

The Public Interest Bar Loses a True Giant in Citizen Jurisprudence

The field of environmental law during the past fifty-plus years has been marked by the contributions of several legal giants. Some like Joe Sax made their contributions primarily as legal scholars; others like David Sive did so by leadership in the bar. Another giant in environmental law, Bruce Terris, who passed away this February, made his mark in the courts, which is also why it is fitting to pay tribute to Terris's remarkable career in this column.

A true pathbreaker and champion of the environmental citizen suit, Terris founded in 1970 the first environmental public interest private litigation firm. Terris's model was unlike any other at the time. Unlike a public interest group, he did not rely upon charitable donations. Nor, like a private law firm that seeks to promote social justice by suing for compensatory and punitive damages, did Terris rely upon contingency fee-based litigation. Terris was instead the first to rely almost exclusively on the attorney's fee-shifting provisions that were in 1970 just beginning to be available for citizen suits in federal environmental statutes.

His was a bold and financially risky undertaking from the outset and has remained so ever since. Yet, his firm, which began simply as the Office of Bruce Terris in 1970, and is today known as Terris, Pravlik & Millian, has been a major force for environmental citizen suits for almost half a century.

Terris's cases are the stuff of legends. There are far too many to begin to list, so a few highlights will have to suffice. His very first was no less than one of environmental law's most famous cases, *Sierra Club v. Morton*, decided by the Supreme Court in 1972. Terris brought to environmental public interest representation a sophisticated and

strategic understanding of Supreme Court advocacy. For six years, soon after graduating from law school, Terris worked in the U.S. Solicitor General's Office, including closely with SG Archibald Cox (and Attorney General Bobby Kennedy) on voting rights cases such as *Baker v. Carr*.

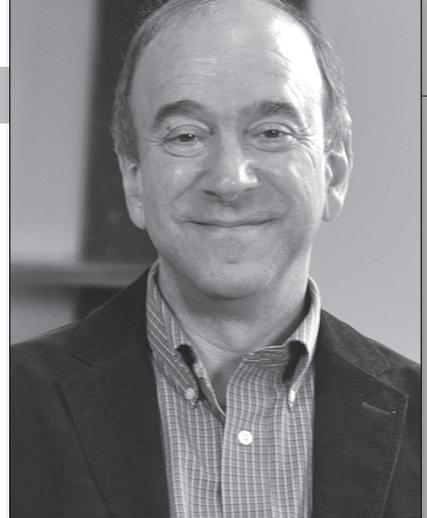
In *Sierra Club v. Morton*, Terris made his mark even though he was counsel for amicus curiae, The Wilderness Society, and not counsel for a party. The club lost on the threshold issue of standing, largely because it decided to rely only on the broadest possible theory of standing. In ruling against the Sierra Club, Justice Potter Stewart's majority opinion for the Court relied heavily on Terris's submission in offering a blueprint for how to succeed on standing in future environmental cases, including on remand. That blueprint became settled law for subsequent decades to the benefit of

a generation of environmental attorneys bringing citizen suits.

When, moreover, Justice Antonin Scalia authored a series of majority opinions in

the early 1990s that cut back on environmental citizen suit standing, Terris returned to the Court and succeeded in establishing precedent that significantly limited Scalia's handiwork. Terris persuaded the Court in 1999 to grant review in *Friends of the Earth v. Laidlaw*, the first time the Court had granted an environmental organization's cert petition since *Sierra Club v. Morton*, almost thirty years earlier. And then Terris prevailed on the merits, in a 2000 opinion for the Court authored by Justice Ruth Bader Ginsburg, over Scalia's dissent, that restored much of the standing ground that had been threatened by Scalia's earlier opinions for the Court.

Another Terris case plainly worthy of the Hall of Fame of environmental



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litigation is *Fri v. Sierra Club*, decided in 1973. In *Fri*, an equally divided Supreme Court affirmed a court of appeals ruling that effectively established the Clean Air Act's Prevention of Significant Deterioration Program. That result was hardly pre-ordained by the relevant statutory language and once again reflected Terris's exceedingly effective advocacy. The practical effect of the Court's ruling has been heightened air quality protections throughout the nation.

Like many of environmental law's pioneers, Bruce Terris had no particular interest in environmental law when he decided to become a lawyer. Terris recently remarked that he would have been "crazy" to have pondered environmental law as a possible area of interest when he began law school in the 1950s because the field of environmental law did not then exist and "there were essentially no environmental lawyers" even at the time he founded his law firm in 1970. Like many of his generation, he came to environmental law not so much from a profound interest in environmentalism in the first instance, but instead secondarily from an interest in poverty law and social justice.

Terris loved citizen suit environmental litigation. As he once put it, he very much enjoyed the "combat" of litigation and "trying to match [his] mind with others. Fits with me." His contributions to environmental litigation were great. His tremendous advocacy skills, and his no less tremendous chuckle, will be missed.