



IN MEMORIAM

Joseph L. Sax
James H. House and Hiram H. Hurd Professor, Emeritus
University of California, Berkeley
1936 - 2014

Joseph Lawrence Sax, renowned as one of the founders of the field of environmental law, passed away in March after a series of strokes. Joe was the consummate scholar and teacher; a visionary and influential environmental advocate; and a loving husband, father, and grandfather. He will be sorely missed and dearly remembered. His influence on environmental and natural resources law will continue for many decades to come, both through his writings and the many students and colleagues he inspired to follow in his footsteps.

Joe graduated from Harvard College in 1957 and the University of Chicago Law School. He began his law teaching career at the University of Colorado in 1962, moved to the University of Michigan in 1966, and came to Berkeley in 1986. It would be impossible to overstate Joe's influence on the field of environmental law. He entered academia before anyone had imagined such a specialty. Over the next ten years, Joe and a handful of others literally invented environmental law. According to Professor Barton ("Buzz") Thompson of Stanford Law School, "Joe, more than anybody else, is responsible for the very existence of the field called environmental law. Joe came up with some of the central concepts that are still key to environmental law."

Joe's scholarship was original and typically broke new ground. A unifying theme throughout his career was (as he entitled one of his papers) "the legitimacy of collective values" and the importance of a corresponding public interest in shared resources. He is perhaps best known for his re-discovery of the public trust doctrine, an obscure 19th century doctrine until Joe showed how it could be adapted to promote environmental protection. (Joseph L. Sax, *The Public Trust in Natural Resource Law: Effective Judicial Intervention*, (1970).) The ideas in that paper later became the basis for a revolutionary California Supreme Court decision requiring that state agencies consider impacts on ecosystems and other public resources when allocating water rights. Joe's vision of the public trust has been adopted to various degrees in most American states and many foreign nations.

Citizen suits, another of Joe's once-radical ideas, have become deeply embedded in environmental law and spread to many other contexts. Joe was one of the first to explain why it was essential that ordinary citizens have access to the courts to protect public environmental interests. (Joseph L. Sax, *Defending the Environment* (1971)). That idea became the core of the early environmental protection law Joe drafted for Michigan, which quickly became known as the Sax Act, and was routinely incorporated in the wave of federal environmental laws of the 1970s.

Joe's scholarship was never timid. He cared deeply about the issues he took on, and he did not shirk from taking controversial positions. In *Mountains Without Handrails* (1980), winner of the Michigan Press Book Award, for example, he fiercely contested the expansion of mass recreation in the national parks. But at the same time, his writing was never overbearing or overwrought. He was a scholar's scholar: he read voraciously

and broadly; he thought synthetically; he reasoned carefully; and he always treated opposing arguments with respect. In addition to the public trust doctrine and citizen suits, Joe made important contributions to our understanding of “takings” doctrine, the constitutional provision that controls when the government must compensate property owners for the economic impact of regulations; the purposes of the National Park system, and how those purposes should guide park management; the law of cultural preservation; and western water law. Recently he had been writing about the little-known property doctrines of accretion and avulsion, which have gained new importance as climate change promises to drastically remake coastal maps; about application of takings doctrine to water rights; and about the concept of a “fair share” of resources in property law.

As a teacher, Joe influenced countless students, some of whom went on to work in academia, others in government, and many in private law firms. Anyone who had the good fortune to experience one of his classes came away not only with a much deeper understanding of the subject matter but with a sense of the importance of approaching tough issues honestly and directly, and a great model for doing so. As Chris Carr, a 1994 Boalt graduate now practicing at Morrison and Foerster in San Francisco wrote recently, Joe’s teaching “conveyed the unmistakable message that the issues needed to be engaged deeply, with rigor, and with an appreciation for the perspectives of others.” Joe was unflappable in the classroom, and leavened his rigorous analysis with kindness and consideration for his students. Dave Owen, now a law professor himself, recalled when he was a student in Joe’s Water Law class at Berkeley that another student regularly brought her infant child to the class. One day, when the baby was fussing, the mother picked her up and made to leave the classroom. Joe, who was renowned not only for his intellect but also for his genteel and somewhat formal manner, calmly told her that he was sure that no one minded the baby fussing and, as Dave put it, his saying so “of course made it true.”

Joe especially loved teaching Water Law, because it brought into sharp focus the tension between private and public rights that was so central to his career. But he also taught a variety of environmental and natural resources law classes, including an innovative class on the relationship of nature to culture. One of Joe’s greatest teaching contributions was the development of a water law casebook that, true to Joe’s form, went well beyond judicial opinions to include a variety of materials that helped put the issues in context. It’s routine now for environmental and natural resources casebooks to range well beyond the law, thanks in large part to Joe’s vision.

Joe did not confine his work to the ivory tower. Throughout his career he engaged directly and effectively with the issues he cared about in the courts, legislatures, and agencies. He authored amicus briefs and special reports, consulted on litigation, and served as an expert witness. He worked with countless environmental public interest groups and state and federal agencies. He was a special advisor to Interior Secretary Bruce Babbitt in the mid-90s, when the Endangered Species Act first came under heavy fire from the right, and helped Babbitt find needed flexibility in that landmark law. In 2002, he authored a report for the State Water Resources Control Board on groundwater management that has played an important role in political debates during this year’s extraordinary drought.

Joe was an influential citizen of the Law School community. He came to faculty deliberations thoroughly prepared on the issues and the difficult policy questions that faced the school during the turbulent years of the affirmative action struggles with The Regents. His voice was always calm; his positions were sound and persuasively presented. Although he did not always carry the day, he unfailingly worked to make the chosen position successful. His colleagues much appreciated his commitment and his efforts.

Joe was the recipient of many honors over the course of his career. He was a Fellow of the American Academy of Arts and Sciences and the recipient of awards from the Environmental Protection Agency, Sierra Club, National Wildlife Federation, Environmental Law Institute, Mono Lake Committee, and many others. In 2007 he was honored with the prestigious Blue Planet Prize that has been likened to a Nobel for environmental science. Fittingly, this year the California State Bar’s Environmental Law Section awarded him the inaugural Lifetime Achievement Award.

Joe Sax is very much missed by his family, friends, colleagues, and admirers worldwide. Although he lost his beloved wife of 55 years, Ellie, shortly before his own death, Joe is survived by his three daughters and four granddaughters. He will long be remembered for the field he helped found, and the crucial work he did on so many of that field’s most important issues.

Holly Doremus
Herma Hill Kay