Environmental Law (Report No. 109)

RESOLVED, That the American Bar Association
a. supports actions by federal, state, territorial and local governments, private entities and academic institutions to achieve implementation and enforcement of environmental laws, regulations and policies so that a disproportionate share of the burden of environmental harm does not fall on minority and/or low-income individuals, communities or populations;

b. urges federal, state, territorial and local administrative agencies to give priority attention to this problem by, among other things, improving agency procedures governing access to information and the decision-making process, distributing information about environmental impacts and applicable laws, by adopting regulations and policies to mitigate or eliminate those impacts, and assessing and managing environmental risks so that they better take account of the need to eliminate such inequities; and

c. urges Congress, state and territorial legislatures and local governments to enact legislation, as appropriate, and to take other appropriate measures to redress and eliminate situations in which minority and/or low-income people have borne a disproportionate share of harm to the environment; and

BE IT FURTHER RESOLVED, That the American Bar Association urges;

a. further documentation of the causes and consequences of the inequitable distribution of environmental burdens;

b. the delivery of legal services in the area of environmental law to eligible persons in minority and/or low-income communities;

c. additional training of environmental lawyers to recognize, address and redress incidences of environmental inequity;

d. law schools to consider the expansion of curricula and clinical programs to educate students to deal with these problems; and

e. state, territorial and local bar associations to adopt resolutions similar to this ABA resolution.
The physical environment of America's minorities -- Hispanics, Native Americans, Asians, African Americans, the poor of any color -- has in one way or another been left out of the environmental cleanup of the past two decades. Black children, as a whole, have more lead in their blood than do white children. Blacks are decidedly over-represented in air-pollution nonattainment areas. The environment of migrant farm workers, particularly in their exposure to hazardous pesticides, has not been well protected, to say the least. People of color are much more likely to have hazardous waste sites in their backyards than are whites.

The proposed resolution responds to an increasing body of disturbing evidence that the burden of adverse environmental impacts falls disproportionately on people of color and/or low income populations. While other terms have been used to describe this phenomenon, notably "environmental racism" and "environmental equity," the term "environmental justice" is the preferred characterization of this struggle, reflecting as it does the goal to be achieved.

1. Growth of the Environmental Justice Movement

Over the past two decades, public and private institutions and academic scholars have conducted research and investigation to determine whether the burdens of environmental harm and the benefits of environmental protection have been distributed inequitably to minority and/or low income populations.

The studies show that our environmental laws, as well as the means by which they are implemented and enforced, do not adequately protect these populations. While the causes are many and varied, and the specific instances of injustice


2. For a comprehensive list of these studies, see Luke W. Cole, "Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law," 19 Ecology L.O. 619 (1992).
sometimes difficult to establish under our current legal framework, the prevalence of environmental injustice -- or the lack of environmental justice -- cannot be ignored and should be addressed by the American Bar Association.

The environmental justice movement is said to have started in 1982 as a result of the outrage generated by the decision of the State of North Carolina to build a toxic waste landfill for PCB-contaminated dirt in Warren County. The contaminants to be buried there were to come from fourteen different counties in the State. Warren County, however, had the highest percentage of people of color of any county in the state and was one of the poorest. The ensuing protest, the first national African-American protest against the location of a hazardous waste facility, involved not only residents of Warren County, but civil rights, labor and political leaders as well as environmental activists. Demonstrations in opposition to the proposed site resulted in the arrests of more than 500 people, including Dr. Benjamin P. Chavis, Jr., then-Executive Director of the United Church of Christ Commission for Racial Justice (now Executive Director of the National Association for the Advancement of Colored People), Dr. Joseph Lowery of the Southern Christian Leadership Conference; and Congressman Walter Fauntroy (D-DC).

2. What Studies Have Shown Over Several Decades

At least since the early 1970s, academicians, social


5. Id.

6. Id. at 37.
scientists and federal agencies have been noting and documenting the disproportionate distribution of the adverse effects of environmental pollution on lower income populations; early in the 1980s attention was turned to the impact on minority populations. Some of the more prominent of these studies and their results are set forth below.

a. Findings of the U.S. General Accounting Office

In 1982, the same year as the Warren County protest, Congressman Fauntroy and Congressman James J. Florio requested the U.S. General Accounting Office (hereinafter, GAO) to conduct a study "to determine the correlation between the location of hazardous waste landfills and the racial and economic status of the surrounding communities."

The GAO found, among other things, that African-Americans were the majority of the population in three of the four communities where the four off-site hazardous waste landfills (Chemical Waste Management, Sumter County, Alabama; Industrial Chemical Company, Chester County, South Carolina; SCA Services, Sumter County, South Carolina; and the Warren County PCB landfill, North Carolina) were located. At least 26% of the population in all four communities had incomes below the poverty level and most of that population was African-American. In the 1980 census, the poverty level was $7,412 for a family of four.

7. See, e.g., Council on Envtl Quality, The Second Annual Report of the Council on Environmental Quality 192-93 (1971) (finding that air pollution is distributed inequitably by income); Brian J.L. Berry et al., The Social Burden of Environmental Pollution; A Comparative Metropolitan Data Source 563, 570-71 (1977) (reporting that solid waste sites in Chicago are distributed inequitably by income), cited in Cole, supra note 2, at 623 n.9.


9. Off-site landfills are "those not part of or contiguous to an industrial facility," id., at 1.

10. Id.
b. 1987 United Church of Christ Report

In 1987, the United Church of Christ Commission for Racial Justice (UCC) released its report, Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites (hereinafter UCC Report). Among other things, the UCC Report concluded that the racial composition of a community proved to be the most significant factor among the variables tested in the decision to locate hazardous waste facilities.

More specifically, the UCC Report found that communities with the greatest number of commercial hazardous waste facilities had the highest composition of racial and ethnic residents. In communities with two or more facilities or one of the nation's five largest landfills, the study found that the average minority percentage of the population was more than three times that of communities without facilities (38% compared to 12%). The UCC Report also concluded that in communities with one commercial hazardous waste facility, the average minority percentage of the population was twice the average minority percentage of the population in communities without such facilities (24% compared to 12%). Finally, the UCC Report found that three out of the five largest commercial hazardous waste landfills in the United States were in predominantly African-American or Hispanic communities. At that time, those three landfills (Emelle, Sumter County, ...)

11. The UCC conducted a cross-sectional study of the racial and socio-economic status of residents of the zip code areas surrounding the 415 commercial hazardous waste facilities in the contiguous United States that could be identified through EPA's Hazardous Waste Data Management System (since replaced by the Resource Conservation and Recovery Information System), and compared those characteristics to those of zip codes that had no such facilities. For criticisms of the UCC study see Lazarus, supra note 3, at n.55, 28 n.73.

Alabama; Scotlandville, Louisiana; and Kettleman City, California) accounted for 40% of the total estimated commercial landfill capacity in the nation. As a result of this comprehensive study, the term "environmental racism" first was coined.

c. Environmental Protection Agency's 1992 Report

The findings of these (and other) studies were largely confirmed by the U.S. Environmental Protection Agency (EPA) in its June 1992 Report. The Agency's Environmental Equity Working Group concluded that:

- Racial minority and low-income populations experience higher than average exposure to selected air pollutants, hazardous waste facilities, contaminated fish, and agricultural pesticides. Exposure does not always result in an immediate or acute health effect. High exposures and the possibility of chronic effects nevertheless are a clear cause for human health concerns;

- There are clear differences between racial groups in terms of disease and death rates. There are also limited data to explain the environmental contribution to these differences. In fact, there is a general lack of data on environmental health effects by race and income. For diseases that are known to have environmental causes, data are not typically disaggregated by race and socioeconomic

13. For additional studies on the extent to which locally undesirable land uses (LULUS) are disproportionately located in neighborhoods predominantly populated by people of color and the poor, see Robert Bullard, "Solid Waste Sites and the Black Houston Community," 53 Soc. Inquiry 273 (1983); Bullard, supra note 4; Race and the Incidence of Environmental Hazards: A Time for Discourse (B. Bryant and P. Mohai eds. 1992) (reviewing 15 such studies); and Vicki Been, "Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics" (draft manuscript in the possession of report authors) (report on pilot project assessing whether an examination of the socio-economic characteristics of host communities at the time they were chosen would shed light on the competing disproportionate effect and market dynamic theories).

The notable exception is lead poisoning: a significantly higher percentage of African-American children compared to white children have unacceptably high blood lead levels;

• Similarly, environmental and health data are not routinely collected on risks posed by multiple industrial facilities, cumulative and synergistic effects, or multiple and different pathways of exposure. Risk assessment and risk management procedures are not in themselves biased against any particular income or racial groups. However, risk assessment and risk management procedures can be improved to take better into account equity considerations;

• The language, format and distribution of written materials, media relations and efforts between the EPA and other government agencies and racial minority groups and/or low-income groups can be improved to communicate better information related to environmental problems. In addition, EPA can broaden the spectrum of groups with which it interacts;

• Case studies of EPA program and regional offices reveal that opportunities exist for addressing environmental equity issues and that there is a need for environmental equity awareness training; and

• Native American communities and tribal governments are a unique cultural and political group who have distinct environmental problems. Tribes often lack the physical infrastructure, institutions, trained personnel, and resources necessary to protect their members and the reservation environment.

15. In a related context, one scholar has proposed adding equity sensitivity considerations to property rights claims in natural resources disputes. See A. Dan Tarlock, "Environmental Protection: The Potential Misfit between Equity and Efficiency," 63 U. Colo. L. Rev. 871 (1992).

16. While studies to date have been confined to the EPA’s administration of pollution and pesticide laws, environmental and natural resources laws administered by other federal, state and local agencies also should be studied to determine whether the types of trends raised in EPA studies have wider applicability.
d. Findings of the National Law Journal

EPA's environmental equity record was further put into question by an eight-month study conducted by the National Law Journal (NLJ Report). That study, released in the fall of 1992, examined the correlation between race and income and the Agency's enforcement of environmental laws and regulations. The study found that EPA, in effect, discriminates against minority communities not only in the cleanup of hazardous waste sites, but in enforcing all federal environmental laws aimed at protecting citizens from air, water and waste pollution. According to the NLJ special report, the disparity in responding to and enforcing hazardous waste laws is based on race and not on income. The NLJ Report came to these conclusions as a result of its computer-assisted analysis of every federal environmental lawsuit concluded in the last seven years and every residential toxic waste (1,177) site in the 12-year history of the Agency's Superfund program. Among other things, the NLJ Report concluded:

- It takes 20% longer for advanced hazardous waste sites in minority communities to be placed on the Superfund National Priority List than sites in white neighborhoods;
- Minority areas wait the longest for a federal response to hazardous waste complaints; low-income communities wait almost as long. (But white communities wait less than high income communities, thus indicating that color is a more important factor than income);
- At sites in minority communities, EPA selects "containment" (capping or walling off of a hazardous site)

17. Marianne Lavelle & Marcia Coyle, "Unequal Protection: The Racial Divide in Environmental Law," Nat'l L.J., Sept. 21, 1992, at S1-12. Among other awards presented to the Journal for this series were the 1992 George Polk Award for Legal Reporting, the Scripps Howard Foundation Edward F. Meeman Award for Environmental Reporting, the Investigative Reporters and Editors Award "for uncovering a pattern of unequal enforcement of federal laws in minority communities," the Unity Award in Media "for outstanding coverage of minority problems, issues and concerns," and Columbia University's Paul Tobenkin Memorial Award for "outstanding achievement in the fight against racial and religious hatred, intolerance, discrimination and bigotry."
7% more frequently than the preferred permanent "treatment" method of eliminating the waste or ridding it of its toxins. At sites in white communities, EPA orders permanent treatment 22% more often than containment.

- Penalties imposed on violators of environmental laws in minority areas are lower than those imposed for violations in white areas. The federal government imposes an average of $335,566 in penalties for violations of hazardous waste laws for white areas and only $55,318 in minority neighborhoods. Furthermore, for all the federal environmental laws aimed at protecting citizens from air, water and waste pollution, penalties in white communities are 46 percent higher than in minority communities;

- There is a disparity in the minority community's exposure to environmental harm when compared to the exposure of the residents in white areas. For example, a greater proportion of minorities live in areas that do not meet pollution standards set by the Clean Air Act (46% of African-Americans, compared to 33.6% of whites, live in communities where carbon monoxide levels exceed the EPA's pollution standards; 62.2% of African-Americans live in areas where ozone levels exceed EPA limits; more than 57% of Hispanics live in areas polluted by carbon monoxide, while greater than 71% of Hispanics reside in communities with excessive ozone levels).

e. Other Studies, Articles and Conferences

Other studies have been undertaken during the past three decades that show that minority communities and/or the poor suffer disproportionately from garbage dumps, air


19. Berry et al., supra note 7, at 563, 570-71 (1977) (reporting that solid waste sites in Chicago are distributed inequitably by race), cited in Cole, supra note 2, at 625 n.17; Bullard, supra note 13 (finding that garbage dumps in Houston are placed disproportionately in black neighborhoods), cited in Cole, supra note 2, at 625 n.17.
pollution, lead exposure, pesticide exposure, noise pollution, and rat bites. African-Americans and Native Americans have been disproportionately exposed to these hazards.

20. Michael Gelobter, "Toward a Model of Environmental Discrimination," in Bryant and Kohl (eds.), supra note 13, at 65-68 (arguing that damage caused by air pollution is inequitably distributed by race in urban areas); Myrick Freeman, "The Distribution of Environmental Quality," in Environmental Quality Analysis 243, 264 (A.V. Kneese & B.T. Bower eds., 1972) (finding that air pollution is distributed inequitably by race in Kansas City, St. Louis and Washington, D.C.); cited in Cole, supra note 2, at 625 n.17; Berry et al., supra note 7 at 569-562, 572 (noting that air pollution in 13 major urban areas is distributed inequitably by race); cited in Cole, supra note 2, at 625 n.17.


22. Marion Moses, A Field Survey of Pesticide-Related Working Conditions in the U.S. and Canada: Monitoring the International Code of Conduct on the Distribution and Use of Pesticides in North America, 1 (1988) (finding that the vast majority of farmworkers are people of color and that pesticides comprise the major health risk to farm workers); cited in Cole, supra note 2, at 626 n.17; F.W. Kutz et al., "Racial Stratification of Organochlorine Insecticide Residues in Human Adipose Tissue," 197 J. Occupational Medicine 619, 622 (1977) (noting that a national study detected almost twice as much of the pesticide DDT in the fat tissue of African-Americans as in the fat tissue of whites and that the pesticide lindane was detected more than twice as often in African-Americans as in whites); cited in Cole, supra note 2, at 626 n.17.

23. See, e.g., Berry et al., supra note 7, at 563, 573 (finding that noise pollution in three major urban areas is distributed inequitably by race); cited in Cole, supra note 2, at 625 n.17.

24. Id. at 563, 567 (finding that the risk of rat bites in the Chicago area is distributed inequitably by race).
Americans also eat more fish than whites and as a result are exposed more to the toxics that have been bioaccumulated by those fish.

A 1990 study by Clean Sites found that sites in rural poor counties are less likely than those in other areas of the country to be included on the National Priorities List of federal priority sites. In addition, the Clean Sites study noted that the disproportionate effect of the population factor in the EPA’s Hazard Ranking System may result in rural populations who rely on private wells for drinking water not receiving equal protection, thus raising the question of whether adequate efforts are being made to evaluate drinking water in many cases where site documents indicate a threat to drinking water.

In addition to these studies, numerous articles have been published in law school journals, books, periodicals.


newspapers and magazines, and conferences and seminars have


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been held to discuss the issue. In the first American Bar Association initiative to address the issue and to bring together environmental, public interest and civil rights lawyers, law professors, and social scientists, the ABA Standing Committee on Environmental Law (SCEL) organized a conference in May 1992 on "The Role of the Organized Bar and the Issues of Environmental Racism/Equity/Justice" in Williamsburg, Virginia. The conference generated extensive debate and provided sorely needed education to some of the conference participants. The conference also demonstrated the need for further discussions on this issue between environmental lawyers, private practitioners, civil rights attorneys, legal services lawyers, academicians, social activists, industry representatives, and government decisionmakers and regulators. The conference participants developed an exhaustive list of recommendations for SCEL to review and consider. As part of that process, SCEL developed the policy statement that is the subject of this report.

3. The Need for Action

While the record of environmental injustice is becoming increasingly clear, carefully documented by legal scholars, social scientists, government agencies, and civil rights, environmental and political activists, progress toward environmental justice has been slow. The reasons for this are multiple, some stemming from this country's sorrowful legacy of racism that has systematically excluded people of color from the decisionmaking process and the institutions of government as well as from better neighborhoods and schools.

Whatever the cause of the disproportionate distribution of environmental harms to minority and low income populations, scholars as well as public interest, legal services and


32. See Lazarus, supra note 3 (citing racism, the relative absence of minority economic and political power and the structure of environmental policy making, particularly the exclusion of minority participation in the formation of environmental policy, as causes for the inequitable distribution of environmental costs and benefits).
private practice lawyers have recognized the difficulty of achieving environmental justice under our present environmental legal framework. Some have argued that current evidentiary barriers are too high under the civil rights laws to allow remediation of all but the most extreme situations, while others point out that successful causes of action cannot be framed under existing environmental laws. The situation has been made worse by the impediments placed in the path of these communities by the administrative process, such as the impediments imposed by the formality of that process, the geographic distance between the environmental problem and the decisionmaking agency and the highly technical and legalistic language of the decisional record. Conversely, environmental attorneys frequently are ill-equipped to respond to fact patterns and injuries that may traditionally fall within the purview of civil rights laws rather than environmental protection laws. Taken together, these barriers are virtually insurmountable for a significant portion of our population.

4. Initiatives Taken in Response

In partial response to the absence of environmental justice, legislation has been introduced in Congress.

33. See Peter L. Reich, "Greening the Ghetto: A Theory of Environmental Race Discrimination," 41 U. Kan. L. Rev. 271 (Winter 1992) (concluding that greater opportunities exist at the state than at the federal level to address environmental race discrimination because of problems of proof and access to information under federal civil rights and environmental laws). See also Cole, supra note 2, at 632, n.36, n.37 (listing articles discussing and cases raising civil rights causes of action to remedy environmental injustice); Lazarus, supra note 3, at 59-80 (describing the difficulties of litigating to remedy distributional inequities under the civil rights laws); Vicki Been, "What's Fairness Got to Do With It? Environmental Equity and the Siting of Locally Undesirable Land Uses," 78 Cornell L. Rev. (forthcoming 1993).

34. S. 720 "Indian Open Dump Clean-up Act of 1993," 103d Cong., 1st Sess. (introduced by Sen. John McCain (R-AZ) ("to identify open dumps on Indian lands and to close them in compliance with federal or tribal standards, whichever are stricter"); H.R. 1267 untitled, 103d Cong., 1st Sess. (introduced by Rep. Bill Richardson (D-NM) ("to grant state..."
of these bills, the Environmental Justice Act of 1993, calls for a comprehensive survey of every county or appropriate geographical unit in the country in an attempt to rank the 100 counties or other geographic units most severely contaminated by toxic chemical releases. The bill would support community groups in these areas with technical assistance grants, provide for comprehensive health surveys in those vicinities, require enhanced inspection of area facilities, and provide for a moratorium on new pollution sources in such communities. Comparable measures have been introduced at the state level.

Whatever the fate of a particular piece of legislation, given the breadth of the problem described in the studies referenced in this Report, expeditious and effective responses to the problem of environmental injustice by administrative agencies are critical. Some responses, although limited in scope, already have been forthcoming from the federal

(Footnote continued)

35. H.R. 2105, introduced by Rep. Lewis (D-GA). Similar bills were introduced in the 102nd Congress by then-Senator Albert Gore (S. 2806) and Rep. Lewis (H.R. 2105).

36. CA AB 3024, Assembly Bill 3024 (introduced by Lucille Roybal-Allard (D-Los Angeles)), introduced, passed and vetoed by Governor Pete Wilson (required permit applications for toxic facilities to include site demographic statement listing race, age, language and income characteristics of targeted communities); NY AB 9902, Assembly Bill 9902 (introduced by Maurice Hinchey (D), March 4, 1992), 2nd Reg. Sess. of 214 NY State Gen. Assembly (establishes in Dept. of Env. Cons. task force on environmental equity and provides powers and duties).
government. For example, over the past three years, EPA has established an Office of Environmental Equity and has expanded its education and outreach programs to minority and low-income communities. Administrator Carol M. Browner has stated that environmental justice is one of the key policy themes of her tenure at the EPA, and has announced several new initiatives in this area. However, more needs to be done to reform the administrative process to achieve environmental justice, not only by EPA but by other federal agencies.

Academia has played a significant role in developing the growing body of literature in the environmental justice field. Law schools have made their own unique contribution to the field by adding courses (or new units to existing courses) on environmental justice to their environmental law curricula. The goals of these courses are to educate law students about the legal issues in the environmental justice field, to impose some rigor on the study of those issues and to contribute to the growing body of scholarship. In addition, law school clinical programs are representing low income and minority

37. See Statement of Carol M. Browner, Administrator, U.S. Environmental Protection Agency, before the Government Operations Committee, United States House of Representatives, May 6, 1993. Administrator Browner pointed to, among other things, new lead paint initiatives, an interagency working group to address environmental justice, and agreements between the EPA and the Civil Rights Division of the Department of Justice.

38 See, e.g., Oversight Hearings: Environmental Racism, Hearings Before the Subcommittee on Civil and Constitutional Rights of the Senate Committee on the Judiciary, 103rd Cong., 1st Sess. (March 3, 1993) (Statement of Demolin Ferris, Program Director, Lawyers' Comm. on Civil Rights Under Law) (recommending changes in agency priorities, creation of a new inter-governmental coordinating council and improvements in access to governmental decisionmaking).

39. For example, Georgetown University Law Center has added a three-unit seminar on environmental justice specifically to contribute to scholarship in the field. The Vermont Law School's Environmental Law Center is hosting a speaker series this summer in "Race, Class, Justice and Environmental Policy" to educate its students in this area and to add specific courses to examine the issues further. Student efforts are underway at Boalt Hall at the University of California at Berkeley to institute an environmental justice course.
communities in their efforts to resist these burdens.  

5. The Need for Action By the American Bar Association

It is both appropriate and desirable for the American Bar Association to articulate a clear position on the issue of environmental justice. The legal profession has a duty to speak out forcefully on such an important issue. In fact, the proposed resolution reflects perfectly this year's theme for the American Bar Association (ABA) enunciated by ABA President J. Michael McWilliams: 'All for justice, and justice for all.' President McWilliams has stated that many sectors of this society, including lawyers and non-lawyers, must join forces to fulfill this justice system goal. On its face, the resolution is a strong endorsement of this important theme. The resolution recognizes that all segments of society -- both public and private -- have important roles to play in responding to these injustices.

From a public policy perspective, adoption of this resolution promoting environmental justice will support efforts to (1) identify and ameliorate the health care problems suffered by inhabitants of affected communities, (2) respond to major quality of life issues facing the residents, (3) set priorities for responding to major environmental problems, and (4) identify the tools, resources, and enforcement authority available to the federal, state and local governments.

For the foregoing reasons, therefore, the proponents of this resolution urge the House of Delegates to adopt the proposed resolution which recognizes that environmental justice should be a goal for this nation, and supports, in principle, the passage of legislation (or the amendment of

40. Georgetown University Law Center started an environmental justice clinical program in 1991, which has already helped a low income, minority neighborhood resist the siting of an industrial waste processing facility and prevent the expansion of an automobile recycling facility into another low income minority community. The Clinic is currently working with other similar neighborhoods to clean up an improperly closed municipal ash pile on the grounds of a public mental health hospital, fight the construction of a freeway, remove oil from a tributary of the Anacostia River, and get lead out of public housing. See Washington Times, "Georgetown Students Dump on Junk East of the Anacostia," at A7 (June 15, 1992).
existing legislation) to the extent necessary, for example, to achieve the goals as set forth in the resolution. In addition, the resolution is intended to support:

- public and private efforts to continue documenting the incidence, causes and consequences of the inequitable distribution of environmental costs and benefits;
- initiatives to improve agency procedures regarding access to information and to the decision-making process and the assessment of risks to low-income and/or minority communities from environmental hazards;
- additional training of lawyers, scientists and other specialists in the environmental field to address environmental justice issues and the provision of greater job opportunities for minority and low-income individuals in the environmental field;
- delivery of legal services in the area of environmental law to eligible persons in minority and/or low-income communities as a particularly appropriate priority for the legal profession; and
- expansion of environmental curricula and law school clinical programs to educate students about the problems of environmental injustice and to provide legal assistance for its victims.

41. The term "legal services" is meant to be interpreted in the broadest possible sense as inclusive of all efforts, both public and private, including pro bono work, to offer legal assistance to those unable to afford private legal services at market rates. The resolution language is not intended to suggest that environmental law be given greater priority than other vital areas of assistance. However, environmental law has not been a traditional specialty of providers of legal services and the Committee seeks to increase the profession's and providers' awareness of the issue and thus their consideration of appropriate responses to help meet the need for representation.
The proposed resolution, by addressing itself to a wide spectrum of entities, recognizes that environmental policy is made by many, and that there are multiple opportunities to correct the causes and consequences of environmental injustice.

In view of the foregoing reasons, the Standing Committee on Environmental Law, the Section of Individual Rights and Responsibilities, the Commission on Homelessness and Poverty, the National Bar Association, Inc. and the Hispanic National Bar Association urge the House of Delegates of the American Bar Association to adopt this resolution promoting environmental justice.

Respectfully submitted,

Dinah Bear, Chair
Standing Committee on Environmental Law

Paul L. Friedman, Chair
Commission on Homelessness and Poverty

Janet R. Studley, Chair
Section of Individual Rights and Responsibilities

Allen J. Webster, Jr., President
National Bar Association, Inc.

Carlos G. Ortiz, President
Hispanic National Bar Association

August, 1993
GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Environmental Law;
Cosponsors:
ABA Commission on Homelessness and Poverty,
ABA Section of Individual Rights & Responsibilities,
Hispanic National Bar Association, and
National Bar Association, Inc.

Submitted By: Dinah Bear, Chair, Standing Committee on Environmental Law (SCEL)

1. **Summary of Recommendation(s).** The resolution supports efforts by federal, state and local governments, academic institutions and private entities to achieve implementation and enforcement of environmental laws, regulations and policies so that a disproportionate share of the burden does not fall on minority and/or low-income individuals, communities or populations; urges Congress, state legislatures and local governments to enact legislation and take other measures to redress and eliminate such situations; urges administrative agencies to give priority attention to this problem by improving procedures in access to information and decisionmaking, adopting regulations and policies to mitigate or eliminate impacts, and assessing and managing environmental risks to take better into account the need to eliminate such inequities. Urges further documentation of causes and consequences of the inequitable distribution of environmental burdens; delivery of legal services in environmental law matters to eligible persons; additional training of lawyers; expansion of law school curricula and clinical programs; and passage of similar resolutions by state and local bar associations.

2. **Approval by Submitting Entity.** At its February 15, 1993 meeting, SCEL unanimously approved the Report and Recommendations. The final draft was approved by conference call on June 29.

3. **Has this or a similar recommendation been submitted to the House or Board previously?** No.

4. **What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?** None on this issue. This Recommendation follows a long line of Association policy supporting equal protection of rights and opposing discrimination in other settings. The recommendation does not affect existing policy, but complements it. ABA policies that reflect this history include, but are not limited to, the following policy statements: (a) opposing discrimination on the
basis of race (1965); (2) opposing discrimination in hiring practices (1972); (3) opposing discrimination in the sale or rental of housing (1980); (4) opposing discrimination at institutions receiving federal financial assistance (1986); (5) opposing discrimination in capital sentencing decisions (1988); (6) supporting legislation that would provide equal access to quality health care regardless of income (1990); (7) supporting due process in public housing actions (1990); and (8) supporting the creation of effective community reinvestment programs in financial institutions to help avoid discrimination and to stabilize the housing and business in low- and middle-income communities (1991).

5. What urgency exists which requires action at this meeting of the House? As documented in the accompanying report, considerable evidence has been marshalled of significant adverse harm to human beings in minority and/or low-income populations. An affirmative response from the American legal community to this evidence is critical to addressing these issues. Action at this Annual Meeting would put the ABA, and thus, much of the legal profession, on record supporting initiatives to achieve environmental justice without further delay. Further, several proposed bills have been introduced in Congress (see response to #6).

6. Status of Legislation. A number of relevant bills have been introduced in Congress, including: S. 720, "Indian Lands Open Dump Clean-up Act of 1993"; H.R. 1257, "to grant state status to Indian tribes for purposes of enforcement of the Solid Waste Disposal Act"; H.R. 2105, "To establish a program to assure nondiscriminatory compliance with all environmental, health and safety laws, and to assure equal protection of the public health"; H.R. 1925, "To amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980 to require the Administrator of the Agency for Toxic Substances and Disease Registry to collect and maintain information on the race, age, gender, ethnic origin, income level, and educational level of persons living in communities adjacent to toxic substance contamination"; and H.R. 1924, "To amend the Solid Waste Disposal Act to allow petitions to be submitted to prevent certain waste facilities from being constructed in environmentally disadvantaged communities."

7. Cost to the Association. Adoption of this resolution would create no significant additional costs to the Association.

8. Disclosure of Interest. Barry E. Hill, a member of SCEL, is active in the environmental justice area and, with other SCEL members, was significantly involved in
drafting this resolution and report. He has been representing the Environmental Justice Coalition in lobbying for passage of the Environmental Justice Act of 1993. Another SCEL member involved in drafting, Hope Babcock, is an Associate Director of the Georgetown University Law Center's Institute for Public Representation clinical program which represents low-income and minority populations in environmental justice claims. This report and other related SCEL activities, however, were developed by SCEL independent of those initiatives.

9. Referrals.

Original Report with Recommendations was referred to all state and local bar associations represented in the Association's House of Delegates, and the following entities, in April 1993:

**Sections and Divisions**
- Administrative Law and Regulatory Practice
- Business Law
- Criminal Justice
- Family Law
- General Practice
- Government and Public Sector Lawyers
- Individual Rights and Responsibilities
- Judicial Administration Division
- Labor and Employment Law
- Law Student Division
- Litigation
- Natural Resources, Energy and Environmental Law
- Public Contract Law
- Public Utility, Communications and Transportation Law
- Science and Technology
- Senior Lawyers Division
- Tort and Insurance Practice
- Urban, State and Local Government Law
- Young Lawyers Division

**Standing Committees**
- Delivery of Legal Services
- Dispute Resolution
- Ethics and Professional Responsibility
- Lawyers and Scientists (AAAS)
- Lawyers Public Service Responsibility
- Public Education

**Special Committees and Commissions**
- Homelessness and Poverty
- Legal Problems of the Elderly
- Mental and Physical Disability Law
- Opportunities for Minorities in the Profession
- Women in the Profession
- Consortium on Legal Services and the Public
- Coordinating Group on Bioethics and the Law
Coordinating Group on Energy Law
Medical Professional Liability

Affiliated Organizations
American Law Institute
Association of American Law Schools
Conference of Chief Justices
Federal Bar Association
Federal Energy Bar Association
Hispanic National Bar Association
National Asian Pacific American Bar Association
National Association of Attorneys General
National Association of Women Judges
National Association of Women Lawyers
National Bar Association, Inc.
National Conference of Commissioners on Uniform State Laws
National Conference of Women’s Bar Associations
National District Attorneys Association
National Institute for Trial Advocacy
National Legal Aid and Defender Association
National Lesbian and Gay Law Association

10. Contact Persons. (Prior to the meeting.)
Dinah Bear, Chair (202/395-5754)
Standing Committee on Environmental Law
American Bar Association
1800 M Street, NW
Washington, DC 20036

Elissa C. Lichtenstein, Staff Director (202/331-2650)
Standing Committee on Environmental Law
American Bar Association
1800 M Street, NW
Washington, DC 20036

11. Contact Person. (Who will present report to House.)
Barry E. Hill (202/775-4728)
Member, Standing Committee on Environmental Law
Dickstein, Shapiro & Morin
2101 L Street, NW
Washington, DC 20037

12. Contact Person Regarding Amendments to This
Recommendation. (Are there any known proposed amendments
at this time? If so, please provide the name, address,
telephone, fax & ABA/net number of person to contact.)

Should amendments be made, Dinah Bear, listed above in #10, is
the contact person.

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