

# Larry Gibson and the Lobster Boat

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Students at Virginia Tech in 2008 pointed me to Larry Gibson and the situation near Coal River Mountain. Larry was blocking mountaintop removal coal mining on nearby Kayford Mountain by refusing to sell his land. I agreed to participate in a 2009 protest in West Virginia, because the coal mining was a local environmental abomination and a cause of global climate change.

Larry hoped that the courts could help put a stop to mountaintop removal, and he somehow concluded that I might be able to help. That notion was probably based on the Kingsnorth case in the United Kingdom in 2008, in which protestors who halted the operation of a large coal-fired power plant successfully used the “necessity” defense. The defendants admitted that they had committed a crime in halting the power plant operations, but asserted that they did so only to prevent a greater crime: the willful destruction of life and property by burning of coal when science makes it clear that resulting climate change will have highly deleterious effects.

The defendants were acquitted at Kingsnorth because of brilliant work of Mike Schwarz, the lawyer for the defense. I submitted [written testimony](#) to support the defendants by showing the reality of concerns about climate change and the failure of governments to take effective actions. However, it was only because of Schwarz that the jury could appreciate the matter. You could hear a pin drop in the court as he captivated the jury by reading specific sentences from my testimony and asking explanations.

Some question the validity of the necessity defense or the value of acquittal. The larger crime is not stopped; global fossil fuel burning continues unabated. However, it may be possible to draw attention to the injustice of human-caused climate change, an injustice mainly to young people.

Larry and I tried once. After being arrested at the 2009 protest for ostensibly blocking traffic, we refused to pay the fine and requested a trial. After two years, West Virginia authorities dropped the charges. We neither paid fines nor went to jail. And they avoided unwanted publicity.

Larry was a genuine hero (<http://earthjustice.org/mountain-heroes/larry-gibson>). It was hard to turn down his entreaties. I twice drove to his place on Kayford Mountain, a 10-hour drive from my house, and I walked with him at a protest of mountain-top removal mining at “Appalachia Rising” in Washington ([Fig. 1](#)), where I read [a statement](#) on Freedom Plaza. We were arrested for sitting in front of the White House in protest of President Obama’s refusal to address mountaintop removal. It grated on Larry that we had to pay fines, with no chance for a trial.

Larry kept bugging me to find a case where we could draw attention to the folly of mountaintop removal. I kept putting him off, saying that I had to focus on finishing a paper that would make the broader climate story clear – then we would look for a venue. The paper seemed to take forever. A journal refused to publish it, because it contained “normative” statements, and raised moral issues, which the editor said did not belong in a science paper.

Before it was finished, Larry had a heart attack and died. I still have a couple of his “if you dare to be one” t-shirts, but I don’t wear them. [The paper](#) was finally published.

This week Ken Ward and Jay O'Hara were to go on trial, threatened with 9 months in jail, for using their lobster boat, Henry David T., to block shipment of coal to Brayton Point power plant (Somerset, MA), one of the dirtiest coal-fired power plants in the United States.

I prepared a [written testimony](#) to help their defense. It was never needed. Their lawyer, Matt Pawa, is as brilliant as Schwarz. Pawa has won important victories in the courts, including a case against automakers for resisting implementation of higher vehicle efficiencies. In the present case, the District Attorney decided to drop all criminal charges against Ward and O'Hara, although they will each have to pay \$2000 fines.

There are many brave people who recognize the climate crisis and are beginning to stand up and take personal risks to try to stop expansion of the fossil fuel industry, across the United States, in Canada, and in other nations. Their courage is remarkable and I hope it has an awakening effect.

The courage displayed by Larry Gibson, Ken Ward, Jay O'Hara and a growing number of others is absent in our political leaders. In the United States, both political parties kowtow to the fossil fuel industry. One party simply denies the reality of human-caused climate change. The other party feigns concern, advocating ineffectual costly policies such as renewable portfolio standards for utilities, while simultaneously approving development of dirty unconventional fossil fuels and continuation and expansion of drilling and mining of every fossil fuel that can be found.

Incredibly, given the clarity of scientific evidence on the danger of exploiting the unconventional fossil fuels, it is possible that the next Presidential candidates of both parties may favor building the Keystone XL pipeline. This despite the fact that economic analyses show that a simple rising carbon fee in 10 years would reduce annual United States fossil fuel use ten times more than the volume of fuel carried by that enormous pipeline. Politicians could explain that an honest price on fossil fuels would make our economy more efficient, help modernize our infrastructure, and improve our energy and national securities. However, this would require understanding, honesty and courage, qualities that seem to be in short supply among our politicians.

What I would like to do, if I can find support for it, is play offense instead of defense. Instead of using legal talent to defend protestors and minimize their penalties, we should file cases against the real culprits, our governmental leaders who are failing to protect the rights of all people, especially young people. The basis for legal action, in my opinion, should be the most fundamental rights guaranteed by our Constitution.

The science is clear. If we do not phase down fossil fuel emissions rapidly, we will hand young people a situation out of their control. Our Constitution guarantees all people equal protection of the laws. It says they cannot be deprived of life, liberty or property without due process of law.

Young people are people. It is time to file suit against our governments, to ask the courts to require the government to present plans to phase down fossil fuel use at a pace that can stabilize climate, preserving nature and a future for young people, providing young people equal protection of the laws.