

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

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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.”) Albiston¹ 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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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.

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 Williams⁷ 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 Fingerprinting 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 sure¹⁶—he used his energies to create the William H. Hastie Fellowship¹⁷ 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

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. Bernstein, *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.

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).