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Recommended Citation

Roger Williams University School of Law, "Newsroom: Horwitz on 'Necessity Defense'" (2014). *Life of the Law School (1993-)*. 413.

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Newsroom

Horwitz on 'Necessity Defense'

Professor Andrew Horwitz explains why the "necessity defense" invoked by two environmental protesters at Brayton Point Power Station is a long shot.

From the Providence Journal: [“Activists who blocked coal barge at Brayton Point to use ‘necessity defense’ at trial, by Alex Kuffner, Journal Staff Writer](#)



FALL RIVER, Mass., September 06, 2014: When

Ken Ward and Jonathan “Jay” O’Hara go on trial here on Monday for blocking a coal shipment to Brayton Point Power Station, [...] the two environmental activists will argue that their actions were justified because of the threat posed to the planet by the burning of fossil fuels. [...] It’s a novel use of what’s known as the “necessity defense” — a long-standing doctrine that allows that in some instances by breaking the law a greater harm is being prevented. [...]

Though **criminal law professor Andrew Horwitz** said the necessity defense has a long history, he has never heard of it being argued before in a U.S. court in relation to climate change.



To explain the logic behind the defense, **Horwitz, an assistant dean and professor of law at Roger Williams University School of Law**, describes someone walking on the sidewalk who is confronted by a car veering into their path. To get out of the way, the pedestrian jumps into a homeowner's garden. Under the law, he trespassed, but he only did it to save his life. [...]

“The struggle — and why these defenses rarely succeed — is that the nexus between action and plausible claim that you're preventing the harm is hard to establish,” **Horwitz said**.

For full story, click [here](#).

<http://www.providencejournal.com/breaking-news/content/20140906-activists-who-blocked-coal-barge-at-brayton-point-to-use-necessity-defense-at-trial.ece>