

A TRIBUTE TO DEAN JAMES HUFFMAN

BY
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Google James Huffman sometime. Aspiring actor.¹ Confederate soldier.² Convicted murderer.³ California bankruptcy attorney at FileBK.com.⁴ Democratic Senator and failed gubernatorial candidate from Ohio.⁵ Professor of history at Wittenberg University.⁶ And not last and not least, James Lloyd Huffman 2d. Jim. Dean.

Others will write of his tangible accomplishments as Dean. I do not intend to demean them by not discussing them; they were substantial and real. Instead I want to address a more delicate subject and how it relates to Jim as Dean. That delicate subject is Jim's politics.

On the faculty we all have our own politics. Most of us, but not Jim, reflect the national law school faculty tendency to be liberal⁷ in our politics, in the mainstream of Oregon voters—that is, we vote the Democratic ticket, not the Green Party ticket. Of course, there are exceptions to the liberal consensus. Jim is one of those exceptions. He is one of two Oregon lawyers listed on the website of the Republican National Lawyers Association.⁸ He is a prominent member of the Federalist Society.⁹ He has been a Distinguished Bradley Scholar at the Heritage Foundation.¹⁰ He is on the board of the

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¹ James Clifton Huffman, <http://www.jamescliftonhuffman.com/home.cfm> (last visited Jan. 27, 2007).

² Brother Wolf Storytelling, Confederate James Huffman, <http://www.ericwolf.org/civilweb/huffmanold.html> (last visited Jan. 27, 2007).

³ Huffman v. State, 825 N.E.2d 1274, 1277 (Ind. App. 2005).

⁴ FileBK.com, <http://www.huffmanlaw.com/> (last visited Jan. 27, 2007).

⁵ James W. Huffman, http://en.wikipedia.org/wiki/James_W._Huffman (last visited Jan. 28, 2007).

⁶ James L. Huffman, <http://www3.wittenberg.edu/jhuffman/> (last visited Jan. 27, 2007).

⁷ As in the definition: "Favoring proposals for reform, open to new ideas for progress, and tolerant of the ideas and behavior of others; broad-minded." The Free Dictionary, <http://www.thefreedictionary.com/liberal> (last visited Jan. 27, 2007); *see also* ANN COULTER, HOW TO TALK TO A LIBERAL (IF YOU MUST): THE WORLD ACCORDING TO ANN COULTER (Crown Forum 2004).

⁸ Republican National Lawyers Association, Find a Republican Lawyer, <http://www.rnla.org/bio/FindALawyer.asp?Alpha=&State=OR> (last visited Jan. 27, 2007).

⁹ The Federalist Society, Practice Group Leadership Directory, <http://www.fed-soc.org/Practice%20Groups/2005directory.htm> (last visited Jan. 27, 2007).

¹⁰ James Huffman, Erskine Wood Sr. Professor of Law, <http://www.lclark.edu/dept/lawadmss/huffman.html> (last visited Jan. 27, 2007).

Foundation for Research on Economics & the Environment (FREE),¹¹ a leader in espousing free market environmentalism, and he has been excoriated by the Community Rights Counsel for his lectures at FREE's seminars for federal judges.¹² He successfully defended the constitutionality of Oregon's Measure 37 before the Oregon Supreme Court.¹³ He testified before a congressional subcommittee to the effect that regulation of carbon dioxide by the United States Environmental Protection Agency would be unconstitutional as a violation of separation of powers.¹⁴ And he has been a frequent conservative op-ed writer for papers as widespread as the Washington Times,¹⁵ L.A. Times,¹⁶ National Law Journal,¹⁷ and Oregonian.¹⁸ Most recently, Jim has had amicus briefs filed on his behalf in *Massachusetts v. Environmental Protection Agency*,¹⁹ in support of EPA's failure to regulate carbon dioxide, and in *Environmental Defense v. Duke Energy Corp.*,²⁰ challenging EPA's standard for requiring new source review in Clean Air Act attainment areas, both of which are before the Supreme Court this term.

One might assume that Jim's activism on behalf of conservative causes generally and anti-environmental causes in particular would cause a certain tension with his leadership of a law school renowned for its environmental law program. In addition, one might assume that his political-environmental views would create personal animosity and friction with the environmental faculty. It is a tribute to Jim, however, that neither of these assumptions is true.

First, while Jim has never hidden his personal political and environmental views, and while they might well distinguish his written

¹¹ Foundation for Research on Economics & The Environment, FREE Staff & Board, <http://www.free-eco.org/staff.php#gggray> (last visited Jan. 27, 2007).

¹² Doug Kendall, Community Rights Counsel, Nothing for Free: How Private Judicial Seminars are Undermining Environmental Protections and Breaking the Public's Trust (2000), available at <http://www.tripsforjudges.com/crc.pdf>.

¹³ *MacPherson v. Dep't of Admin. Servs.*, 130 P.3d 308 (Or. 2006).

¹⁴ *EPA Regulation of Carbon Dioxide: Hearings Before the H. Comm. on Government Reform, the H. Comm. on Science, the H. Subcomm. on National Economic Growth, the H. Subcomm. of Natural Resources, the H. Subcomm. on Regulatory Affairs, and the H. Subcomm. on Energy and the Environment*, 106th Cong. (1999) (statement of James L. Huffman, Professor of Law and Dean, Lewis and Clark Law School) ("My conclusion is that EPA regulation of carbon dioxide pursuant to the Clean Air Act or any other extant statute is unauthorized and would constitute a clear violation of the fundamental constitutional principle of separation of powers.").

¹⁵ James L. Huffman, Op-Ed., *Consent or Not*, WASH. TIMES, May 19, 2003, available at <http://www.washtimes.com/op-ed/20030518-094919-7325r.htm>.

¹⁶ James L. Huffman, Op-Ed., *Interior Needs a Free Market Approach*, L.A. TIMES, Jan. 23, 2001, at B9.

¹⁷ James L. Huffman, *Justices Boost Federalism Again*, NAT'L L.J., Jan. 22, 2001.

¹⁸ James L. Huffman, Op-Ed., *Judicial Independence: Raising the Perception of Justice in Oregon*, THE OREGONIAN, Oct. 26, 2006, available at <http://www.oregonlive.com/search/index.ssf?/base/editorial/1161804318124060.xml?oregonian?edc&coll=7>.

¹⁹ Brief of the Cato Institute and Law Professors Jonathan H. Adler, James L. Huffman and Andrew P. Morriss as Amici Curiae in Support of Respondents, 126 S. Ct. 2960 (2006) (No. 05-1120), 2006 WL 3043962.

²⁰ Brief Amici Curiae of Law Professors in Support of Respondent Duke Energy Corp., 126 S. Ct. 2019 (2006) (No. 05-848), 2006 WL 2689780.

scholarship and oral presentations, they never influenced his personal relations with his faculty. As Professor Michael Blumm has written in these pages, despite the grave differences over politics and environmental law between them, they were at home rafting and drinking beer together. And, yes, arguing politics and environmental law. From my first publication²¹ in 1984 to a public debate in the last year of his deanship over the Supreme Court's *Kelo* decision,²² it has been one of my roles at the law school to be the Clarence Darrow to Jim's William Jennings Bryan, or at least to attempt to be such. But, while there was no love lost between Darrow and Bryan, I count Jim to be one of my closest friends on the faculty. Our debates were fun, but real; we both believed in our positions, but ultimately the vigorous exchange of ideas and the benefit to the students of hearing different voices was much more important than who won or lost. There is not a member of the environmental law faculty who does not count Jim as a friend and who does not respect him, even while they scratch their heads at his odd opinions.

Second, despite his personal views on environmental law, Jim has been the strongest supporter of the environmental law program in a series of deans, all of whom have supported the program. From its creation in 1996 to its current staffing of five attorneys, Dean Huffman has been a consistent and strong supporter of the Pacific Environmental Advocacy Center (PEAC), which could not have existed without his support. Similarly, the International Environmental Law Project (IELP) was created with Jim's support and encouragement. Now with a tenure track director and full-time staff attorney, IELP has provided a unique opportunity for the approximately ten students per year actually to practice international environmental law and actually to make a difference in the world. The National Center for Animal Law, located at and supported by the law school, is another example of Jim's support both for a new and expanded educational opportunity for Lewis & Clark students and also for a program that could enhance the reputation and prowess of the law school in the environmental field, even though the goals and techniques of the program were at odds with his personal political and environmental philosophy. The expansion of the environmental law summer school, the addition of staff support for the environmental law program, the expansion of the LL.M. in Environmental Law program, and initiatives by the Natural Resources Law Institute have all been actively supported by Jim. With his credentials, his defense of the environmental law program as important to the school and to the students has carried special weight to potentially critical alumni or law school supporters.

In short, the environmental law program, and the law school as well from the benefits accruing to a nationally ranked program, owes a great debt of gratitude to Dean James Huffman for his support. That he could subordinate his personal political and environmental views to the greater

²¹ William Funk, *Alive and Well in the Leviathan State: A Reply to Professor Huffman*, THE ADVOCATE, Vol. 4, No. 2, Spring 1985, at 10.

²² See *Kelo v. City of New London*, 545 U.S. 469 (2005).

good of the institution, and do so enthusiastically, is a tribute to a law school dean. We look forward to his return to the faculty as a colleague.

I cannot conclude this tribute without noting Jim's contribution to legal scholarship. Like Jim, it spans a great range. Nevertheless, especially to those of us less inclined to his political views, it is possible to speculate that his most lasting legacy to legal scholarship will not be the tome entitled *Government Liability and Disaster Mitigation: A Comparative Study*,²³ or even his poem on liberty and community,²⁴ but instead will be the "well-known and oft-cited law review article,"²⁵ *Chicken Law in an Eggshell, Part III—A Dissenting Note*,²⁶ which some have described as "the classic treatment,"²⁷ and which has been enshrined in the definitive collection of the funniest law review articles.²⁸ But that is Jim. Sometimes funny; sometimes serious. But when in doubt, smile, because he will be smiling.

²³ JAMES L. HUFFMAN, *GOVERNMENT LIABILITY AND DISASTER MITIGATION: A COMPARATIVE STUDY* (1986).

²⁴ James L. Huffman & James C. Brumberg, *A Dialogue on Liberty and Community*, GREEN BAG, Summer 2004.

²⁵ Chicken Law, Business Blog, (July 5, 2003), http://popuptoaster.blogspot.com/2003_06_29_popuptoaster_archive.html#110713583454346439 (last visited Jan. 28, 2007).

²⁶ James L. Huffman, *Chicken Law in an Eggshell: Part III—A Dissenting Note*, 16 ENVTL. L. 761 (1986).

²⁷ The Volokh Conspiracy, (Aug. 12, 2005), <http://volokh.com/posts/1123884884.shtml> (last visited Jan. 28, 2007).

²⁸ AMICUS HUMORIAE: AN ANTHOLOGY OF LEGAL HUMOR (Robert M. Jarvis, Thomas E. Baker & Andrew McClurg eds., 2003).