

## Changing Age-Old Ways: Creating Careers in Legal Education for Minority Law Graduates

William G. Moore

*Over the years, the University of Wisconsin Law School has established itself as an institution committed to aiding minority and disadvantaged students.*

*In 1967 the commitment was formalized with the establishment of the Legal Education Opportunities Program (LEO).*

*In the early 1970s, through the initiative and major efforts of UW Law Professor James E. Jones, Jr., the Hastie Fellowship Program was launched in the Law School. The Fellowships were named for the Honorable William H. Hastie (1904–1976), a Black educator and judge who, devoting his life to public service, had shaped with excellence everything he touched. The list of capacities in which Judge Hastie had served was long and distinguished: Dean of the Law School at Howard University, Assistant Solicitor in the Interior Department, U.S. District Judge in the Virgin Islands, aide to the Secretary of War, Governor of the Virgin Islands, then Judge and later Chief Judge of the United States Court of Appeals for the Third Circuit. In these roles, he had been a man "profoundly committed to the betterment of his race and to the law as the avenue by which that improvement might be reached most speedily." And central to those commitments was his belief that equal education was one of the first steps toward elimination of inequality in the United States.*

*Wisconsin's Hastie Fellowship Program was designed to assist in implementing Judge Hastie's views toward equal education, for the program was uniquely fashioned to "assist minority law school graduates in preparing for a career of legal education." More than a decade after the launching of the Fellowships, and twelve "Hasties" later, it is clear that the program has made a small but very important contribution to "meeting the critical need for a greater number of members of minority groups on law school faculties."*

*Bill Moore—a writer who shortly expects to attend graduate school (and a big help to the GARGOYLE of late)—relates below the story of the Hastie Fellowship Program at the UW Law School.*

"If the law is perceived as an ocean wave," related Professor James E. Jones, Jr. of the University of Wisconsin Law School to an audience of the AALS section in Minority Groups in late 1974, "and the Golden 60s productive of one of tidal proportions in the equal employment area, it seems that by the time that wave reaches the shores of academia it will be little more than a mild ripple that threatens to leave few, if any tracks in the campus sands."

The statistics revealed a grim picture indeed. In 1974, when Professor Jones made the remarks just quoted, less than 2% of the practicing lawyers in the United States were Blacks. Among legal educators, as distinguished from practicing lawyers, the fraction of Blacks at that time was almost surely smaller still. Other minority groups likewise were disproportionately represented in the ranks of practicing attorneys and law professors.

To those small numbers of racial minority lawyers, the UW Law School had in the past contributed. Professor Jones himself earned his law degree here in 1956 but he had arrived on his own initiative and it was not until the early 1960s that the Law School began its first affirmative efforts to interest young Blacks and recruit them for Wisconsin. Those affirmative action efforts were formalized with the establishment in the Law School of the Legal Education Opportunities Program (LEO) in 1967. The LEO program was charged not merely with seeking out Blacks but was designed more broadly to "institutionalize admis-

sions and financial support for minority law students to help remedy the deficiencies of minority law students in Wisconsin and the country."

Wisconsin's efforts down through the time in which the LEO program was installed focused primarily on efforts to interest and encourage minority students in obtaining a legal education. For some time, however, the Law School had sought to add minority lawyers to its faculty. For years, the faculty had urged Jim Jones to cast his lot with the School and in 1968, he arrived to serve as its first minority representative.

The LEO program at Wisconsin was making some progress by the early 1970s, for the number of participants had continued to grow. Often, though, problems which existed for non-minority students in Law School pressed on minority students with still greater force. In the turbulent late 60s and early 70s, it was often asserted that a chasm separated alienated students from their professors. But if this were so as to students generally, it could be said that a veritable abyss separated the LEO students from their professors. Moreover, the attrition rate among first year minority students, for a variety of reasons, was exceedingly high. A number of things needed to be done.

No one perceived more clearly than Professor Jones that his appointment could not by itself close the abyss separating LEO students from the faculty. Minority law professors were going to be essential to that process and the law schools had not merely to interest and recruit minority law students; they had to take on the further task of encouraging and training some of them to enter a career in legal education. Closing the abyss—in Wisconsin and elsewhere—would call for the education of a great many others to equip them, as he had been equipped, to

take on the challenges and responsibilities of a career as law professors.

With America's minorities essentially absent from the legal profession, law was an almost exclusively white field, and it promised to remain that way unless a conscious dismantling of the condition were undertaken. Through the initiative of concerned faculty members, the Law School took further steps to do just that.

### The Establishment of the Hastie Fellowships

On April 27, 1973, Professor Jones, encouraged by several of his colleagues, sent a memo to Dean George Bunn proposing the "establishment of the William H. Hastie Fellowships," named in honor of William H. Hastie, former Chief Judge on the United States Court of Appeals for the Third Circuit, Dean of Howard Law School, and "incisive polemicist in the Civil Rights Movement," ranked with such figures as Thurgood Marshall and Charles Houston.

The proposed Hastie Fellowship, in Professor Jones' words, would aim to

"provide advanced legal training to exceptional minority students to qualify them for, and encourage them to undertake, the teaching of the law," thus focusing an attack on the deficiency of minorities in legal education;

"provide faculty level support for the LEO Program through the utilization of such teaching fellows as counselors, tutors and 'academic buddies' of the LEO students," thereby easing the high attrition rate among first year students;

"expand faculty-level capacity more adequately to meet the special needs of our minority students, and the needs of the university community," in an attempt to bridge the gap between faculty and LEO students while, again, addressing the attrition rate issue.

At the start, the program consisted of two Fellows per year for a two-year period. During this time, the Fellows would tutor, counsel, participate in recruiting and retention concerns, and aid minority students on a half-time basis, while the corresponding portion of their time was devoted to working for LL.M. degrees. Then, as now, the Fellows were selected with the same admissions standards applying to other law graduate students, from a pool of applicants of minority or disadvantaged backgrounds, by a faculty committee established for the purpose. Those chosen were provided

with a stipend out of which they were required to pay in-state tuition for courses taken in pursuit of the LL.M. degree.

### Short on Resources, Long on Ideals

Like the initial LEO Program, funding for the Hastie Fellowships came from research and staff funds, "a little from here, a little from there." State funding came later, in 1976. The program found itself shaped by available resources.

But, notes Professor Jones, if the program was short on resources, it was long on ideals. Only suggested in the ambitious proposal, the delicate and intricate nature of the fellowships was revealed through time. The tasks were demanding indeed.

William H. Hastie's qualities of "expert counsel" which "made him a cynosure for students and faculty alike" were to prove to be helpful, if not essential traits for the Fellows. In many respects, the void between students and faculty became, in effect, the Hastie Fellows' home, and placed them in the position of middlemen, at once suspected by faculty members of "playing surrogate," for minority students, and by students of acting as buffers, installed for the benefit of the faculty. George Bunn illustrated the Hasties' position in a letter written to introduce the first Fellows to the faculty. "They are," he wrote, "really neither students nor faculty, but in between, 'go betweens.' Unless we give them respect

and attention the students will not."

In addition to their duties as counselors and diplomats, it should be remembered, the Hasties were expected to pursue their own advanced degrees, saddling them simultaneously with the tensions encountered by both students and faculty.

### The First Hasties and Demonstrable Success

With these difficult roles to fill, and the accompanying problems to surmount, the fate of the program, and to some degree, the subsequent success enjoyed by it and those connected with it, was determined by the first Hastie team.

This consisted of Daniel O. Bernstine, currently a UW Law Professor, and Nancy T. Bernstine, today Assistant Professor at Antioch Law School. Their efforts produced results which furnished concrete evidence that a program like the Hastie Fellowships could succeed. And succeed not mildly, but markedly. For, not only did the Bernstines help to reopen the lines of communication between faculty and minority students, but during their tenure managed to bring off a marked improvement in the academic performance of first-year minority students: In 1969, only 50% of the first-year minority group had achieved a passing average of 77. In 1974, 88% of that year's group met or bettered the 77 mark. Moreover, both the Bernstines, having completed their graduate work, went on to

Assistant Dean Stephan Rocha



Professor James E. Jones



secure teaching positions—an ultimate goal of the Hastie program.

The Bernstines' success at mitigating the "antagonism that had pitted special program students and faculty against each other," and at catalyzing the significant academic improvement among first year LEO students, was achieved largely through voluntary support services—voluntary because much of the initiative was left to the students themselves. The Bernstines, rarely playing the role of teachers themselves, acted as ringmasters in organizing special review and tutoring sessions where small groups of students met with individual members of the faculty. Informal, friendly counseling was frequently a by-product of these review and tutoring sessions. A great deal of the Bernstines' time also went into similar counseling of the minority students. But with dialogue between faculty and students established, the result was more and more the propagation of a feeling of mutual respect and cooperation between faculty and students, a feeling which grew over time.

The Bernstines refused adamantly to be either buffer or babysitter. Their ability, as team and individuals, to balance independence of opinion with understanding of both sides enabled them to "assist and criticize both faculty and minority students without damaging (their) relationship" with either group. With the voluntary support system in place, morale of minority students considerably lifted, faculty encouraged, and concrete results established, the program was off to a fine start.

### Evolution of the Fellowships

The Bernstines' record at the Law School as Hasties is a particularly celebrated one, and understandably so. The Bernstines turned in performances difficult to equal but subsequent Hasties have also been successful. There are cases, it cannot be denied, where the Law School and the individual participant were not as well served by the program as it might have been hoped; still, it appears that the successes far outweigh the failures. And in no case has the experience of the institution or the individual Hastie proved to have been fruitless.

Some Hastie Fellows did not complete their LL.M. degrees. The ideal situation would call not only for completion of the LL.M. paper but also publication of its contents in quintessential form. While publication has probably facilitated placement, absence of a publication record has not hindered their securing positions in either legal education or other areas of the law.

A greater concern is voiced over those Hasties who, after leaving the Law

School, do not enter legal education. Most have taught for at least a time and those who have not yet done so indicate that at some point they do intend to teach. Some feel that work in the field is essential before undertaking teaching, and thus delay entering the field immediately. The program can, in any case, boast a very high success rate. Of the twelve participants to date, eight have taught at one time or another.

There were bugs in the Fellowship design. And some remain. Hasties were encouraged to voice their concern over problems, so that later participants and the program itself might benefit from their experience. With a number of these suggestions heeded, the fellowships have been improved and reshaped to the benefit of everyone concerned.

One major change set the program on a staggered schedule, which allowed for greater continuity among the Fellows. Thus, for a time, while one Hastie was in his or her second year, the counterpart was just beginning his or her program. Counseling and academic time was divided to provide each participant with opportunities for uninterrupted writing and research periods.

One Hastie termed admissions and recruiting duties "the most difficult undertaking I experienced as a Hastie." Others were concerned about the enormous amount of time spent in counseling. With time it was clear that the jack-of-all-trades role designed for the Fellows was simply too burdensome for them to bear efficiently. In 1980, it was proposed that a position of Assistant Dean be established to handle the counseling, admissions, recruiting and retention duties previously provided by the Hastie Fellows. The first official Assistant Dean was Nancy T. Bernstine, certainly no stranger to counseling and recruiting. Since 1982 Stephen Rocha has assumed these duties.

At the same time that the Assistant Deanship was established, the program was shortened. With the counseling continued only on a voluntary basis, the Hasties were left to pursue an LL.M. degree and gather some teaching experience in a year instead of two years' time.

### Today

Currently for the 1984-1985 year, the Hastie Fellowship is held by Kimberle Crenshaw. Ms. Crenshaw completed a B.A. at Cornell University and went on to receive her J.D. at Harvard.

The Fellowship earns high marks from Ms. Crenshaw. She praises its flexibility but cautions that its offerings are only what one decides to make of the program. From the start, she has been, in

her own words, after a "total experience," and has expressed her eagerness to teach. She is now supervising the Douglas Competition.

Ms. Crenshaw recalled her first year at Harvard, and wished she had had the opportunity to talk and relate with older, more experienced students. In view of this, she has gone out of her way to open her doors to first and second year students. Thus, Ms. Crenshaw defines her role informally as a "student who is a friend to a lot of first year students" and she finds the Fellowship virtually "tailor-made" to her interests.

Ms. Crenshaw will clerk for Shirley Abrahamson, Justice of the Wisconsin Supreme Court (and UW Law Faculty member on leave of absence), when she completes her year here, and, in the near future, intends to take up teaching, something in which she has always had an interest.

### The Future

The founding of the Hastie Fellowships was a response to an acute situation in the Law School itself and to a broader, deeper and persistent malaise found in legal education institutions throughout the country. The program set out not only to contribute to the pool of aspiring, qualified minority and disadvantaged would-be-educators, but more idealistically, to begin a dismantling of the image of law and legal education as white professions.

Steps on the road to success have come. Of the twelve Hasties thus far, eight—as noted earlier—have been involved in teaching at some point. One Hastie is an assistant law dean.

The Law School's commitment to aiding minority and disadvantaged students continues. But it is essential that other schools pledge themselves to the same task, for it is, sadly, the uniqueness of the Hastie Program that makes the force of the wave, in Professor Jones' metaphor, slow to the point that it leaves "few tracks in the campus sands."

Kimberle Crenshaw

