

UB Law Forum

Volume 7
Number 1 *Summer 1993*

Article 22

4-1-1993

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UB Law Forum

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Recommended Citation

UB Law Forum (1993) "Environmental Racism Topic of Mitchell Lecture," *UB Law Forum*: Vol. 7 : No. 1 , Article 22.

Available at: https://digitalcommons.law.buffalo.edu/ub_law_forum/vol7/iss1/22

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Environmental Racism is Topic of Mitchell Lecture

There is no reason to think that environmental law, as good a thing as that might be, is immune from racism," Professor Richard Lazarus of Washington University Law School said at UB Law School's annual Mitchell Lecture March 4 in O'Brian Hall.

"Whether you call it environmental justice, environmental equity or environmental racism, the fact is that lawyers are way behind the curve on this issue."

Lazarus was introduced by Professor Errol Meidinger, who called him an author of the "most interesting and unusual law journal articles being written today on the subject of environmental law." Meidinger characterized the internationally respected speaker as a teacher, researcher and scholar who brings "a special way of thinking" to his work, which has recently been focused on the emerging subject of environmental inequality.

Lazarus began by telling the story of how he was introduced to the little discussed and deeply disturbing subject of environmental racism by an Afro-American student named Kevin Brown, who approached him about writing a paper on the siting of hazardous waste facilities in minority communities.

"It was the first time I'd ever heard of this topic," Lazarus said. He suggested that Brown see what he could find in the law library, but that approach yielded nothing. The general university library produced lots of material, though. "The sociologists were well aware of environmental racism, where the lawyers were not paying attention."

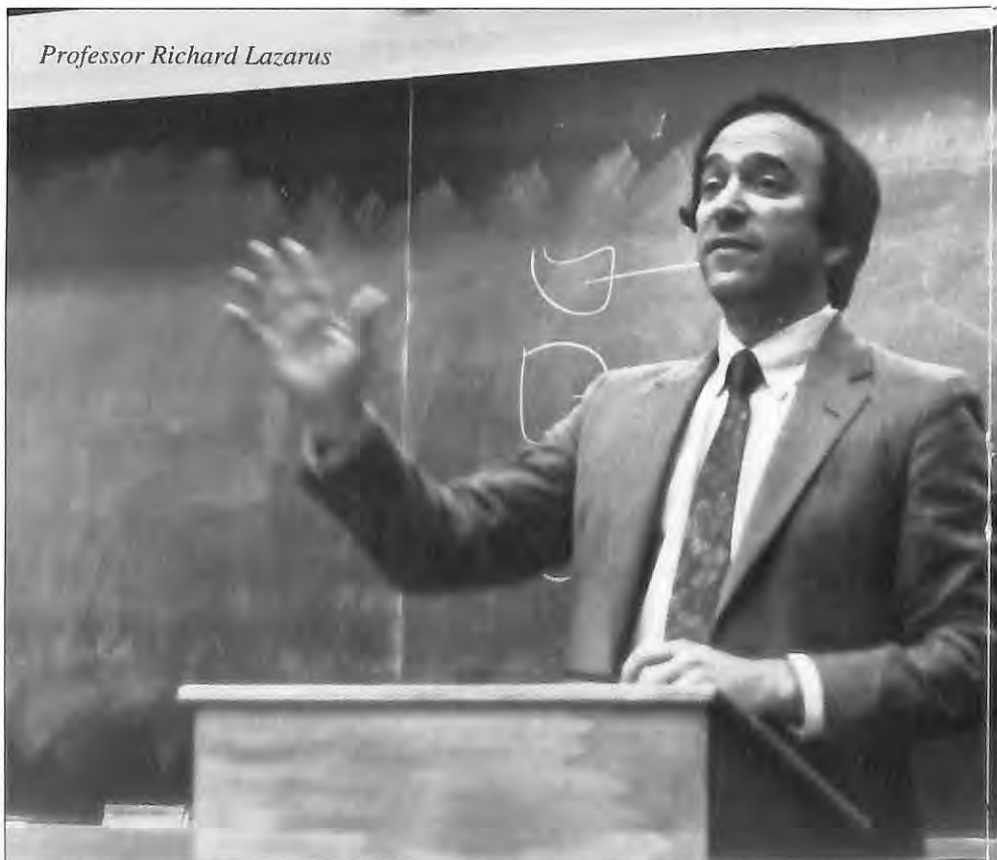
Lazarus encouraged further research. "Kevin took a look at toxic

release data in the St. Louis area and overlaid it on a census map." What he found was startling: a distinct pattern of environmental discrimination, with fifty percent more toxic releases in minority neighborhoods. "It was time to re-think environmental law, to figure out what was happening, to explain it theoretically. It was time to take a distributional approach," Lazarus said, explaining the importance of recognizing that environmental protection law creates winners and losers. "Then you can do a benefits/burdens analysis."

The obvious benefits of environmental legislation include health, enjoyment of nature and, for some, a positive economic impact. But economic impact can also be a burden, because environmental protection sometimes results in price increases, higher taxes and loss of jobs and income. Another significant burden, often overlooked, is environmental risk. "That's because environmental protection laws don't eliminate the dangers entirely, but merely reduce and redistribute them." The location of waste treatment and disposal facilities, for example, can be a new bur-

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Professor Richard Lazarus



den to one community while relieving another. "You reduce the risk, but change the identity of the population exposed."

Disturbing patterns of racism emerge when we look at environmental law from a distributional perspective, Lazarus told

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his audience. "Then we must ask why. We must find out what it is that makes environmental law susceptible to having risks disproportionately exposed."

He described some reasons as generic socio-economic ones. Exclusionary zoning, for example, leads to segregation of environmental hazards in areas without the economic or political clout to prevent it. Poverty and racism result in "environmental blackmail" of communities which "can't afford the luxury of environmental protection." When waste sites and other risks are located in such communities, there is a resulting multiplier effect. "Once you have one there is a neutral reason for more."

Other reasons for environmental racism are rooted directly in modern environmental law, which has only been around for 20 years. "There is so much on the agenda and it takes such an enormous effort to get things through Congress that, as a practical matter, only those with clout will get attention," Lazarus said. "The EPA has more to accomplish than it can possibly do, so it has to pick and choose. The choices depend on who has access. That's the reason things like endangered species, acid rain and preservation get more attention than lead paint or toxic waste in urban areas."

Pursuit of environmental justice and the elimination of environmental racism means first developing a better understanding of the topic and then reforming the structure of the environmental regulation process. Just to get started will require, among other things, facing the fact of environmental racism, taking distributional equity into account in environmental law, promoting a citizen suit process that is accessible to minorities, increasing minority membership in environmental organizations, and thinking about solutions in new ways.

"This is completely new ground for environmental protection law," Lazarus said. "Law schools are finally picking up on this. BALSAs are becoming more active." He outlined

some areas that will need attention from the legal community. "There are gaps in the data. More analysis is needed. Congress and the EPA must become active, the regulatory process must address minority issues, and litigation will play an important role."

It will also be important for environmental and civil rights groups to understand each other and find mutual areas of concern. The absence of minority clout in the environmental lawmaking process and the low minority membership in the major environmental organizations is especially ironic in view of the fact that environmentalists have borrowed heavily from the rhetoric and methods of the civil rights movement.

Today there is an unfortunate gulf between the two movements. "Minorities fear that mainstream groups will co-opt environmental justice issues, and the people in environmental groups don't like this issue. It's threatening." One area where interests converge is transportation, he suggested, which could be a good starting point for a cooperative effort.

Lazarus packed his thought provoking lecture with facts and insights, giving numerous specific examples of inequity, concrete suggestions for regulatory reform and possible strategies for litigation based both on environmental and civil rights law. He repeatedly reminded his audience that the pursuit of environmental justice begins with facing the disconcerting concept of environmental racism. "For me it was Kevin Brown being in my class. I got taught a lot by a student. I had my thinking redirected." He concluded by re-emphasizing the importance of awareness. "We're trying to re-tell the story over and over again so we can make distributional concerns a part of environmental law."

Lazarus' visit to UB was part of an annual lecture series established in 1950 in memory of James McCormick Mitchell, a prominent Buffalo attorney who served as president of the University of Buffalo Council in the 1930s and 1940s. ■