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# The Hastie Fellowship Program at Forty: Still Creating Minority Law Professors

Thomas W. Mitchell

*Texas A&M University School of Law*, [thomas.mitchell@law.tamu.edu](mailto:thomas.mitchell@law.tamu.edu)

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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<sup>1</sup> at a time in which there were very few minority law professors in the United States.<sup>2</sup> 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<sup>3</sup> 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

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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,<sup>4</sup> 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."<sup>5</sup> 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.<sup>6</sup>

Though it is important to recognize that law school faculties today are significantly more diverse than law faculties were thirty to forty years ago,<sup>7</sup> 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,<sup>8</sup> however, just fifteen percent of law professors in 2008 identified themselves as being minorities.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> The composition of these feeder schools has remained remarkably stable over time.<sup>13</sup> 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](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.<sup>14</sup>

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.<sup>15</sup> Each Fellow is assigned a primary faculty advisor and, in addition, many Hastie Fellows have had a secondary advisor as well.<sup>16</sup> 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.<sup>17</sup> 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

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15. *William H. Hastie Fellowship Program*, U. Wis. L. SCH., [http://www.law.wisc.edu/grad/fellow\\_hastie.html](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.