

# THE PHILADELPHIA LAWYER

Vol. 77, No. 4

Philadelphia Bar Association Quarterly Magazine

Winter 2015

## Climate Change: Time to Act

Lawyers Must Assume  
Leading Role in Finding Solutions

BY STEVE HARVEY



88th Chancellor  
Albert S. Dandridge III  
By BERNARD W. SMALLEY SR.



Stretching His Legs  
on the Appalachian Trail  
By GRANT E. NICHOLS



# CLIMATE CHANGE: TIME TO ACT

BY STEVE HARVEY

**M**ore than 25 years have passed since NASA climate scientist James Hansen testified in Congress that the Earth was warmer in 1988 than at any time recorded in history, and that “global warming is now large enough that we can ascribe with a high degree of confidence a cause-and-effect relationship to the greenhouse effect.” Since then, the science of climate change has been confirmed and re-confirmed. All of the major scientific organizations worldwide have reached the same conclusion. Global air temperatures are rising and there will be significant effect on the planet, none of it good, much of it unknown, and it has already begun.

The cause is indisputably human activity, specifically, unrelenting emissions of carbon dioxide and other greenhouse gases caused by burning fossil fuels: oil, natural gas and coal. The United States for many years led the world in total annual greenhouse gas emissions, but it has been passed by China with

India close behind. So we, as a world of people, must face the impending and probably existential problem of arresting climate change and preserving the biosphere.

Don't take it from me. Take it from a scientist, Richard Alley, Ph.D., of Penn State University, who explained the scientific consensus on climate change at a Philadelphia Bar Association Chancellor's Forum to a capacity crowd at bar headquarters on Nov. 6. Dr. Alley is a glaciologist who is widely credited with showing that the earth has experienced abrupt climate change in the past – and likely will again, based on his study of ice cores from Greenland and West Antarctica.

Dr. Alley is a member of the National Academy of Sciences and the Royal Society, and has worked with both organizations on published reports explaining the consensus on climate change. He served as one of the authors on the United Nations Intergovernmental Panel on Climate



Dr. Richard Alley  
Photo by Geoff Haines-Stiles, for Earth: *The Operators' Manual*

People ask, why lawyers? Because the solution to climate change must be expressed in law. In fact, the problem in one sense can be said to have occurred because of a lack of legal restriction. But more, the problem is so important and urgent that it deserves the attention of our profession. We've done it before on other issues of great importance to us and our families, issues like independence, abolition of slavery and civil rights. Lawyers and the legal community played leading roles in all of those causes.

Change, whose members shared the 2007 Nobel Peace Prize. He has many other accomplishments in the area of climate science. He has been described as "a cross between Woody Allen and Carl Sagan" for his informative and entertaining teaching style.

Dr. Alley began his presentation with the "skinny version of the program," which is that "we enjoy the good that we get from energy use, which is now primarily from fossil fuels. We must change or suffer really, really serious consequences and the sooner we start changing the better off we will be economically and in other ways. So you can now enjoy your dinner."

The problem is the huge volume of carbon dioxide (CO<sub>2</sub>) we are now emitting into the atmosphere, many of us without realizing it, because CO<sub>2</sub> is invisible. To illustrate the point, Dr. Alley asked the audience to compare the weight of household trash per person per year in America, which is less than 1,000 pounds, to the weight of CO<sub>2</sub> put into the atmosphere per person per year in America, which is about 40,000 pounds. "This cannot continue," he explained. "We are burning fossil fuels roughly a million times faster than nature saved them for us."

The result is an unprecedented level of CO<sub>2</sub> in the atmosphere. For 800,000 years CO<sub>2</sub> levels ranged from 180 to 280 parts per million, and continued at the upper end of that range for the 8,000 years of human civilization. That number has risen since the Industrial

Revolution, with most of that rise in recent decades, to 400 parts per million, a mark we just passed in 2013, and it is still rising.

The accompanying chart (see page 23) from the National Oceanic and Atmospheric Administration that shows the change in CO<sub>2</sub> levels over time, more specifically, the spike in CO<sub>2</sub> levels caused by burning fossil fuels.

CO<sub>2</sub> blocks cooling, something science has known for a long time, and more CO<sub>2</sub> will block more cooling of the Earth as it emits energy from the sun's rays. This is why, when asked if he "believes in global warming," Dr. Alley responds: "We don't believe it. It's physics. And it's physics like if I drop this pencil it will fall down. There isn't another side of that."

Will global warming have adverse consequences? At this point it seems that there will be consequences no matter what, but unless CO<sub>2</sub> emissions are reduced a lot more quickly it will cause serious changes for life on earth, including sea level rise imperiling the lives of many people around the world, not to mention food shortage and loss of biodiversity, to name just a few problems we can expect. Dr. Alley said that all of the uncertainties about climate change relate to the downside risk. As he put it when he spoke upon his election to the Royal Society this past summer: "we are doing a huge geochemical experiment in the world by putting CO<sub>2</sub> up and the uncertainties

about what it might do are mostly on the bad side."

Many scientists, governments and the United Nations have concluded that we must reduce CO<sub>2</sub> emissions quickly to limit further temperature increase to no more than another two degrees Celsius (3.6 degrees Fahrenheit), or face devastating consequences. The Intergovernmental Panel on Climate Change has advised that greenhouse gas emissions in 2050 will have to be 40 to 70 percent lower than what they were in 2010, and by the end of the century they will need to be at zero. Even then, we will have to consider yet unknown technology to take carbon dioxide out of the atmosphere.

Or face devastating consequences. This isn't something that can easily be ignored. These are the findings and conclusions of the entire scientific community around the world developed for more than 25 years.

An international outcry for action on climate change grows louder every day, supported by the United Nations and many of the world's governments, including countries with millions of people living near sea level who will have no place to go. Many religious leaders from all faiths have spoken out strongly. Pope Francis is said to be preparing an encyclical. The Rockefeller family is divesting its holdings in fossil fuels.

Much is being done to address or at least understand the problem. Scientists, economists and planners

around the world are studying it. The U.S. military is preparing contingency plans. The insurance industry is investing heavily in understanding the risk. The Environmental Protection Agency (EPA) issued proposed new regulations to reduce emissions from power plants. California is taking bold steps to reduce emissions.

On Sept. 21, the United Nations kicked off Climate Summit 2014 with more than 300,000 people marching in New York City. The Summit seeks to achieve an international accord designed to reduce emissions substantially, the hope never fulfilled in the Kyoto Protocol that in 1997 the U.S. Senate killed with a non-binding resolution on a 95-0 vote.

It seems obvious that substantial reduction and then elimination of greenhouse gas emissions should be an immediate policy goal of the United States and all other countries. Is this technologically and economically feasible? The answer is unequivocally yes, according to most economists including many well-known conservatives, such as Charles Schultz, Hank Paulson and Gregory Mankiw. Former George W. Bush Treasury Secretary Paulson had an excellent article on this subject in *The New York Times* on June 21, 2014. Economists generally agree that a carbon pricing policy, i.e., a carbon tax or cap and trade system, would limit emissions substantially while creating a free market revolution in new technologies, with substantial economic benefits. As Americans, we could take the lead politically, technologically and economically. The rest of the world would be forced to follow in order to compete.

What other choice do we have? Isn't this the whole point of the American experiment – that a free people can lead themselves through a government designed to secure our future. There is no reason why we should reject our principles now and quietly give in to the loss of the natural world that we all depend upon for life. Instead we should use the authority that derives from the consent of the governed to make new laws that force a substantial reduction in CO2 emissions. Or face devastating consequences.

As a practical matter, meaningful carbon pricing cannot happen without the approval of the world's most powerful legislative body, the U.S. Congress. Congress has done nothing on climate change since 1987, when it passed the Global Climate Protection Act, which directed the EPA to propose to Congress a "coordinated national policy on global climate change." Congress then emphasized that "ongoing pollution and deforestation may be contributing now to an irreversible process" and that "[n]ecessary actions must be identified and implemented in time to protect the climate." Since 1987, Congress has enacted no laws on climate change, and has not mandated a coordinated national policy. More recently, many legislators have declared their disbelief in climate change, presumably a reflection of the views of the voters in their districts or their campaign donors, and surely not a proper assessment of the scientific evidence.

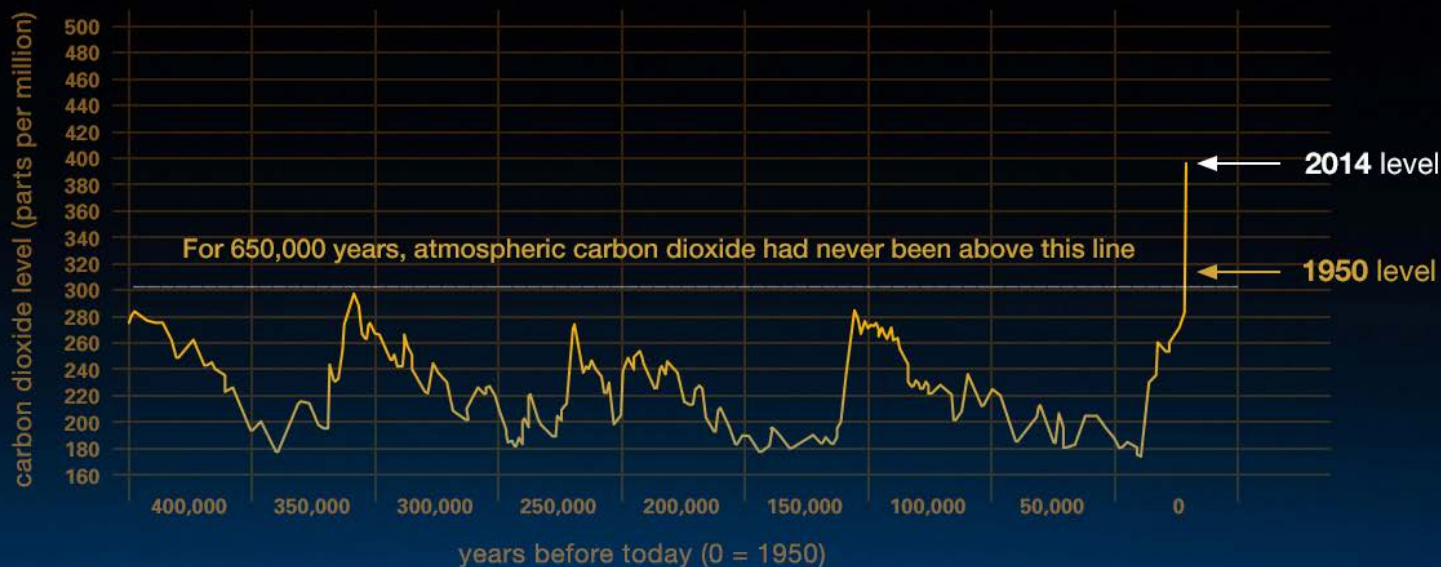
Congress must act on climate change. This is too important to get it wrong for even a few more years. This cannot be decided as a partisan issue. It must be decided on the scientific

**THE LAUREATES  
CONFERENCE CENTER**  
— AT THE FRANKLIN INSTITUTE —

Book your next event at  
Philadelphia's newest  
IACC-rated Conference Center

**215.448.1165**  
[www.fi.edu/conferences](http://www.fi.edu/conferences)

MEET AT A SMARTER LEVEL 



facts.

But Congress needs to be urged to act. That's where we all come in. We need many more voices: fathers, mothers, teachers, nurses, athletes, fire fighters, astrophysicists, yoga instructors, CEOs and yes, lawyers.

People ask, why lawyers? Because the solution to climate change must be expressed in law. In fact, the problem in one sense can be said to have occurred because of a lack of legal restriction. But more, the problem is so important and urgent that it deserves the attention of our profession. We've done it before on other issues of great importance to us and our families, issues like independence, abolition of slavery and civil rights. Lawyers and the legal community played leading roles in all of those causes.

With the support of Chancellor William P. Fedullo, the Board of Governors of the Philadelphia Bar Association recently passed a resolution on climate change. The resolution calls on the U.S. Congress, the Pennsylvania General Assembly and

local governments to promote policies, such as carbon pricing, to reduce the use of fossil fuels and greenhouse gas emissions. The full resolution can be found here: [www.philadelphiabar.org/page/ResJune14\\_3](http://www.philadelphiabar.org/page/ResJune14_3).

The Philadelphia Bar Association is only the second bar association to speak out on climate change. In 2008, the American Bar Association passed a similar resolution.

Many people recognize climate change as the great moral and ethical issue of our time. As lawyers, it is right that we make our voices heard. The hope is that we can generate publicity about the resolution passed by our bar association, the nation's oldest, so that other bar associations and other groups will join in the call for action.

We can also look for ways each one of us can work on this issue. With the help of people in the Philadelphia legal community, a new website has been launched: [www.calltothebar.org](http://www.calltothebar.org). It's a place where lawyers can show their support by signing an online petition, learning more about the issues, and

getting involved.

Finally, we can and should encourage other bar associations and organizations of every kind to make it a first order of business to take a stance on climate change. That's also part of the Philadelphia Bar Association resolution and the mission of [calltothebar.org](http://calltothebar.org).

It's hard to overstate the seriousness of the issues if we can believe Richard Alley and the reports from the science community. Do we believe them? As lawyers, particularly in Philadelphia, the birthplace of science in America, we know how to evaluate scientific evidence. Many of us have science backgrounds and many more have developed expertise in evaluating scientific claims and evidence. The answer to the question is clear, as is our obligation to call for Congress to take action now to protect society from the devastating consequences of climate change if CO2 levels don't come down. ■

*Steve Harvey (steve@steveharveylaw.com) is principal in Steve Harvey Law LLC.*