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REMEMBERING JAMES B. HELMER, JR.,
A TITAN OF FALSE CLAIMS ACT LITIGATION

*B. Nathaniel Garrett**

When I was first approached about the idea of the *University of Cincinnati Law Review* publishing a symposium issue dedicated to Jim Helmer, Jim was alive but struggling with amyotrophic lateral sclerosis (often referred to as Lou Gehrig’s disease), and his health was declining. I thought the symposium was an excellent idea, and I recall Jim being so appreciative of the concept when I shared it with him. Jim was honored to be recognized by the *Law Review*—an institution where he served as the Editor-in-Chief while he was a student at the University of Cincinnati College of Law and that he continued to support during his life. Sadly, Jim did not get to see the finished product as he passed away before this publication was printed. On February 3, 2023, the Cincinnati legal community lost one of its premier civil litigators, and those who practice False Claims Act litigation on the relators’ side lost a pioneering trail-blazer who rediscovered and helped improve the statute to make it the powerful anti-fraud law that it is today.

Jim was a remarkable man, and he lived a remarkable life. I will be forever grateful for having the chance to work with and learn from him. His legacy will live on in the many lives of clients, lawyers, judges, students, and others that he impacted. Most of Jim’s professional life was dedicated to representing whistleblowers in *qui tam* lawsuits—a highly unique and complex practice area in which plaintiffs can sue fraudsters on behalf of the United States and collect a portion of a successful recovery. Jim’s legacy in such cases lives on through the False Claims Act boutique he founded, now known as Helmer Martins Tate & Garrett Co., LPA. Always the consummate professional, Jim epitomized a hard-working trial attorney with a deep respect and adherence to the law, ethics, and rules of practice. He demanded a lot from himself and others, but that mindset allowed him to achieve great things and thoroughly enjoy life. Jim was a giant in the law, and we are all so fortunate to stand on his shoulders.

I. THE VALUE OF HARD WORK

Jim was born in Piqua, Ohio, but spent summers from age six to sixteen working on his uncle’s cotton and tobacco farm outside of Lake City,

* Co-President of Helmer Martins Tate & Garrett Co., LPA in Cincinnati, Ohio, and partner and mentee of Jim Helmer. I was a law student at the University of Cincinnati College of Law and future Editor-in-Chief of the *Law Review* when I met Jim at a social function, which started an enduring friendship.

South Carolina. It was tough work in hot and humid weather, but it taught Jim about poverty and the value of hard work. From an early age, Jim learned that work was necessary for one to fully appreciate what life has to offer and to be a productive member of society. That mentality stayed with him as he grew older and went to college, where he proved to be a high achiever. Jim graduated from Denison University with honors, and he was a member of the varsity football team. Originally, Jim thought he would be a high school social studies teacher and football coach. However, he ultimately decided to go to law school. He attended the University of Cincinnati College of Law, graduating in 1975. During law school, Jim served as the Editor-in-Chief of the *Law Review*.

As was typical for Jim, he left a lasting mark on everything that he did. I recall when I was serving as the Editor-in-Chief of the *Law Review* almost four decades later that Jim's typewritten notes on the "Function of the Law Review" were still in circulation. The notes continue to be passed down from year to year. I had a chance to review those notes again recently, and much of what Jim wrote in 1975 was still applicable to this day. Jim's notes offered keen insight and perspective meant to help those that came after him. That was typical Jim: paving a metaphoric trail, leaving his footprint, and offering guidance for novices.

II. PRIVATE PRACTICE

After law school, Jim found his calling as a trial lawyer. It was a job that provided him an infinite supply of new opportunities every day beyond his wildest dreams.

Jim started his legal career clerking for Judge Timothy S. Hogan, Chief Judge of the United States District Court for the Southern District of Ohio. Following his clerkship, he worked at two small firms in Cincinnati until venturing out on his own. Jim believed that the practice of law was demanding, but very rewarding if done properly. For a large part of his career, he worked eighty hours a week, including evenings and weekends. Jim took few vacations, but also did not care much for traveling. In his spare time, he enjoyed his sport car collection—which grew to be as impressive as he was.

Jim's approach to litigation embraced the adversarial system. Admittedly, Jim did not view high-stakes litigation as a time to make friends with opposing counsel. Instead, Jim adhered strictly to courtroom rules, procedures, and professional ethics, and he insisted that his opponents did the same. Jim's approach worked, and his practice flourished. During his career, Jim represented both plaintiffs and defendants in major litigation, and his clients included Fortune 500 businesses, law firms, insurance providers, the National Football League, school boards, franchisees and

individuals. Jim served as lead counsel in about a dozen class action lawsuits concerning securities fraud, civil rights, environmental law, and the Truth-in-Lending Act. Jim obtained several multi-million dollar jury verdicts and served as trial counsel in over 400 published legal decisions. In total, Jim helped recover in excess of \$3 billion for his clients.

His practice took him to courts throughout the United States, including to the Ohio Supreme Court and United States Supreme Court. Jim won four cases before the Ohio Supreme Court and a landmark unanimous decision from the United States Supreme Court. He authored numerous books and articles on the law. Jim was most recognizable, however, as being one of the longest-practicing False Claims Act lawyers in the country.

III. JIM “REDISCOVERED” THE FEDERAL FALSE CLAIMS ACT

In the 1980s, defense procurement fraud was rampant. Congressional leaders were looking for ways to combat and deter that fraud, which led them to examine an old Civil War era statute known as the False Claims Act (sometimes referred to as Lincoln’s Law since Abraham Lincoln signed it into law). Around the same time that Congress was looking for solutions, Jim represented John M. “Jack” Gravitt in a case against General Electric’s aviation division (*United States ex rel. Gravitt v. General Electric Co.*, Case No. C-1-84-1610 (S.D. Ohio)). Gravitt, who served as a Marine during the Vietnam War, found out that his supervisors at the GE jet engine plant in Evendale, Ohio were overbilling the government for work on the B-1 Lancer bomber. After refusing to participate in the fraud, Gravitt was fired, and Jim filed his first *qui tam* lawsuit. The Gravitt case was the only pending *qui tam* action reviewed and considered by Congress in drafting the modern False Claims Act in 1986. Both Jim and his client were subpoenaed to testify about the law.

In 1985 and 1986, Jim testified before the United States House of Representatives and the Senate concerning ways to modernize and improve the False Claims Act. Modernization was necessary because after World War II, the statute was nearly amended out of existence as a result of individuals with no original information about fraud copying criminal indictments to bring civil False Claims Act cases. Amendments to the statute in 1943 minimized the role of the whistleblower and gave the government total control over the lawsuit. In stark contrast, the 1986 amendments empowered the whistleblower, which greatly strengthened the False Claims Act and made it wildly successful as the government’s primary tool to combat fraud. Since the 1986 amendments, the False Claims Act has recovered over \$72.5 billion which had been lost to fraud committed by unscrupulous contractors.

After his first False Claims Act case, Jim focused most of his practice on this area of law. Jim was one of the original members of Taxpayers Against Fraud—a non-profit organization supporting the False Claims Act Relators’ Bar and other whistleblower programs. In 2008, Jim received the Lifetime Achievement Award from Taxpayers Against Fraud for his pioneering work on the False Claims Act.

Jim was a thought leader and great champion of the False Claims Act. When Jim first started pursuing these cases, he could read all of the published court opinions on the statute in a day. That all changed due to the 1986 amendments, as there is now a substantial body of precedent dealing with the statute. To help practitioners navigate the complexities of the law, Jim wrote *False Claims Act: Whistleblower Litigation*—a two volume treatise currently in its eighth edition. The treatise contains a wealth of Jim’s knowledge and experience, and it was specifically written to help *qui tam* practitioners litigating False Claims Act cases. Again, classic Jim: leading and guiding others to achieve success. Jim was a firm believer in the underlying premise of the False Claims Act—enlisting the public to assist their government in combating fraud by incentivizing such activity. Jim spent his career fighting for the rights of *qui tam* whistleblowers.

IV. SUPREME COURT OF THE UNITED STATES

At the pinnacle of his career, Jim argued the case of *Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662 (2008), before the United States Supreme Court. The Court ruled, by a 9-0 decision, in favor of Jim’s client but then interpreted the False Claims Act in a restrictive manner. Undeterred, Jim returned to testify before two Congressional Committees in 2008 concerning the clarification of the False Claims Act. Congress overwhelmingly passed new amendments championed by Jim, and the amendments were signed into law on Jim’s birthday (May 20, 2009). The *Allison Engine* case subsequently settled after nearly twenty years of litigation, and Jim’s whistleblower clients received the maximum share permitted by the False Claims Act.

While many litigators may never be lucky enough to find themselves with a single case before the Supreme Court, Jim ended up having two more cases accepted by the Court. Shortly before Jim’s passing, the certiorari petitions for our False Claims Act cases captioned *United States ex rel. Schutte et al. v. SuperValu Inc. et al.*, No. 21-1326, and *United States ex rel. Proctor v. Safeway, Inc.*, No. 22-111, were granted. Oral argument took place on April 18, 2023. Jim’s spirit was with us that day. The issue for the Court in these cases is whether and when a defendant’s contemporaneous subjective beliefs or understanding about the law-

fulness of its conduct are relevant to whether the defendant acted “knowingly” when it presented false or fraudulent claims. For Jim, the answer was obvious that, as intended by the 1986 amendments to the False Claims Act, a defendant that believes it is submitting false claims has acted “knowingly” under the statute. Let us hope the Court gets it right. A win for the Relators would reinforce the False Claims Act’s viability as the nation’s top anti-fraud law, just as Jim has always advocated that it is.

V. JIM’S LEGACY

Jim valued loyalty and generosity, and he was committed to helping the institutions that helped him along his way in life. He also paid it forward and helped future generations of students and lawyers. Jim donated his time and money liberally. Jim made gifts and endowed a scholarship at Denison University. He consistently supported the University of Cincinnati College of Law by financing awards, endowing a professorship chair, and funding scholarships for students. Jim was a benefactor for the construction of the new law school building, and a large classroom was dedicated and named in his honor. Jim also enthusiastically supported and donated to the Ohio Innocence Project and its exonerees. As was said during eulogies of Jim at his funeral, he left his footprints in the sand.

Despite his illness, Jim’s mind never stopped working, and he continued to work into his final days. Jim approached his illness like he did everything in life, with great strength and resolve. His passing is a significant loss to so many.

Personally, I will be forever grateful for being a partner, mentee, and friend of Jim Helmer. The impact that he has had on my life was profound. He taught me so much about law and life. Most importantly, Jim gave me the opportunity to succeed in the practice of law, and as Jim would say: “Opportunity arrives each and every day for all of us. Most opportunities we turn down. A few we seize and of those we must take full advantage.” Jim, I am taking full advantage and following in your footsteps, my friend. Thanks for blazing the trail for me and so many others in False Claims Act litigation.