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## Foreword

**JAMES D. COX**

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This is a love story. For almost 40 years, Jim and Duke have loved each other with a mutual dedication and admiration that has brought each one of them into a higher plane of being. Not that the relationship has been at all fair or balanced. This is because Jim has never asked much of his partner over the years. But the reverse has not been true. Between the University and the Law School, Duke has been a demanding, one might say insatiable, institutional spouse, always ready with new burdens and assignments for Jim. And Jim has always responded cheerfully and without complaint. The list of important Law School and University committees that he has chaired over the years is astonishing. Even so, Jim would be the first to say that he has received a great deal from Duke—terrific colleagues and students, a platform for his scholarship and teaching, a wonderful community to raise his family, and where his human spouse, Ellen, or Bonnie, as she is known, could fulfill her own aspirations, and a place where his extraordinary range of talents could find an outlet in institutional service and in many other ways and venues.

The courtship began in 1977. Jim was on the faculty at Hastings, where he went to Law School, and there was a building buzz about him. He had visited at Stanford in the previous year and had been a smashing success. Keith Mann, the academic dean at Stanford, wrote to the Duke Dean Walter Dellinger that Jim's teaching had earned him

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† Dean and Professor of Law, Duke University School of Law. These remarks were delivered at the Institute for Law and Economic Policy Symposium, Vindicating Virtuous Claims, held on April 7–8, 2016 in Miami Beach, Florida.

the Award for Teaching Excellence, given by students, and that this had not been a fluke or a mere popularity contest. According to Dean Mann: “With respect to teaching, Jim is viewed as not simply satisfactory, or even upper quartile, but of star quality.” How right that view and prediction proved to be! Dean Mann also noted that Jim was producing important scholarship, in particular, his article on *Ernst & Ernst v. Hochfelder*<sup>1</sup> was much admired.

In those days, the dean had a much freer hand. Upon receiving the letter from Stanford, Walter apparently detailed Professor John Weistart to “make it so.” There was an exchange of phone calls and correspondence. In a lengthy letter to Professor Weistart, detailing his pending research and writing projects and his many teaching interests, Jim ended by emphasizing that this was also a family decision: “John, . . . we are interested in a relocation which will offer Ellen and [me] *both* a meaningful and productive academic future.” Walter Dellinger informed the faculty that he had invited Jim to visit Duke for the spring semester of the 1978–79 academic year. The two sides of the impending union apparently liked what they saw because on July 1, 1979, Jim Cox became a Professor of Law at Duke, and Bonnie simultaneously joined the faculty of what in two years would be the Fuqua School of Business.

Here we are 36 years later and still together, still going strong.

What a marvelous University and Law School citizen Jim has been. He does it all. He is a leader, a worker-bee, a go-to guy. He takes on the tough assignments—whether it is mentoring a junior colleague who needs help or designing responsible investment policies for the University. He astutely figures out how he can best play a constructive role whether it is to help develop consensus or to be the devil’s advocate in the room. All the ways one can describe a person invaluable to an institution fit Jim.

But it is in the interaction with his Law School colleagues and his students where Jim particularly shines and has made the critical difference in the lives of others.

Jim is a superb colleague. For one thing, he is really accomplished. He just knows a lot. He has strong empirical and quantitative skills, and he has an understanding of markets and securities law that few can match. Add to this an inquiring, nimble mind and an incredible work ethic, and you have one of the foremost scholars of our time.

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1. James D. Cox, *Ernst & Ernst v. Hochfelder: A Critique and an Evaluation of Its Impact upon the Scheme of the Federal Securities Laws*, 28 HASTINGS L.J. 569 (1977).

Of course, one can be a great scholar and not a great colleague. This is not Jim Cox, however. His natural curiosity and gregariousness, his enthusiasm for learning and helping are such that he eagerly participates in the work of others, whether students or faculty, offering insights in a spirit of mutual inquiry.

Somewhere along the line, Jim learned or understood that egotism and self-importance are not synonymous with influence and consequence. In the academic setting, many ascribe to egalitarianism while seeking status and hierarchy. Not our Jim. He is neither impressed by academic baubles or rankings or self-regard, nor does he rely on his considerable past accomplishments to claim the privileges of rank.

Because Jim is so broadly gauged, he is at home not only in the academic world but in the world of judges, regulators, and lawyers. Perhaps this is one reason his work is so widely read and has had such effect. Lawrence Baxter on our faculty notes how humbling it was to go to Washington D.C. with Jim when the two of them were teaching in our Duke in D.C. program. Lawrence notes:

Jim's prestige as a securities lawyer is legendary. This was brought vividly home to me when I would visit the SEC with Jim as part of our inspections for the Duke in D.C. course: young securities regulators there would quite literally come out of their offices to stop him in the hallway and tell him how much they wanted to meet him, that they had learned everything they knew in the field from professors who used his casebooks, and how much they admired him.

Jim is not just an intellectual guide, mentor, and interlocutor—challenging us all to do better—but he is also a true and caring friend, what some of us would call a *mensch*. This emerges in the metaphors that faculty use to describe him. He is always there, according to Professor DeMott, “The Rock of Gibraltar, and mixing metaphors, the anchor of our strengths.”

Kate Bartlett harkens to the European bike trips that Jim and Bonnie have been organizing for faculty and friends over the past several years. According to Kate, Jim is the “sweeper,” “staying in the back and making sure everyone else is ahead of him so that no one who might break down or otherwise need help will get inadvertently left behind.” As the “sweeper,” Jim is our quiet community care-taker.

Just as Kate thinks of Jim's loyalty and kindness in the context of international travel, so does David Lange. This story is long but bears telling in David's own words:

Some years ago [Jim and I] were both in Hong Kong, and planning to go up to Beijing for some additional meetings. I had some business in Hanoi first. And while there, my adopted brother presented me with a large dried [and quite dead] sea turtle. It was much too large to fit into [my] luggage, so I wrapped it in brown paper and sent it through to Hong Kong as its own piece of baggage. That was fine in Vietnam. In Hong Kong, however, I was promptly detained by customs for attempting to transport a contraband item, and as I quickly came to realize, a contraband item that was most especially forbidden by who knows how many treaties, conventions, [and] accords.

And there I was: an obvious smuggler, in detention at the Hong Kong Airport, awaiting the disposition of my case.

So what does this have to do with Jim Cox?

A man of lesser character might well have expressed sympathy for my plight, but it would scarcely have been objectionable had he pressed some hollow reassurances on me, and then continued with his travel plans, leaving me to my fate. But that was not Jim.

Instead he canceled both our flights, put us on some sort of list for the next available flight to Beijing, and settled in to wait for me. He was personally reassuring to me throughout the period of my imprisonment. For as the hours passed, what had begun as mere detention began in my mind inexorably to resemble imprisonment, complete with bowls of thin rice gruel.

Eventually, I was released with a stern warning. And Jim and I, now considerably delayed, traveled on to Beijing.

So as you will see, I can attest to the fact that Jim Cox is loyal to a fault. Should you ever find yourself in danger of being hanged as a pirate, I would advise calling him. He will stand by you and make whatever arrangements may be necessary for the disposition of your estate. I call him a good man to travel with.

Students are as enthusiastic about Jim as his colleagues. Indeed, it is fair to say that Jim is the greatest teacher in the history of Duke Law School. There are many dimensions to this bold claim. One is quantitative: Since joining the faculty in 1979, Jim has taught roughly 7,000 students, which is nearly two-thirds of the Law School's total number of students since its inception in 1930. The numbers are

particularly compelling when one considers that in the interest of a fairer distribution the dean's office occasionally has attempted, with little discernable effect, to dampen demand for Cox by scheduling Jim's courses in the least popular timeslots in the early morning.

The other dimension to the claim that Jim is the best ever is qualitative, but the data is there. Like his colleagues, students respond to Jim's goodness, dedication, and humility in addition to his brilliance and off-beat sense of humor. In their comments in their teaching evaluations, students refer repeatedly to Jim as a "gem," "a treasure," a "legend," "an institution," and simply "the MAN." One student called him "a god among mortals"; another said she hopes "he teaches into his 90s so [her] as yet-to-be-born kids can take his class." His Business Associations course was described as "a comedy club and PBS news program rolled into one." Their enthusiasm is such that they have run out of ways to articulate it. One simply wrote "BEST BEST BEST BEST BEST BEST BEST BEST CLASS I EVER HAD," in all caps—for the record, that's nine "bests."

Students mention over and over again how much they learned in his courses—how rigorous they were, how demanding he was of their time and attention, how obvious it was that he cares deeply about his students and their futures, and how he went beyond the cases and statutes to teach them how to be effective practitioners of corporate and securities law in the real world. One student offered the hypothesis that "people who don't take securities regulation in law school with Cox are more likely to end up in jail." Perhaps the empiricists in the room could test this interesting proposition.

Students come to Duke specifically to take Cox, as they put it. And this is true of foreign students every bit as much as students from the United States. Little do they know that you don't take Cox, he takes you!

I have listened to Jim in the classroom, and I can attest to his brilliance. He is just a joy. He sweeps you up in his train of thought and completely captures your attention. It's amazing, a unique experience. I once asked him what his secret was. But this is like asking Yo Yo Ma, "Why are you such a good cellist?" The question is impertinent. The answer is that he is gifted, that he has some extra dimension, and that he cares deeply about doing it well and works hard at it. Jim's answer was typical Jim: "I don't know. I did catch a fly once with my tongue and the class seemed to perk up."

Jim does much more for students outside of the classroom. He is a mentor, career counselor, and friend in time of trouble. They know they can count on him.

Jim's legendary frugality is actually based on his generosity for his colleagues and his students. In Jim's view, there are far better uses of his money and the Law School's than on free lunches, new cars, and the like. Year after year our salary negotiations take the form of Jim begging me to give his raise to someone else on the faculty who might need it more. He insists on public transportation and bag lunches all to keep Law School costs down so that students don't pay so much tuition. His one indulgence is pie. As he confessed to me, he is just happier when there is a pie in the house. But the pie comes from Costco you can be sure and was probably on sale.

It was just about 10 years ago when Jim called me up in his role as chair of the dean's search committee. I was a United States District Judge happily ensconced in the Eastern District of California. He asked a question carefully crafted and that demonstrated his lawyering skills: "Would you reject out of hand the idea of becoming the dean of Duke Law School?" "Well," I said, "I wouldn't reject it out of hand." "Good," he said, "then you should come here next week to meet the search committee." I knew then what that fly felt like.

Since that time I am proud to say that I have become Jim's friend, and Nancy and I so enjoy our time with Jim and Bonnie. We have been to their beach house. And they have been to our cattle ranch in New Mexico. On that particular occasion, following an early November ice storm, we lost all power for the better part of a week. Though his teeth were chattering and there was much involuntary shivering, Jim was an uncomplaining companion soaking in the natural beauty of the remote landscape.

When Justice Douglas left the bench he wrote a message to his colleagues in which he drew a comparison between their time together and a canoeing party. He said:

I am reminded of many canoe trips I have taken in my lifetime. Those who start down a water course may be strangers at the beginning but almost invariably are close friends in the end. There were strong headwinds to overcome and there were rainy days as well as sun drenched days to travel. The portages were long and many and some

were very strenuous. But there were always a pleasant campfire and the stand of white bark birch . . .<sup>2</sup>

We aren't at the end of our canoe trip with Jim, not by a long shot. There will be difficult portages and rainy days, to be sure, but there will be many delightful campfires and there will be pie. We will be cheerful in the company of our steady companion, the very best of men to travel with.

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2. 423 U.S. vii, ix (1975).