability work or who bring a sustainability perspective to their legal work. This specific form of research is known as

qualitative research.⁴⁸ Unlike quantitative research, which “uses *numbers* as data,” qualitative research “uses *words* as data.”⁴⁹ More specifically, “qualitative researchers are interested in *understanding the meaning people have constructed*; that is, how people make sense of their world and the experiences they have in the world.”⁵⁰

As explained in the introduction, the purpose of this research is to understand what practicing lawyers engaged in legal work related to sustainable development actually do. Although no one has surveyed the number of lawyers in the United States who do work related to sustainability, a conservative estimate is that several thousand lawyers devote at least part of their practice to such work. A basic source of information on this topic is the Martindale-Hubbell online directory of lawyers and their listed areas of practice.⁵¹ In that directory, 615 U.S. lawyers identified sustainability as a practice area, and an additional 144 lawyers identified sustainable development.⁵² The number becomes considerably larger if lawyers who identify climate change and renewable energy are part of their practice are included. An additional 749 attorneys include climate change as part of their practice area.⁵³ And another 826 attorneys identify renewable energy as a practice area who do not identify climate change, sustainable development, or sustainability as a practice area.⁵⁴ The number gets even larger when various aspects of social sustainability are included. For instance, 590 attorneys identify human rights as a practice area.⁵⁵ That totals 2,624 attorneys. Because the directory is focused on lawyers in private practice, it is less likely to include government attorneys; academic attorneys; and attorneys employed by nongovernmental organizations, businesses, and corporations. Thus, the figures provided here probably understate the number of attorneys doing legal work related to sustainable development.

The lawyers who were interviewed for this Article represent a subset of this larger group. All of them have spent a substantial part of their career doing work for clients, although not all of them were working for legal clients at the time of the interview. The 26 lawyers who were interviewed are mostly in private practice with law firms. Some in-house counsel are also included because they also work for a client. Some work for local, state, or federal government.

⁴⁸ See generally, SHARAN B. MERRIAM & ELIZABETH J. TISDELL, *QUALITATIVE RESEARCH: A GUIDE TO DESIGN AND IMPLEMENTATION* (4th ed. 2016) (explaining how to conduct qualitative research and write findings).

⁴⁹ *Id.* at 6 (citing VICTORIA CLARKE AND VIRGINIA BRAUN, *SUCCESSFUL QUALITATIVE RESEARCH: A PRACTICAL GUIDE FOR BEGINNERS* 3-4 (2013) (emphasis in original)).

⁵⁰ MERRIAM & TISDELL, *supra* note 48, at 15 (emphasis in original).

⁵¹ MARTINDALE.COM, *I Want to: Find a Lawyer or a Law Firm*, <http://www.martindale.com/> (last visited Mar. 1, 2017).

Membership in the ABA’s Climate Change, Sustainable Development and Ecosystems Committee provides another data point. The Committee has 837 members. E-mail from Dana Jonusaitis, Director, ABA Section of Environment, Energy, and Resources, to author (Sept. 7, 2016, 13:50 EDT) (on file with author). Of course, many lawyers likely do this work who are not members of this Committee.

⁵² E-mail from Brent Johnson, Co-Director & Reference/State Documents Librarian, Law Library, Widener University Commonwealth Law School to author (Mar. 3, 2017, 10:37 EST) (on file with author).

⁵³ *Id.*

⁵⁴ *Id.* Smaller numbers of attorneys identify other aspects of sustainable development, such as energy efficiency (30) and mixed use development (77) as practice areas. *Id.*

⁵⁵ *Id.*

Others now work for nongovernmental organizations, consulting firms, or law schools, although all of these have had substantial previous governmental or private experience in practicing law. The great majority have more than 20 years of experience, often in different jobs or with different law firms, over the course of their career, although some have been practicing only a few years. All of those interviewed self-identify as doing legal work related to sustainability.

The results of the interviews are not presented as a representative sample of the 1.3 million licensed lawyers in the United States.⁵⁶ They nonetheless constitute a reasonable sample of the total population of lawyers who do work related to sustainable development. Not quite half (12) were selected because I have known or worked with them on sustainable development and climate change issues through the ABA or in other professional contexts. These are, however, only a few of the lawyers with whom I have worked on these issues. Ten were interviewed because they were identified by colleagues or other interviewees as lawyers who should be interviewed. Four others were selected based on their law firms' website descriptions.⁵⁷

The research was conducted by telephone interviews based on 13 questions that are set out in the Appendix. Telephone interviews were used to encourage participation and to permit follow-up questions when appropriate. The attorneys who participated in these interviews were promised confidentiality to encourage them to speak frankly about their views and experiences.⁵⁸ The length of each interview was about an hour, although several were considerably longer. The interviews were conducted at various times between June 2014 and August 2016.⁵⁹ Afterwards, I sent my interview notes to those interviewed and asked for any changes or corrections they thought appropriate; many returned my notes with revisions. At the end of the interviews, an online data base program was used to consolidate all of the interviews into a single "master report" that organized the answers by question, which facilitated comparison and analysis.⁶⁰ Except as otherwise stated, any quantitative indications (e.g., "some," "many") apply only to the lawyers who were interviewed.

II. HOW THESE LAWYERS UNDERSTAND SUSTAINABILITY

⁵⁶ American Bar Association, Lawyer Demographics: Year 2016 (2016), http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.authcheckdam.pdf.

⁵⁷ Several interviews were subsequently excluded from this list, or were terminated quickly, because the attorney is not actually doing work related to sustainability. Interviews with three lawyers who have never practiced law, or who are long retired, were also excluded. At least five unstructured interviews with other lawyers were also excluded.

⁵⁸ This Article sometimes makes details vague to protect the identity of these attorneys. For the same reason, it does not use gender-based pronouns to refer to the interviewees (e.g., he/she, his/hers).

⁵⁹ Interviews were not recorded; I typed while people spoke.

⁶⁰ Master Report, Sustainability in Law Practice Interviews with 26 Attorneys (2016) (unpublished report generated by author for this Article) (on file with author) [hereinafter Master Report of Interviews]. The data base program was developed by Qualitrics.

How do the lawyers who do sustainability work understand the meaning of sustainable development and sustainability? And how does that understanding square with the way that other sustainability practitioners use the term?⁶¹ These lawyers have a good understanding of sustainable development and sustainability. Most were conversant with several widely applied shorthand definitions of the term, but tended to be more interested in how sustainable development concepts and principles are actually applied in practice. Many emphasized key aspects of sustainable development—its long-term time horizon, the importance of reducing overall negative impacts and even creating positive impacts, and limits on resource use. In the context of the specific work they do, they reflected a sophisticated understanding of not only the term but what it means for their clients. That said, they tended as a group to be more focused on the environmental dimension of sustainability than on the social dimension.

A brief history of the term sustainable development may be helpful here.⁶² Although many use the term sustainability as a substitute for sustainable development, the original term is sustainable development, and the original term provides several keys to understanding. Development is understood internationally in terms of both economic and social development, and requires a foundation of peace and security. Development, in other words, is not economic development alone; it is more helpfully understood in terms of human development. The objectives of development are human freedom, opportunity, and quality of life. This model of improving the human condition, which dates at least back to the end of World War II, has nothing to say about the environment. In consequence, development tends to work by furthering economic and social progress to some degree, but at the expense of the environment as well as living and future people who depend on that environment. Discussions that treat development and environment as inherently oppositional forces (e.g., development vs. environment, or having to choose between development and environment) are based on that weakness or limitation in the development model. Human population and economic development grew rapidly after World War II. Widespread environmental degradation and deep and growing poverty—both understood as caused or not addressed by development—grew to the extent that they threatened to overcome, undermine, or weaken the progress of development.⁶³

As a result, nations of the world concluded that the development model needed to be modified. Instead of development, countries would strive for *sustainable* development. They first committed to that change at the U.N. Conference on Environment and Development (or Earth Summit) in 1992⁶⁴ and most recently reaffirmed that commitment with the U.N. General Assembly's 2015 adoption of Sustainable Development Goals (SDGs).⁶⁵ As the official name of the Earth Summit indicates, sustainable development is a way of reconciling development and

⁶¹ Most of the interview material in this part is taken from answers to Question 4 (“What is your understanding of sustainability?”).

⁶² This paragraph summarizes a history that is explained and documented in much greater detail in Dernbach & Cheever, *supra* note 6, at 252-61.

⁶³ The case for this proposition was originally made in OUR COMMON FUTURE, *supra* note 7.

⁶⁴ See *supra* note 45 and accompanying text.

⁶⁵ G.A. Res. 70/1, *supra* note 46.

environment. In fact, the key action principle for sustainable development is integrated decision-making.⁶⁶ Essentially, decisions involving environment or development must take both into consideration and further both in more or less equivalent ways. Sustainable development also requires a long-term perspective; intergenerational equity is a key principle to be applied in integrated decision making.⁶⁷ The goals of sustainable development are essentially the same as those of development—human freedom, opportunity, and quality of life—except that sustainable development focuses on those goals for both present and future generations.⁶⁸

Conceptually, this has two consequences that are not always recognized. First, because conventional development can damage not only the environment but also humans who depend on that environment, conventional development can be criticized as unjust, particularly when the adverse effects are visible or obvious. It follows that sustainable development is a way of fostering environmental and social justice⁶⁹ and protecting human rights.⁷⁰ Second, the social dimension of sustainability is often considered of equal importance to the environmental dimension.⁷¹ This, of course, builds on the prior point.

Many writers, including me, have used sustainable development and sustainability synonymously. But it is important to recognize that sustainability is often used to describe a future state of affairs—a sustainable society—where basic environmental and social challenges and threats no longer exist, and where human well-being is fostered for present and future generations.⁷² Because no individual, corporation, or country can move from unsustainable development to sustainable development overnight, the transition to a sustainable society is often described in terms of a journey.⁷³ A great many of the steps in this journey move from less sustainable activities and projects to more sustainable activities and projects. A critical question is whether any given project or activity should be directed at reducing adverse environmental and social impacts or instead directed at creating positive environmental and social impacts (along

⁶⁶ John C. Dernbach, *Achieving Sustainable Development: The Centrality and Multiple Facets of Integrated Decisionmaking*, 10 IND. J. GLOBAL LEGAL STUD. 247 (2013) (analyzing and comparing various provisions of the Rio Declaration). See also Marie-Claire Cordonier Segger & Ashfaq Khalfan, *SUSTAINABLE DEVELOPMENT LAW: PRINCIPLES, PRACTICES, AND PROSPECTS* 103 (2004) (defining “sustainable development law” as a “set of legal instruments and provisions where environmental, social and economic considerations are integrated by varying degrees in different circumstances”).

⁶⁷ Claire Molinari, *Principle 3: From a Right to Development to Intergenerational Equity*, in *THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT: A COMMENTARY* 139 (Jorge E. Viñuales ed. 2015).

⁶⁸ Dernbach & Cheever, *supra* note 6, at 257-58.

⁶⁹ John C. Dernbach, Patricia E. Salkin & Donald A. Brown, *Sustainability as a Means of Improving Environmental Justice*, 19 MISSOURI J. ENVTL. & SUSTAINABILITY L. (2012).

⁷⁰ INTERNATIONAL BAR ASSOCIATION CLIMATE CHANGE JUSTICE AND HUMAN RIGHTS TASK FORCE, *ACHIEVING JUSTICE AND HUMAN RIGHTS IN AN ERA OF CLIMATE DISRUPTION* 9 (2014) (recommending that “states consider recognizing freestanding human rights to a safe, clean, healthy and sustainable environment” (emphasis removed)).

⁷¹ See, e.g., WILLIAM R. BLACKBURN, *THE SUSTAINABILITY HANDBOOK: THE COMPLETE MANAGEMENT GUIDE TO ACHIEVING SOCIAL, ECONOMIC, AND ENVIRONMENTAL RESPONSIBILITY* (2d ed. 2015) (explaining wide variety of best corporate sustainability practices giving equal attention to environmental and social sustainability).

⁷² PAMELA MATSON ET AL., *PURSuing SUSTAINABILITY: A GUIDE TO THE SCIENCE AND PRACTICE* 20-23 (2016).

⁷³ See, e.g., BOARD ON SUSTAINABLE DEVELOPMENT, NATIONAL RESEARCH COUNCIL, *OUR COMMON JOURNEY: A TRANSITION TOWARD SUSTAINABILITY* (1999).

with its presumed positive economic impacts). Because of growing population and economic development, and the substantial cumulative effects of numerous negative impacts, achieving sustainable development would seem to require that we move toward the latter.

This explanation has been reduced to several shorthand formulas that are more widely understood than the history. The iconic and most often cited definition of sustainable development is contained in the 1987 report of the World Commission on Environment and Development, *Our Common Future* (also called the Brundtland Commission, after then-Norwegian Prime Minister Gro Harlem Brundtland, its chair). Sustainable development, the report said, is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁷⁴ Others describe sustainable development as based on three overlapping circles or three pillars—social, economic, and environmental. The idea is that progress on sustainable development occurs when a particular action furthers all three. In the corporate setting, the use of independent metrics to measure each of the three is described in terms of a “triple bottom line,” where the social, economic, and environmental goals are often referred to as “people, profit, and planet.”⁷⁵

It is also important to recognize what sustainable development is not. Sustainable development is not a discrete subject or area of law like energy, insurance, or even environment; it is a way of viewing, analyzing, and making decisions about a wide range of human activities. In addition, sustainable development is not another term for environmentalism or environmental protection, and it is not about protecting the environment for its own sake. It is about advancing human wellbeing in the context of a quality environment. Nor is sustainable development simply about “balancing” the environmental, economic, and social aspects of a proposal; the ultimate test of a decision, as the Brundtland Commission recognized, is whether it ensures the ability of future generations to meet their needs. Conversely, sustainable development is not another term for sustained economic growth. Economic development is part of sustainable development, but sustainable development is a framework for integrated decision making, not simply realizing profits or growth. Finally, sustainable development is not another way of describing environmental regulation; it recognizes the need for a great variety of legal tools, including those fostering sustainable economic development.⁷⁶

Many of the lawyers who were interviewed for this Article explained their understanding of sustainable development in terms of the Brundtland Commission definition, three circles, three pillars, or the triple bottom line. One lawyer captured the definition this way: “The simultaneous pursuit of economic prosperity, environmental stewardship, and social

⁷⁴ OUR COMMON FUTURE, *supra* note 7, at 24.

⁷⁵ See, e.g., Carolina Miranda, *The Breakthrough Thinking of the Triple Bottom Line*, CULTIVATING CAPITAL, <http://www.cultivatingcapital.com/business-sustainability-triple-bottom-line/> (last visited Feb. 27, 2016). See also ANDREW W. SAVITZ & KARL WEBER, *THE TRIPLE BOTTOM LINE: HOW TODAY’S BEST-RUN COMPANIES ARE ACHIEVING ECONOMIC, SOCIAL, AND ENVIRONMENTAL SUCCESS—AND HOW YOU CAN TOO* (rev. ed. 2014) (explaining how businesses can design and implement sustainability strategies).

⁷⁶ John C. Dernbach, *Creating the Law of Environmentally Sustainable Economic Development*, 28 PACE ENVTL. L. REV. 614 (2011) (setting out a typology of laws that protect the environment, create jobs, and foster economic development).

responsibility.”⁷⁷ Another thought the Sustainable Development Goals are a helpful touch point, partly because of their breadth. “It is having a society, including a business model, where you are advancing environmental, social, and economic goals.”⁷⁸ As the following discussion indicates, however, their operational understanding tended to focus more on environment, energy, and land use than on the social dimensions of sustainability. In that respect, they mirror the reality that environmental sustainability is now more accepted among practicing attorneys than social sustainability.⁷⁹

Some were uncomfortable with the question about the meaning of sustainable development, or highlighted the limits of one-sentence definitions. They tended to see these definitions as incomplete. As one attorney explained:

I understand sustainability to have stewardship at its core – using resources today in a manner so that resources are still available for the future. But it is more complicated than that simple definition. There are a lot of nuances involved when you start peeling the onion, with issues including energy efficiency, water usage, sustainable harvesting practices for replenishable resources, and carbon footprints.⁸⁰

The Brundtland Commission definition “isn’t wrong,” another said. “To be more technical, we have to have an energy budget that comes from the sun and other finite resources and cycles on planet. If we don’t succeed in arranging civilization within those processes, we’re toast.”⁸¹ A third attorney made a similar point from a different perspective: “Unless sustainability is translated into tangible parameters, it is hard for businesses to get their minds around it.”⁸²

The decision-making and advocacy aspect of the sustainable development frame was much more important to one attorney than a short definition:

I’m not confident that I would put as much meaning into a short definition. The big question is how much we reduce the environmental cost of what we are doing. Part of that requires more holistic thinking than the limits in my air permit. The sustainability frame is good for options, alternatives, and advocacy. It is particularly good for advocacy with government agencies and environmental groups.⁸³

⁷⁷ Master Report of Interviews, *supra* note 60, at 17.

⁷⁸ *Id.* at 16. For this attorney, the social dimensions of sustainability are particularly important. *Id.*

⁷⁹ E-mail from William Blackburn, William Blackburn Consulting, Ltd., to author (Oct. 3, 2016, 11:03 p.m. EDT) (on file with author).

⁸⁰ *Id.* at 17.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 16-17.

Some lawyers emphasized the long-term aspect of sustainable development. One emphasized the need to harmonize environmental protection and economic development so “we can survive for more than the next several decades.”⁸⁴ Another stated the importance, for long-term sustainability, of being “fossil fuel free.”⁸⁵ And another said: “If I were going to redefine sustainability, it would be creating a system that has the components and structure to maintain itself long term and the flexibility to adjust to changing circumstances.”⁸⁶

Others emphasized the importance, for sustainable development, of reducing impacts and creating healthier places:

Sustainable development law focuses on shaping land use and economic development to have a lighter impact on the environment, including, but not limited to climate change mitigation and adaptation. Sustainable development uses less material, avoids consuming wetlands or eroding watersheds, consumes less energy, emits less carbon dioxide, lessens storm water runoff, reduces ground and surface water pollution, and creates healthier places for living, working, and recreating.⁸⁷

Several attorneys emphasized the importance of limiting resource use. Of sustainable development, one said:

It boils down to conserving and best utilizing available resources—not using more water than you need to, turning food waste into energy, using an LED (light-emitting diode) bulb ⁸⁸ instead of an incandescent bulb, smart ways of doing what we do every day that don’t affect what you do every day. We are not asking people to sit in the dark. A lot of people I talk to make the assumption I am a left wing environmentalist. I am a registered Republican, and a capitalist at heart. We don’t have to live in teepees or destroy the environment to enjoy what the American lifestyle has to offer. This is being smart about how you use your resources.⁸⁹

Many other attorneys were more comfortable defining and applying sustainable development concepts and principles from the perspective of their own work, rather than abstract definitions. One of these lawyers explained it in terms of its application to the corporate world:

⁸⁴ *Id.* at 16.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 16.

⁸⁸ LEDs use 20 to 25 percent of the energy of regular incandescent light bulbs and last up to 25 times longer. U.S. Department of Energy, *Lighting Choices to Save You Money*, <http://energy.gov/energysaver/articles/lighting-choices-save-you-money> (last visited Feb. 27, 2016).

⁸⁹ Master Report of Interviews, *supra* note 60, at 17.

“How can we help corporations live into an aspirational goal of creating and encouraging human flourishing?”⁹⁰ A lawyer who works with agricultural and industrial chemicals explained:

I use it very generally as a surrogate for doing things from inception to end of life in a more environmental and human health sensitive way—including smarter selection of feedstocks and improved manufacturing processes. It can be summarized as smarter, cheaper, greener. It is about designing technologies so that they are fundamentally more green through their whole life cycle, and the product is sustainable from a business, environmental, and health and safety perspective.⁹¹

An attorney working in-house for a large city with an express sustainability commitment explained the term in ways that are somewhat similar to the explanation given above, but also quite different in detail:

The City sees it as addressing a wide variety of issues at the same time, including receiving waters and carbon footprint. A lot of this is reversing the trend toward greater and greater degradation. We have reversed flow, and now we are trying to push back and make the city a greener space, a better storm-water-managed space, and reduce energy consumption or switch to other forms of energy. This is not being driven by economic development or job creation; these things are a benefit, but not a driver.⁹²

Another attorney, who works with businesses and investors, explained that the transition to sustainability is being driven by economics:

I see that sustainability is critical to long term-success in business and investment. If you manage your environmental, social, and governance issues and impacts well, you will be more successful in business and investment. There is a lot of data showing that sustainable companies outperform sustainability laggards in their industry significantly, and that investment strategies that incorporate environmental, social, and governance metrics tend to do better. Sustainability investment beats unsustainable investment. There are megatrends in terms of social license and laws pushing sustainability (at least in the EU), as well as transparency and disclosure, and competitive pressure for companies to be

⁹⁰ *Id.* at 16.

⁹¹ *Id.* at 17.

⁹² *Id.* at 18.

sustainable. Sustainability is starting to win, but it is not because of law. It is more about economics.⁹³

An attorney who works with many businesses that seek to do sustainability work explained these developments in terms of the economic attractiveness of the triple bottom line. This attorney used Walmart's Sustainability 360 program, a comprehensive program for integrating sustainability into all aspects of its business,⁹⁴ as an example:

A lot of companies these days understand an opportunity to be aspirational, and they are finding business models to do that. This provides opportunity to scale sustainability, because the programs they implement are providing profitability. Walmart did not start its Sustainability 360 program to make money. There was leadership at the top that was interested, and then they found all kinds of waste in their supply chain. So they developed a questionnaire for suppliers that makes it clear to suppliers that you better use less plastic, ship less air in your packages, and have lower greenhouse gas emissions. Once you do that for Walmart, you will do that for other companies.⁹⁵

Finally, several attorneys explained that their view of sustainable development is evolving with experience. Several years ago, one attorney came to the conclusion that simply reducing adverse impacts was not an adequate way to approach sustainable development. "My clients and I concluded" that "anything other than a regenerative approach is inappropriate. Simply sustaining is not enough." At a green building event at Ball State University called "Building to Save the Earth," this attorney remembered, someone asked if "'building to save the earth' was like 'logging to save the owls.'" This attorney often wonders "if sustainable development has the same challenge."⁹⁶

III. WHAT SUSTAINABILITY LAWYERS DO

The question of what sustainability lawyers actually do in their work with clients addresses two distinct aspects of their work. One is subject matter and clients, which are most helpfully discussed together. The other is the types of legal work they do.⁹⁷

⁹³ *Id.* at 49.

⁹⁴ Walmart, *Sustainability*, http://www.corporatereport.com/walmart/2014/grr/environment_sustainability_360.html (last visited Feb. 27, 2016).

⁹⁵ Master Report of Interviews, *supra* note 60, at 48.

⁹⁶ *Id.* at 17.

⁹⁷ Most of the material in this part is taken from answers to Question 1 ("How long have you been in this position?"), Question 2 ("What kind of work do you do, and who are clients?"), and Question 8 ("Apart from client counseling, what type of other legal work do you do on sustainability?") in the Appendix.

A. Subject Matter and Clients

The primary subject matter of the work performed by these lawyers varies considerably, and includes environmental law, climate change and clean energy law, corporate law, land use and development law, sustainable infrastructure finance, corporate social responsibility, and human rights. The lawyers interviewed also differ in their explicit identification with sustainability; some (but not all) identify themselves not as sustainability lawyers but rather with the primary subject matter of their work. Their clients are also diverse. What follows illustrates the wide range of activities and clients they described in the practice of law related to sustainability.

Many are environmental lawyers who see issues through a sustainability lens. These lawyers, taken together, have a broad range of clients, including municipal governments, financial institutions, investors, utilities, industry, state and local governments, property owners, and nongovernmental organizations.⁹⁸ Many of their corporate clients have international operations. As one explained: “I do not have a sustainability practice. I have a sustainability prism that informs, or through which I view, my cases, and how my cases should be managed, litigated or pursued.”⁹⁹ Another said: “I don’t sell myself as a sustainability lawyer. I am an environmental lawyer who believes in sustainability, and I counsel clients who are willing to go toward that path. I believe this is an option I need to make the client aware of.”¹⁰⁰

Within environmental law, the subject matter of their work is also varied. Many do the full range of environmental law work, including air and water pollution, wetlands, endangered species, waste, and other subjects. Others are more specialized. Some focus on the environmental aspects of transactions and on brownfields redevelopment. One works in the industrial chemical and agro-chemical area, and represents chemical producers, formulators, and end users of these chemicals.¹⁰¹ Another, working for a regulatory agency, is helping to “identify strategies that can be used to strengthen compliance other than the traditional inspection and enforcement route,” including “greater transparency about facility compliance and performance.”¹⁰²

Other lawyers work primarily or exclusively on climate change, renewable energy, and energy efficiency. These lawyers work in a wide variety of private practice, governmental, business, academic, and nongovernmental settings. One, with a long career in a variety of governmental and consulting positions, has focused on “developing and teaching an awareness of energy policy in a carbon-constrained world.”¹⁰³ Continuing the theme of identification with

⁹⁸ Master Report of Interviews, *supra* note 60, at 5-10.

⁹⁹ *Id.* at 7.

¹⁰⁰ *Id.* at 27.

¹⁰¹ *Id.* at 5-10.

¹⁰² *Id.* at 5.

¹⁰³ *Id.* at 8.

the primary subject matter of their work rather than sustainable development, another explained: “I’m a climate change lawyer; I don’t call myself a sustainability lawyer.”¹⁰⁴

Other lawyers are anchored in corporate law, but again their work involves a sustainability lens. One lawyer describes his clients as “renewable energy, energy storage, energy efficiency companies, and companies with strong sustainability platforms, products, or services.” Other clients are social enterprises and impact investors.”¹⁰⁵ Several do work for start-up companies that want to focus on sustainability, including green technology companies.

Some work primarily in land use and development law. The clients for that work can be buyers or sellers, as well as tenants or lenders. The types of projects on which they work indicate their orientation toward sustainability. One attorney worked for many years as in-house counsel for a publicly traded real investment trust that began to pursue energy efficiency, air and water quality, materials consumption, and other issues in its existing real estate holdings and in new construction.¹⁰⁶ Another, in private practice, has done considerable work in New Urbanism, an approach to planning and designing communities that emphasizes walkability, mixed uses, a diversity of people, traditional neighborhood structure, and quality of life.¹⁰⁷ Until somewhat recently, a considerable part of this attorney’s work involved “large-scale, New Urban projects that identified as pursuing sustainable development—energy and water efficiency, planting programs, and a wide range of environmentally themed projects.”¹⁰⁸ More recently, this attorney has been doing work for smaller scale developments, including urban infill projects. In addition to developers, this attorney’s client base includes green building and resilient design organizations, ecodistricts,¹⁰⁹ and companies that are trying to bring “energy efficiency, green energy, and social equity projects into the marketplace.”¹¹⁰

Another lawyer combines traditional real estate development with solar energy and sustainable development. This lawyer’s law firm has a longstanding client base comprised of “property owners, whether that is hotels, shopping centers, office buildings, apartments, or industrial buildings.”¹¹¹ The lawyer says: “We were able to take that client base and put solar on their roofs and encourage them to enter the green sustainability movement and say this is good for your business.”¹¹² Another drafts best-practice-in-sustainability ordinances for the

¹⁰⁴ *Id.* at 5.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 16.

¹⁰⁷ NEW URBANISM, Principles of New Urbanism, <http://www.newurbanism.org/newurbanism/principles.html> (last visited Feb. 27, 2016). See also DANIEL K. SLONE & DORIS S. GOLDSTEIN, A LEGAL GUIDE TO URBAN AND SUSTAINABLE DEVELOPMENT FOR PLANNERS, DEVELOPERS, AND ARCHITECTS (2008) (explaining how to apply New Urbanist principles).

¹⁰⁸ Master Report of Interviews, *supra* note 60, at 7.

¹⁰⁹ An ecodistrict is a neighborhood that combines “livability, green infrastructure and community decision-making.” PORTLAND SUSTAINABILITY INSTITUTE, THE ECODISTRICTS INITIATIVE: GETTING TO NEXT GENERATION NEIGHBORHOODS, http://www.mayorsinnovation.org/images/uploads/pdf/22ecodistricts_10-22-10.pdf (2010).

¹¹⁰ Master Report of Interviews, *supra* note 60, at 7.

¹¹¹ *Id.* at 10.

¹¹² *Id.* at 12.

consideration of municipalities (e.g., transit oriented development,¹¹³ green building, and water conservation), and trains local officials on these issues.¹¹⁴

Some lawyers focus on sustainable infrastructure finance. One does legal work for “development and financing of projects that are mostly for sustainable infrastructure of one kind or another, including renewable energy, energy efficiency, microgrids,¹¹⁵ water, and wastewater.”¹¹⁶

Others are engaged in various aspects of social sustainability, including corporate social responsibility and human rights. “We don’t do a lot of environmentally oriented work,” one attorney explained. “Our practice is primarily in the human rights space.”¹¹⁷ The client base for this kind of work, the attorney said, tends to involve multinational corporations operating in developing countries where they or their suppliers incur risks of violating human rights. This client base has expanded over time:

When I started, our client base was primarily but not exclusively oil, gas, and mining companies who were worried about tort cases and were worried about litigation based on acts of security guards at their facilities. Our practice has grown. We have seen diversification of the client base, including now big banks, apparel companies, private equity firms that are looking at potential investments, and technology companies.¹¹⁸

Finally, some lawyers who once practiced law related to sustainability—have now moved into consulting or nonlegal positions on sustainable development. One explained: “I am helping a green building organization with some of its programs. I am doing sustainability consulting for corporations and not-for-profit clients. I also work with professionals who are traditional environmental lawyers, and also many, many lawyers who have transitioned from law to sustainability consulting.”¹¹⁹ Another runs a business that sells “software to create, implement, and manage strategic sustainability plans.”¹²⁰ Still another works for a nongovernmental organization that is devoted to addressing climate change and sustainable development.¹²¹

B. Types of Legal Work

¹¹³ Transit oriented development is walkable and mixed-use development around transit nodes such as rail or mass transit stations. See TRANSPORTATION RESEARCH BOARD, NATIONAL ACADEMY OF SCIENCES, TRANSIT ORIENTED DEVELOPMENT IN THE UNITED STATES: EXPERIENCES, CHALLENGES, AND PROSPECTS S-1 (2004).

¹¹⁴ Master Report of Interviews, *supra* note 60, at 5.

¹¹⁵ “A microgrid is a local energy grid with control capability, which means it can disconnect from the traditional grid and operate autonomously.” U.S. Dep’t of Energy, *How Microgrids Work*, <http://www.energy.gov/articles/how-microgrids-work> (last visited Feb. 27, 2016).

¹¹⁶ Master Report of Interviews, *supra* note 60, at 7.

¹¹⁷ *Id.* at 9.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 5.

¹²⁰ *Id.* at 7.

¹²¹ *Id.* at 45.

These lawyers perform a wide variety of types of legal work. This includes counseling, transactional work, litigation, advocacy, and drafting.

Perhaps the most common type of legal work in this context is client counseling. Much of it, of course, is traditional client counseling about compliance with statutes, regulations, and other legal requirements, including assistance in complying with those requirements.¹²² These regulatory requirements include California's cap-and-trade program for greenhouse gas emissions.¹²³ Much of this work too, is counseling related to litigation or potential litigation, including enforcement actions.¹²⁴ For some lawyers, counseling does not just occur in an office setting; at least one speaks to corporate boards of directors about Securities and Exchange Commission reporting and disclosure requirements related to sustainability.¹²⁵

In addition to traditional counseling about compliance with applicable laws, however, lawyers that do sustainability-related work also counsel clients on how to move toward, or achieve, sustainability. Lawyers are required to address legal issues related to sustainability, of course. But the ABA Model Rules of Professional Conduct also provide: "In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."¹²⁶ As a result, lawyers may raise sustainability issues even when they are not grounded in specific legal rules. At the same time, a lawyer is generally required to abide by a client's decisions about how to proceed in any matter.¹²⁷ As described in greater detail below, many lawyers specifically counsel their clients on a variety of sustainability matters, explaining the desirability of particular options based on reduced cost, greater efficiency, improved reputation, enhanced likelihood of compliance, and other factors. As will also be seen, clients may or may not follow that advice.

In addition to counseling, sustainability in law practice also involves a great deal of transactional work. Brownfields redevelopment is a good example of this type of work. As one lawyer explains:

With transactional work, I assist with negotiating the contractual provisions that allocate environmental liability and risk between the parties to a deal. The clients for that work can be buyers or sellers, as well as tenants or lenders. With brownfields redevelopment work, I assist in putting together teams to execute remediation strategies for a site. In that role, I serve as an environmental oncologist, excising the environmental cancer impacting a site so redevelopment can occur. The clients for that work are typically developers. In both roles, the

¹²² *Id.* at 5-9.

¹²³ *Id.* at 6

¹²⁴ *Id.* at 5-9.

¹²⁵ *Id.* at 30.

¹²⁶ ABA MODEL RULES OF PROFESSIONAL CONDUCT, Rule 2.1.

¹²⁷ *Id.* Rule 1.2(a)

ultimate goal is to make sure properties are positioned so they are marketable, lendable, and developable.¹²⁸

Much transactional work involves sustainability projects other than brownfields redevelopment, and the legal aspects of these projects can be complex. An attorney who works for a large city described the legal effort required to design, construct, and operate a biogas recovery project at a sewage treatment plant.¹²⁹ “How do you do a complex project in a city framework, dealing with millions of rules on procurement and other issues? It is like running an obstacle course to do a project.” For finance and budget reasons, a bank owns the facility, which was largely designed by the city and built by a city-selected contractor, and the bank has leased the facility back to the city. “In order to do a project like that,” this attorney said, “you have to be a transactional attorney; you can’t just be a regulatory lawyer. This is about writing, negotiating, managing, and selling contracts.”¹³⁰

Other transactional work for these lawyers involves solar energy, including negotiation of power purchase agreements, site agreements, construction agreements, finance, and tax related counseling.¹³¹ For green leasing, the transactional issues are about setting up a structure whereby the owner can get certification under the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED). In addition, the leasing arrangements need to be structured to “make sure tenants do what needs to be done to keep LEED certification.”¹³² For other lawyers, transactional work in an environmental setting involves mergers and acquisitions, private equity deals, and “all sorts of offerings on the public market, including both issuers and underwriters, and strategic litigation counseling.”¹³³ One attorney negotiates “improbable sorts of hookups” between smaller start-up companies with a sustainability orientation “and larger companies who are interested in them and their line of business. An example of these hookups is a set of agreements between a ride sharing company and major airlines that have an interest in that capability.”¹³⁴

Many of these lawyers are active in litigation. While litigation is a traditional part of legal practice, some lawyers are using it to advance sustainability.¹³⁵ A lawyer who does a lot of transactional work related to solar energy explained that sometimes “deals go bad.”¹³⁶ In one case, this lawyer said, solar collectors were installed as canopies over a parking lot, and they

¹²⁸ Master Report of Interviews, *supra* note 60, at 8.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 32.

¹³² *Id.*

¹³³ *Id.* at 5.

¹³⁴ *Id.* at 5.

¹³⁵ On the other hand, one lawyer who does not do much litigation expressed skepticism about the value of litigation to foster sustainability, saying that litigation does not address the required behavioral changes. *Id.* at 32.

¹³⁶ *Id.* at 32.

collapsed, resulting in litigation.¹³⁷ Another lawyer, who does enforcement defense work, sees this work in a sustainability context:

The first step in achieving a resolution with government enforcement is correcting the violation. But compliance programs have sustainability components. Almost always, the system does not work because of sustainability concerns—such as inappropriate consumption of resources, or discharge of pollutants. When you fix a system, you fix a process. A lot of sustainability is avoidance—pollution prevention, material substitution, upfront design issues. On a wastewater treatment plan with compliance issues, for example, we are counseling the client to reevaluate the design to incorporate energy sustainability (energy recovery to provide waste heat and reduce energy usage costs), which can avoid multiple problems, such as noncompliance, permitting, and operational costs.¹³⁸

Advocacy on behalf of sustainability is another important skill for these lawyers. They comment on proposed regulations and proposed government agency actions, testify before Congressional and legislative committees, lobby legislators and government agencies, and present arguments before city councils and zoning hearing boards, as well as corporate boards.¹³⁹ One lawyer who left law practice for a period said: “I came back to being involved with the law, because I saw that there is an enormous amount of work to do on advocacy.”¹⁴⁰ This includes “helping people understand how things are connected, and how some things that seem okay are really bad in the long run.”¹⁴¹ Two lawyers identified advocacy involving brownfields remediation as demonstrating how sustainability arguments can broaden the range of issues being considered as well as potential solutions. One explained: “In negotiations with environmental agencies about contaminated site remediation, I raised sustainability arguments about impacts of the remedy on other environmental media and on the community.”¹⁴² Another worked on a remediation case where the property owner was in bankruptcy to see it was possible to turn the site into a solar farm. This lawyer said that “was one of the criteria for selecting the bankruptcy trustee, which would actually make money for the estate.”¹⁴³

Drafting is another frequently employed type of work for lawyers engaged in sustainability. Drafting is a powerful tool for advancing sustainability because it involves writing the public and private laws that govern the behavior of individuals, businesses, and organizations in specific contexts. Drafting on behalf of sustainability includes drafting proposed statutes and regulations, drafting municipal ordinance representing best practices in

¹³⁷ *Id.*

¹³⁸ *Id.* at 33-34.

¹³⁹ *Id.* at 30-32.

¹⁴⁰ *Id.* at 31.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

sustainability, drafting private governance agreements for land development (including home owner associations; commercial associations; codes, covenants, and restrictions), and drafting and editing various disclosure documents.¹⁴⁴ One lawyer helped revise a “smarter” municipal regulation involving water use and conservation.¹⁴⁵ “In my city, we were charging less on per-unit basis the more water that was used; we turned it upside down, charging more for greater per-unit water use.”¹⁴⁶ Another lawyer, who works in the human rights and corporate social responsibility context, explained the range of her firm’s drafting activities: “We do everything from policy and standard development to developing contract language and vendor guidelines.”¹⁴⁷

Drafting is more than scrivener’s work and it is not merely legal; it requires an attorney to conceptualize how particular actions on behalf of sustainability will actually work in the real world, and to make sure that the legal rules being drafted will actually work in practice. This, in turns, requires a solid understanding of the subject matter, which frequently involves matters that are not strictly legal in nature. A lawyer who works on sustainable land use and community planning explained:

A lot of document drafting is a formality, and a lot of lawyers throw that in for free. They don’t realize how much damage can be done with a bad document, because it is so hard to change. Once you start subdividing a property, it is possible to destroy a lot of value of property with bad documents. A lot of bad legal writing masks fuzzy thinking. A lot of my work involves looking at a master plan, and visualizing it at each stage of development, and figuring out what needs to be done at each stage.¹⁴⁸

Other types of legal work or skills were also identified. One lawyer’s firm serves as a facilitator for multi-stakeholder dialogues on a variety of issues, including voluntary principles for security and human rights.¹⁴⁹ Other law firms include scientists as well as lawyers, which requires the lawyers to be able to collaborate effectively with scientists on specific projects.¹⁵⁰ Many mentioned pro bono, community service, or public education work.¹⁵¹

Finally, one lawyer emphasized that many people who are trained as lawyers are able to successfully use their skills in nonlegal settings:

I see so many lawyers who are in the consulting space. The skills that lawyers bring to the table are an ability communicate orally and in writing better than

¹⁴⁴ *Id.* at 30-32.

¹⁴⁵ *Id.* at 31.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 9.

¹⁴⁸ *Id.* at 30.

¹⁴⁹ *Id.* at 32.

¹⁵⁰ *Id.* at 31.

¹⁵¹ *See generally id.* (references throughout).

almost every other professional sector, and to critically analyze a situation. I see that over and over again. Some lawyers also have the ability to convene all players, get them to the table to achieve a particular result, and deliver it.¹⁵²

IV. DYNAMICS OF ATTORNEY-CLIENT CONVERSATIONS ON SUSTAINABILITY

Understanding the dynamics of conversations that lawyers have with their clients on sustainability involves at least three issues: the circumstances under which clients raise sustainability issues with their attorneys, the circumstances under which attorneys raise sustainability issues with their clients, and what attorneys say in those conversations.¹⁵³

A. *When Clients Raise Sustainability Issues with Attorneys*

A great many lawyers interviewed for this Article say that their clients come to them for sustainability-related legal work precisely because these lawyers, their firms, or both, specialize in the kind of legal work that is being sought. Other say clients come to them with questions about business risks and opportunities that they can answer through the use of a sustainability lens. By contrast, very few of the lawyers say their clients rarely or never come to them for legal help on sustainability related matters. One, who does a lot of work for real estate developers, said that “they are driven by the bottom line, including lender concerns about project costs,” adding that they “don’t want to spend on green if they are not going to realize financial benefit.”¹⁵⁴

Many attorneys said that clients are attracted to them because of their overall work on legal aspects of sustainable development. One, who works on a broad range of sustainability issues, said: “Clients come to us for this. They have variety of levels of sophistication and understanding of various issues we are trying to help them address.”¹⁵⁵ Another, whose client base includes “social enterprise clients,” says it is easier to attract other such clients “because they are seeking an integral approach to their business; sustainability is part of their DNA. How business treats planet and people is just as important to them as profits.”¹⁵⁶ A lawyer with a broad range of clients and client sustainability issues explained it this way:

Clients consult me with respect to environmental health and safety programs. In that context, they consider sustainability. I help and advise them on methods and approaches to be more sustainable. Development clients approach us on wanting

¹⁵² *Id.* at 30.

¹⁵³ The interview material in this part is primarily drawn from answers to Question 5 (“Under what circumstances do your clients raise sustainability issues with you?”), Question 6 (“Under what circumstances do you raise sustainability issues with your clients?”), and Question 7 (“When you talk to clients about sustainability, what do you say?”) in the Appendix.

¹⁵⁴ Master Report of Interviews, *supra* note 60, at 22.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 19.

to include sustainable design into their projects, for a variety of reasons. We help them with that. Energy user clients approach us about concerns relating to greenhouse gas issue issues, and we counsel them on that.¹⁵⁷

Similarly, attorneys who work in-house for a governmental or nongovernmental client committed to sustainable development described a high level of interaction with people at all levels of the organization who are interested in advancing sustainability. Sometimes the client's movement toward sustainability occurs with a noticeable shift. In 2011, the National Research Council published a report called *Sustainability and the U.S. EPA*, which recommended that EPA adopt a comprehensive approach for integrating sustainability into EPA actions and decisions, and that it incorporate sustainability into its strategic objectives.¹⁵⁸ A lawyer who worked at EPA before and after the issuance of the report explained that EPA didn't ask for much legal help on sustainability prior to the issuance of the report, but that the "report really changed that. We got asked to turn that into a path forward for EPA, and that has now been incorporated into EPA governance structure because it is in EPA's strategic plan."¹⁵⁹

Many clients come to attorneys because of their expertise in specific sustainability-related issues. A lawyer with considerable national experience in financing renewable energy and energy efficiency projects and programs said: "I'm lucky enough to have a number of clients for whom these issues are very important. This is self selecting process."¹⁶⁰ The clients of another lawyer, who has deep expertise in community planning and mixed use development, "are starting from the position that mixed use developments are inherently more sustainable."¹⁶¹

Some clients in the chemical industry are especially interested in legal help in moving toward sustainability. A lawyer who works for many of these companies explains:

Sustainability is embedded in their entire construct. For some clients, sustainability is a motivator for creation of new technologies. If we are deploying a particular technology for a particular use, we are looking to diminish its effects in particular applications, both because it is the right thing to do, and because it won't otherwise pass EPA screening. Sustainability is always there. It is very rarely the case when we ask if they are concerned about tort liability, worker health and safety, or the like.¹⁶²

Clients come to other lawyers because of their expertise with public disclosure. "At the end of the day," a lawyer who does this work explains, "what a publicly traded company has done and what it is going to do must be disclosed in SEC-regulated documents and through other

¹⁵⁷ *Id.* at 20.

¹⁵⁸ SUSTAINABILITY AND THE U.S. EPA, *supra* note 20.

¹⁵⁹ Master Report of Interviews, *supra* note 60, at 19.

¹⁶⁰ *Id.* at 21.

¹⁶¹ *Id.* at 17.

¹⁶² *Id.* at 21.

media and reports and to the public on web sites.”¹⁶³ This lawyer’s job is helping publicly traded companies “sharpen their disclosure” to the SEC as well as in other disclosure documents, to make sure the disclosure documents are accurate and consistent, and to help companies tell their story. The lawyer continued:

There is also a strategic corporate direction part to this for consumer-facing clients, which means most companies. A global food company may have concerns about what is in its food, which may have a social, environmental, or other component. A company may want to change the perception of its profile to be more sustainable in order to recover market share.¹⁶⁴

In some cases, lawyers are sought when a law or regulation makes it hard or impossible to do what the client believes to be sustainable. Laws that foster or encourage unsustainable development are a recurring and substantial problem, many said. One attorney who works with industrial clients explains her challenge:

Typically, the issues we are battling now involve EPA’s regulation of recyclable materials and secondary hazardous materials. Because of the sham recycling history, and EPA’s policy on this,¹⁶⁵ clients that are exercising attempts to be sustainable—by adopting really efficient processes such as closed loop recycling and putting chemical intermediates back into manufacturing—are leading EPA to say these are sham recycling. If EPA is trying to hammer people who are doing green chemistry and more sustainable practices, then where are we going to go?¹⁶⁶

A land use and development attorney tells a similar story:

Many times, because of the reputation I’ve developed over many years of this kind of work, clients come to me wanting to do a sustainable project, but there are all kinds of legal or regulatory obstacles. When my projects include components of New Urbanism—things we want to do to increase pedestrianism—they typically violate local laws, and we have to get these laws changed. We want to harvest water but we are not allowed to harvest water. We want to introduce a new non-toxic wood product, but the treated lumber industry blocks it.¹⁶⁷

In other cases, clients come to lawyers on sustainability issues because of concerns about risk, opportunity, or both, that is related to sustainability. Clients come to one attorney because

¹⁶³ *Id.* at 19.

¹⁶⁴ *Id.*

¹⁶⁵ For an explanation of this issue, see Jeffrey M. Gaba, *Rethinking Recycling*, 38 ENVTL. L. 1053 (2008).

¹⁶⁶ Master Report of Interviews, *supra* note 60, at 21.

¹⁶⁷ *Id.*

they “perceive a sustainability risk, whatever that may be. It might be manufacture of a hazardous chemical, or something in the workplace.”¹⁶⁸ Clients also come to this attorney because sustainability provides a “business opportunity—to operate more efficiently (use less energy, less water), or obtain a reputational advantage.” Companies “are getting smarter about the upside to this, as opposed to merely managing risk.”¹⁶⁹ In a somewhat similar vein, clients come to another lawyer under two circumstances, both of which involve opportunity. In one, the client is being told that it needs to be green or sustainable, and it doesn’t know how. In the other, a client wants to build a project in a more sustainable manner, and needs legal help getting it done.¹⁷⁰

B. When Attorneys Raise Sustainability Issues with Clients

In raising sustainability issues with clients, there appear to be two extremes and a much larger center. At the center are lawyers who believe they have a fiduciary duty to explain risks and opportunities related to sustainability when these would benefit the client. Some lawyers raise sustainability related questions and suggestions based on what the client seems to care about, and to the extent that the client is interested. Some lawyers have standard questions, programs, and tools related to sustainability that they routinely share with clients.

On one end of the extremes are lawyers who don’t need to raise these issues because their clients already embrace sustainable development. “If sustainability is not consistent with their core philosophy,” one lawyer said, “we tend not to work with them.”¹⁷¹ On the other end of the extremes are lawyers who are reluctant to raise sustainability issues at all, if clients have not already raised them, because these clients are not interested. A lawyer who specializes in brownfields cleanup said: “When I raise these issues, they say, we are hiring you as our environmental oncologist, and we only want your input on the remedial aspects of the project.”¹⁷²

Many lawyers frame the decision to raise sustainability issues with clients in terms of their professional responsibility to their clients. As a matter of professional responsibility, Stephen Gillers has written, lawyers have a fiduciary duty toward the client that is based on “trust and confidence.”¹⁷³ This duty requires the lawyer to act with “solicitude for, candor toward, and tenacity on behalf of the client within the scope of the work the lawyer has been hired (or appointed) to do.”¹⁷⁴ While the fiduciary status of lawyers probably does not add to their other duties to clients (including competence and diligence), “it is instead meant to drive

¹⁶⁸ *Id.* at 19.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 22.

¹⁷¹ *Id.* at 25.

¹⁷² *Id.*

¹⁷³ STEPHEN GILLERS, REGULATION OF THE LEGAL PROFESSION: THE ESSENTIALS 18 (2009) (emphasis omitted).

¹⁷⁴ *Id.*

home the point that we expect lawyers to observe their obligations fully and without reservation.”¹⁷⁵

Thus, when sustainability issues provide opportunities to benefit clients, or raise risks of which the client may be unaware, some of these lawyers believe they need to raise those issues. As one explained: “All of us as fiduciaries are honor bound to maximize opportunities for our clients. You have to educate your client on anything that would enhance your client’s opportunity for success—to get what the client wants with as few commercial hurdles and legal obstacles as possible.”¹⁷⁶ A straightforward way this works, another explained, occurs when “they have not yet perceived a risk that we have seen in the history of other companies in the same sector, or they don’t have programs that their competitors do. This is also true for business opportunities.”¹⁷⁷

Lawyers often raise sustainability questions with their clients when, and to the extent, that the lawyer believes these clients are interested. As a lawyer who does considerable corporate work explained:

There are two kinds of lawyers. One believes in sustainability, sees all these risks related to it, and encourages clients to understand and mitigate or manage the risks. When a lawyer does that, management responds by asking what they should do, or by blowing it off as BS and deciding they will deal with it when someone raises it. The other kind of lawyer says: the client will tell me when they have a risk they want help with.¹⁷⁸

Approaching sustainability advice in the first of these ways requires the lawyer to have a good understanding of the client’s goals and orientation. One said: “The issue here is: where is my client on the sustainability journey?”¹⁷⁹ Another explained that understanding what issues the client is sensitive to—reputational risk, litigation risk, or social responsibility—affects what tack that lawyer takes in explaining sustainability issues to that client.¹⁸⁰ An energy lawyer simply points out to clients “that there are other ways and places they can go that serve them at other levels. It is just part of conversation, not where I am preaching.”¹⁸¹

Often, these lawyers are in the position of explaining sustainability options that are either cost saving or revenue producing. The economic bottom line is a powerful driver for providing sustainability-related legal advice, according to a longtime environmental lawyer:

¹⁷⁵ *Id.* at 76.

¹⁷⁶ Master Report of Interviews, *supra* note 60, at 25.

¹⁷⁷ *Id.* at 23.

¹⁷⁸ *Id.* at 24.

¹⁷⁹ *Id.* at 24. Another put it more bluntly: “This is for people I know; I don’t do this for everybody.” *Id.* at 23.

¹⁸⁰ *Id.* at 25.

¹⁸¹ *Id.* at 24.

I raise it when there are opportunities for tax credits and other economic benefits, when it can assist them in marketing or preserving their market. You can't really raise issues just because it is a good thing to do; you have to raise it because it is of economic benefit to shareholders.¹⁸²

Sometimes these lawyers advocate for what they believe to be a more sustainable remediation at a contaminated site that would also be less expensive to the client.¹⁸³ A clean energy finance lawyer provided a similar explanation: "Lots of times you can help them along at margins. Energy efficiency saves money. If you do electricity storage with a solar system, you improve operation of the grid and get paid for doing so. Lots of times the sustainable thing to do is also right thing to do from a money saving point of view."¹⁸⁴

Some clients do not mention sustainability but, as one lawyer explains, "sustainability issues were embedded or implicit in their request for legal advice." This lawyer cited these questions as examples: "What is the cheapest way to clean up this Superfund site? How do I get this enforcement case over with? What are the risks of this strategy?"¹⁸⁵ Other lawyers "counsel clients on how they incorporate sustainable measures into their projects if they don't raise it with us."¹⁸⁶ Another encourages clients to include sustainability as part of their project or product if it "is going to need public or regulatory support."¹⁸⁷ A lawyer who works on hazardous waste issues raises sustainability "whenever we are looking at a waste stream. I ask: why you are generating this? Do you want to have to deal with these rules?"¹⁸⁸

At other times, a land use and development attorney said, clients come to lawyers when something has simply "gone wrong or is not happening." This lawyer explained:

They may not identify the issue as a sustainable development issue, but it is clear to us that it is. Why do people have so little disposable income in downtown? Part of answer is that they are spending too much money on transportation and not enough on housing. So we work on transit oriented development.¹⁸⁹

A lawyer who does extensive work on corporate public disclosures described another context in which the client does not raise sustainability issues, but legal advice related to sustainability is needed:

Today reporting material sustainability issues is gaining prominence. Clients ask: what is legally required and what are the legal ramifications of reporting based on

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 20.

¹⁸⁶ Master Report of Interviews, *supra* note 60, at 24.

¹⁸⁷ *Id.* at 25.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 19.

what stakeholders are asking? The lawyer's job is to ask: do you understand that there are issues under the umbrella of sustainability that present risks? For example—climate change risk factors for all of a business's investments. If the company is in the insurance business, how are they taking account of risks of increased disease, migration, and other public health effects?¹⁹⁰

A lawyer who works with many multinational corporations does not raise sustainability issues broadly with clients, but sees the sustainability framework as akin to medicine—"looking at the patient holistically."¹⁹¹ Thus:

When a client comes to me with a problem that opens a portal to sustainability analysis, I will look at it through that portal. Then we don't have 12 discussions about the same symptom—for example, worker dust inhalation claims at different facilities over time. That may be indicative that the company is using materials that are not sustainable or sourced sustainably, and alternatives may exist that will eliminate the entire issue.¹⁹²

Sometimes this legal advice is directed at those within an organization who can use it to advocate a particular outcome to more senior management. One environmental lawyer in private practice gives sustainability-related legal advice when:

I am trying to give broader strategic advice about what approach would likely produce the best long-term outcome for the company or institution. A bunch of in-house environmental counsel and environmental health and safety managers also care about the environment, and you can work with internal champions. You can give them advice they can share with their business people. There is often an opportunity to appeal to the broader interests of environmental counsel or chief sustainability officers, who do care about it, and who think sustainability is in the interests of the company.¹⁹³

When the opportunity to raise sustainability issues with clients arises, many lawyers have menus of issues, tools, and options to share with them. Options include various tax incentives, rebates, and grant programs. Tools often include specific methods or areas of expertise that lawyers have developed to address particular problems. One lawyer presents "social entrepreneur clients" with a "menu of sustainability choices," including rules of corporate citizenship, writing how the company treats people and the planet into the bylaws of the

¹⁹⁰ *Id.* at 24.

¹⁹¹ *Id.* at 23.

¹⁹² *Id.*

¹⁹³ *Id.* at 24.

company, and getting needed sustainability certifications.¹⁹⁴ A real estate development lawyer who has developed expertise in solar energy and other aspects of sustainable real estate development said: “If I start the conversation, it generally needs to be an economic conversation.”¹⁹⁵ This lawyer has a standard approach:

The client may buy an industrial building with a big roof. I say you can put solar panels on roof, and you can make money. That starts the conversation, and the client gets an 8% return on its investment. Then the client comes back and says, “What else is in your bag of tricks?” And I talk about LEDs. And that is how you make converts. This is how you get their attention.¹⁹⁶

Many of these lawyers frankly acknowledged that clients did not always accept these suggestions. Another indication of client responsiveness is provided by answers to a follow-up question that many were asked—about the fraction of their time that they spent doing sustainability work. While most of these answered that all or nearly all of their time is devoted to sustainability work, others answers were in the middle range, and two were below 25 percent.¹⁹⁷ But, as the tone of their other answers suggest, they keep making sustainability suggestions to their clients.

C. What Attorneys Say in Sustainability Conversations

The first two questions in this part, which involve what lawyers say when clients raise sustainability issues, and what they say about sustainability when clients do not, each focus on specific aspects of the attorney-client sustainability conversation. But they do not provide an overall opportunity for attorneys to discuss their approach to attorney-client discussions about sustainable development. That is the purpose of this question. Of course, if there relevant public or private laws would drive an effort toward sustainability, those laws would need to be discussed. As already explained, however, some aspects of sustainable development are required or supported by law, but many are not. Beyond that, many attorneys answered that a critical starting point is understanding what the particular client needs and wants. Other attorneys described the importance of framing a conversation with clients in terms of risks and opportunities. These two points of emphasis, of course, are not mutually exclusive.

A great many answered that what they say depends on the client. One attorney, who does a lot of work with sustainability-oriented startup companies, underscored this point by focusing on the listening aspect of an attorney-client conversation: “I mostly just ask questions. How important is sustainability to you? Do you simply want to comply with the law or do you want

¹⁹⁴ *Id.* at 23.

¹⁹⁵ *Id.* at 25.

¹⁹⁶ Master Report of Interviews, *supra* note 60, at 25.

¹⁹⁷ *Id.* at 50.

to be aspirational?”¹⁹⁸ In addition to a client’s commitment to sustainability, other values or issues are often part of this conversation. One lawyer’s experience is that the conversation tends to depend on the client’s mix of “conservation values (water, energy, natural resources) and economic values (things that can be done more cost effectively or be more affordable).”¹⁹⁹ Another explained his approach in this way:

For clients who don’t care about climate change, I talk to them about reducing cost through using less energy, buying cheaper and using less. Why wouldn’t one be interested in that? If there is ancillary benefit to environment, that doubles the bang for the buck. Much of it is about return on investment, and is pitched as efficient.²⁰⁰

In addition, one lawyer explained the importance of comparing a client’s performance to its peers. “Clients try to benchmark themselves, asking where they fit in terms of their peers. Sustainability may come into that discussion; are they consistent with best practices?”²⁰¹

An attorney with a long career in private practice who now runs a sustainability company framed the key questions in terms of understanding what the client needs and wants:

When you talk to a client about sustainability, it is in many ways like being a therapist talking to a patient, and you are trying to figure out whether the patient is willing and ready to do the work or is in denial. It would be easy if we could deal with sustainability as a compliance matter and tell the client you must do A, B, C, & D on sustainability. And there is a legal framework like that for some sustainability matters (pollution, labor standards, etc.). But really there is no law or regulation for all issues, and certainly none at the sustainability best practices level. So the conversation is instead about efficiencies, and evaluating and managing sustainability-related risks and opportunities (like generating revenue with new products and services or entering new markets).²⁰²

The risks and opportunities of sustainable development, of course, depend on what goods or services the client is producing, or where the client is planning to locate. An environmental attorney thus tailors a standard approach based on assessment of risks and opportunities to a specific discussion about risks and opportunities for a particular client:

I put sustainability issues into context of risk within their industry of not addressing these issues, and opportunities they could realize if they addressed

¹⁹⁸ *Id.* at 26.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* at 28.

²⁰² *Id.* at 27.

these issues. Perhaps for some industries, if one markets a product that has green components (such as household cleaners that are greener), they can capture greater market share.²⁰³

Another attorney, who does considerable work in the land use and zoning area, sees and communicates sustainable development issues in terms of risk:

Today we are telling people not to build in high hazard areas so you don't get flooded. There are risks of climate change that are being picked up by conservative markets—banks, lenders, secondary mortgage markets. If a client is not assessing these risks, and our job is due diligence as lawyers, then I'm seeing an opportunity that perhaps others have not opened their eyes to.²⁰⁴

Others make a broader argument that a sustainability approach will benefit the client and relevant stakeholders. One environmental attorney habitually asks clients: “Can't we make this look better for everybody by doing (fill-in-the-blank)?”²⁰⁵ Another tells clients: “I say this is a matter that will be important to some of the people you work with, and will be important to more people over the next decade, and if you want to deal with this issue, you should do it now.”²⁰⁶ An attorney with extensive corporate experience said:

There is no way to summarize it. The simplest thing to say is that: to the extent sustainability principles represent good holistic management—whether from a governance or process or business perspective—then I encourage that approach. I believe they are best served by looking at an issue as part of a larger suite of related concerns and opportunities—all of which are embraced by sustainability-related principles.²⁰⁷

Another attorney summarized his approach to such conversations in this way: “To make this work long term, and minimize your long term liabilities and transaction costs, you may want to consider the broader environmental and social context.” For contaminated sites, that means doing “a good cleanup so it doesn't come back to bite you later.”²⁰⁸ For another attorney, that means “getting stakeholder feedback or input from the community in designing” a development project.²⁰⁹ It might be better to “spend more time and money now to save a lot more time and money later by achieving a sustainable result.” Depending on the situation, this attorney makes a

²⁰³ *Id.* at 26.

²⁰⁴ *Id.* at 48.

²⁰⁵ *Id.* at 27.

²⁰⁶ Master Report of Interviews, *supra* note 60, at 28.

²⁰⁷ *Id.* at 26.

²⁰⁸ *Id.* at 27.

²⁰⁹ *Id.*

business case, a case based on reputational risk, a case based on demonstrating “you care about the community and the environment,” or a case based on what competitors are doing on sustainability.²¹⁰

Interestingly, many lawyers make these arguments without mentioning sustainability, sustainable development, or climate change. Many clients, several said, will not listen to an explanation based on climate change.²¹¹ One attorney uses efficiency as a substitute for sustainability. “Efficiency is as big a term as you want it to be. They can’t hear the S word [sustainability] in the middle of the country.”²¹² Another uses sustainability principles and concepts as a substitute for the term itself:

I have lots of sustainability conversations in which the word sustainability never comes up—such as about governance, supply chains—but which are based on sustainability as it is properly understood. People hire lawyers, not preachers, and no one wants to be preached at. You can make a lot of good medicine that will go down with the right amount of sugar.²¹³

A green building and community development lawyer explained the dynamics of such conversations:

A lot of times I tell them how to save money, how it will give them an economic advantage in the marketplace. We talk about almost everything except that is the right thing to do and will save the world. That doesn’t mean I don’t have clients that believe that. If I have to persuade them, though, these other aspects get emphasized. In my state, many clients have engineers who tell you that a more sustainable model will cost you more. I tell them they have the wrong engineer. If you had an engineer who knew more, that engineer would tell you how to do this in a way that would cost you less and create more community benefits. The challenge here is to convince a client of both intrinsic benefits (lower cost, increase in tenants, lower operating costs, higher retention rate for tenants), and extrinsic benefits (that might benefit the community or the environment, and would mean that the community is more likely to support your project).²¹⁴

He added that there are often limits in how far an attorney can go in arguing for the intrinsic benefits of sustainable development:

²¹⁰ *Id.*

²¹¹ *Id.* at 26.

²¹² *Id.* at 28.

²¹³ *Id.* at 26.

²¹⁴ *Id.* at 28.

Some clients are wary of attorneys who pitch intrinsic benefits. The clients see the attorneys as engaging in advocacy. They worry that you are advocating something, and if they say no, your heart won't be in advocating for their position. I had one client who hired me because I pushed back against what he proposed, but would move his project forward whether I won or lost our internal arguments. He didn't buy all of the things I suggested as sustainable, but he bought a lot of them.²¹⁵

When a client is fully engaged in an effort to achieve environmental and social sustainability, on the other hand, the conversation can be more fruitful. Another attorney is working with benefit corporations and B Corporations, two closely related types of for-profit corporations formed not only to make profits but also to produce social and environmental benefits.²¹⁶ This attorney explained:

Lawyers are creative people who can make positive change. At the end of the day, the question is whether we are able to have a conversation about how to have all three things at the same time: economic prosperity, environmental stewardship, and social responsibility. Companies are not able to stop being bad overnight. We are working with a B Corporation that has been willing to lay bare everything, and their goal is to stop contributing bad stuff. They know where they want to go, but have no idea how to get there yet. When you engage an entire company in that way, people get extraordinarily creative; the challenge is thrown down, and a solution emerges over time.²¹⁷

V. PERSONAL AND PROFESSIONAL QUALITIES OF LAWYERS DOING SUSTAINABILITY WORK

Understanding the personal and professional qualities of these lawyers is important for two reasons.²¹⁸ For one who is considering sustainability in law practice—whether a student entering law school or an experienced practitioner looking to change direction—it is useful to know what people in this field actually think and believe. That information may be helpful in

²¹⁵ *Id.*

²¹⁶ Jay Love, *Benefit Corporation Vs. Certified B Corp in Plain English*, BLOOMERANG (Aug. 17, 2015), <https://bloomerang.co/blog/benefit-corporation-vs-certified-b-corp-in-plain-english/>. Both are alternatives to nonprofit status for a company. A benefit corporation exists by virtue of state law; a B Corporation is a benefit corporation that has also been certified by a third party for measurable social and environmental performance, accountability, and transparency. *Id.* See also Matthew J. Dulac, *Sustaining the Sustainable Corporation: Benefit Corporations and the Viability of Going Public*, 104 GEO. L.J. 171, 173-79 (2015) (providing a primer on benefit corporations, including the 2013 Delaware statute authorizing benefit corporations).

²¹⁷ Master Report of Interviews, *supra* note 60, at 31.

²¹⁸ This part draws primarily on interview answers to Question 3 (“How did you get interested in sustainability?”), Question 9 (“What personal or professional characteristics are most essential to your sustainability work?”), Question 10 (“What do you find most rewarding about your sustainability work?”), and Question 11 (“What do you find least enjoyable or most frustrating?”).

making a decision. For legal educators, this information may be helpful in designing curricula and programs as well as in teaching classes.

A. How They Became Interested in Sustainability

A few of these lawyers say they have always been interested in sustainability and sustainability concepts, and some say they became interested during college or jobs prior to law school. For many, an interest in sustainability grew out of their work in environmental law. But many were led to sustainability by specific workplace or community experiences involving projects, perspectives, clients, or colleagues that exposed them to sustainable development concepts. For some, these experiences fed a sense of dissonance between what they were then doing and what they wanted to do, which led them to move their career more in the direction of sustainable development.

Many lawyers said that they had always been personally interested in sustainable development, even before the term was used. A clean energy finance lawyer explained:

I was a charter subscriber to an energy efficient home magazine, *New Shelter*, which started in 1970s or 1980s. It was all about how to build a passive solar house and collect rainwater and have composting toilets—real practical advice. I grew up with a grandfather who taught botany and started arboretums, and my mother knew the names of all the trees and was an organic gardener. I read *The Sand County Almanac*²¹⁹ fairly early on.²²⁰

Others became interested during college.²²¹ One participated as a college student in the first Earth Day (a national teach-in on the environment) in 1970.²²² Several had science related majors.²²³ Another developed a particular sustainability interest in college that led to a job in that area after law school.²²⁴ This attorney looked at the duties of global multinational corporations in college. That led to work after college at a corporate social responsibility

²¹⁹ ALDO LEOPOLD, *THE SAND COUNTY ALMANAC* (1949) (classic work in conservation and environmental protection).

²²⁰ Master Report of Interviews, *supra* note 60, at 13-14.

²²¹ Interestingly, one attorney became interested in sustainability when he stepped out of his law practice for several years to do teaching and research at a major university:

In my university position, the big areas were climate change, biodiversity, and sustainability. I also was working with forestry, and sustainability has been an important part of forestry for a long time. This is emerging area, and you can't get into an emerging area as easily when you have to have billable hours, etc. When I returned to private practice, however, I saw that my clients were interested in sustainability.

Id. at 11.

²²² *Id.* at 14.

²²³ *Id.* at 14.

²²⁴ *Id.* at 15.

company that performed screenings of company performance for investors. When this attorney was in law school, the field of corporate social responsibility did not exist. The attorney interned during law school with a “group that was filing a lot of litigation against companies,” but was “more interested in facilitating dialogue with companies,” and saw that nongovernmental organizations and companies “were not particularly good at talking to each other.” After law school, this attorney found a law firm that was interested in this type of work.²²⁵

One became interested in toxic metals because of a job this lawyer took after dropping out of college. This lawyer has subsequently done considerable work on energy efficiency and renewable energy, in no small part because of emissions of those metals from coal-fired power plants:

I worked for the state’s only residential training institute for people who were severely retarded. I was picked to work with the twelve most difficult men, and most were in their mid-50s. I got interested in why they were mentally retarded. One was trauma, two were genetic, and the other nine were heavy metal poisoning, mostly mercury and lead. Many of these men were kids when they were exposed to these heavy metals. So I went to law school to get lead and mercury out of kids’ brains.²²⁶

Another became interested in sustainability because of training and work experience prior to law school as a chemical engineer: “We don’t waste and don’t like to waste. Chemical engineering requires mass balance; my brain is not organized to accept waste. When I worked as a Superfund on-scene coordinator, I saw the result of operations that saw no downside to generating waste.”²²⁷

For some lawyers, their work has always been about sustainable development. The attorney discussed earlier who does corporate social responsibility work provides one example. Another example is provided by an attorney who does considerable work with start-up companies interested in sustainability:

I started working with shade grown organic fair trade coffee, with a give-back model. They provide some of their proceeds to help educate kids in that part of world. After that, I became more and more interested in those business models, and never gave up. Then the firm said, “You ought to be our firm’s guy.”²²⁸

For many, their own experience practicing law led them to sustainability, even if they did not start out that way, or even if they have not been spending all of their time doing sustainable development work. Some are environmental lawyers who became knowledgeable about

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* at 14.

²²⁸ *Id.* at 11.

sustainability as part of their overall practice, often because they have thought broadly about how the companies and businesses they represent affect the environment and the communities in which they operate. For at least one, this interest has intensified over time: “As you age, and you become a grandfather, you think about what kind of legacy you and others leave behind for your grandkids.”²²⁹

To no small degree, many of the key concepts of sustainable development are embedded, albeit imperfectly, in environmental laws and in their implementation. An attorney with long experience at EPA explained:

The common thread of my work in agency has been achieving environmental goals in ways that are in harmony with social and economic goals. I assume that they are not automatically in conflict. This began in the Clinton administration “Reinvention” era.²³⁰ We didn’t call it sustainability then. When we discussed reinvention— we used terms like “cleaner, cheaper, smarter.” We found it wasn’t just cheaper; it could also advance environmental goals. Then we found that this aligned with what others were calling sustainability.²³¹

A good number of lawyers became interested in sustainability when they saw the limits of simple compliance with environmental laws. One dates his interest in sustainability to his experience in permitting for storm water discharges. The conventional approach is to use pipes to convey storm water to treatment plants, but it is also expensive. By contrast, green infrastructure—the use of permeable areas, green roofs, rain gardens, and other features that allow water to be absorbed into the ground—is less expensive and generates environmental and social benefits.²³²

The idea that we were physically and chemically impairing waterways with relatively benign discharges got me very interested. The issue is not what is in water; the issue is volume. How do you avoid overwhelming urban creeks? We began to look at green infrastructure to address the issues we had. We have looked at reducing volume and also the redesign of urban waterways to help manage runoff.²³³

Another was led to sustainable development after taking a management position at a major pharmaceutical company:

²²⁹ Id at 14.

²³⁰ For a history of this effort, see SHEILA M. CAVANAGH, ROBERT W. HAHN, & ROBERT N. STAVINS, NATIONAL ENVIRONMENTAL POLICY DURING THE CLINTON YEARS 9-10 (2001), <http://www.rff.org/files/sharepoint/WorkImages/Download/RFF-DP-01-38.pdf>

²³¹ Master Report of Interviews, *supra* note 60, at 11.

²³² U.S. Environmental Protection Agency, *What is Green Infrastructure?* <https://www.epa.gov/green-infrastructure/what-green-infrastructure> (last visited Feb. 27, 2016).

²³³ Master Report of Interviews, *supra* note 60, at 15.

My job was about managing risk, and looking for opportunities. It was more preventative. That is what moved me toward sustainability. Many of the larger companies have the luxury of being more progressive and forward looking, and they look out ahead of environmental regulation. They have to manage risks that are not yet regulated. There are business opportunities from managing risk better, being greener, operating more efficiently, and utilizing fewer natural resources. And so many times companies are out ahead of regulation in order to grab opportunities.²³⁴

Many lawyers became interested in sustainable development through real estate work. For one lawyer, it began with the realization that most of the real estate transactions on which that lawyer worked were in “greenfields”—previously undeveloped areas that may have been used for agriculture or forestry. This lawyer became very interested in LEED at the same time, and began exploring many of the legal ramifications of LEED for developers, landlords, and tenants, and contractors.²³⁵ Another lawyer, who has done considerable work in walkable communities and New Urbanism, was introduced to the issue shortly after law school when two real estate law firm jobs did not work out. With a baby, this lawyer decided to work at home. An attorney from the second firm introduced this lawyer to a prospective client who has planning a new community, and this lawyer has been doing that kind of work, for this and other clients, ever since.²³⁶

The recession that began in 2008 brought at least one lawyer, who had spent the bulk of his career doing “all things real estate,” to practice in the sustainability arena. In the next year, his firm started a sustainability department:

The biggest reason for starting the department was the real estate crash; real estate work dried up, and I was looking for another area of practice. Also, in 2008, the state legislature adopted a law creating one of largest incentives for renewable energy. We started getting a client base with a lot of millennials and professionals who weren’t interested in living in the suburbs, and who were willing to entertain paying more to be in a green building. And there were retailers and other businesses who recognized that this would be a good business model, and would give them a marketing advantage.²³⁷

Another lawyer’s career went through several phases before this lawyer started working on sustainable development. This lawyer started as a real estate attorney, but soon began

²³⁴ *Id.* at 11.

²³⁵ *Id.* at 13.

²³⁶ *Id.* at 6.

²³⁷ *Id.* at 15.

“establishing a practice that could be called ‘environmental aspects of real estate transactions.’” Then the firm asked this lawyer to do more land use projects:

Because of my environmental reputation, I got big, nefarious projects—landfills, coal cogeneration projects, medical waste, mining projects, and exploratory oil wells. I developed a practice working on projects where people filled auditoriums opposing my projects. At one point, a woman asked me how I could sleep at night. I said, “Unless you are walking home, to a home that uses no power and you eat all of your garbage, you expect all of these facilities to be in someone’s back yard; you just didn’t want it to be yours. I sleep just fine.” My undergraduate degree was in philosophy, and I went home and did a gut check, and I was not where I wanted to be. But it was not for the reason she thought. My landfills were many times better than those the state had been using. The cogens [combined heat and power, or cogeneration plants] were more efficient than the conventional plants. My oil well was safer. It wasn’t those projects that kept me awake – it was the shopping centers and subdivisions that chewed through irreplaceable habitat. Those kept me awake. In 1988, I began doing New Urbanist projects. I met the “green mafia”—leading voices of sustainable development—in a green development project. I decided that was what I wanted to do—focus on sustainable development and New Urbanism.²³⁸

Finally, some lawyers have been introduced to sustainable development because of their community work. One helped to start up a green building council in his area. “I have never been in an organization where people are more committed, where the environment was more stimulating,” this lawyer said. “It was infectious. I was the founding director; and I am really proud of that.”²³⁹ Another started learning about sustainable development through friends and local organizations at the same time as the firm for which this lawyer was working began to get interested in sustainability.²⁴⁰

B. Most Essential Personal and Professional Characteristics for Sustainability Work

Many of the most essential characteristics of a lawyer practicing law relating to sustainability are the same as those of a good lawyer, including good analytical, speaking, writing, research, and advocacy skills; an ability to work effectively with clients and others; and an appetite for hard work. The personal and professional characteristics identified by these lawyers as most essential to their sustainability work begin with those skills. But these lawyers emphasized six basic characteristics: expertise in, and even passion for, sustainability; ability to

²³⁸ *Id.* at 14.

²³⁹ *Id.* at 12.

²⁴⁰ *Id.* at 26.

listen well; open mindedness, curiosity, and creativity; good problem solving skills; patience; and an ability to think big picture and long term. As a whole, they overlap with, but extend beyond, the skills of most lawyers.

A word of caution about this list is appropriate. These lawyers typically did not identify more than three or four characteristics; many identified only one or two; and many identified, as the most important characteristic, something that most or all of the others did not identify at all. So it would be inappropriate to conclude that these lawyers, or any lawyer doing work related to sustainability, possess all of the characteristics identified here in equal measure. As one attorney explained, in answering this question, “There is not one model of a typical lawyer in this space.”²⁴¹

What follows are the personal and professional characteristics these lawyers identified as most essential to their work:

Expertise in, and even passion for, sustainability. These 26 lawyers, of course, all have this characteristic. Expertise in sustainability, one said, includes “what it means, relevant legal frameworks, best practices, what other companies in the industry are doing in sustainability, and what government policies are relevant.”²⁴² Another explained the importance of mastering the wide variety of issues that arise in this “quickly trending and developing area.”²⁴³ At least one is LEED AP certified, which means that this lawyer has significant expertise in green building.²⁴⁴

For many, mere expertise is not enough. One explained that “you have to have a genuine interest in it” to understand the environmental, economic, and social facets of any given issue and “all of the different parties that will be impacted.”²⁴⁵ Another said passion for the concept is necessary to “articulate issues in an industry friendly fashion.”²⁴⁶ “Enthusiasm helps,” another emphasized. “You have to convince people.”²⁴⁷

Ability to listen well. “The key thing,” one lawyer said, “is hearing what people really want, so you can find a solution for everyone.”²⁴⁸ Another spends “a lot of time listening to clients, trying to figure out various approaches to address a particular problem.”²⁴⁹ Still another stressed the importance of understanding whether the “client is asking a sustainability question or if sustainability is relevant even if it is not explicitly asked about.”²⁵⁰

Open mindedness, curiosity, and creativity. These qualities are grouped here because they overlap and because many attorneys explained themselves in this way. A lawyer who works with developers said: “I am constantly questioning why architects, engineers, or planners do something in a certain way, so we can unlock creative ways of meeting their goals while

²⁴¹ *Id.* at 54.

²⁴² *Id.* at 34.

²⁴³ Master Report of Interviews, *supra* note 60, at 34.

²⁴⁴ *Id.* at 12.

²⁴⁵ *Id.* at 33.

²⁴⁶ *Id.* at 34.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 33.

²⁴⁹ *Id.* at 54.

²⁵⁰ *Id.* at 34.

accomplishing those goals in a more sustainable fashion.”²⁵¹ Another described intellectual flexibility, imagination, and creativity as essential:

That’s why I like the work. We need to develop new answers to questions. It is not a field for lawyers who are comfortable doing the same thing year after year with the same forms. It is field for people who are prepared to invent or be creative. Yet as a counterpoint, you can’t be operating in the ionosphere. You have to be realistic and pragmatic.²⁵²

In the realm of environmental law, several lawyers said, sustainability means thinking creatively about how to solve problems, and suggesting solutions that are different from what would ordinarily be considered:

You can’t be focused on what not to do, or how to stay in compliance. This is the big challenge I see for lawyers in sustainability. As a lawyer, you need to have the personality to go beyond compliance to help the client find ways to get things done, to find legal levers to help the client accomplish what they want. You can’t simply say no. If you are working on permit, you need to find a way to help the client meet the requirements in more sustainable way.²⁵³

A good example of this creativity is provided by a lawyer in private practice with a municipal client.²⁵⁴ The lawyer proposed a public-private partnership to enable the city to combine ground source geothermal energy recovery with subsurface storm water recharge basins. Because the project would be privately owned but operated on behalf of the city, the owner would be able to take advantage of tax credits, and the city would be able to take advantage of private capital.²⁵⁵

One lawyer who counsels many small companies said it was not just necessary for the attorney to be creative. The attorney must also have “a love of working with creative people. Some of the people I work with are the coolest people ever. Most of my developers are mom and pops. They want to make money, but they see themselves as stewards of the land and they want to create something enduring.”²⁵⁶

Patience. Several emphasized the importance of being patient with clients, particularly when they are resistant or do not understand. They emphasized the importance of explaining, translating, and clarifying issues related to sustainability. Said one: “You have to keep

²⁵¹ *Id.*

²⁵² *Id.* at 33.

²⁵³ Master Report of Interviews, *supra* note 60, at 33.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

winnowing down the negative conversation about why we would do that, and what are the benefits to us.”²⁵⁷

Good analytical and problem solving skills. Sustainable development is “multi-disciplinary and multi-focal,” said one lawyer with significant experience working with major corporations.²⁵⁸ The multiple focal points of sustainable development, of course, are defined by its environmental, social, and economic dimensions. This attorney emphasized the importance of “being able to take all sorts of information and synthesize it, critically evaluate it, toward the end of solving a problem.”²⁵⁹

Ability to think big picture and long term. The multiple focal points noted above and the intergenerational aspect of sustainable development require lawyers who work in this area to approach problems from a broad perspective. The three pillars, one said, require “a much broader lens,” the ability to “connect seemingly disparate ideas and work areas” and to break down silos.²⁶⁰ From this perspective, for example, legal advice on forest protection is not just about the forest itself, but about economic development and community protection.²⁶¹ Another described “an ability to think about things at a meta or systemic level, and then drill down to components of that to more granular levels, and move back and forth between systemic and granular levels.”²⁶² Others emphasized the need to care about “long-term outcomes; you can’t just be focused on billable hours or the cheapest short-term outcome for your client.”²⁶³ An attorney has to think about “what the world is going to be like in 50-60 years,” said another, who worked with Native Americans at one point.²⁶⁴ “They introduced me,” this attorney explained, “to the idea of thinking seven generations ahead.”²⁶⁵

Some lawyers can do big picture thinking, one said, and some cannot:

A certain kind of lawyer does project finance and public-private partnerships. Some people are natural project managers. It involves keeping a number of large complex documents in mind, and how they fit together. Some people do this well, and some do not. Lawyers tend to be detail oriented and not big picture. To do project management, it helps to be a big picture person. It is not so different for sustainability.²⁶⁶

C. Most Rewarding Aspects of Sustainability Work

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 49.

²⁶¹ *Id.* at 33.

²⁶² *Id.* at 34.

²⁶³ Master Report of Interviews, *supra* note 60, at 34.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

A great many of these lawyers identified the achievement of specific and positive results as the most rewarding aspect of their work on sustainability. Many said they found it satisfying to explain sustainability projects to clients, and particularly satisfying to convince clients who are either uninformed or skeptical. Others identified the work itself, saying it is enjoyable and intellectually engaging. And some said the most rewarding aspect is working with likable and talented people.

Many described the most rewarding aspect of their work in terms of specific projects or laws to which they contributed that made some positive difference. Over and over, they described the satisfaction of working on the right side. One said: “I am always flabbergasted by the incredible opportunities to do things that are more effective, save money, create local and life-long jobs, and beautify neighborhoods.”²⁶⁷ Another lawyer said the work is “always about the good I’m doing. Understanding that there is actual good and bad that can be done is an important divining rod in what we do.”²⁶⁸

Another attorney explained the potential for sustainability to accomplish good outside the United States, and particularly in developing countries where many of this attorney’s clients operate:

On a global geopolitical level, it is the opportunity to create extraordinary good in places that should not have to experience primitive and benighted approaches or walk the same resource-intensive pathways to prosperity for their people as developed countries did. There are generation skipping technologies and theories. If an advanced solid waste sorting technology could be implemented in Nairobi, for example, you could remanufacture or up-manufacture up to 95% of what is currently being disposed of.²⁶⁹

They expressed this in terms of “helping the community,”²⁷⁰ “contributing toward nudging the world in the direction it should be going,”²⁷¹ or making the state “a better place to live.”²⁷² One explained legal work in sustainability in terms of “making a positive difference in the world for mankind and the environment beyond solving a narrow legal problem.”²⁷³ Another likes “the idea that by helping clients reuse existing property and infrastructure, I am not contributing to metastasizing urban sprawl that chews up greenfields.”²⁷⁴

²⁶⁷ *Id.* at 36.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Master Report of Interviews, *supra* note 60, at 36.

²⁷⁴ *Id.* at 37.

Many attributed this ability to do good work to their clients. “You collect enough clients that want to do the right thing,” said an energy finance lawyer, “then you get to do the right thing most of the time.” This lawyer added that it is “getting better all the time.”²⁷⁵

While many find satisfaction in getting specific projects done, others expressed satisfaction in drafting laws that are subsequently enacted or in helping getting those ordinances or laws adopted. One, who helped write the regulations for a five-cent tax for plastic bags for a major city, said that “seeing this in operation is amazing.”²⁷⁶ Another, whose work in drafting and implementing laws at the state level has led to significant reductions in that state’s greenhouse gas emissions, has found such “structural reform” especially satisfying.²⁷⁷

Some were nonetheless bluntly cautious or circumspect about the limits of what they are helping to achieve. Many cast their work more in terms of reducing negative impacts than in terms of achieving positive impacts. One lawyer actually makes a difference “on some days.”²⁷⁸ Another sometimes influences a client “to do something that has decreased their footprint.”²⁷⁹ Still another found it satisfying when “you can make progress. It is all a drop in the bucket. But it is progress.”²⁸⁰

A lawyer who specializes in sustainable community development projects said:

The thing I find most rewarding is when we get to create a project that truly makes the community better than it would have been without the project. This is a really high standard. So much development diminishes the community. It is so hard to deliver development that not just sustains but makes things better. That is the standard I strive for when working for sustainable development.²⁸¹

Others find satisfaction in explaining to clients why more sustainable approaches are better, and how they will work. One enjoys “persuading companies to invest in a new technology that is truly better, safer, and more efficacious than something that has been used for years.”²⁸² Another, who specializes in legal work related to sustainable communities, said, “The part I love the best is rolling out that master plan with the client, and spending hours talking about the possible things could happen with this property.”²⁸³ Many find particular satisfaction in convincing skeptical clients. This explanation is illustrative: “I love it when people who are

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 36.

²⁷⁷ *Id.* at 37.

²⁷⁸ *Id.* at 36.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 37.

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ Master Report of Interviews, *supra* note 60, at 36.

so certain that what they want to do is right for the world realize that a lower cost, less intrusive solution is in fact better for the environment.”²⁸⁴

Some attorneys emphasized that they find the work enjoyable and intellectually engaging. “It is fun,” one attorney said.²⁸⁵ Another described it as “an endless horizon. That’s the most exciting thing. It is just beginning, and you can’t see where it will go.”²⁸⁶ Another, with a long and diverse career in the public and private sector, said:

What is wonderful about this field is that it so diverse. It never ceases to engage me intellectually. My career has been very multidimensional—it has been sustaining and nurturing. I can’t think of another career that has been as sustaining and challenging. By contrast, I know a lawyer who has been a bankruptcy lawyer for 35 years, and this has been a very static area of law. Sustainability is a very dynamic area of law, policy, and thought leadership.²⁸⁷

Another explained the work in terms of tracking social expectations concerning business performance on sustainability:

Something I particularly enjoy is being a trend spotter—where societal expectations are trending. Companies need to comply with mandatory standards but also with developing and evolving standards. I am a curious person, and find the work intellectually stimulating. I also feel I am playing a part in defining and refining the core performance expectations for companies—not just law and policy, but also what they expect they should do. Playing a role in that conversation is very rewarding.²⁸⁸

Some expressed their greatest satisfaction in terms of the people with whom they get to work. One explained this as “having a community of people in your office who I can work with to realize the vision of sustainability.”²⁸⁹ Another said: “People who work in sustainability tend to be very nice. This is not a joke; it is true. They are interested in cooperation, working across department lines, and encouraging departments to look at alternatives and options to be more sustainable.”²⁹⁰ Several commented on the great talent of the people with whom they work. One enjoys mentoring “young millennials who are wicked smart to assist in getting things done.”²⁹¹

Finally, a lawyer with many corporate clients responded to the question of what is most rewarding or satisfying by saying:

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 37.

²⁸⁹ *Id.* at 36.

²⁹⁰ *Id.* at 37.

²⁹¹ *Id.* at 36.

Everything. It does not get any better than this. I get out of bed at 6:30 in the morning, and think about how fast I can get to the office. When I started this work, I got completely overwhelmed and a bit depressed. At a certain point, we made a conscious decision to stop focusing on the negatives. We explain issues factually, and then we dive into the solutions. We don't talk about whether a company is good or not. I prefer not to talk to people who aren't interested in working on solutions. We work with great people, and all of the great ideas that can get a business to the triple bottom line.²⁹²

D. Least Enjoyable or Most Frustrating Aspects of Sustainability Work

Many lawyers reported that they found little or nothing unpleasant or frustrating about their sustainability work.²⁹³ Others answered by talking about work-life balance, time sheets and billing, the administrative aspects of big law firm practice, or their organization's lack of resources—none of which are directly related to sustainability work.²⁹⁴

But the great majority of these lawyers did not feel this way, and there was a great range in the aspects of their practice they find least enjoyable or most frustrating. Some were frustrated with clients that did not understand or support sustainability. Others identified public opposition based on ideology or misrepresentation, or simply public ignorance of basic science and environmental policy, as the least enjoyable part of their practice. Some are frustrated with the slow pace of progress, particularly on energy and climate change. And some find least enjoyable or most frustrating legal barriers to sustainability, and the time and difficulty of accomplishing sustainability activities and projects. As will be seen below, there is some overlap between these aspects of legal practice and what these lawyers see as the greatest obstacles to sustainability.

Many complained about some of their clients, often distinguishing between those they enjoy working with and those they do not enjoy working with. "I meet clients who want to be best in the field and clients who are dragged into the field kicking and screaming," one attorney explained.²⁹⁵ A common complaint for these lawyers was "narrow, short-term thinking."²⁹⁶ One attorney described such clients as "focused purely on minimizing short-term cost—how much you pay to settle the case or close the deal and how much you pay your lawyer to do it."²⁹⁷ Another common complaint is clients who lack a basic "understanding of science and policy behind sustainability and environmental protection" (e.g., climate change, chemical loading)²⁹⁸

²⁹² *Id.* at 37.

²⁹³ Master Report of Interviews, *supra* note 60, at 38. "I really can't say." one responded. *Id.*

²⁹⁴ *Id.* at 38-40.

²⁹⁵ *Id.* at 40.

²⁹⁶ *Id.* at 38.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

or who resist attorney suggestions “based not on facts but on politics.”²⁹⁹ These and other factors, they said, often mean that clients are not interested in analyzing a problem from a sustainability perspective or looking at the additional options that such an analysis would provide.

An attorney who has done a lot of work on cleaning up contaminated sites explained these problems in terms of the “limited role of the attorney in big-picture decision making.” This attorney said:

When I talk to clients about what they are going to do next, after the property is cleaned up—are they going to do a green building, etc.—that falls on deaf ears. There is a perception that energy efficiency and green building are more expensive than they really are. My overall frustration is not getting a place at the table in the overall conversation.³⁰⁰

Another attorney explained the least enjoyable aspect of working with clients in terms of the patience it requires. Yet sometimes, this attorney said, patience pays off:

I have had to be patient with individuals within companies and with companies themselves. All are at different stages of their sustainability journey. There is often dissonance between what needs to be done and what companies and individuals are able to do. But when people understand what they can do, and what they can encourage other people to do, they move pretty quickly. It is waiting for the “aha” moment that is the hardest thing to do. When that happens, it extraordinarily wonderful, the best thing ever. We spend a lot of time thinking about how to get people to the “aha” moment faster.³⁰¹

Another group of these lawyers said that the most frustrating aspect of their sustainability work is public opposition to specific proposals or projects based on ideology or outright misrepresentation. A lawyer who does considerable legal work for solar industry clients complained about the “blowback that the industry gets from people who are not knowledgeable.” This lawyer described a proposed solar energy project for a school system where the client was able to show the economic advantages of this project, but where one school board member was simply opposed to solar energy.³⁰² Another echoed that point in describing the least enjoyable aspect of sustainability work:

Ideological intransigence; that’s number one, head and shoulders above everything else. It is a whole cluster of things. If I have an American value, it is

²⁹⁹ *Id.*

³⁰⁰ *Id.* at 39.

³⁰¹ *Id.*

³⁰² *Id.*

that we recognize problems soberly and solve them intelligently. When people talk about socialism, conspiracy, property rights; this requires an entirely differently skill set, and it retards problem solving.³⁰³

One complained about the Not In My Back Yard (NIMBY) phenomenon that occurs on some of the land use projects on which this attorney works.

The most frustrating thing is when individuals or communities use legitimate sustainability issues to mask raw NIMBYism. Say a community really doesn't want adjoining development to happen. So they raise issues about trees or endangered species that they have not cared about historically; they simply don't want development on the adjoining property. We can't work out a compromise on that issue because they are using it as blocking issue. This gives a bad name to legitimate issues, because then developers and engineers see these simply as things to stop the project.³⁰⁴

And another framed the least enjoyable aspect of the work in terms of polarized national politics, and particularly the people who are "utterly cynical" in their opposition to specific EPA proposals:

It is hard enough to do this without fighting people who are lying. It's not just climate change. It is the assertion that a new EPA rule will bring the economy to halt, when the reality is that the new rule will make us better off and not worse off. It is not only bad earth science; it is bad economics.³⁰⁵

Another group of lawyers said that what they liked least was not public opposition but lack of public understanding. For some, this is based on the same concerns about lack of basic science and environmental policy knowledge as their clients. For others, there is a distinct regional dimension to this ignorance. One attorney, who travels frequently to California, says sustainability "is in the dark ages in my home state."³⁰⁶ In this attorney's view, that translates into fewer clients for sustainability-related legal work.³⁰⁷ Another does not enjoy the "need to win the same battles over and over again."³⁰⁸ This attorney explained: "You can go to the state legislature and argue that energy efficiency would save money and reduce emissions. Then five

³⁰³ Master Report of Interviews, *supra* note 60, at 38.

³⁰⁴ *Id.* at 39.

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 38.

³⁰⁷ *Id.*

³⁰⁸ *Id.* at 40.

years later you have to go back and defend the same program because it is threatened with budget cuts.”³⁰⁹

For many attorneys, limited progress and the slow pace in moving toward sustainability are the most frustrating or least enjoyable aspect of their sustainability work, particularly on energy and climate change. One found it “frustrating” that sustainability “is viewed as secondary and superfluous, or an afterthought, as opposed to ingrained in everything we are doing.” Another “learned about global warming in college in 1977. We have been talking about the world of closed systems since the 1970s, and I wish we were farther ahead.”

One group of lawyers identified legal barriers and the time and difficulty of getting sustainability projects and actions done as the parts of their work that they liked the least. Within this group, a common complaint is that the laws themselves get in the way. One criticized a township code that requires LEED projects to get a variance for energy-efficient lighting and waterless urinals, rather than simply allowing them.³¹⁰ The need to get a variance, of course, adds time and expense to these projects. A land use lawyer frequently butts against “wrongheaded legislation that won’t let us do the best possible plan,” such as requirements for more parking space than needed.³¹¹

For others, the difficulty of navigating existing laws and policies to get more sustainable projects and activities approved is what they like the least. One complained about the difficulty of satisfying all stakeholders for a proposed project or activity, saying that “99% of time, not everyone is going to be happy.”³¹² Another complained about how bureaucracy and lengthy review processes for complex projects in a municipal setting can “wear you down.”³¹³ This lawyer said it can also wear clients down. Hopefully, the lawyer added, they “stay the course, and stay enthusiastic.”³¹⁴

One attorney’s work on behalf of more sustainable outcomes repeatedly puts that attorney in the position of doing something for the first time, and not only for clients.³¹⁵ This attorney received six water bills from the city after putting in six geothermal wells to heat and cool this attorney’s home, and had to get a city ordinance changed to fix the problem. This takes a personal toll, the attorney said; trying to be sustainable is unnecessarily difficult.³¹⁶

VI. FUTURE OF SUSTAINABILITY IN LAW PRACTICE

³⁰⁹ *Id.*

³¹⁰ *Id.* at 38.

³¹¹ *Id.*

³¹² *Id.*

³¹³ Master Report of Interviews, *supra* note 60, at 40.

³¹⁴ *Id.*

³¹⁵ *Id.* at 39.

³¹⁶ *Id.*

The future of sustainability in law practice depends on answers to two questions. Where are the major obstacles? And where are the jobs?³¹⁷

A. Roadblocks to Sustainability

These lawyers were also asked about what they see as the greatest obstacles to sustainability. Not surprisingly, there is some overlap between the answers to this question and their answers to the question about the aspects of their sustainability work that they find least enjoyable or most frustrating. But the question about greatest obstacles to sustainability is less subjective and invites a broader perspective than a lawyer's own practice. Perhaps for that reason, the range of answers focused primarily on two points: public opinion and the limits of existing law.

Public opinion is an obstacle, many said, because of public ignorance, providing many of the same explanations described above (e.g., ideology, lack of basic understanding about science and the environment).³¹⁸ This, others said, contributes to the slow pace of change, which was also discussed above. But many attorneys see the biggest obstacle to sustainability in terms of a personal unwillingness on the part of the public to make changes in their lives. People "have hard time changing habits," one said.³¹⁹ Another attorney said: "We have a consumer mindset. I grew up with parents of the Depression, and we were encouraged to save and reuse. How do you inculcate a philosophy of the light footprint? People talk the sustainability talk, but they don't walk the talk."³²⁰ One describing "personal avarice and selfishness" as obstacles to sustainability.³²¹

Other lawyers pointed not to ignorance or unwillingness to change but to numerous incorrect mental models or understandings of sustainable development. A major source of misunderstanding, they said, is rooted in the perceived economy vs. environment aspect of environmental regulation. One attorney said that people see environmental regulation "as just environmental, without looking at social and economic benefits. Some people simply don't see connections. They might do better with environmental regulation if they saw social and economic benefits."³²²

A lawyer who works with many businesses said people often believe that "profitability and sustainability are at opposite ends of spectrum. That is wrong, but that is absolutely how it

³¹⁷ This part is thus comprised primarily of answers to Question 12 ("What do you see as the greatest roadblocks to sustainability?") and Question 13 ("Where are the jobs in sustainability and law? (current and future)").

³¹⁸ One added that "people are too busy doing what they are doing to sit back and think about what they are doing." Master Report of Interviews, *supra* note 60, at 41. Another said the basic obstacle is the "Lack of ability to show in 1-5 minutes what people can do to effect positive change at home, church, synagogue, school, work. How do you get person, organization, community, or business involved? Everyone looks at each other, and no one moves." *Id.*

³¹⁹ *Id.* at 42.

³²⁰ *Id.* at 43. Another explained that it "hard to persuade average person they should lead sustainable life style." *Id.* at 41.

³²¹ *Id.* at 42.

³²² *Id.* at 41.

works, and it grows out of environmental regulatory experience.”³²³ Instead of putting profitability and sustainability at opposite ends of a line, whereby one grows as the other diminishes, this lawyer uses a coordinate grid with a horizontal X axis (representing profitability) and a vertical Y axis (representing sustainability). The grid shows that high values for both profitability and sustainability are possible. “I draw pictures like that because it helps people understand it.”³²⁴

Another obstacle is based on the view that sustainability should be supplanted by resilience, particularly as the climate changes and the need to protect structures and systems from disruption becomes more evident. But both are necessary, one lawyer explained:

Sustainability and resilience are different. I can take an industrial user and put them completely off the grid on a more sustainable platform—say biomass. Then I do resilience analysis and determine that a system with only one source of power is less resilient than the grid with many generation sources. Greywater reuse³²⁵ is much more resilient than rainwater capture. We have to pay attention to when we are charting for resilience and when we are charting for sustainability.³²⁶

Still another obstacle to sustainability is based on the incorrect understanding that sustainability is unnecessary, more expensive, or both. One lawyer has had “clients who are not qualified to do LEED building say it is too expensive or can’t be done.”³²⁷ Many of these clients have constructed buildings in a conventional way for decades, and do not see the need for change. This attorney could not get the environment section of his state bar association to support changes in the state’s building code to support LEED certification.³²⁸ In a somewhat similar vein, another attorney explained the greatest obstacle as short-term thinking about sustainability and energy efficiency investments.³²⁹ While the benefits of such investments last for decades and create cost savings far in excess of their initial investment, this attorney said, many businesses will not undertake energy efficiency unless their savings repay the initial investment within 18 months.³³⁰

The biggest challenge, a finance attorney said, is “changing various cultural attitudes.”³³¹ This attorney explained: “If you go to a hotel, and tell them you will save them \$5 million in their energy bill” with energy efficient retrofits, “there is no one whose job it is to think about

³²³ *Id.*

³²⁴ *Id.*

³²⁵ “Greywater is gently used water from your bathroom sinks, showers, tubs, and washing machines. It is not water that has come into contact with feces, either from the toilet or from washing diapers.” Greywater Action, *About Greywater Reuse*, <http://greywateraction.org/content/about-greywater-reuse/> (last visited Feb. 27, 2016). It can be reused for watering or irrigation, among other things. *Id.*

³²⁶ Master Report of Interviews, *supra* note 60, at 42-43.

³²⁷ *Id.* at 41.

³²⁸ *Id.*

³²⁹ *Id.* at 43.

³³⁰ *Id.*

³³¹ *Id.* at 42.

this.” Many universities are thinking about this, the attorney said, but they are the exception. “At high levels at many corporations, they get it, but they do not get it several levels down” in the organization. In energy efficiency finance, it is more important “to get customers to feel safe doing this new thing, than to get finance itself. Financing is more mechanical; you don’t have to fight entrenched skepticism.” Changing these attitudes, the attorney said, will require not only a new generation of environmental professionals, but a new generation of clients and “customers of clients.”³³²

The other basic obstacle to sustainability cited by these lawyers is limits in existing law. One type of obstacle that some recounted, which was described in the previous part, occurs when the law itself prevents or impedes a desired project or activity. But many lawyers see the limits of existing law in broader terms. For many environmental lawyers, environmental law is a necessary but insufficient condition for sustainable development. “Our environmental laws were written in the 1970s and early 1980s,” one attorney said.³³³ “They don’t incorporate sustainability. They are narrow, siloed, media specific, and don’t take into account net environmental and social impact. We have an outdated environmental legal system, and a political system that is too polarized to fix it.”³³⁴ Another explained the limits of environmental law in terms of the under pricing of resources such as water, which means that “people are not incentivized to save or protect” those resources.³³⁵

The missing ingredient, many said, is legal rules providing a structure that guides and encourages sustainable behaviors and projects. According to one lawyer, this includes specific standards “against which we can calibrate our actions to that which we should be achieving.”³³⁶ For this lawyer, the specific problem is the way in which EPA implements certain laws, including the lack of measurable standards relating to sustainability:

Without question, the rigid adherence to “the way we’ve always done it” at EPA staff level is frustrating. I adore all of the people we work with, but some in the federal agencies are not as aware of new technologies as they could be. There is an information gap, a lack of scientific awareness. Beyond that, there is sometimes a resistance to doing things differently than they have always been done. When you put in an application for a new chemical, there is an optional field question about pollution prevention. Even when you do fill in that field, there is no standard against which EPA program people measure the value of that information. Our chemical could be 10 out of 10 here, and the incumbent technology awful. But from an advocacy perspective, there is no demonstrable,

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.* at 43.

³³⁶ Master Report of Interviews, *supra* note 60, at 42.

measurable standard against which to advocate for the preferability of that chemical.³³⁷

Interestingly, an EPA attorney made a similar point in a different context. The least enjoyable thing for this attorney is people who cannot get past the broad definition of sustainability stated by the Brundtland Commission.³³⁸ We need to “get past kumbaya,” the attorney said, explaining that the Brundtland definition is “too abstract to be meaningful to a lawyer.” The challenge, this attorney added, is to figure out what sustainable development should mean in specific contexts.³³⁹

A lawyer with substantial corporate experience said the biggest problem in achieving sustainability is:

the absence of universally applied standards or metrics so that sustainable behavior is properly rewarded and capital can be appropriately allocated in the global market. There is a lot of work ongoing in that area, but that is the issue that needs to be solved. Once that is solved, that is your ultimate top down answer to sustainability. Everybody would aspire to be in that choir.³⁴⁰

B. Jobs in Sustainability and Law

The importance of knowing where to find sustainability-related legal employment is obviously important to law students and lawyers who are seeking such work. It provides many insights into how many jobs there are, what kinds of jobs there are, how to break into the field, and what to expect in the future. And yet it also sheds considerable light on what it means to practice law related to sustainability.

Among the lawyers interviewed for this Article, many said that legal jobs related to sustainability are everywhere, but they are not ordinarily labeled as such. Rather, these lawyers said, sustainability is or should be a critical part of all legal work. Many identified specific workplaces (e.g., in-house counsel) or subjects (e.g., climate change) that are particularly amenable to sustainability related legal work. At the other end of the spectrum, however, are lawyers who say there is little or no work, in part because of competition from consultants and other nonlawyers.

Many of these lawyers believe that sustainability-related legal jobs truly are everywhere, but that sustainability is not a subject like environmental law or energy law. Echoing the point frequently made when they described their own work, they said they see sustainable

³³⁷ *Id.* at 39.

³³⁸ *Id.* at 38.

³³⁹ *Id.*

³⁴⁰ *Id.* at 41.

development as a tool,³⁴¹ lens,³⁴² or prism³⁴³ that can be applied to all areas of law. To no small degree, these jobs are created by the lawyers who fill them based on the sustainability expertise they develop as well as their ability to generate and maintain client interest in sustainability. As one attorney explained:

There is not a sustainability niche as its own niche. Sustainability can, however, be embedded in lots of areas of legal practice. It may come in on a remediation issue or permitting issue. Sustainability can be a significant part of the practice of a real estate lawyer; brownfields law is a perfect example of sustainability. Corporate lawyers have to think about the supply chain. It is not a stand-alone; it is a skill or competency that people ought to have in a lot of different areas of legal practice. A lawyer who can use knowledge of sustainability effectively—not just spotting issues and telling a client what they can’t do—but also finding opportunities and being forward looking—that’s the skill. But that is just being a good lawyer. Can you help the client get toward what they want?³⁴⁴

A lawyer with substantial experience in corporate law said there will be more such jobs in the future:

As the world changes to embrace sustainability principles, the legal jobs will change everywhere. It will be infused in so many elements of corporate behavior that it will become a language you need to be familiar with, to speak, to do the job you are doing, just as you need to understand math to do the things you do. That flavor will be in every legal job. That will be the evolution of sustainability-related entities and objectives, percolating into societal behavior, corporate behavior, and interpersonal behavior.³⁴⁵

An energy finance attorney explained the availability of legal jobs in terms of the necessary and inevitable transition toward sustainability:

There is a huge amount of work. Over the next 20 years, if we do it right, we are going to remake the entire economy. The grid will work differently. There will be a lot more behind-the-meter energy generation. There will be a whole new level of communications connectivity that goes along with energy connectivity. People are rebuilding the food chain, and lots of other things are going on. It is doing all of the things that lawyers do but with a certain consciousness about what

³⁴¹*Id.* at 45.

³⁴² *Id.*

³⁴³ *Id.* at 7.

³⁴⁴ *Id.* at 44.

³⁴⁵ *Id.*

you are doing. If that is what your client's goals are, you can help them achieve their goals.³⁴⁶

"This is a great time to be a lawyer," one said.³⁴⁷ Another explained: "Sustainability aspects of all projects will require lawyers to negotiate, to draft, to counsel, to implement, and to do all those things. You will also need lawyers to deal with problems that occur."³⁴⁸

These jobs involve a wide variety of different areas of law.³⁴⁹ Of these, climate change, renewable energy, energy efficiency, and environmental law were frequently mentioned. Other lawyers mentioned finance, business and human rights, Securities and Exchange Commission disclosure, development of new companies, real estate and land use, green leasing, and sustainable communities. A land use lawyer explained: "They are all over the place—real estate, land use, energy, environment, international, and combinations of the above. They are in business counseling, business acquisitions, insurance, finance, including mortgages, and general due diligence work. I'm just getting started."³⁵⁰

The specific places where sustainability-related legal work is more likely to occur also vary considerably, according to the combined answers of these lawyers. Some law firms are doing more of this work than others; as indicated earlier, some even hold themselves out publicly as doing sustainability-related legal work.

Several attorneys suggested in-house positions with either corporations or governments. A corporate social responsibility lawyer explained:

The expansion of social equity within sustainability has resulted in new types of positions. If you put social equity in sustainability, there is an expansion of roles for lawyers. Most of the expansion I've seen in sustainability positions has been inside corporations. Since 2008, there are a lot more sustainability positions that lawyers can fill that exist in large-scale corporations.³⁵¹

Among government opportunities, several attorneys mentioned in-house positions at municipalities. An attorney for a major city that is committed to sustainable development said the city received 70 resumes when it posted a water/storm water legal job with a major sustainability component.³⁵² Another lawyer said that there are many sustainability-related legal tasks at the local level, but cautioned that "local government attorneys may be doing standard subdivision work 80% of the time, and sustainability work 20% of the time."³⁵³

³⁴⁶ Master Report of Interviews, *supra* note 60, at 46.

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 45.

³⁴⁹ *Id.* at 44-49.

³⁵⁰ *Id.* at 44.

³⁵¹ *Id.* at 46.

³⁵² *Id.* at 47.

³⁵³ *Id.* at 46.

Several attorneys mentioned working for nongovernmental organizations that are oriented toward sustainable development, and one works at such an organization. These organizations may or may not involve the actual practice of law, including litigation. This attorney's organization "employs a bunch of lawyers in our policy program and disclosure work."³⁵⁴ Another option several mentioned is using legal and advocacy skills in contexts where one is not strictly practicing law. "These jobs and few and far between," one lawyer said, "but you are advantaged if you have a legal background because some of what you touch is regulatory in nature."³⁵⁵

In answering the question about where the jobs are, many of these lawyers offered advice to would-be lawyers in sustainability work. Much of this advice mirrored what others said about the nature of legal work related to sustainability—that it is a lens or prism through which to analyze problems in any field. "Young people tell me they want to be sustainability lawyer," an attorney with many corporate clients said. "And I tell them to be a corporate lawyer, and then look for ways to affect every business in a more sustainability way."³⁵⁶ One said the same point can be made for other fields. "Take what is otherwise a traditional environmental or real estate/land use, or insurance job, and figure out a way to bring these ideas into your work, and push the envelope."³⁵⁷ Another explained this challenge to young lawyers against the background of a substantial increase in corporate sustainability reporting that has occurred in recent years, thanks in part to the standardization of reporting and auditing.³⁵⁸ This lawyer said:

A young lawyer wanted to work on sustainable corporate reporting, but she wouldn't have been hired by a Fortune 500 corporation because she didn't have enough expertise in conventional corporate reporting. So her choice was to work on conventional corporate reporting, and work toward sustainable corporate reporting, or do niche work as part of a larger team. The question is how much time you want to spend doing things you don't want to do, in order to do things you do want to do. There are a few pure positions, but they are hard to come by.³⁵⁹

As several lawyers frankly acknowledged, they or others have essentially created their own jobs in this way. A corporate social responsibility lawyer said, "A lot of people who are in this space created their own jobs. It requires a lot of persistence and resilience."³⁶⁰ If you want to work on climate change, another said, "Jobs are where you create them."³⁶¹

³⁵⁴ *Id.* at 45.

³⁵⁵ *Id.* at 47.

³⁵⁶ Master Report of Interviews, *supra* note 60, at 44.

³⁵⁷ *Id.*

³⁵⁸ AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 14, at 159-160.

³⁵⁹ Master Report for Interviews, *supra* note 60, at 46.

³⁶⁰ *Id.* at 47.

³⁶¹ *Id.* at 44.

At the other end of the spectrum, a smaller number of those interviewed said that there are few if any jobs in law related to sustainability. “There is more traction in sustainability in engineering or science,” an environmental attorney said. “It seems very soft in law right now.”³⁶² Another environmental lawyer said: “I’ve been trying to broaden my practice into the sustainability arena, and I really haven’t found anything out there.”³⁶³ One lawyer has tried and failed to convince colleagues at that lawyer’s firm as well as other firms to embrace sustainability:

Most law firms have not figured out how to monetize sustainability. Until they do, they are not going to pay attention. I’ve had those conversations, and advocated that every firm should have a sustainability practice group, but it is hard for them to make money doing that. If they can’t make money or commit to pro bono, how can you convince people to do it?³⁶⁴

As several attorneys see it, the lack of legal jobs is due in no small part to competition from consultants or nonlawyers. This lawyer’s explanation is illustrative: “When this all started, a sustainability lawyer might be the only sustainability person in the room. Now, there are consultants and internal sustainability staff and officers at corporations who have their own sustainability expertise at less cost. That has lowered the number of opportunities for sustainability lawyers.”³⁶⁵

CONCLUSION

In a fundamental sense, this Article is about the role of law and lawyers in achieving the transition to a sustainable future. The lawyers who do sustainability related legal work tend to have a solid operational understanding of what sustainable development means and requires. They do a wide variety of types of legal work, in many legal fields, for a diverse range of clients. Their clients often come to them precisely because of their sustainability expertise, and they have developed savvy ways of raising sustainability issues and options when their clients come to them for other reasons. They find ways of reducing the adverse environmental and social impacts of their clients’ actions, and even creating positive impacts. They are also maximizing environmental, social, and economic opportunities for their clients, and identifying better choices—if the client is open to those opportunities and choices. They have come to sustainability by a variety of routes, but they are passionate and knowledgeable in what they do. And they tend to recognize that sustainability can be part of every legal practice.

But it should also be clear from the variety of views expressed in this Article that they do not all think exactly the same way about sustainable development or the role of sustainability in

³⁶² *Id.* at 46.

³⁶³ *Id.*

³⁶⁴ *Id.* at 45.

³⁶⁵ *Id.* at 46.

law practice. And readers with experience in the practice of law, particularly environmental law, will have almost certainly recognized that some of what these lawyers describe in sustainability terms is the same kind of work that was described decades ago simply in terms of cost savings or protection of the client's legal position by going "beyond compliance." A lawyer who works with business start-ups described the role of attorneys in this transition by contrasting attorneys who see sustainability as a form of compliance with existing laws and those who (like himself) see the need for laws and lawyers that support and encourage sustainable development at the necessary scale:

When I started this, I looked at law firms and consultancies and banking firms, to see what they were doing. Sustainability covers it all. My working hypothesis is that most lawyers are adopting that brand to primarily describe an environmental regulatory practice rather than a corporate innovation or client-focused sustainability perspective. From the client's perspective, they are interested in sustainability as a regulatory compliance matter, trying to minimize the regulatory burden on their clients. There is a big disconnect in capitalism that requires a least common denominator—environmental law. But these regulations are not aspirational; they are a bare minimum.³⁶⁶

Some of what these lawyers describe in sustainability terms is almost certainly simply relabeling of work that was previously described in other terms. And some of the work described here is more modest—the use of sustainability to achieve compliance with environmental laws in cheaper and more efficient ways. But much of it is more far reaching—helping companies, businesses, and governments to achieve their ambitious sustainability goals or nudging them to understand how a sustainability perspective can reduce the environmental and social harms they would otherwise create and even create economic, environmental, and social benefits. Given the magnitude of the climate change challenge and other sustainability issues, the aspirational part of sustainability almost certainly represents the future direction of laws and lawyers.

For all of these lawyers, however, sustainable development provides a common perspective and set of principles to guide decision making. All of them see how it leads to better decisions, however much they or others might wish to see even better decisions or see better decision making employed at a vastly greater scale. By understanding what they all do, we better understand how law and lawyers can contribute to a more sustainable society.

³⁶⁶ *Id.* at 48.

APPENDIX

SUSTAINABILITY IN LAW PRACTICE
QUESTIONS FOR LAWYERS

Name:

Title and Employer:

Phone:

Email:

Date:

1. How long have you been in this position?
2. What kind of work do you do, and who are clients?
3. How did you get interested in sustainability?
4. What is your understanding of sustainability?
5. Under what circumstances do your clients raise sustainability issues with you?
6. Under what circumstances do you raise sustainability issues with your clients?
7. When you talk to clients about sustainability, what do you say?
8. Apart from client counseling, what type of other legal work do you do on sustainability?
9. What personal or professional characteristics are most essential to your sustainability work?
10. What do you find most rewarding about your sustainability work?
11. What do you find least enjoyable or most frustrating?
12. What do you see as the greatest roadblocks to sustainability?
13. Where are the jobs in sustainability and law? (current and future)