

In Covering the Judiciary, I Most Recall Some Truly Great Lawyers

I wrote my first column in these pages exactly 25 years ago, and this is my last. Certainly not because I have run out of material. Environmental law in the courts is as important and active as ever. But simply because a quarter century seems like an opportune moment to pass this particular mantle on to another.

The Supreme Court has been a frequent, though not exclusive, focus of my columns. My very first discussed the thinness of the Court's docket in October Term 1994, in sharp contrast to the preceding term, when the Justices' decided seven significant environmental law cases.

The *Massachusetts v. EPA* greenhouse gas litigation was itself the subject of three columns. The first, published a month after oral argument in the D.C. Circuit, correctly predicted that, over Judge David Tatel's dissent, Judges Raymond Randolph and David Sentelle were likely to reject the challenge to EPA's decision not to regulate greenhouse gas emissions from new motor vehicles, though without embracing EPA's view that GHGs are not air pollutants.

The second column, published a few weeks before the Supreme Court oral argument in the case, described the high stakes should the federal government prevail in its argument that the environmental petitioners lacked Article III standing and predicted (correctly) that "Justice Anthony Kennedy seems the most likely fifth vote favoring jurisdiction."

Finally, the month after the Court's ruling in *Massachusetts*, I published a column on Justice John Paul Stevens' opinion for the Court: "A Breathtaking Result for Greens." The first and last sentences were the same and both consisted of only one word: "Stunning." The column also described the

result as "breathtaking" and pointed out that *Massachusetts* was the first time that "environmentalists have both persuaded the Supreme Court to grant review over the federal government's opposition and then won on the merits." Almost 13 years later, that is still true.

My favorite columns during the past quarter century, however, have been focused not so much on individual cases but instead on specific lawyers who have played outsized roles in environmental litigation — as judges and justices, private, governmental, and public interest advocates, and legal scholars. Modern environmental law has enjoyed the company and good work of many extraordinary lawyers during the past fifty years and their contributions, at least as much as the results in individual court cases, are worthy of distinct recognition.

Judges, justices, and advocates on all sides made for several landmark decisions

The first such column, published in December 1999, was titled "A Farewell to the Claiborne Style." It celebrated the remarkable career of Louis Claiborne, who served for decades as the career deputy solicitor general of the United States. Claiborne, who oversaw the federal government's environmental, natural resources, and Indian law docket at the High Court wrote exquisite briefs that uniquely combined striking intelligence, a flair for evocative rhetoric, and a puckish sense of humor.

Two columns published in 2001 and 2002, titled "Olson Stands Firm on the Mountaintop" and "Bishop Moves to Secure Court Win," focused on the courageous advocacy of Ted Olson as SG and on Mayer Brown lawyer Timothy Bishop, who has been a leading industry lawyer of great skill for business interests for the past three decades. Another column, "Solicitor Drives Hard in Water Cases," under-



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scored the advocacy skills of two more government advocates: President Bill Clinton's Solicitor General Seth Waxman and President George W. Bush's Solicitor General Paul Clement.

The columns that allowed me to celebrate the passing of several of environmental law's greatest lawyers, however, were those that made me appreciate the enormous opportunity that ELI's treasured Steve Dujack has provided me by inviting me to write this column.

In the "Loss of Environmental Law's Foremost Stewards," I had the great privilege of reflecting upon two of our heroes, whom I described as "environmental law's founding fathers": David Sive and Joe Sax. In combination, Sax as a legal scholar and Sive as a litigator, they championed the essential role that citizen litigation could play in defending the natural environment.

My May 2017 column, titled "Public Interest Bar Loses a True Giant in Citizen Jurisprudence," provided a personally meaningful moment to celebrate the inestimable Bruce Terris, who devoted his own career to citizen suit enforcement of the nation's air and water pollution control laws. Terris was a warrior, and he formed in 1970 the first environmental public interest private law firm and for 47 years epitomized the best of that first generation of environmental litigators. Terris made his mark with "environmental law in the courts," making this last tribute a fitting way to close my final "In the Courts" column.