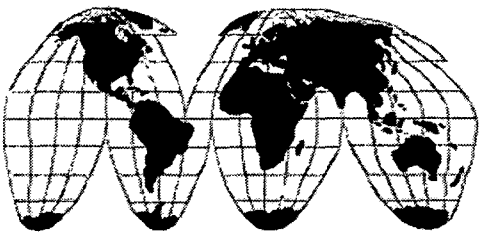

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Volume 2013 Number 3

WISCONSIN LAW REVIEW

Published by the University of Wisconsin Law School

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The Wisconsin Law Review *thanks Professor Anuj Desai for his assistance over the past year. The outgoing Editorial Board also wishes a year of success to the incoming Editorial Board.*

The *Wisconsin Law Review* (ISSN 1943-1120) is published six times a year at the University of Wisconsin Law School, 975 Bascom Mall, Madison, Wisconsin 53706-1399. Periodicals postage paid at Madison, Wisconsin and additional offices. POSTMASTER: Send address changes to *Wisconsin Law Review*, University of Wisconsin Law School, 975 Bascom Mall, Madison, Wisconsin 53706-1399. Telephone: (608) 262-2109.

Subscription Price: US$40.00 per year to all domestic addresses (including territories); US$45.00 per year to all foreign addresses. Subscription prices are for the current year only. In order for the subscriber to receive a complete volume at subscription price, the *Wisconsin Law Review* must receive payment by January 15th of the volume year. Subscribers paying after that date will not receive issues that have already been published. Any back issues for the current volume are available for US$10.00 each to all domestic addresses (including territories) and US$11.00 each to all foreign addresses.

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Back issues and back volumes through Volume 2005, inclusive, can be obtained from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209-1987. Microform reproductions are available from William S. Hein & Co., Inc. and University Microfilms, Inc., 300 North Zeeb Road, Ann Arbor, Michigan 48106-1346.

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CITE AS: 2013 WIS. L. REV. XXX

A TRIBUTE TO PROFESSOR JAMES E. JONES, JR.: IN HONOR OF AN "HONOR MAN"

MARIO L. BARNES*

INTRODUCTION

I met Professor Jim Jones, quite accidentally, within days of arriving in Madison in the fall of 2002. There to pursue my Master of Laws (LL.M.) degree, my initial thesis advisor was Professor Catherine ("K.T.") Albiston[1] and her office was across the hall from Professor Jones's. One day, while I waited to meet with K.T., Professor Jones noticed me and asked me into his office. He instantly remarked that I looked a bit "long in the tooth" to be a law student, as a way of jokingly asking my purpose for being outside his door. When I told him I was a new William H. Hastie Fellow, he immediately perked up. Next, he provided a history of the fellowship and asked a number of questions about my background, work history, teaching, and writing interests. When I mentioned I was transitioning from active service in the United States Navy, he became even more animated. He shared that he too had served in the Navy during World War II. When we learned that we had both spent time stationed on the island of Guam, I surmised that I had likely met a mentor with whom to trade "war stories" for the next two years. In fact, we spoke so long on the day we met that I never did get in to see K.T.

Based on Professor Jones's gregarious nature, I have to believe others have also felt they have established an immediate rapport with him. After our first meeting, for the next two years I would frequently return to his office. I was no longer there to see K.T., but instead, to be cajoled, teased, intellectually stimulated, chastised, challenged, and, most

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* Professor of Law and Senior Associate Dean for Academic Affairs, University of California, Irvine School of Law; B.A., J.D., University of California, Berkeley; LL.M., University of Wisconsin Law School. Thank you to the student editors for their thoughtfulness and patience. I also thank members of the University of Wisconsin Law School faculty, Professor Thomas Mitchell in particular, for organizing this wonderful effort to celebrate our esteemed colleague and mentor. To my fellow Hastie Fellowship alumni, I owe you a huge debt for your support throughout my academic career; I am proud to be a member of this august group, which was only made possible through the efforts of Professor Jim Jones.

1. Professor Albiston left Wisconsin for an appointment at the University of California, Berkeley School of Law after my first year. She continued, however, to advise my project. Professor Arthur McEvoy—who now teaches at Southwestern Law School in Los Angeles—stepped in as an additional onsite advisor.

of all, to be regaled by stories of a life well lived. In fact, I visited Professor Jones's office so often that two things were true. First, I heard many of the stories from his autobiography, *Hattie's Boy: The Life and Times of a Transitional Negro*,[2] as the book was being edited. Second, after my first year in Madison, K.T. only half-jokingly directed me to place time limits on my sessions with Professor Jones, fearing that I would otherwise not complete my LL.M. thesis.

I relished my conversations with Professor Jones. In fact, the title of this Tribute references one of our early talks about his time in the Navy. While in boot camp, Professor Jones learned he was his company's "Honor Man," a designation for the person who had the highest scores from amongst his company on the battery of aptitude tests administered to new recruits.[3] The designation was clearly intended as a compliment. While Professor Jones understood this, he expressed some trepidation about what he also considered to be an empty gesture and one that was steeped in a tradition of using often-unproven tests to limit workplace options for people of color.[4] His ability to see danger in a designation that stood to privilege him personally but raised larger systemic concerns is what confirmed his status as a true "Honor Man." Accordingly, for me, an important part of his legacy shall be that his own success was never as important as the work he did to create opportunities for others.

Looking back, I now see that Professor Jones's insights influenced my experiences while in Madison and beyond. Important lessons gleaned from his stories inform much of this reflection. While I cannot distill the full breadth of Professor Jones's wisdom here, I will convey two key insights. First, I will articulate how Professor Jones's autobiography expanded my understanding of the opportunity for utilizing narratives in law. Second, I will recount his wisdom relative to efforts to ensure greater inclusiveness within majority institutions.

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2. JAMES E. JONES, JR., HATTIE'S BOY: THE LIFE AND TIMES OF A TRANSITIONAL NEGRO (2006).

3. *Id.* at 90.

4. In referring to the "Honor Man" designation in his autobiography, he also explicitly referenced his concerns about using tests within employment. *Id.* at 92; *see, e.g.*, *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (an early case exploring the racially disparate impact of general aptitude tests). Under current employment law, facially neutral workplace practices—such as the tests Professor Jones took—that create a disproportionately harmful impact for one or more groups are only upheld where they are "job related" and consistent with "business necessity." *See* Charles A. Sullivan, Ricci v. DeStefano*: End of the Line or Just Another Turn on the Disparate Impact Road?*, 104 NW. U. L. REV. 411, 412 (2010). Recent Supreme Court jurisprudence, however, signals that employer efforts to ameliorate the disparate impact of ostensibly neutral tests may now serve as the basis for those performing well on such tests to bring disparate treatment claims. *Id.* at 413–14; Cheryl I. Harris & Kimberly West-Faulcon, *Reading* Ricci*: Whitening Discrimination, Racing Test Fairness*, 58 UCLA L. REV. 73, 75–76 (2010).

ON AUTOBIOGRAPHY AS HIS STORY AND HISTORY

As revered law professors such as Derrick Bell,[5] Jerome Culp,[6] and Patricia Williams[7] have demonstrated, leveraging one's autobiography or at least selected life stories can be an important method for engaging legal doctrine. While there is no indication he opposed this methodology,[8] Professor Jones did not typically use personal stories within his scholarship.[9] Still, the stories he shared with me took on more than a personal quality. His stories were representative of important larger histories related to events such as the creation of the field of employment discrimination, the integration of the University of Wisconsin faculty and student body, the development of national

5. *See, e.g.*, DERRICK BELL, CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTOR (1994) (a retelling of the events of his life, which caused him to leave Harvard Law School after the faculty failed to hire a woman of color); DERRICK BELL, ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH (2002). Professor Bell, who was a visiting professor at New York University Law School after leaving Harvard, died in October of 2011. *See* Fred A. Bernstein, *Derrick Bell, Law Professor and Rights Advocate, Dies at 80*, N.Y. TIMES, Oct. 7, 2011, at A18.

6. Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding Me in the Legal Academy*, 77 VA. L. REV. 539 (1991) (discussing the deliberate use of his autobiography within the law classroom). Professor Culp died in February of 2004. *See Duke Law Professor Jerome Culp Dies at Age 53*, DUKE TODAY (Feb. 6, 2004), http://today.duke.edu/2004/02/culp_0204.html.

7. *See, e.g.*, PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991); Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127 (1987) (reciting the now famous story of the refusal of a store employee to admit the author into a Benetton store).

8. For example, he has written favorably of the emergence of storytelling and its proponents within legal scholarship. James E. Jones, Jr., *LL.M. Programs as a Route to Teaching: The Hastie Program at Wisconsin*, 10 ST. LOUIS U. PUB. L. REV. 257, 258–59 (1991). Additionally, Professor Jones included Professor Williams's and Professor Bell's work in his edited collection on race. *See* Derrick Bell, *Remembrances of Racism Past: Getting beyond the Civil Rights Decline*, *in* RACE IN AMERICA: THE STRUGGLE FOR EQUALITY 73 (Herbert Hill & James E. Jones, Jr. eds., 1993); Patricia J. Williams, *Fetal Fictions: An Exploration of Property Archetypes in Racial and Gendered Contexts*, RACE IN AMERICA, *supra*, at 425. Professor Williams's contribution included a story of being discriminated against while seeking housing in Madison. Williams, *supra*, at 425–26.

9. Interestingly, on at least two occasions when reflecting on diversity in the legal academy, Professor Jones included personal stories within his work. He spoke of his own experiences as a law student at Wisconsin when discussing how minority law students may not be aware of the "traditional" route into legal academia. Jones, *supra* note 8, at 259–61. After transitioning to emeritus status, Professor Jones also published a speech where he shared the story of his early years in teaching. James E. Jones, Jr., *Some Observations on Teaching from the "Pioneer" Generation*, 5 MICH. J. RACE & L. 229, 230–33 (1999).

affirmative action policy, and attempts to achieve diversity within the legal academy.[10]

With regard to the immediate effects of our conversations, my graduate thesis studied the use of personal narratives in law. My research centered on advocating the use of autobiography and storytelling as methods to engage legal principles.[11] Rather than using his powerful autobiography to encourage my use of stories, he suggested that my project include specific doctrinal interventions and closely analyze the context within which narratives were being offered. Like anyone who ever exchanged ideas with Professor Jones, he caused me to think more critically about my work. In particular, he, along with Professor Albiston, helped to move my focus toward engaging interdisciplinary perspectives and interrogating the multiple meanings of stories.[12]

My discussions with Professor Jones often left me with the need to process multiple insights. For example, his specific advice on the use of narrative in law could be construed as a call to pay careful attention to how one utilizes personal stories. The lasting impact of our broader conversations, however, demonstrated the relevance of autobiography, his in particular, to framing significant changes within law and society. He participated in meaningful ways in important historical events and succeeded in spite of unfair arrangements designed to limit his opportunities. He did so with a devout focus on bringing along and lifting up others for whom success would have been less likely without his efforts. Much like the civil rights giants studied in Harvard Professor Ken Mack's exceptional recent book, *Representing the Race: The Creation of the Civil Rights Lawyer*,[13] Professor Jones simultaneously managed the myriad demands of a mostly white profession and the minority affinity groups on whose behalf he advocated. It is for this reason that the sum of his personal experiences—alongside those of other

10. For a discussion of these and other of Professor Jones's significant contributions, see Vicki Schultz, *A Tribute to James E. Jones, Jr.*, 9 EMP. RTS. & EMP. POL'Y J. 525 (2005).

11. Mario L. Barnes, The Stories We Did Not Tell: Identity, Family Silence and the Legal Recreation of Inequality (Oct. 21, 2004) (unpublished LL.M. thesis, University of Wisconsin Law School) (on file at the University of Wisconsin Law School Library). A number of the insights on narrative from the thesis were published in Mario L. Barnes, *Black Women's Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941 (2006).

12. For a recent example of this influence on my critique of narrative, see Mario L. Barnes, *Foreword: LatCRIT Theory, Narrative Tradition and Listening Intently for a "Still Small Voice,"* 1 U. MIAMI RACE & SOC. JUST. L. REV. 1, 9–21 (2011); Mario L. Barnes, *Racial Paradox in a Law and Society Odyssey*, 44 LAW & SOC'Y REV. 469, 469–75 (2010).

13. KENNETH W. MACK, REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER (2012).

pioneers who fought to ensure greater workplace and societal diversity—constitutes a piece of our history rather than merely his story. While I never found Professor Jones particularly interested in accepting compliments pertaining to the significance of his work and life, it appears that even he might now acknowledge this particular insight.[14]

ON THE IMPORTANCE OF CREATING IT AND LETTING IT GO

Professor Jones's autobiography is important because of what it teaches about at least two topics—challenging systems of oppression through direct action and preserving inclusiveness by giving up control over the means to achieve it. With regard to the former point, one of my favorite stories involves Professor Jones convincing the University of Wisconsin to hire four tenured law faculty of color in the same year.[15] The story resonates because it demonstrates Professor Jones, a consummate negotiator, in action. Rather than spending time criticizing majority claims about the operation of concepts of merit within academia or interrogating the false promises of liberalism—important undertakings to be sure[16]—he used his energies to create the William H. Hastie Fellowship[17] and explode the myth that there were no qualified minority faculty candidates.[18] This is the same energy Professor Jones brought to ensuring the success of other diversity initiatives at the University of Wisconsin Law School, such as the law-student-focused Legal Education Opportunities (LEO) Program.[19]

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14. JONES, *supra* note 2, at xi (acknowledging within the preface the interface between his life and significant events in history).

15. *Id.* at 718–20. This hiring led the Society of American Law Teachers to present the University of Wisconsin Law School with an award for diversity in faculty hiring. *Id.* at 794.

16. Scholars with respective ties to University of Wisconsin Law School and the Hastie Fellowship have advanced such critiques. *See, e.g.*, Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711 (1995); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

17. Professor Jones proposed the William H. Hastie Fellowship to the Wisconsin faculty in 1973 as a means to "provide advanced legal training to exceptional minority students to qualify them for, and encourage them to undertake, the teaching of law." Jones, *supra* note 8, at 263.

18. *Id.* at 263–66 (indicating that with the Hastie Program, Professor Jones sought to create aspiring minority law professors who could meet the "traditional academic credentials" of the profession).

19. For descriptions of the LEO program, which is a special admissions program started in 1967 and designed to recruit and retain law students of color at the University of Wisconsin Law School, see Schultz, *supra* note 10, at 530–31; Daniel O. Bernstine, *An Empirical Study of the University of Wisconsin Law School Special Admissions Program: A Progress Report*, 7 BLACK L.J. 146, 148–51 (1982).

Finally, one other key insight Professor Jones shared is that if one wanted inclusion programs to succeed, then one must be willing to create them and let them go. By this he meant that too many people hold tightly to the programs they create for fear they will otherwise fail. He reasoned, however, that anything that could be viewed as a specialty concern of only a few faculty members would not succeed over time. It is for this reason that when I arrived in Madison he was in the role of informal Hastie Fellow advisor rather than still heavily involved with the faculty committee. He saw this move as critical to ensuring the Hastie Fellowship became part of the institutional fabric of the law school.[20] Doing so, however, enhanced the law school's reputation for significantly contributing to the diversity of legal academia and the program's success, even as it also meant his being less directly involved over time. His being more interested in securing institutional and programmatic success than personal acknowledgment is a further manifestation of the type of "honor" I referenced in the Introduction.

CONCLUSION

When Professor Jones first spoke to me about publishing his autobiography, he identified "serendipitous" as a word that best described his life. I always thought it an odd choice because so much of his life was not about luck, but rather about being prepared for every opportunity that presented itself. To the extent one believes that fortune smiles on those who most deserve it, Professor Jones is a wonderful example of this principle. His legacy, however, will not only be about the good fortune he received, but about the colorful stories and unmatched wisdom he shared, especially with those of us who earned this reward by doing no more than passing by his open office door. That he has committed so much of his life to helping others means there are scores of students and scholars who have benefitted from his efforts. As one who has benefited greatly from his insights, I can only say—most appropriately in this case—that it has been a tremendous honor.

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20. It is for this reason that when people address the success of the Hastie Fellowship, they largely give credit to the University of Wisconsin itself, rather than mentioning Professor Jones's singular important contribution. *See, e.g.*, David M. Trubek, *Foundational Events, Foundational Myths, and the Creation of Critical Race Theory, or How to Get Along with a Little Help from Your Friends*, 43 CONN. L. REV. 1503, 1508 (2011) ("*Wisconsin* also had a tradition of supporting minority legal scholars; *it* established the Hastie Fellowship in 1973 to support minority scholars who wished to enter law teaching . . . .") (emphasis added).

JIM JONES: A PROFESSOR'S PROFESSOR

DANIEL O. BERNSTINE*

One of the inevitable things that comes from writing a piece like this is a need for reflection. As I reflected on my relationship with James E. Jones, Jr., I realized that I have known Jim for over forty years beginning from virtually the first day of my career as a lawyer. I also recalled some of the many professional and life lessons I learned from him.

HIS REPUTATION PRECEDED HIM

After graduating from law school, my first job was as a staff attorney in the Solicitor's Office in the United States Department of Labor. Since nearly my first day in that office, I heard about the "great Jim Jones" who had preceded me as the first African American lawyer in the division. Several years before I arrived, Jim left the department to become the first African American faculty member at his alma mater, the University of Wisconsin Law School. Jim had spent thirteen years in the department and, during that time, he rose through the ranks from Legislative Attorney to the highest nonpolitical rank in the Solicitor's Office, Associate Solicitor, for the Division of Labor Relations and Civil Rights.

Jim was very proud of being what he liked to refer to as "the lawyer's lawyer." He had the opportunity to work on many major, impactful labor initiatives, but one of the initiatives he was most proud of was his work as one of the architects of Executive Order 11246,[1] which was signed by President Lyndon B. Johnson in 1965.[2]

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* President, Law School Admission Council.

1. Exec. Order No. 11246, 3 C.F.R. 167 (Supp. 1965).

2. *Id.* The Executive Order prohibits contractors doing business with the federal government from discriminating in employment decisions on the basis of race, color, sex, or national origin. *Id.* The Executive Order was also one of the first to require contractors to take affirmative action to ensure that applicants are employed and are treated without regard to their race, color, religion, or national origin. § 202; Gregory L. Hanson, *The Affirmative Action Requirement of Executive Order 11246 and Its Effect on Government Contractors, Unions and Minority Workers*, 32 MONT. L. REV. 249, 250 (1971).

CROSSING PATHS

I first met Jim at the National Bar Association Convention in July 1973. As a young lawyer, I had been sent to the convention by the Department of Labor to recruit potential lawyers for the Solicitor's Office. I was seated at our exhibition booth when a distinguished-looking gentleman stopped by and introduced himself. His name was James E. Jones, Jr. and he had stopped by to say hello to one of his longtime friends, who also had come to the convention to recruit but who was not in the booth at the time. Naturally, Jim and I struck up a conversation, during which he mentioned that he was attending the convention to look for possible candidates for the William H. Hastie Fellowship Program, which had just been established at the University of Wisconsin Law School. The fellowship was a two-year program designed to help prepare young law graduates for a career in law teaching. The program required Fellows to spend half of their time as an advisor to minority J.D. students and the other half of their time doing research towards an LL.M. degree.[3] I expressed interest in applying for the program and, several months later, I found myself in Madison as one of the first two Hastie Fellows.

The Hastie Program was Jim's brainchild and, since its inception, there have been a total of forty-three Fellows. The vast majority of the Fellows have gone on to successful teaching and administrative careers at law schools all over the country. That aspect of Jim's vision for the program was clearly realized. Without a doubt, the University of Wisconsin Law School has been one of the largest producers of faculty of color in this country. Jim wanted to eliminate the excuse that many schools used when explaining their inability to find qualified people of color for faculty positions. The other aspect of Jim's vision was that the program would serve as a model for other law schools but, unfortunately, the model was not adopted extensively elsewhere.

While Jim deserves much of the credit for the Hastie Program, he artfully ensured the program's success and institutionalization. On the one hand, he personally instilled in all of the Fellows an obligation to "pay your dues." In other words, Jim made sure that all Fellows understood that: (1) they were expected to graduate, and (2) after graduation they were expected to pursue a career in legal education as a faculty member or an administrator. On the other hand, Jim did not serve

3. The program has since been modified so that Fellows no longer serve as formal advisors to students. Instead, the emphasis has shifted to allow for greater concentration on research and also increased opportunities for classroom teaching experience. *See William H. Hastie Fellowship Program: Increasing the Diversity of the Law Teaching Profession*, U. WIS. L. SCH., http://law.wisc.edu/grad/fellow_hastie.htm (last updated Jan. 24, 2013).

as the research advisor to most of the Fellows, since the research interests of the Fellows varied greatly. As a result, at some point a significant number of faculty members have served as an advisor to one or more Fellows and the entire faculty has become invested in the success of the program.

From my own perspective, little did I know that my completion of the Hastie Fellowship was just the beginning of my connection to Jim.

MY NEXT-DOOR NEIGHBOR

After three years on the faculty at Howard University School of Law, I found myself back at Wisconsin as the second African American on the faculty. During those years as a faculty member, my office was next to Jim's office. An added bonus was that we shared similar work habits—both of us would inevitably show up on Saturdays to work all day and then Jim would faithfully do his weekly chore of grocery shopping for the week. I learned some invaluable lessons from Jim about how to survive in a competitive law school environment. Jim taught me that it was important to "get tenure first and then you can do the other stuff, if you want to." An important corollary to that rule was that while prestigious law schools in particular will consider teaching and public service during tenure decisions, the thing that matters most is the publications record. In fact, Jim argued that, in the end, publications were probably the only thing that mattered. Every day, and especially on Saturdays, Jim was there to remind me of what was most important for a successful career in legal education.

Jim also taught me that one of the responsibilities of senior faculty was to run interference for junior faculty, because becoming tenured was paramount. He understood that often junior faculty were not in a position to decline a request from the dean, the central administration, or the community. In my own case, Jim often took the initiative to decline on my behalf; sometimes against my own wishes. In almost every instance, of course, his judgment was better than my own. This lesson is one that carried over throughout my career, including when I became a dean and a university president.

STUDENTS BECAME DISCIPLES

Jim was one of the most prolific scholars on the faculty. But, in the final analysis, nothing gave him more pleasure than his interactions with students. I always smiled at Jim's reaction when teaching evaluations were disclosed. His image of sternness crumbled over a single negative

student comment because, more than anyone else I know, he cared about what students thought of him.

In many respects, Jim has been a father figure to many of us. Nowhere was his impact as a father figure more prevalent than with students. While Jim was never reluctant to speak his mind even to those who did not care to listen, he did so with students more than any other group.

Jim was often seen in the halls or in his office with students. It was interesting to witness the evolution of students' attitude towards him. Not surprisingly, Jim had a reputation of being a very demanding teacher. Some students avoided Jim's courses because of his reputation and, unfortunately, missed out on the opportunity to learn from one of the great labor lawyers. However, the fact that students avoided Jim in the classroom did not exempt them from Jim's influence. What was most interesting to watch was that early in a student's interactions with Jim, the student was more often button-holed by Jim in the hallways. As students progressed in law school, they were more likely to seek out Jim for his advice. Many students who initially thought of Jim as "out of touch" became some of his most devout disciples.

A LASTING LEGACY

For me and many others, Jim has always been a bigger-than-life figure. He constantly demanded much from others, but he also demanded much of himself. I know he was always proud to be the "lawyer's lawyer," but I always think of him as this professor's professor.

KEEPING UP WITH JIM JONES: PIONEER, TASKMASTER, ARCHITECT, TRAILBLAZER

KIMBERLÉ WILLIAMS CRENSHAW*

It is a special honor to have this opportunity to celebrate Professor Jim Jones's pivotal role in integrating the ranks of the law professoriat. Jim Jones was of course not the only one who hoped that the number of minority law professors would swell as the number of law graduates increased, but unlike those who simply watched and waited, Jim Jones decided to actually do something about the infamous "pool problem" in legal education.[1]

Through his innovation, mentoring, and dogged advocacy, Jim Jones put action to passion, quietly, deliberately, and diligently creating a pipeline of minority law teachers. I know that, at least for me, and most likely for every other Hastie Fellow, were it not for Jim Jones, we would not have the careers that we do.

This Tribute provides us all with the opportunity not only to express profound gratitude to Professor Jones, but to consider the implications of his visionary leadership in the context of the contemporary challenges we now face.

As is always the case with trailblazers like Jim Jones, there are stories to tell, and I certainly have a few. Beyond that, however, I would like to dig a little deeper to think about how we recover the contributions of Jim Jones and others like him—the race men and women of the twentieth century[2]—in the current milieu of post-racialism. Those of us in the post-segregation generation probably know many elders like Jim Jones. It might have been an elementary school teacher, a college professor, or even a public figure whom we admired from afar. Neither exclusively liberal nor moderate, conservative nor radical, the common denominator in race men and women was that they straddled the fence between being and doing, illustrating through thought and deed what it

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1. *See* Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1265 (2011) (discussing how Harvard, typical among most law schools, approached the pool problem as an evolutionary approach, watching to see who would eventually emerge).

2. "Race men" and "race women" are twentieth century colloquialisms used to refer to black intellectuals and leaders who prototypically embrace a stance towards their racial marginality with a mix of race pride and commitment to lifting others as they climbed. *See generally* HAZEL V. CARBY, RACE MEN (1998) (investigating, inter alia, W.E.B. Du Bois's status as a "race man").

means to deliver body and mind in the service of a people. This way of attending to race seems old school these days, particularly in light of newer ways of thinking about how race frames cause. I want to think about how to lift this legacy up—to find ways of bringing it forward to reground and inspire us to confront the sobering realities that await our attention.

MEETING JIM JONES

I heard about Jim Jones weeks before I met him, and what I was told scared me to bits. It was 1984, and, having joined other student activists in protesting the status quo at Harvard Law School, it was time for me to consider what kind of career was in store for me. Corporate practice was just not an option—I had learned early on that while some things came easy for me, adapting to the culture of mainstream law firms was not one of them. Equally importantly, like many good advocates, I had become a passionate believer in the case we law students were building against contemporary legal education. As many of us saw it, not only was law school a site of meaningful struggle around the terms through which American race relations would be legitimized or transformed, law teaching and scholarship were also important sites of contestation in the ongoing efforts to transform American society.[3] Extending the reach of integration to legal education also provided another pressure point to ensure that the transitory nature of law student activism might be augmented by a longer term presence behind the podium.

Law school deans and administrators were well aware that the voice of student protest posed only an intense but ultimately weatherable storm that would pass with one easy word: graduation. I had decided a year earlier that I rather fancied this idea of being a law professor. Not only was I impressed by the enormous intellectual freedom they seemed to have, I was mesmerized by the ability of some of my more famous professors to use their law school classrooms as mock jury pools, as focus groups and mini law firms full of eager associates to articulate the

3. *See* Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705, 728 (arguing that "[a] much larger minority intelligentsia should produce more scholarship about the legal issues that have impact on minority communities. The subject matter of scholarship is determined at present by the unregulated 'interest' of academics. What we decide to write about just 'flows naturally' from our backgrounds, education and individual peculiarities. I think it is obvious that some significant proportion of minority intellectuals would be led in this way to write about minority legal issues. The precedent for this is the creation of modem civil rights law by black lawyers who devised the litigation strategy of the National Association for the Advancement of Colored People. It would be farfetched to argue that the race of these lawyers was irrelevant to their choice of subject matter, or that the black civil rights cause would have evolved in the same way had all the lawyers involved been white.").

right answer to legal problems that, unknown to us, were cases of first impression. Engaging us to chase as-yet-unsettled theories and arguments was generative for our professors and it prompted me to wonder: was it possible to use the classroom in a similar fashion to explore theories about race and law? I could only imagine what kinds of projects were possible when one does not have to worry about choosing cases to pay the bills. Intellectual freedom—what is thy name? Tenured law-professorship.

The only challenge—and I mean that only in the same way a 200-pound man can be called Tiny—was that I had no idea how to become a law professor. During all the heady times of my working with other students to pull together teach-ins, write petitions and briefs, and even create and facilitate an "alternative course" at Harvard Law School,[4] none of our faculty allies ever suggested, hinted, or inquired whether I might want to pursue a career in law teaching. Somehow that possibility never materialized while I was at Harvard, so I was left to drift in a sea of desire without a clue about how to navigate these waters.

Then one day I saw a poster announcing the Hastie Fellowship at the University of Wisconsin Law School. Thankfully, I had just taken A. Leon Higginbotham's seminar on Race and American Law, so my recognition of the first African American Court of Appeals judge for whom the fellowship was named stopped me dead in my tracks.[5] It was like the poster was talking to me:

> Psssttttt, hey YOU! Yes YOU!! You say you want to be a law teacher, but let's face it, you haven't the remotest clue of how to go about it, and from where I sit, it doesn't look very likely that you'll sort that one out. But here, just maybe, is a program for you.

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4. Crenshaw, *supra* note 1, at 1277–87.

5. William Hastie earned his LL.B. from Harvard University in 1930 and his Doctorate in Juridical Science from the same institution in 1932. Linda T. Wynn, *William T. Hastie (1904–1976)*, TENN. ST. U. LIBR., http://ww2.tnstate.edu/library/digital/hastie.htm (last visited Mar. 21, 2013). He was Assistant Solicitor at the Department of the Interior from 1933–37 and Judge of the District Court of the Virgin Islands from 1937–39, making him the United States' first African American federal magistrate. *Id.* He was the Dean of Howard University School of Law from 1939–46. *Id.* He served as the first African American Governor of the Virgin Islands from 1946–49. *Id.* He was a civilian Aide to the Secretary of War from 1940–42, but resigned from his position in 1943 in protest of segregation and discrimination in the armed forces. *Id.* In 1944, he supported the position of the National Committee to Abolish the Poll Tax. *Id.* He was appointed to the Third Circuit Court of Appeals in 1949, the highest position held by any African American at that time, and became Chief Judge in 1968. *Id.*

I read the announcement at warp speed, and I probably took the poster with me to meet with one of the few professors there who seemed amenable to thinking through this possibility: Duncan Kennedy.

While he knew nothing about the program, he did know David Trubek, his former law professor who was Director of the Institute for Legal Studies at Wisconsin,[6] whom he rang up as I sat there to explore the possibility. An application followed, and in short order, a trip to Madison was arranged. I was told that I would meet David Trubek, Bill Whitford, Dirk Hartog, a few more members of the committee, and then . . . Jim Jones. The way they said it . . ."Jim Jones". . . told me that this was really the interview that counted.

BUT WHAT WAS IT ABOUT JIM JONES THAT HIS NAME WAS SPOKEN WITH A PREGNANT PAUSE AS A CHASER?

My other interviews went well—I talked about a few research ideas I wanted to pursue as a Hastie Fellow; one was an interrogation of both conservative and liberal takes on civil rights that would eventually be my thesis and first published article.[7] And the second was something I was still trying to conceptualize that pertained to the interaction of race and gender discrimination.[8] I had a few cases that seemed puzzling, but I really didn't know what I was talking about at the time. I just knew that I wanted some time to figure out how to talk about it.

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6. *David Trubek: Professor of Law Emeritus*, U. WIS. L. SCH., http://www.law.wisc.edu/profiles/dmtrubek@wisc.edu (last visited Mar. 21, 2013). ("David M. Trubek is Voss-Bascom Professor of Law Emeritus and a Senior Fellow of the Center for World Affairs and the Global Economy (WAGE) at the University of Wisconsin-Madison. A graduate of UW-Madison and the Yale Law School, Professor Trubek served as law clerk to Judge Charles E. Clark of the 2nd Circuit Court of Appeals and as Legal Advisor to the USAID Mission to Brazil. . . . He joined the UW Law School faculty in 1973 and served as Associate Dean for Research from 1977 to 1984. During this period he also was Director of CLRP, the Civil Litigation Research Project, which was supported by the US Department of Justice. In 1985 he founded the UW's Institute for Legal Studies which he directed from 1985–90. Trubek was appointed as University Dean of International Studies in 1990 and became the founding director of the UW-Madison International Institute in 1995. After stepping down as Dean and Director of the Institute he was Director of WAGE from 2001 to 2004. . . . He has . . . published articles and books on the role of law in development, human rights, European integration, the changing role of the legal profession, and the impact of globalization on legal systems and [mechanisms of] social protection . . . . He has also contribut[ed to the literature on] critical legal theory, the sociology of law, and civil procedure.").

7. *See* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

8. *See* Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

Folks were worried. I was talkative and probably a tad provocative, but would I survive Jim Jones? If I was just blowing air, he would call me out. One thing was clear: this interview was not a conversation that I would be able to charm my way through. I had to convince Jim Jones that I was a law professor in the making. This fellowship was a precious resource, and Jim Jones just did not suffer wannabes lightly.

Well, what is a girl to do when the stakes are high, you are nervous and unsteady, and do not know how to get your act in order? Tried and true for me was to call my mom, which I surely did before I went to meet Professor Jones.

Now my mom, Mariam Williams Crenshaw, was, as they said at the time, "something else," a fierce advocate, a school teacher in what we now call an "urban school," a disciplinarian, a cultural historian, the person who would not let any student graduate from her class without knowing all the verses of the Negro National Anthem,[9] and who also would bring lotion and Afro sheen to school so that students could groom themselves in the privacy of her office before the start of the day. And, having come of age as her father's driver as he delivered babies and tended to the medical needs of their community, she would often return to those very same homes for nearly fifty years, making her own house calls to engage parents of the students who were not living up to their potential. A loving standard-bearer in inner-city education, she was the embodiment of "tough love" long before it became sullied by its association with punishment rather than high expectations.[10] She was a race woman, and Jim Jones was apparently her counterpart at the University of Wisconsin. Neither one of them tolerated underachievement, but at the same time, their hearts beat for students and they were both tireless advocates for them.

I called my mom to talk about my interview with Jim Jones as though he was some kind of puzzle. Halfway through my anxious entreaties for advice, she lost her patience. "Don't you realize who this man is and what he has done to provide you this opportunity?" It was then that I realized that talking to Jim Jones could not be any more

9. "The Anthem," originally titled "Lift Every Voice and Sing," was written by James Weldon Johnson and his brother John Rosamond to commemorate Abraham Lincoln's birthday. Herman Beavers, *Johnson, James Weldon*, *in* THE CONCISE OXFORD COMPANION TO AFRICAN AMERICAN LITERATURE 231, 231–32 (William L. Andrews et al. eds., 2001). "The Anthem" captures the history of African American suffering and the black community's achievement in overcoming it.

10. Typical of a punitive articulation of "tough love" is the Hollywood variety of the failing urban school in need of a principal with a big stick. LEAN ON ME (Norman Twain Productions & Warner Bros. Pictures 1989), featuring Morgan Freeman, is perhaps the best embodiment of this genre. My own mother, and other "race men and women" like her, embraced a philosophy of high expectations in the context of culturally relevant and rigorous education.

challenging than growing up in a household of race men and women, a place where you were expected to speak up and to have something meaningful to say.

Hanging up the phone, I scolded myself for thinking that Jim Jones was out to get me simply because he was going to take me through the paces. I had been there before on any number of occasions with the range of irascible family members, organic intellectuals, advocates, and thought leaders in the community that raised me. Of course I am not going to say that at my interview Jim Jones was warm and fuzzy, or that he embraced me like a loving uncle. He was not and he did not. But he did take me seriously. He did challenge me. He did listen to me. He did tell me exactly what he thought and I told him what I thought. We were off to a great start.[11]

Jim Jones had a steady hand in my early scholarship. Now certainly, we did not always agree—I am not sure he ever understood my attraction to Critical Legal Studies (CLS). I in turn did not get why, given his long history of fighting against discrimination through his work as a government lawyer, he was not a dyed-in-the-wool radical. We had spirited debates about his work as a labor lawyer and, as importantly, he introduced me to the entire literature on race and labor unions, to the inimitable Herbert Hill,[12] and to the institutional history of affirmative action.[13] This vantage point found a direct route into my work,

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11. Importantly, Jim Jones was not a fan of Critical Legal Studies (CLS), the school of thought with which I was most closely affiliated. Later, when invited to address the Critical Race Theory conference, a school of thought that grew out of CLS, Jones expanded his critique to the large contingent of scholars of color. *See generally* JAMES E. JONES, JR., HATTIE'S BOY: THE LIFE AND TIMES OF A TRANSITIONAL NEGRO (2006).

12. Herbert Hill was an ardent supporter of early affirmative action programs, and an outspoken critic of union attempts to preserve seniority systems that contravened Title VII. *See generally* HERBERT HILL, BLACK LABOR AND THE AMERICAN LEGAL SYSTEM: RACE, WORK, AND THE LAW (1977) (tracing black labor from the abolition of slavery through the 1960s and 1970s, masterfully weaving together legislative developments, administrative adjudications, federal policy shifts, and workplace practices pertaining to employment discrimination).

13. *See, e.g.*, James E. Jones, Jr., *"Reverse Discrimination" in Employment: Judicial Treatment of Affirmative Action Programs in the United States*, 25 HOW. L.J. 217 (1982) (highlighting the inaccuracies and misconceptions surrounding the term "reverse discrimination"); James E. Jones, Jr., *The Bugaboo of Employment Quotas*, 1970 WIS. L. REV. 341 (detailing "the development, theory, and design of the revised Philadelphia Plan"); James E. Jones, Jr., *The Development of Modern Equal Employment Opportunity and Affirmative Action Law: A Brief Chronological Overview*, 20 HOW. L.J. 74 (1977)) (providing a history of the development of equal employment law); James E. Jones, Jr., *The Genesis and Present Status of Affirmative Action in Employment: Economic, Legal, and Political Realities*, 70 IOWA L. REV. 901 (1984–85) (exploring the concept and background of affirmative action); James E. Jones, Jr., *The Origins of Affirmative Action*, 21 U.C. DAVIS L. REV. 383 (1988) (examining "the legal and constitutional origins of affirmative action"); James E. Jones, Jr., *Twenty-One Years of Affirmative Action: The Maturation of the Administrative Enforcement Process under the Executive Order 11,246*

specifically in my growing understanding of the long history of racial exclusion in the labor movement and, by extension, within certain elements of the left. I had certainly learned the glorious history of the Wobblies in college,[14] and my mom was a fierce supporter of the teachers union, but there was also the ugly underbelly of the AFL-CIO and their role in resisting integration of the skilled trades which quite directly set the stage for affirmative action. In all these discussions, I understood that Jim Jones was far from the conservative critic some made him out to be. Indeed, he was much more of a race activist than many advocates today who have refused to meet the specious claims of post-racialism with anything more than a shrug.

Being a race man, as it turns out, is itself a radical undertaking, especially in an institutional setting where there was little incentive to create interventions that worked. Moreover, to sustain it through years of contestation and the growing sense that the effort is obsolete reflected a tenacity that was Jim Jones's hallmark. Jim Jones developed the Hastie Program in response to claims within the law school world that there were few minorities qualified to teach.[15] And it must be said, given all the attention and energy that CLS generated in the ideological arena, that Jim Jones's innovation has stood the test of time, proving yet again that a structural intervention—a project that actually creates a physical on-ramp into legal education—has a unique legacy to which we all can attest.

Importantly, as the high standards imposed by people like Jim Jones attest, racial justice and high achievement are not in opposition. In fact, it is a page out of the anti-affirmative-action book to suggest that the advocacy of the past was something other than high-performance pragmatism. Indeed, the hallmark of Jim Jones and the Hastie Fellowship itself was recognizing that high performance, without a way to crack the barriers to opportunity, is nothing more than teaching into the wind. Race men and women like Jim Jones know that affirmative action works where structural innovation and high-level preparation meet. This is a

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as Amended, 59 CHI.-KENT L. REV. 67 (1982) (discussing "the maturation of the enforcement process of the executive order program on equal employment opportunity and affirmative action").

14. "Wobblies" is a nickname for members of the Industrial Workers of the World. For a definitive history of the Wobblies, see MELVYN DUBOFSKY, WE SHALL BE ALL: A HISTORY OF THE INDUSTRIAL WORKERS OF THE WORLD (Joseph A. McCartin ed., abridged ed. 2000).

15. JONES, *supra* note 11, at 777–78. Established in 1973, the Hastie Fellowship prepares students of color obtaining their LL.M. at the University of Wisconsin Law School for a career in law teaching by providing faculty mentorship in the writing of the students' theses and involvement in the faculty community. *William H. Hastie Fellowship Program*, U. WIS. L. SCH., http://www.law.wisc.edu/grad/fellow_hastie.html (last updated Jan. 24, 2013).

truth about this legacy that we cannot allow post-racial adherents to sully.

Jim Jones's contributions make it all the more important that we think hard and long about the contemporary bid to relegate our race men and women to a bygone era. I remember how my boundless joy at the election of Barack Obama was cut short—cut to the bone one might say—when the post-racial celebrations became for some pundits an opportunity to repudiate the race men and women that made the election of Barack Obama possible. Commentators were all ready to jettison the ones who found a way when there was no way; the ones who were not content to merely "get theirs," but were committed to opening the door wider so we could come in too. I simply cannot fathom how it can be that our society can drink the post-racial elixir and think that Jim Jones and others like him who paved the way can simply sashay away, their contributions no longer needed.

I think that Jones's kids have to do more than to keep his invention—the Hastie Fellowship—alive. We have to reinvent ways to stake out the claims of racial justice in the face of concerted efforts to wipe out this sensibility. To borrow a page from Jones's playbook, we need to know our adversary in order to develop a strategy to struggle against it. Yesterday's adversary was the complacency that settled in after the collapse of formal segregation. Jones's advocacy and institutional architecture were manifestations of his determination to push the envelope beyond standard practices. Today's adversary is a certain post-racial settlement that celebrates but does not expand the modest level of inclusion that has resulted from hard-fought battles like those waged by race men and women of the earlier generation. This settlement is evident in various ways, including in doctrine and discourse that effectively declare that the momentum forward is no longer expected, promoted, or necessary.

POST-RACIAL AS MISSION ACCOMPLISHED

Post-racialism sometimes functions as a claim that we have accomplished the mission of racial integration; however, upon closer inspection, this accomplishment is a far cry from what might be called the complete elimination of vestiges of the racial state of affairs ante. A vision of what was once a measure of such an accomplished mission might be found in the affirmative project of *Green v. County School Board of New Kent County*.[16] The Court's insistence that New Kent County must eliminate all vestiges of a dual schools system, "root and

16. 391 U.S. 430 (1968).

branch,"[17] is a valid benchmark to determine whether we are truly "post-racial" that could be applied throughout society. Now, clearly, most folks who embrace the current conception of post-racialism are hard pressed to point to the complete elimination of vestiges of discrimination root and branch. Thus theirs is a more stylized claim that we are post-racial notwithstanding the fact that any Mission Accomplished claim is clearly premature.

The legacy of race men and women is, of course, to resist anything short of full equality—whether they define it as fully realized integration, an equitable sharing of resources, or some other measure. As Fannie Lou Hamer quipped in rejecting the compromise at the 1964 Atlantic City convention, "[w]e didn't come all this way for no two seats . . . ."[18] Today's claim that we have somehow arrived at the "promised land" reflects less of an embrace of "root and branch" elimination of racial barriers contemplated by New Kent County, but far more of a *Freeman v. Pitts*[19] attitude toward legal education; namely, that we have integrated to the fullest extent practicable.[20] As Jones reminds us again and again, we have not come close to what could have happened if each law school that complained about the pool problem had decided to do something about it. Had, say, the top forty schools undertaken an apprenticeship approach like the Hastie, we would be celebrating not dozens, but thousands of minority law professors having joined the ranks through this modest but practical effort. And we have not even thought about the other professions like medicine, business, and the sciences, all of which could have done something similar.

Here I think it is important to point out how the Hastie Fellowship was shaped by Professor Jones's experience in the federal bureaucracy. As a labor lawyer, Professor Jones worked in the face of intransigence to facilitate integration. Jones' success in crafting an industry-specific response to the legacy of racial exclusion gives us reason to contest post-racial claims that what has been done to address racial exclusion is pretty much all that could be done. Jones and other race men and women knew better. And as the Hastie experience illustrates, the possibilities are only limited when there exists only a negligible number of individuals empowered enough to implement similar initiatives throughout American society.

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17. *Id.* at 437–38.

18. KAY MILLS, THIS LITTLE LIGHT OF MINE: THE LIFE OF FANNIE LOU HAMER 5 (2007).

19. 503 U.S. 467 (1992).

20. *See id.*

Another version of post-racialism that seeks to render the legacy of our race men and women obsolete is the post-racial pragmatism line.[21] By those lights, race men and women have been eclipsed by the new pragmatism, by the success of Barack Obama and others like him who, it is believed, have managed to break glass ceilings simply by proving themselves fit for the job. Curiously, this notion of the new pragmatism seems to suggest that the race men and women of the past were something other than pragmatists—idealists, perhaps; symbols; or Atlases carrying the race on their shoulders; but not pragmatists. Of course this notion of post-racial pragmatism is contestable on at least two grounds. First, if Barack Obama had run the post-racial campaign that many seem to think he did, he would have lost. Obama's campaign was smart, it was smooth, and it did what it needed to do, sometimes quietly, sometimes more publicly, but it was not, at the end of the day, nonracial. For any of us living in Ohio, in Michigan, or in other battleground states, we know for certain just how the ground campaign required a practical deployment of white people to talk to white people, to work the institutional mechanisms at hand to smoke out the excuses, and to present the candidate on a clean slate. Nothing about this is new to race men and women, particularly when it comes to building alliances with working class and union folks.

So, who is the "us" that stands to inherit the legacy of the race men and women like Jim Jones? I want to say we are those who know we have benefitted from the efforts of Jim Jones and others who could have climbed the ladder to the ivory tower and pushed it away, but did not. I want to say that we are those who, whether we do race work or not, understand that our very presence in these institutions is important work, and every day we have the opportunity to carve new possibilities and to resist efforts to sully or marginalize the dynamic and creative interventions of the people who got us here. I want to say that the legacy is held not just by people of color but by whites as well who have similarly benefited from efforts to break down the patterns of job placement that privileged the elite. Whites have benefited as well by learning from and working with people with whom they might never have encountered but for the active intervention of the race men and women we honor like Jim Jones.

The reversals of course are real, and they are not all coming from the Tea Party. As we learned from the demise of the first Reconstruction,[22] backlash is not solely a matter of newly empowered

21. *See generally* Crenshaw, *supra* note 1, Part IV.C.

22. *See, e.g.*, J. MORGAN KOUSSER, COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION 14 (1999) (describing reasons for "the collapse of the First Reconstruction").

redeemers, but is also facilitated by the abdications of those who were at one point our allies, those who stepped back to pursue other interests, or who bought into the argument that enough had been done. I think there are many ideological equivalents of that today, but key among them is the effort to sanction all discussion of race under the template of post-racialism.

I think we are fortunate, however, to be in a far better position than we were during the demise of the first Reconstruction, and it is partly thanks to men and women like Jim Jones that we have managed to hold our own in these institutions and hopefully, to reproduce ourselves. It would be fitting to honor Jim Jones in the fiftieth year of the program if every Jones' kid committed to doubling his legacy. By that, I mean expanding the clan by creating programs like this and by sending our students to the Hastie Program. I am proud to say that my colleagues and I mentored a few of Jones' grandkids ourselves; at UCLA, we have sent at least one student directly into the Hastie Program, and now, having created a critical race fellowship at UCLA, we have graduated two Fellows who have entered law teaching. Clearly the most fitting appreciation and tribute to Professor Jim Jones is to continue his work, to hold up his high standards, and hopefully, to make him proud.

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THE DEATH OF AFFIRMATIVE ACTION?

MICHELE GOODWIN*

INTRODUCTION

The United States Supreme Court recently heard *Fisher v. University of Texas*,[1] a case brought by a young woman who claims that she was discriminated against in the Texas undergraduate admissions process.[2] Scholars and commentators on the left and right predict that *Fisher* marks the inevitable death of affirmative action, despite Justice Sandra Day O'Connor's edict in *Grutter v. Bollinger*[3] that twenty-five more years of "diversity" in law schools would be needed in order to achieve worthy societal goals.[4] Justice Elena Kagan recused herself; she served as United States Solicitor General and filed a brief when the case was before the Fifth Circuit.[5] Affirmative action may not be dealt its death blow just yet, but the need for reflection on the policy seems clear.

Our nation's history is replete with examples of exclusion and barriers to higher education. Throughout the first half of the twentieth century, and into the 1960s, blacks were not alone in experiencing the impacts of Jim Crow. Jewish students were denied admission at the

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Jim's journey to the law school—first as a student and later as a professor changed not only his life, but that of countless others. Jim was the first person to racially integrate the faculty at the University of Wisconsin and one of its few black law students in the 1950s. By the time Jim joined the faculty in 1969—thirteen years after graduating—very little had changed in the racial integration of law schools, either in the professorate or the student bodies. These were the facts of the time. Many credit Jim, and rightfully so, with spearheading the most dynamic integration of the legal academy through establishing the William H. Hastie Fellowship.

1. No. 11-345 (U.S. argued Oct. 10, 2012).
2. 631 F.3d 213, 217 (5th Cir. 2011), *cert. granted*, 132 S. Ct. 1536 (2012).
3. 539 U.S. 306 (2003).
4. *Id.* at 343.
5. Jess Bravin, *Justices to Revisit Race Issue*, WALL ST. J., Feb. 22, 2012, at A3.

nation's most elite law and medical schools.[6] "Quotas" were put in place to exclude "too many" Jews from swelling the ranks of the legal profession;[7] Northwestern Law School was controversially associated with discrimination against Jewish applicants (and blacks)[8] as were other law schools and the legal profession more generally. In other words, what it means to be "qualified" for law school admission in the United States invites scrutiny because of historical patterns of ethnic bias and stereotyping in higher education and subsequent employment.[9]

In her path-breaking ethnography, *New York Jews and the Great Depression: Uncertain Promise*, Beth Wenger explains that "Jews felt doubly beleaguered by the rising tide of job discrimination."[10] Indeed, "[e]ven young Jews who remained in school . . . could not escape discrimination. . . . [as] elite private colleges imposed a quota system for Jewish admission . . . ."[11] During the first half of the twentieth century, "many law schools had introduced 'character' criteria in their admissions policies and the percentage of Jewish law students" predictably declined

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6. *E.g.*, Edward C. Halperin, *The Jewish Problem in U.S. Medical Education, 1920–1955*, 56 J. HIST. MED. & ALLIED SCI. 140 (2001).

7. *See, e.g.*, Marcia G. Synnott, *Numerus Clausus (United States)*, *in* 2 ANTISEMITISM: A HISTORICAL ENCYCLOPEDIA OF PREJUDICE AND PERSECUTION 514, 514–15 (Richard S. Levy ed., 2005); Fred M. Hechinger, *About Education; The Trouble with Quotas*, N.Y. TIMES, Feb. 10, 1987, at C1 ("In the 1920's prestigious colleges used overt or covert quotas, mainly against Jews."); Debra Cassens Weiss, *Ruth Bader Ginsburg Worked Harder to Beat Jewish Quotas*, A.B.A. J., (Jan. 15, 2008, 8:11 AM), http://www.abajournal.com/mobile/article/ruth_bader_ginsburg_worked_harder_to_beat_jewish_quotas.

8. *See, e.g.*, JAY PRIDMORE, NORTHWESTERN UNIVERSITY: CELEBRATING 150 YEARS 180 (2000). Similarly, Irish immigrants suffered against racial stereotypes that stigmatized their communities and restricted opportunities in education and employment. JAY P. DOLAN, THE IRISH AMERICANS: A HISTORY 62 (2008). The Irish were thought to be unteachable and "barbarians." *Id.* According to Theodore Parker, "*[t]he Irish are ignorant, and, as a consequence thereof, are idle, thriftless, poor, intemperate, and barbarian.*" *Id.* (emphasis added). His was a popular sentiment at the time, repeated by educators, politicians, employers, and embraced widely by non-Catholic Americans. *Id.*

9. JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 186–88 (1976). Auerbach presents a compelling narrative about the persistence and collateral costs of discrimination against Jews as law school applicants, students, and subsequently lawyers and potential law professors. In a moving passage, he quotes Felix Frankfurter as having wondered "whether [Harvard] shouldn't tell Jewish students that they [matriculate] at their own risk" of ever landing a legal job commensurate of their merit and legal training. *Id.* at 186. For example, even Jewish law review editors were barred from the ranks of partnership at prestigious law firms until after World War II. *Id.*

10. BETH S. WENGER, NEW YORK JEWS AND THE GREAT DEPRESSION: UNCERTAIN PROMISE 23 (1996).

11. *Id.*

as such measures likely served as proxies to suppress admission.[12] In his detailed account of legal education from 1850–1980, Robert Stevens explains that "the Yale Board of Admissions was deeply concerned about 'the Jewish problem.'"[13] Even legal politicians were concerned that Jews entering the legal profession "might undermine the American way of life."[14]

Notwithstanding the eventual dismantling of barriers, in spheres of law and medicine, Jews experienced pernicious forms of discrimination in higher education. According to David Oshinsky, Cornell University, Columbia University, the University of Pennsylvania, and Yale University implemented "rigid" quotas to bar Jewish students from their medical schools.[15] He notes that a Yale medical school dean emphatically instructed: "[n]ever admit more than five Jews, take only two Italian Catholics, and take no blacks at all."[16] Oshinsky suggests that this is a reason why Jonas Salk, who discovered the polio vaccine, attended City College of New York and New York University rather than its more elite cousins.[17]

This Tribute urges a more robust examination of affirmative action policies applied in the United States. It suggests that there is more to be said about affirmative action than the narrow, predictable frames typically accounted for in the literature that places race at the center of the debate. Rather, this Tribute takes up the role of gender and the middle-class white family. On the one hand, it makes the case that legal scholarship has overlooked that affirmative action benefits middle class white families.[18] On the other hand, it explains that, overwhelmingly, the lead litigants opposing affirmative action have been white women. The Tribute concludes challenging scholars and educators to think beyond traditional frames and to critique who really benefits from and who is left behind in the application of contemporary affirmative action practices in the United States.

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12. *Id.*; ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 100–01 (1983); *see also* JAMES WILLARD HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 255 (1950) (explaining that "arguments favoring avowed quota systems for admission to law schools and to the bar were under sharp suspicion as covert devices of anti-Semitism.").

13. STEVENS, *supra* note 12, at 101.

14. *Id.* at 100–01.

15. DAVID M. OSHINSKY, POLIO: AN AMERICAN STORY 98 (2005).

16. *Id.*

17. *Id.*

18. Due to page constraints, this Tribute takes up a very narrow slice of a complex dialogue on white families and affirmative action. The page limits do not provide for a more detailed discussion of the topic than to succinctly articulate a few key points. A work in progress expounds in greater detail on the themes emerging from this work.

REFRAMING THE DEBATE: AFFIRMATIVE ACTION AND WHITE WOMEN

For all the handwringing over affirmative action, few commentators consider who benefits from the platform and whether or not (and for whom) it achieves its goals. Some of this may be difficult to deduce, but few scholars bother to sift through the broader sets of data. For example, while blacks may perceive themselves as the primary beneficiaries of affirmative action, whites might mistakenly hold that view too.[19] In other words, white women may not recognize the entitlements they gained due to affirmative action.[20] In part, the dialogue about affirmative action misses much due to how the debates are framed. For example, one significant omission from the affirmative action literature is the benefit to white families; after all, affirmative action policies opened the doors to small business ownership,[21] education,[22] and sports for white women.[23] For all the law review articles on the constitutionality of affirmative action, the displacement of whites, and the stigmatization of minorities, few venture to study the uplift of white families based on affirmative action. One reason why this might be is that whites feel stigmatized by affirmative action or misperceive it as exclusively benefiting blacks and Latinos. Empirical studies demonstrate the illusory nature of those perceptions.[24]

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19. Tim Wise, *Is Sisterhood Conditional? White Women and the Rollback of Affirmative Action*, 10 NAT'L WOMEN'S STUD. ASS'N J., Autumn 1998, at 1, 8 (discussing the "racialization" of discussions about affirmative action).

20. *See id.* at 1–2 (noting that, "[d]espite the benefits that have accrued to . . . white women as a result of affirmative action, there has been an alarming silence on the part of most white women" in support of such policies).

21. *Id.* at 4.

22. *See id.*

23. Title IX is a law passed in 1972 that requires gender equity for males and females in every educational program that receives federal funding, including athletics. Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235, 373–75 (1972) (codified as amended at 20 U.S.C. §§ 1681–88 (2006)).

24. *E.g.*, Wise, *supra* note 19, at 3. For example, with federal, state, and university affirmative action policies from 1972 to 1993:

> The percentage of women architects increased from 3% to nearly 19% of the total;
> The percentage of women doctors more than doubled from 10% to 22% of all doctors;
> The percentage of women lawyers grew from 4% to 23% of the national total;
> The percentage of female engineers went from less than 1% to nearly 9%;
> The percentage of female chemists grew from 10% to 30% of all chemists; and,
> The percentage of female college faculty went from 28% to 42% of all faculty.

Id.

Ironically, if affirmative action "dies," some might argue that its demise is proof of its success for white women. After all, they claim, the *Fisher* case is brought by a white woman, and empirical data points to women as the primary beneficiaries of affirmative action and civil rights laws, particularly in education (and business).[25] Consider this: thirty years ago at some of the nation's most elite schools, such as Dartmouth, barely a handful of women were in the graduating classes; or consider that law schools, now just about at parity, refused to admit "qualified" women applicants.[26] Some commentators could argue that the experiences of white women in these contexts differ from that of blacks, because the former were qualified and the latter simply were not. Such arguments offer a seductive refrain that suggests policies to advance the progress of white women are corrective, but for persons of color they are unwarranted and unearned entitlements.

Indeed, similar arguments served as the legal foundation for excluding talented blacks in the south from attending their state institutions in Maryland, Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Tennessee, and other states.[27] The late Supreme Court Justice Thurgood Marshall, a Baltimore native, applied to Howard University Law School rather than the University of Maryland because the state's flagship law school refused to admit blacks.[28] Yet, notice parallel justifications for the exclusion of women in law. Esteemed jurists, lawyers, and law professors claimed that women were not cut out for the rigors of law[29]—their brains were too prone to melancholia and their hearts too wide and open to handle the fouler side of law (reading daily about battery, rape, and murder).[30] The Wisconsin Supreme Court's holding in *In re Goodell* provides a relevant and potent example worth capturing in extended detail for this Tribute:

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25. Wise, *supra* note 19, at 3–4.

26. *See* Cynthia Fuchs Epstein, *The Myths and Justifications of Sex Segregation in Higher Education: VMI and the Citadel*, 4 DUKE J. GENDER L. & POL'Y 101, 102–03 (1997); Deborah L. Rhode, *Midcourse Corrections: Women in Legal Education*, 53 J. LEGAL EDUC. 475, 477–78 (2003).

27. Gil Kujovich, *Equal Opportunity in Higher Education and the Black Public College: The Era of Separate but Equal*, 72 MINN. L. REV. 29, 30 n.1 (1987) (discussing "[t]he southern and border states . . . that maintained a rigid system of segregation in public higher education during the separate but equal era").

28. JUAN WILLIAMS, THURGOOD MARSHALL: AMERICAN REVOLUTIONARY 52–53 (1998).

29. *See In re Goodell*, 39 Wis. 232, 245 (1875) ("Nature has tempered woman as little for the juridical conflicts of the court room, as for the physical conflicts of the battle field. Womanhood is moulded for gentler and better things.").

30. *Id.* at 244–46.

> We cannot but think the common law wise in excluding women from the profession of the law. . . . The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor. . . . There are many employments in life not unfit for female character. The profession of the law is surely not one of these. The peculiar qualities of womanhood, its gentle graces, its quick sensibility, its tender susceptibility, its purity, its delicacy, its emotional impulses, its subordination of hard reason to sympathetic feeling, are surely not qualifications for forensic strife.[31]

This type of rhetoric boldly proclaimed women intellectually unfit for legal reasoning. When delivering the Madison Lecture at New York University Law School, then Associate Supreme Court Justice Sandra Day O'Connor quoted a speech given by Clarence Darrow—a "champion[] of unpopular causes"—that echoes similar stereotypes, recalling the famous lawyer telling a group of women: "You can't be shining lights at the bar because you are too kind. You can never be corporation lawyers because you are not cold-blooded. You have not a high grade of intellect. I doubt you can ever make a living."[32]

In later years, some judges refused to hire women as law clerks.[33] For example, Justice Felix Frankfurter passed on hiring a young Ruth Bader Ginsburg despite her election on Harvard's and Columbia's law reviews and graduating first in her law school class.[34] In an interview,

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31. *Id.* at 244–45.

32. Sandra Day O'Connor, *Portia's Progress*, 66 N.Y.U. L. REV. 1546, 1548 (1991).

33. Michael J. Klarman, *Social Reform Litigation and Its Challenges: An Essay in Honor of Justice Ruth Bader Ginsburg*, 32 HARV. J.L. & GENDER 251, 268 (2009) (noting that even Justice William Brennan, "the most liberal justice of the 1970s, . . . refused to hire female law clerks for many years").

34. *Interview with Justice Ruth Bader Ginsburg*, ACAD. OF ACHIEVEMENT (Aug. 17, 2010), http://www.achievement.org/autodoc/printmember/gin0int-1. According to Justice Ginsburg:

> Justice Frankfurter, like his colleagues, was just not prepared to hire a woman. Now these were pre-Title VII days, so there was nothing unlawful about discriminating against women. And gentlemen of a certain age at that time felt that they would be discomfited by a woman in chambers, that they might have to watch what they say, they might have to censor their speech. It was surprising that Frankfurter had that typical—in those days—reaction, because he was the first justice to hire an African American as a law clerk some years before. But as I said, like many other federal judges of the time, he just wasn't prepared to hire a woman.

Id.

Justice Ginsburg recalled a dinner with Harvard Law School's dean, Erwin Nathanial Griswold (who later became Solicitor General) during her first year of law school:

> The dean in those days had a dinner early in the term for all the women in the first-year class . . . [and] after dinner he brought us into his living room, and each of us sat next to a distinguished professor, invited to be our escort, and he asked [us] to tell him what we were doing in the law school occupying a seat that could be held by a man. . . . There were still some doubting Thomases on the faculty, and the dean wanted the women's answers about what they were doing in law school to arm him with responses to those members of the faculty who still resisted admitting women.[35]

One need not reach back a full century to observe women's exclusion in higher education (and the workplace); as recently as the 1970s and 1980s, gross disparities plagued admissions and hiring processes. White women were regularly denied admission to historically male colleges. Years before, women's colleges benefited from the status quo gender discrimination because talented young women were denied admission into the Ivy League schools.[36]

As recently as 1996, Virginia fought to maintain policies that excluded women from its male military academies, finally losing in a Supreme Court battle against the Clinton administration.[37] The Supreme Court warned that such policies were discriminatory and required "exceedingly persuasive justification" to pass constitutional muster.[38] Justice Ruth Bader Ginsburg opined that such policies perpetuated stereotypes, stigmatized women, and discouraged women from applying.[39]

Affirmative action and civil rights policies unlocked the doors for white women in the academic halls of the elite universities, while also advancing a (now) settled point: that white women deserve a place in business schools, law schools, medical schools, engineering departments,

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35. *Id.*

36. *See, e.g.*, Wendy Kaminer, *The Trouble with Single-Sex Schools*, ATLANTIC MONTHLY, Apr. 1998, at 22 (discussing how the "Seven Sisters" colleges "evolved into a female Ivy League, educating the daughters of elites and providing social and professional mobility to some members of the middle class").

37. *See United States. v. Virginia*, 518 U.S. 515, 519, 523–30 (1996).

38. *Id.* at 531.

39. *Id.* at 541–43.

and math departments.[40] As such, white women as well as other "minorities" leveraged civil rights laws, and colleges and universities, in response, had an incentive to broaden the scope of their admissions criteria to offer women fair opportunities to gain admission.

The *Fisher* case and affirmative action debates deserve more than a passing glance and reductive argumentation (framed only within the context of race), because post-*Regents of the University of California v. Bakke*[41] individuals suing universities for discrimination against them in the academic admissions process have been white women: Abigail Fisher (*Fisher v. University of Texas*[42]); Barbara Grutter (*Grutter v. Bollinger*[43]); Jennifer Gratz (*Gratz v. Bollinger*[44]); and Cheryl Hopwood (*Hopwood v. Texas*[45]). That white women led the charge against affirmative action in these cases is worthy of note for a few reasons. First, white women benefit significantly from state and federal affirmative action programs (in higher education,[46] small business loans,[47] and government contracts[48]) and in the private sector with hiring and recent efforts to diversify boards of Fortune 500 companies.[49] Second, prior to revamped admissions practices in direct response to civil rights laws, women had much less possibility of success in suing a university to admit them. Discrimination in education and employment defined the norms for three-quarters of the last century. In Barbara Grutter's case, with the exact same academic record, commentators are doubtful that she would have been admitted to the University of Michigan prior to 1975—as she was also an "older" student when she applied.[50] Civil-rights laws changed that; now protections exist to shield "older" students from discrimination.[51]

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40. This is an important point; white women did not suddenly become smarter in the 1970s, 1980s, and 1990s and thus better qualified for admissions. Civil rights laws prevented universities that receive federal funding from discriminating against minority groups, and white women were included under that umbrella. For example, Title IX of the Education Amendments of 1972 prohibits sex discrimination by any educational program or activity receiving federal funds. 20 U.S.C. § 1681(a) (2006).

41. 438 U.S. 265 (1978).

42. 631 F.3d 213, 217, 228 (5th Cir. 2011), *cert. granted*, 132 S. Ct. 1536 (2012).

43. 539 U.S. 306, 316–17 (2003).

44. 539 U.S. 244, 251–52 (2003).

45. 78 F.3d 932, 938 (5th Cir. 1996).

46. Wise, *supra* note 19, at 4.

47. *Id.* at 3–4.

48. *Id.* at 4.

49. *See* Bianca Bosker, *Fortune 500 List Boasts More Female CEOs Than Ever Before*, HUFFINGTON POST (May 7, 2012, 12:34 PM), http://www.huffingtonpost.com/2012/05/07/fortune-500-female-ceos_n_1495734.html.

50. *See, e.g.*, Transcript of Oral Argument at 54, *Gratz v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241) (arguing "Barbara Grutter would not have been admitted under

Third, in each of these landmark affirmative action cases, white men were admitted with lower test scores than the women suing the institutions for racial discrimination,[52] raising the question as to why race and not gender? Or, why attack race in admissions rather than legacy policies?

AFFIRMATIVE ACTION AND BENEFITS TO WHITE FAMILIES?

In casting affirmative action as a race-based policy, primarily for benefit to poor blacks and Latinos, much is lost relevant to a broader socioeconomic study. For example, what are the economic benefits derived by white families due to affirmative action? Arguably, if scholars can credibly claim that affirmative action benefits black families and communities by increasing their wealth, the same could be offered and measured for white families. Understood as such, affirmative action has likely benefited white families socially (as a source of pride that results from members of a family attending and graduating from college and graduate school) and economically. The extent of these benefits, particularly the economic, is yet to be fully understood. However, it is important to comb through the data with this in mind. At least some of the economic uplift of the middle class and upper-income white families may be attributed to affirmative action policies.[53]

As pundits consider the future of affirmative action, aspects of its legacy in the United States should be placed into clearer view, while crafting new strategies. For example, how does affirmative action fit into other contemporary debates involving Asian Americans, Latinos, or

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a race-blind program"); Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299, 300 (2008) (noting that women continued to be denied admittance to U.S. law schools in the 1960s and that "[i]n 1970, women comprised 8% of the total law school enrollments in the United States"); Pam Adams, *Reverse Discrimination Claim Absurd*, COPLEY NEWS SERVICE, Jan. 29, 2003 (noting that "white females have been the greatest beneficiaries of affirmative action"). "Grutter applied 18 years after graduating from college." Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgment on Liability, *Grutter v. Bollinger*, 16 F. Supp. 2d 797 (E.D. Mich. 1998) (No. 97-CV-75928-DT), *available at* http://www.cir-usa.org/legal_docs/grutter_v_bollinger_summary.pdf.

51. For instance, 42 U.S.C. § 6102 (2006) prohibits discrimination based on age in "any program or activity receiving Federal financial assistance."

52. A survey by Scott Jaschik, editor of *Inside Higher Ed*, found that "[m]en are being admitted with lower grades and test scores" than other demographics. Rob Mank, *Men Far More Likely to Benefit from Affirmative Action in College Admissions*, CBS NEWS (Sept. 26, 2011, 12:06 PM), http://www.cbsnews.com/8301-503544_162-20111646-503544.html (quoting Scott Jaschik).

53. Richard Kahlenberg, *Three Myths about Affirmative Action*, CHRON. HIGHER EDUC. (Mar. 29, 2012, 4:42 PM), http://chronicle.com/blogs/innovations/three-myths-about-affirmative-action/32084.

Mexican-born Americans?[54] Should affirmative action policies apply to non-U.S. citizens (i.e., people of color from foreign nations)? What are the implications of affirmative action practices that significantly swell the ranks with foreign-born blacks? Should nationality matter at all? Importantly, who remains left behind in the contemporary approach to affirmative action? Finally, should race matter at all—why not simply focus on socioeconomic status? These questions offer a starting point in a more nuanced approach to how we will educate future generations of Americans.

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54. Asian American students claim discrimination because whites with lower test scores gain admission to elite schools when they have been passed over. *See, e.g.*, Daniel Golden, *Harvard Targeted in U.S. Asian-American Discrimination Probe*, BLOOMBERG (Feb. 2, 2012, 4:01 AM), http://www.bloomberg.com/news/2012-02-02/harvard-targeted-in-u-s-asian-american-discrimination-probe.html; Julianne Hing, *U.S. Dept of Ed Inquiry: Do Harvard and Princeton Discriminate against Asian-American Students?*, COLORLINES (Feb. 10, 2012, 10:03 AM), http://colorlines.com/archives/2012/02/us_dept_of_ed_inquiry_do_harvard_and_princeton_discriminate_against_asian-american_students.html. Countering that, in recent decades, an organized lobby has suggested that "too many" Asians are taking seats that presumably "belonged" to whites. *See* Yi-Chen (Jenny) Wu, *Admission Considerations in Higher Education among Asian Americans*, AM. PSYCHOL. ASS'N, http://www.apa.org/pi/oema/resources/ethnicity-health/asian-american/article-admission.aspx (last visited Mar. 11, 2013) ("Ironically, elite college administrators expressed concerns that they may have 'too many' Asians enrolled in [the] higher education system."); Scott Jaschik, *Is It Bias? Is It Legal?*, INSIDE HIGHER ED (Feb. 3, 2012, 3:00 AM), http://www.insidehighered.com/news/2012/02/03/federal-probe-raises-new-questions-discrimination-against-asian-american-applicants#ixzz2LqRjN9uR ("Many advocates for Asian-American students believe that some elite college admissions officers use phrases like 'well-rounded' to favor white applicants of lesser academic quality over Asian-American applicants."); Daniel de Vise, *Student Claims Harvard, Princeton Discriminate against Asian-Americans*, WASH. POST (Feb. 2, 2012, 11:22 AM), http://www.washingtonpost.com/blogs/ (search for article title; then follow hyperlink) ("Like Jews in the first half of the 20th century, who faced quotas at Harvard, Princeton, and other Ivy League schools, Asian-Americans are over-represented at top universities relative to their population.") (quoting Golden, *supra*); Golden, *supra* (explaining that Asians must outperform whites in order to gain admission to elite U.S. colleges and universities); Hechinger, *supra* note 7 ("[A]n official at the University of California at Berkeley suggested that Asians should not complain about what they perceived as quotas because this might create anti-Asian feelings."). *See generally* THOMAS J. ESPESHADE & ALEXANDRIA WALTON RADFORD, NO LONGER SEPARATE, NOT YET EQUAL: RACE AND CLASS IN ELITE COLLEGE ADMISSION AND CAMPUS LIFE (2009). Some white parents claim Asian students have higher test scores, but emphasize that test scores are not dispositive of future success. *See* Suein Hwang, *The New White Flight*, WALL ST. J., Nov. 19, 2005, at A1 (reporting that white parents in certain California communities are moving and quitting the schools "because the schools are too academically driven and too narrowly invested in subjects such as math and science at the expense of liberal arts and extracurriculars like sports and other personal interests").

CONCLUSION

In the years since affirmative action policies were initially crafted and launched, there has been a steady decrease in the percentages of blacks who benefit from the programs. African American enrollment at some of the top law schools in the country has decreased by more than forty percent.[55] Employment data provides a similar conclusion. This data may tell us that affirmative action is already on life support. This short Tribute to Professor Jim Jones asks for the postmortem, urging reflection on what the policies produced so that we can gain a better understanding and fully account for who benefited from the policies and what remains ahead for those yet wishing for inclusion in the American Dream. If the issues are reframed as such, scholars can better understand and calibrate the right questions to ask about affirmative action, its legacy, and what will be the future of remedial efforts to educate a new generation.

55. *Declining Black Enrollments at Many of the Nation's Highest-Ranked Law Schools*, J. BLACKS IN HIGHER EDUC., Summer 2008, at 10, 10–11.

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JAMES E. JONES, JR.: PARADIGM BREAKER, PARADIGM MAKER

LINDA GREENE*

THE PARADIGM BREAKER

Professor James E. Jones, Jr., affectionately "Jim" only to his wife and closest colleagues of long standing, broke paradigms just by living long enough to graduate from high school. He was born in Little Rock, Arkansas in 1924, just five years after an Elaine, Arkansas white mob massacred African American sharecroppers who organized to obtain fair prices for their cotton crops.[1] Three years before his birth, a white mob lynched Henry Lowry, and, when he was three, another white mob lynched John Carter in Little Rock.[2] In an Arkansas that was *deep south* in every way that posed threats to the ambition of a bright young African American child,[3] Professor Jones built his life on the foundation of confidence he gained from a formidable grandmother,[4] an African American community that resisted violence and actively organized for racial justice,[5] and segregated schools that nurtured rather than crushed this child's ambitions.[6]

The quality of that groundwork paid off in academic success. He graduated *magna cum laude* in 1950 at Lincoln University (MO), received a Masters from the University of Illinois the following year, and earned a Juris Doctor from the University of Wisconsin Law School, all by age thirty-two.[7] By the time he arrived to teach at Wisconsin,[8] he had

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1. GRIF STOKLEY, BLOOD IN THEIR EYES: THE ELAINE RACE MASSACRES OF 1919 xxiii-xxv (2001).

2. Jay Barth, *Remember the 1927 Lynching in Little Rock*, ARK. TIMES, Aug. 1, 2012, http://www.arktimes.com/arkansas/remember-the-1927-lynching-in-little-rock/Content?oid=2367957; *The Land of (Un)equal Opportunity: Documenting the Civil Rights Struggle in Arkansas*, U. ARK., http://scipio.uark.edu/cdm4/index_Civilrights.php?CISOROOT=/Civilrights#timeline (last visited Mar. 19, 2013).

3. *See generally* GRIF STOCKLEY, RULED BY RACE: BLACK/WHITE RELATIONS IN ARKANSAS FROM SLAVERY TO THE PRESENT (2009) (outlining the history of race relations in Arkansas).

4. JAMES E. JONES, JR., HATTIE'S BOY: THE LIFE AND TIMES OF A TRANSITIONAL NEGRO 15, 21 (2006).

5. *See id.* at 75–76.

6. *See id.* at 5–9.

7. *James E. Jones, Professor of Law Emeritus*, U. WIS. L. SCH., http://law.wisc.edu/profiles/jejones@wisc.edu (last visited Mar. 19, 2013).

distinguished himself as a labor lawyer, had been sought after by several law schools,[9] and was an emerging expert in two fields. One, employment discrimination law, was in such an early stage of development as a result of the youth of its main statute, Title VII of the Civil Rights Act of 1964,[10] that there were no textbooks. Professor Jones created his own in his first teaching year,[11] drawing in part on his own experience at the Department of Labor. His second field was labor law, in which he also had experience and had already published two articles.[12] It would be a satisfying success story in the *Only in America*[13] category if Professor Jones had confined himself to "the destruction of a fair number of trees"[14] in the course of his production of at least thirty-seven articles, six books in a decade while Editor-in-Chief of the Labor Law Group,[15] and a seventh book co-edited with the late University of Wisconsin-Madison Professor Herbert Hill, *Race In America.*[16] But there is so much more.

THE PARADIGM MAKER: SERVICE ABOVE SELF

The breadth of Professor Jones's service takes my breath away. He was director of the University of Wisconsin-Madison Industrial Relations Institute, a senator in the University of Wisconsin-Madison Academic Senate for well over a decade, and on the very demanding University of Wisconsin Athletic Board for seventeen years. During a time period that overlaps with those endeavors, he persuaded his colleagues to support a minority law professor development program, the Hastie Fellowship Program, which is still the "gold" standard of all law professor

8. Some details relevant to this event are included in a loving tribute to his mentor-teacher, George William "Bill" Foster, Jr. James E. Jones, Jr., *A Tribute to George William "Bill" Foster, Jr.*, 1987 WIS. L. REV. 218.

9. James E. Jones, Jr., *LL.M. Programs as a Route to Teaching: The Hastie Program at Wisconsin*, 10 ST. LOUIS U. PUB. L. REV. 257, 262 (1991).

10. Civil Rights Act of 1964, Pub. L. No. 88-352, § 701, 78 Stat. 241, 253–66 (codified as amended at 42 U.S.C. § 2000e (2006)).

11. Jones, *supra* note 9, at 262.

12. James E. Jones, Jr., *Racial Discrimination in Employment and in Labor Unions: The Role of Law in Improving Minority Group Employment Opportunities*, 16 INST. ON LAB. LAW 198 (1969); James E. Jones, Jr., *The National Emergency Disputes Provisions of the Taft-Hartley Act: A View from a Legislative Draftsman's Desk*, 17 W. RES. L. REV. 133 (1965).

13. DON KING: ONLY IN AMERICA (Home Box Office 1997).

14. James E. Jones, Jr., *Why Teaching: The Rewards of Academic Life*, 10 ST. LOUIS U. PUB. L. REV. 231, 235 (1991).

15. *Group History: The Labor Law Group*, WASH. U. L., http://law.wustl.edu/laborlawgroup/pages.aspx?id=8164 (last visited Mar. 19, 2013).

16. DERRICK BELL ET AL., RACE IN AMERICA: THE STRUGGLE FOR EQUALITY (Herbert Hill & James E. Jones, Jr. eds., 1993).

development efforts due to rigorous entry requirements, its required master thesis, and its successful alums.[17] Almost simultaneously, he served the President of the United States on the Federal Service Impasses Panel that resolves impasses between the federal government and its unions, the Wisconsin Governor on his Manpower Planning Council, and the Mayor of Madison on his Police and Fire Commission. And how did he find time to serve for thirty years on the United Auto Workers Board of Public Review, an independent board which reviews union action for adherence to contract terms and ethical obligations, and remain throughout a sought-after arbitrator with an active nationwide practice.[18]

I met Professor Jones in 1977 at a NAACP Legal Defense Fund gathering of the best and the brightest civil rights lawyers, called "Airlie House," in Warrenton, Virginia. I am certain that I had not yet begun to teach, but may have had a speaking role at the meeting attended by the staff of the Legal Defense and the great civil rights lawyers such as those who actually litigated *Brown v. Board of Education of Topeka*[19] and *Griggs v. Duke Power Co.*[20] I recall that lawyers, most of them males, had joked about my ten-miles-a-day, long-distance runs and Professor Jones used this topic as an excuse to strike up a conversation about my future. I had not thought much of it at the time, though I did wonder about what he was doing in Wisconsin, about which I knew little except that it bordered a very big lake.

Fast-forward to 1986 and the United States Senate Judiciary Committee, where I was working very long hours at an exciting time. It was the end of a senate term, and the days extended long beyond the routine fourteen-hour days I had quickly embraced. There were scandals to investigate, such as Iran-Contra, and nominated judges and Justices to

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17. Professor Kimberle Crenshaw, a full professor at both the University of California Los Angeles School of Law and Columbia Law School, is one prominent graduate. *Kimberlé W. Crenshaw*, UCLA SCH. L., http://law.ucla.edu/faculty/all-faculty-profiles/professors/Pages/kimberle-w-crenshaw.aspx (last visited Apr. 29, 2013). Another is Daniel Bernstine, former dean of both Howard University School of Law and University of Wisconsin Law School, former President of Portland State University, and current President of the Law School Admissions Council. *Dean Daniel Bernstine to Head LSAC*, U. WIS. L. SCH. (Apr. 11, 2007), http://www.law.wisc.edu/newsletter/In_the_Media/Dean_Daniel_Bernstine_to_Head_LS_2007-04-11. Another former Hastie Fellow, Stacy Leeds, is Professor and Dean of the University of Arkansas School of Law (Fayetteville). *Stacy Leeds*, U. ARK. SCH. L., http://law.uark.edu/directory/?user=sleeds (last visited Apr. 29, 2013). For a list of Hastie Fellows and their placements, see *William H. Hastie Fellowship Program*, U. WIS. L. SCH., http://law.wisc.edu/grad/fellow_hastie.html (last visited Apr. 29, 2013).

18. *The Public Review Board*, UNITED AUTO WORKERS, http://www.uaw.org/page/public-review-board (last visited Mar. 19, 2013).

19. 347 U.S. 483 (1954).

20. 401 U.S. 424 (1971).

review and confirm. After my visiting stints at Harvard in 1984 and Georgetown in 1985, I had resigned my tenured professorship at Oregon to pursue a then inchoate opportunity to be a counsel to the United States Senate Committee, my dream job. No one resigns a tenured professorship, so the word spread quickly that I had broken the mold. In September, 1986, Professor Jones called me and did not pass the time with frivolity. He wanted to know whether I would reclaim my sanity, "get over the Potomac fever," and return to teaching. I told him that I had made a three-year commitment to my Senator, and could not possibly become a candidate at that time.

Jones: When may I call you back?

Me: In about a year and a half.

He must have put it on the calendar. My phone rang a year and a half later, and the rest is history, both mine and that of Wisconsin as an oasis of diversity in the improbable middle west.

Shortly after I arrived in Wisconsin in 1989, I began to hear stories from students about Professor Jones. They told me he found them between classes and talked to them for what seemed like hours. I have no doubt the temporal aspect represented a wild exaggeration. But I knew that Professor Jones was passionate about teaching as he lectured to me frequently about all aspects of the law teaching profession. He was not a popular classroom teacher—he was too prickly and demanding for many—but he was passionate about teaching. When he found a student who seemed to be open to a chat, Professor Jones would talk about what it took to be successful, about the importance of in-depth preparation, and about the existence of a world which would always take the measure of a woman or a man, and the necessity for vigilant preparation. Professor Jones did not view the classroom as his boundary, or a student's failure to enroll as a discharge of his responsibility. He cared about student success too much to limit his role based on class enrollment or formal affiliation. Long after graduation, many students cite those chats as a most memorable and valuable feature of their time at Wisconsin.

Thus, although Professor Jones embraced scholarship, service, and teaching, it is the teaching that he valued most of all. His paradigm of duty to the student endured despite the emergence of a world in which the importance of teaching and informal student contact waned, and reduced teaching loads and research leaves became a marker of professorial stature. Just two years before his official retirement in 1993, Professor Jones wrote of his passion for teaching and his love of students:

> At this point in our nation's history when the pursuit of material things has made Donald Trump a folk hero . . . and when one

> bright young man amasses over $400 million in one year in the junk bond business, it may seem quaint to suggest that the pot of gold at the end of the rainbow is not the highest reward. . . . The most lasting satisfaction is that we glean by basking in the reflected glory of the rainbow, the wonder and beauty of which is supplied by our students—past, present, and future. The pot of gold is ephemeral, rainbows are forever.[21]

21. Jones, *supra* note 14, at 240.

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COMING FULL CIRCLE

STACY LEEDS*

On April 15, 2011, the University of Wisconsin hosted an event that I was regrettably unable to attend, "Honoring Professor James E. Jones, Jr.: A Hastie Fellow Reunion and Workshop." From a peer standpoint, I missed the opportunity to be with my dear friends Michael Green, Michele Goodwin, Adele Morrison, and Thomas Mitchell. The five of us were in residence at the law school at the same time in the late 1990s, making up the largest single collection of Hasties-in-progress. I also missed the perfect opportunity to thank Jim Jones in person, not just for his fortitude in envisioning and executing the Hastie Program, but for his unapologetic optimism for what lay ahead for legal education.

Professor Jones has never been known to mince words. During my time as a Hastie Fellow, I enjoyed hours upon hours of frank conversation with him in the faculty library. I fed my coffee addiction in procrastination of thesis writing as he delivered his notorious straight talk about the past and future of legal education. Taking great paraphrasing liberty to protect the ears of the innocent reader, I will recount three threads of his wisdom:

- If you don't see the thing you are looking for in an institution, create it. Don't let some administrator tell you that it cannot be done. Figure out how to do it, and do it.[1]
- It's harder for people to marginalize you when you are indispensable.
- We do not *always* control the timing of opportunities. When a chance comes around, know that it might be a one-time deal.

I have thought of his lessons several times over the course of my still relatively short career. I can actually hear his voice in my head and it

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* Stacy L. Leeds is Dean and Professor of Law at the University of Arkansas School of Law and is currently the nation's only American Indian law school dean. She began her law teaching career as a William H. Hastie Law Teaching Fellow in 1998.

1. After recounting this frequent sermon from Professor Jones, I had the chance to review his autobiography, *Hattie's Boy: The Life and Times of a Transitional Negro*. There, I found his familiar recounting of how the Hastie Fellowship was conceived back in 1973 in response to a perceived lack of "qualified minority candidates" on the supply side. JAMES E. JONES, JR., HATTIE'S BOY: THE LIFE AND TIMES OF A TRANSITIONAL NEGRO 790 (2006). Of the Wisconsin philosophy, he recalled: "Wisconsin decided it would make this effort, not to *find* the qualified candidate but to *create* them." *Id.*

makes me smile. Professor Jones frequently urged me and other Hastie Fellows to take our roles seriously as scholars and teachers in our chosen subfields, but to take more seriously our responsibility to be a full citizen in the heart of the law school building and in the heart of the law school curriculum.[2] He cautioned us about what committee assignments we should be willing to accept long term.

He frequently reminded me that his vision of full diversity and inclusion in legal education would not be realized if I, for example, taught four Indian law classes and served on a law school diversity committee. He made me promise to ask to teach the first-year property class and to sit on the law school's hiring committee.

A hardcopy reprint of a 1999 *Michigan Journal of Race and Law* article titled "Some Observations on Teaching from the 'Pioneer' Generation" sits on my bookshelf. On the cover, the author, Professor Jim Jones, inscribed the following words to me: "[t]o our Future from the Past." In the article, Professor Jones outlines the three phases of diversity in legal education, the first phase being the initial wave of minority law professors to be hired to tenure-track positions in mainstream law schools.[3] The second phase being when minority law professors "invade the core curriculum"[4] rather than being limited by subject matter expectations, where it is presumed a minority professor would teach civil rights and other special interest courses. His message to my generation of minority law professors was spelled out in classic Jim Jones blunt: "[T]hey must adopt the position that legal education is their house. They are the legitimate occupants, and they are legitimate candidates to be head of household."[5]

When Professor Jones wrote the 1999 article, he suggested that the third phase would begin at some point in the future when "we are no longer considered role players who come off the bench, but part of the starting line-up, the team captains, and the coaches."[6] In that same year, I recall Professor Jones voicing disappointment that only a few former Hastie Fellows were able to attend a symposium that was held around the twenty-fifth anniversary of the Hastie Fellowship,[7] which made my missing the 2011 symposium all the more painful for me.

My reason for missing the event has a bittersweet ending. On April 15, 2011, I concluded an on-campus interview as part of a law school

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2. James E. Jones, Jr., *Some Observations on Teaching from the "Pioneer" Generation*, 5 MICH. J. RACE & L. 229, 232–35 (1999).

3. *Id.*

4. *Id.* at 235.

5. *Id.* at 237.

6. *Id.*

7. JONES, *supra* note 1, at 775.

dean search. At that time, I was still in my thirties, did not graduate from an elite law school, and had only one year of experience as an interim associate dean under my belt. It was a long-shot opportunity that I could have easily talked myself out of pursuing but for one thing: Professor Jones would have been appalled with such manifestation of self-doubt. I was not the traditional law school dean candidate, and that is exactly the point.

I come full circle to tip my hat to my mentor and dear friend James E. Jones, Jr. I know he forgives me for missing the 2011 reunion. I also know that he smiles knowing that I write this tribute from the law dean's office at the flagship university in his home state of Arkansas. I am here because I was a Hastie Fellow. I am here because of Jim Jones.

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THE HASTIE FELLOWSHIP PROGRAM AT FORTY: STILL *CREATING* MINORITY LAW PROFESSORS

THOMAS W. MITCHELL*

INTRODUCTION

From the founding of the Hastie Fellowship Program in 1973 until just a few years ago when his health made it no longer possible for him to come to the law school, Professor James E. Jones, Jr. reached out to each new Hastie Fellow on his own to offer him or her mentorship and guidance. Most Hasties gladly accepted Jim's offer and in many cases the mentoring relationship ripened into friendship over time. I was one of those Hastie Fellows whom Jim mentored and befriended. In his own inimitable and very colorful way, Jim counseled Hasties to keep our eyes on the prize by using our time well as LL.M. students, including by working hard on our master's theses. Even more, he emphasized that we should structure our careers as law professors—from the courses we would teach, to the articles we would write, to the range and type of service we would do—in such a way to maximize the chances that we would become valued and respected members of the faculties we would serve on in the future thereby avoiding the fate of being marginalized. Though Jim's approach to mentoring (and to life in general) could be described as unvarnished or very "old school," as some would say in a different cultural context, the advice he gave many of us is timeless in its value.

Jim, however, made it clear to us that he did not want us to be merely successful law professors as measured by some narrow, conventional standards. By his actions, he showed us what it means to be a law professor who makes a real difference within and outside of the academy. To this end, Jim spent a lot of time talking to and counseling students, whether in his office or in other places around the law school, including the law school's atrium where students normally congregate almost exclusively with their fellow students. Sometimes this counseling

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* Professor, University of Wisconsin Law School. I would like to acknowledge Lauren Powell for her excellent research assistance and Monica Mark for the editorial assistance she provided to me as this Tribute was being finalized. In addition to acknowledging Jim Jones for all of the work he did in founding and supporting the Hastie Fellowship Program over time, I would like to thank all of those at the University of Wisconsin Law School who also played some role in creating the program or who have supported the program in some significant way whether as administrators, faculty advisors for the fellows who have participated in the program, or in some other way.

took the form of Jim bantering with students with whom he had a strong rapport by gruffly suggesting that they should be studying in the library instead of just hanging out. Further, he helped many of his students obtain legal jobs in the fields of labor and employment law. Unbeknownst to most, he checked up on a number of former students and Hastie Fellows once these former students and Fellows were practicing law or working as law professors. Of course, his academic and policy work in the field of labor and employment law and his law school, university, and other service work are legendary.

As a former Hastie Fellow and current faculty chair of the Hastie Fellowship Committee at the University of Wisconsin Law School, I would like to thank my friend Jim for creating a one-of-a-kind fellowship program that has made such a positive difference in my life and in the lives of many, many others. I cherish being part of the community of Hastie Fellows, past and present, and am filled with pride when I receive news of the latest accomplishments of those within our little community. I hope that Jim knows that there are many people committed to sustaining the Hastie Fellowship Program well into the future and to building upon its long record of success.

THE NEED FOR THE HASTIE FELLOWSHIP PROGRAM

Jim Jones began his academic career at the University of Wisconsin Law School at the age of forty-five as an untenured "visiting professor" on the tenure-track in 1969[1] at a time in which there were very few minority law professors in the United States.[2] Nevertheless, he wasted little time in trying to convince his colleagues at Wisconsin and law professors at many other schools to hire more minority faculty. Given that Jim had served as one of five Associate Solicitors within the United States Department of Labor in a position near the top of the civil service ladder[3] and that he had life experiences that were quite different from the life experiences of most law professors, he did not feel nearly as constrained as most untenured professors feel in advocating for institutional change. Many of the law professors he spoke to claimed that their schools could not hire minorities because the pool of qualified minority candidates was too small. Jim made it clear in an increasingly shrill way that he believed that such explanations were simply inadequate

1. JAMES E. JONES, JR., HATTIE'S BOY: THE LIFE AND TIMES OF A TRANSITIONAL NEGRO 475 (2006); James E. Jones, Jr., *LL.M. Programs as a Route to Teaching: The Hastie Program at Wisconsin*, 10 ST. LOUIS U. PUB. L. REV. 257, 262 (1991).

2. Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV. 429, 430 (1986).

3. JONES, *supra* note 1, at 472.

and that law schools across the country had an obligation to do much more to try to increase diversity in the law teaching profession.

Based upon his firm belief that law schools and universities had a responsibility *to create* qualified minority faculty candidates for the teaching market instead of just seeking *to find* qualified minority candidates,[4] Jim developed a proposal to establish the William H. Hastie Minority Teaching Fellowship Program. Jim's original proposal to establish the fellowship claimed that its primary purpose was as follows: "[t]o provide advanced legal training to exceptional minority students to quality them for, and encourage them to undertake, the teaching of law."[5] His proposal was approved by the Wisconsin law faculty in the spring of 1973, just two years after Jim had been granted tenure. Soon thereafter, Jim personally began recruiting potential Hastie Fellows in the summer of 1973 at the National Bar Association's meeting in San Francisco where he identified Daniel O. Bernstine and Nancy Bernstine as excellent prospects. Dan and Nancy ultimately served as the program's first two Hastie Fellows.[6]

Though it is important to recognize that law school faculties today are significantly more diverse than law faculties were thirty to forty years ago,[7] the Hastie Fellowship Program continues to make an important contribution to enhancing diversity in the legal academy. To this end, the most current data that the Association of American Law Schools (AALS) has made publicly available with respect to the racial and ethnic composition of law teachers who are employed by AALS-affiliated law schools makes it clear that minorities are still substantially underrepresented in the legal academy. In 2008, minorities constituted thirty-four percent of the population in the United States;[8] however, just fifteen percent of law professors in 2008 identified themselves as being minorities.[9] Further, after the percentage of minority law professors increased dramatically—if in fits and starts—from the 1970s through the

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4. Jones, *supra* note 1, at 264.

5. *Id.* at 263.

6. JONES, *supra* note 1, at 778, 782–84.

7. *See* Jon C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 HASTINGS L.J. 445, 448 (2000) (stating that as of 2000, "[t]he percentage of total faculty of color in the academy ha[d] risen from 3.9% in 1980–81, to 5.4% in 1986–87 to 13.2% in 1997–98").

8. *See* Press Release, United States Census Bureau, Census Bureau Estimates Nearly Half of Children under Age 5 Are Minorities (May 14, 2009), *available at* https://www.census.gov/newsroom/releases/archives/population/cb09-75.html.

9. Pati Abdullina, *AALS Statistical Report on Law Faculty 2008–2009*, ASS'N AM. LAW SCH., 11, http://www.aals.org/statistics/2009dlt/report2008-09.pdf (last visited Mar. 19, 2013).

mid-1990s, progress in increasing diversity stagnated between 1997–98 and 2008–09.[10]

THE UNIVERSITY OF WISCONSIN LAW SCHOOL HAS MAINTAINED A STRONG COMMITMENT TO THE HASTIE FELLOWSHIP PROGRAM OVER FORTY YEARS

In its fortieth year, among the small number of law school fellowship programs specifically designed to enhance diversity within the legal academy, the Hastie Fellowship Program remains the one that has existed the longest. Keeping true to the mission to *create* law professors, the group of people who have served as Hastie Fellows represents the most diverse group of Fellows any such fellowship program has produced taking into account the race, ethnicity, and educational background of the people who have served as Fellows. At the same time, minorities interested in law teaching have better opportunities to get advanced training in being a law professor than they had in the past. Many law schools now offer fellowship or Visiting Assistant Professor (VAP) opportunities for those who are interested in pursuing a career as a law professor.[11] Though these fellowship programs and VAP opportunities are not designed in any specific way to enhance the diversity of law faculties across the country, several minority law graduates have served as fellows or VAPs at these law schools and some of these people have gone on to serve as tenure-track law professors.

Although there has been a substantial increase over the past several years in the number of fellowship and VAP programs offered by law schools throughout the country for those interested in pursuing a career in law teaching, it remains the case that there are approximately fifteen to twenty schools that are the primary feeder schools that produce the majority of new faculty members hired each year by law schools throughout the country.[12] The composition of these feeder schools has remained remarkably stable over time.[13] Given the reality that a small

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10. *See supra* notes 7, 9 and accompanying text.

11. *See, e.g.*, Paul L. Caron, *Fellowships for Aspiring Law Professors (2012 Edition)*, TAXPROF BLOG (Feb. 14, 2012), http://taxprof.typepad.com/taxprof_blog/2012/02/fellowships-for.html.

12. Daniel Gordon, *Hiring Law Professors: Breaking the Back of an American Plutocratic Oligarchy*, 19 WIDENER L.J. 137, 149 (2009). Furthermore, law schools consistently have hired only a very small percentage of new faculty members who did not attend a law school ranked among the top twenty-five or so of American law schools. *See* Richard E. Redding, *"Where Did You Go to Law School?" Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 599 (2003).

13. *Compare* Gordon, *supra* note 12 (listing the feeder schools in rank order, from high to low, of the percentage of law professors supplied as Harvard, Yale,

number of law schools produce most of the law professors in the United States, in 1991, Professor Jones challenged the top law schools that produced law professors to develop research fellowship programs designed to produce minority law faculty.[14]

Professor Jones hoped that many other law schools would develop fellowship programs that would be designed to increase the number of minorities who would make attractive candidates for positions as law professors. Given that Stanford Law School and Georgetown University Law Center had established minority teaching fellowship programs by 1991, Professor Jones believed there was evidence of increased appreciation for the need for such programs. However, little in the aggregate has changed in the intervening years.

There has been almost no change over the past twenty-five years or so in the number of feeder law schools that have created or sustained minority teaching fellowship programs. Stanford Law School discontinued its program sometime in the mid-1990s after it had been in existence for less than ten years and Georgetown folded its program that was called the Fellowship Program for Future Law Professors into its Law Research Fellowship program, a fellowship program that is designed in part, but not exclusively, to promote diversity in law school teaching. The University of Iowa College of Law started a short-lived, but very successful fellowship program in 1990 called the Faculty Fellows program that was designed to enhance diversity in law teaching. Six of the program's seven fellows were hired as law professors including one who was hired by UCLA, another who was hired by the University of Michigan, and one who was hired by the University of Arkansas where she later became dean of the law school. Despite this extraordinary success, the program was suspended for financial reasons after having existed for only a decade and it has never been revived. After 1990, Harvard Law School developed two fellowship programs that were designed to enhance diversity in the law teaching profession and each program sought one fellow per year. However, Harvard ended one of these fellowship programs in 2007.

A very small number of law schools that have not been considered feeder schools have made some efforts over the course of the past few years to establish teaching fellowship programs to promote diversity

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Michigan, Columbia, Chicago, New York University, Berkeley, Stanford, Georgetown, Virginia, Pennsylvania, Texas, Northwestern, Wisconsin, and Duke), *with* John W. Bruce & Michael I. Swygert, *The Law Faculty Hiring Process*, 18 HOUS. L. REV. 215, 243 & n.150 (1981) (listing the feeder schools as Harvard, Yale, Columbia, Michigan, Chicago, New York University, Georgetown, Texas, Virginia, Berkeley, Pennsylvania, Wisconsin, Northwestern, Stanford, Iowa, Illinois, Minnesota, Cornell, Duke, and George Washington).

14. Jones, *supra* note 1, at 266.

within legal academia with mixed success. UCLA School of Law recently established the Critical Race Studies Law Teaching Fellowship. The fellowship, however, is made available only to UCLA School of Law graduates who, in almost every instance, must have obtained a certificate in Critical Race Studies. A couple of other law schools that are not considered top producers of law professors developed fellowship programs in the past few years that were designed to increase diversity in the law teaching profession but then suspended these programs soon thereafter for financial reasons. It is a testament to the University of Wisconsin Law School's commitment to its Hastie Fellowship Program that it has remained in existence for so long whether in good or bad financial times and despite the fact that Wisconsin has never been a particularly wealthy law school.

STRUCTURE OF THE PROGRAM

In the forty years in which it has existed, the Hastie Fellowship Program has retained its essential structure though the law school has made some changes to it along the way in order to integrate our Hastie Fellows in a better way among the other graduate students at our law school who conduct research and to improve the opportunities for our Fellows to gain meaningful teaching experience. As was the case when the fellowship was established, the Hastie Fellowship is a two-year, research-focused fellowship, and Fellows are expected to produce a thesis that meets the thesis standards established by the law school's Graduate Programs Committee for awarding the LL.M. degree.[15] Each Fellow is assigned a primary faculty advisor and, in addition, many Hastie Fellows have had a secondary advisor as well.[16] Further, Hastie Fellows now participate in the regular seminars offered to all our entering and continuing graduate students who conduct research and these seminars include sessions in which the graduate students present their work to each other.[17] In addition, Hastie Fellows participate in our regularly scheduled internal junior faculty workshops where they have the opportunity to receive critical feedback on their research from tenure-track members of our faculty.

Over the course of the past several years, the Hastie Fellowship Committee has encouraged Hastie Fellows in a more intentional way to get some teaching experience during their final semester in the program and almost all recent Fellows have obtained this experience by teaching a

15. *William H. Hastie Fellowship Program*, U. WIS. L. SCH., http://www.law.wisc.edu/grad/fellow_hastie.html (last visited Apr. 5, 2013).

16. *Id.*

17. *Id.*

seminar course of their own design. In addition to this teaching experience, Fellows have been encouraged to learn something about teaching and organizing a course from members of our faculty. This informal mentoring with respect to teaching has taken different forms. For example, some Fellows have attended several classes taught by a member of our faculty and, in addition, have met with the faculty member to discuss that professor's pedagogical approach. Other fellows have taught two to three classes, for example, in courses offered by members of our faculty and then have had their teaching evaluated by the faculty members teaching these courses. Still other fellows have conducted regular review sessions for students in certain courses taught by members of our faculty.

Hastie Fellows also receive a great deal of mentoring with respect to the overall process of applying for law faculty positions. In preparation for the Faculty Recruitment Conference sponsored by the American Association of Law Schools (AALS), which is often referred to as either the "meet market" or the "meat market," a number of faculty members typically review a Hastie Fellow's curriculum vitae and AALS faculty appointments register form. In preparation for the meet market, each Hastie Fellow does at least two mock interviews with different groups of faculty members.

Hastie Fellows also receive a great deal of guidance in preparation for any on-campus interviews they may have either before or after the meet market. Of course, much of this guidance is focused upon the job talk that candidates for faculty positions must give during the course of on-campus interviews at almost all law schools in the country. The law school begins to make each Hastie Fellow aware of what to expect when giving a job talk in the first semester of his or her fellowship, well before any Fellow would actually go on the market let alone give any job talk. The law school does this by inviting Hastie Fellows to the job talks that are given by candidates for tenure-track or tenured positions who come to our law school for on-campus interviews as well as to the faculty meetings in which the faculty evaluates and makes decisions on whether to offer these candidates positions on our faculty. Further, the law school conducts at least two mock job talk interviews for each Hastie Fellow who is on the market in preparation for any actual job talk that a Fellow would give, and a large number of faculty members, including those who serve in the dean's office, normally participate in these mock job talks.

CONCLUSION

Forty years after it was established, the Hastie Fellowship Program continues to thrive. Throughout the program's history, those who have had the responsibility for administering the program have always been

guided by the program's original mission. The program continues to develop minority law graduates with the potential to serve as very productive law professors into attractive faculty candidates, including many who had not been encouraged by their law professors to pursue careers as law professors when they were law students pursuing juris doctor (J.D.) degrees. Those who have administered the program and the many faculty members who have served on the Hastie Fellowship committee always have believed that those with the potential to serve as law professors exist in many places. To this end, though the Hastie Fellowship Program has had its share of Fellows who received their J.D. degrees from schools such as Harvard, Yale, Stanford, Columbia, Berkeley, Northwestern, Georgetown, and UCLA, it has also had a number of Fellows who received their J.D. degrees from schools such as Howard, Loyola University New Orleans, the University of Tulsa, Northeastern, Loyola University Chicago, Oregon, North Carolina Central University, and Rutgers-Camden.

Not only does the Hastie Fellowship Program continue to place its Fellows on law faculties throughout the country, but also many of the alumni from the program have had stellar careers. Daniel Bernstine became the first Hastie to serve as a law school dean when he was appointed to be Dean of the University of Wisconsin Law School in 1990 and the first to serve as a university president when he was appointed president of Portland State University in 1997. Stacy Leeds was appointed Dean of the University of Arkansas School of Law in 2011, becoming the first American Indian woman to serve as a law school dean in American history. In addition, many other Hastie Fellowship alumni have had impressive careers. Currently, one serves as a senior associate dean at a very prominent law school and another one holds a chaired faculty position at a top-ranked law school. In the past few years alone, one won the AALS outstanding scholarly paper award for junior law faculty, one served as the Acting Secretary of Indian Affairs in the United States Department of the Interior after serving as a tenure-track law professor, and one served as the principal drafter of a uniform act promulgated by the Uniform Law Commission (ULC) making him one of just a handful of minorities ever to have served in this role in the ULC's 121-year history.

Though the Hastie Fellowship Program may not have inspired a large number of other law schools to develop similar programs as Professor Jones had hoped, he has many reasons to be very proud of the Hastie Fellowship Program that would not exist but for him. It remains the leading pipeline program that creates opportunities for minorities from all kinds of different backgrounds to serve as law professors. Given the continuing need to enhance diversity within the law teaching profession, the Hastie Fellowship Program is well positioned to continue

to make a significant contribution to diversifying law faculties across the country for decades to come. In addition to producing first-rate law professors, a number of its graduates are likely to make substantial additional contributions in the years to come in roles such as law school and university administrators and in different types of policy-making roles.

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JIM JONES: A TEACHER, A MENTOR, AND AN INSPIRATION TO LAW STUDENTS

WILLIAM C. WHITFORD*

Professor James E. Jones, Jr. was the first African American member of the faculty at the University of Wisconsin. Jim[1] joined the faculty in 1968 at the age of forty-four, after a highly successful career as a lawyer in the United States Department of Labor, because he wanted to teach. Earlier he had been promoted to the highest status (or "grade") possible for a government lawyer who was not a political appointee. He had served both as Director of the Office of Labor Management Policy and as Associate Solicitor for Labor Relations and Civil Rights, and he was the primary author of the federal government's first effort to require affirmative action employment practices for building contractors doing business with the federal government (called the "Philadelphia Plan").[2] Jim possessed a great deal of information and experience that he wanted to share in the classroom.

And Professor Jones's life story had taught him how important education could be to the future he hopes for. Jim was born in 1924 in Little Rock, Arkansas, in the midst of racial segregation to a family of little means. He supported himself through college, with a healthy assist from the G.I. Bill, and, after graduating from Lincoln University,[3] he became the first African American to earn a master's degree in industrial relations from the University of Illinois.[4] Two years later, having received a prestigious John Hays Whitney fellowship, awarded annually to only fifty African Americans pursuing graduate or professional education anywhere in the country, Jim came to the University of

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1. Current and former students, who have written the other contributions to this Tribute, always use "Professor Jones" when writing or speaking to or about the subject of this Tribute. I have known Jim for forty-five years as a colleague and friend. Although I too have benefitted from his teaching and mentoring, it is most natural for me to call him Jim, as I will frequently do in this Tribute. Obviously, no disrespect is intended.

2. JAMES E. JONES, JR., HATTIE'S BOY: THE LIFE AND TIMES OF A TRANSITIONAL NEGRO 383–426 (2006) (discussing Jim's experiences in holding a management position in the United States Department of Labor). *Hattie's Boy* is Jim's autobiography.

3. Lincoln University is a historically black university located in Jefferson City, Missouri. At the time the University of Arkansas system did not have any college open to African Americans. *See id.* at 63–76. Jim's college education was interrupted by four years of service in the United States Navy during World War II.

4. *Id.* at 77–83, 137–47, 155–81.

Wisconsin Law School, graduating in 1956,[5] and then joined the Department of Labor. Education enabled Jim's social mobility and allowed him to become a highly successful and accomplished lawyer. And it was education that Jim still believes is the best vehicle for persons to achieve their potential, especially persons without social capital acquired at birth.

At the law school, Jim created a new course in employment discrimination law and regularly taught Labor Law.[6] He also immediately made his mark as a leader throughout the university in establishing institutional policy. Shortly after his arrival, Jim was appointed to a committee to set affirmative action policy for the entire university system,[7] and those policies are still mostly in force. He became a faculty member of the university's Athletic Board, where he served for seventeen years and carved out a special niche by insisting that we prepare our student athletes for life after competitive sports.[8] Here at the law school he spearheaded the creation of the Hastie Fellowship Program to provide graduate law degrees for aspiring law teachers.[9] The other contributors to this Tribute to Professor Jones are mostly graduates of that program.

Professor Jones also took a great interest in the law school's Legal Education Opportunities (LEO) Program, started in the year in which he joined the faculty (1968) and designed to recruit members of historically disadvantaged minority groups to become law students.[10] Though Jim has always been a guiding presence for this program, he has never served as an administrator for the program, nor even on the faculty-student committee that sets various policies. Jim has always wanted the entire faculty to take ownership of the LEO Program (as it has) and not for it to be the special project of the law school's only African American professor, as Jim was for many years.

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5. For Jim's account of his law school years, see *id.* at 219–47. Jim was one of the first African Americans to graduate from Wisconsin and had few African American classmates. The law school did not initiate active recruitment of diversity students until 1968, when the Legal Education Opportunities Program was started. *Legal Education Opportunities Program*, U. WIS. L. SCH., http://law.wisc.edu/leo/ (last visited Mar. 21, 2013).

6. James E. Jones, Jr., *LL.M. Programs as a Route to Teaching: The Hastie Program at Wisconsin*, 10 ST. LOUIS U. PUB. L. REV. 257, 262 (1991) (explaining that Professor Jones "developed teaching materials for an entire course in employment discrimination law"). Jim also regularly taught graduate seminars in the university's Industrial Relations Research Institute.

7. JONES, *supra* note 2, at 525–28.

8. *Id.* at 565–80.

9. *Id.* at 717.

10. *Legal Education Opportunities Program*, *supra* note 5.

But the lack of formal involvement in the LEO Program has not restrained Professor Jones from taking an interest in the education and lives of our LEO students.[11] To the contrary Jim took special interest in a great number of LEO students, talking to them for hours in his office and even approaching them in the halls to ask how things were going and to offer advice. Professor Jones has never gone easy on these students; his affection for them has been a "tough love." He has demanded that they work to their abilities and that after graduation they "give back" by becoming successful in whatever career they chose. In my experience former students remember these interactions with Professor Jones more poignantly than their experiences in his classroom. And they appreciate the advice he has given, the demands he has made of them, and the personal example he has set for them by living up to the demanding standards he advocates for others.

I have gathered a few quotes from former students which reflect their experiences with Professor Jones. As somebody who has long been involved in the administration of our LEO Program, and who maintains contact with many LEO graduates, I can assure you that these quotes are representative of many more that I could have collected.[12]

Celia Jackson (class of 1980) recently completed a term as a member of Wisconsin Governor Jim Doyle's cabinet, serving as Secretary of Regulation and Licensing. She writes:

> [Professor Jones] challenged us all in ways that made us uncomfortable but it enabled us to realize our capacity to do more. For me, he was like a grandfather, tough on the exterior, but gentle on the inside, always finding ways to help you discover your own power.

Danae Davis (class of 1980) was until recently a member of the University of Wisconsin Board of Regents. After a successful career as a lawyer, she now heads a nongovernmental organization in Milwaukee working with teenage girls. She writes:

> Professor Jim Jones epitomizes excellence. He expected your best (and) always gave you his best. . . . Professor Jones inspired me to be my best, especially when it comes to academics and being a leader in this community utilizing the skills I began to gain while in Law School.

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11. Though I write here mostly about Jim's involvement with LEO students, he also took a considerable interest in the lives of other students as well, especially ones interested in specializing in labor law. Jim loved to teach.

12. I solicited only four persons for comments, each of whom provided a statement that I could use.

Cory Nettles (class of 1996) is a partner in one of Wisconsin's largest law firms. He also was a member of Governor Doyle's cabinet, serving as his first Secretary of Commerce, and is managing director of a private equity fund. He writes:

> Though I never took a class with [Professor Jones], I was 'taught' by him in the halls and elevators of the Law School, and over countless hours in his office where he regularly held court with me and many others. As a father figure, friend, and role model, he set a high bar of excellence towards which I still strive in my personal and professional life. He was unabashed and unapologetic about the need for minority attorneys to work twice as hard and be twice as good. And who could argue with his approach? It obviously had worked so very well for him and for many whom he had trained.

Eric Jackson (class of 1993) was president of student government while a law student and now is a partner in a D.C. law firm dealing with complex business transactions and litigation. He writes:

> Although I was initially intimidated by him, I came to appreciate it when Professor Jones would tightly grab my arm and pull me to the side to share some wisdom about how to succeed as a student and an attorney.... Professor Jones demonstrated tough love towards me and my fellow students because he wanted us to be excellent in all of our endeavors. I am forever grateful for the lessons he instilled in me.

I have emphasized in this Tribute Professor Jones's role as a teacher and role model for students. I would be remiss if I did not mention that Jim's teaching role extended to his colleagues, like me. Jim has talked to us in the halls or offices as well, and has offered us advice, sometimes in a stern manner, but always with the aim of making us better and more effective people. Because of his many experiences, Jim has so much to teach us, including and especially about what it means and has meant to be an African American working in the law. Like the students quoted above, I too have learned much from these encounters, and I am grateful for it.