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SOME OBSERVATIONS ON TEACHING FROM THE "PIONEER" GENERATION

*James E. Jones, Jr.**

I decided on the precise topic of my talk after checking the roster of the participants. With a little research and some speculation, I concluded that my reason for being on this panel is to give some legitimacy to the objective of having a transgenerational discussion. Near as I can tell, I'm the only one of my generation and if I had been more promiscuous and less careful, the senior generation of you would be contemporaries of my children and the youngest could indeed be my grandchildren.

I can claim some legitimacy depending how broadly you define "pioneer." If it includes the first Black professor at a White law school, then I clearly qualify with regard to the University of Wisconsin. If, however, the definition were restricted to those who first integrated the major law schools there would be few pioneers indeed. William Robert Ming was an associate professor at the University of Chicago Law School in 1948-49. John Wilkins taught at the University of California at Berkeley in the late 1950s. Most of the other "integrations" occurred in the mid to late 1960s, and the earlier participants, such as Harry Groves, Charles Quick and Ken Callahan, had previous teaching experience at Black law schools.¹ I started as a visiting professor in September of 1969. "Visiting" means ranked, but without tenure, and I was granted tenure in the spring of 1970. In view of the fact that the average life expectancy of a White male in 1995 was 73.4 years, and the average life expectancy of a Black male was 65,² I am damned lucky to be here under any circumstances and fortunate, indeed, to be asked to participate.

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1. See ASSOCIATION OF AM. L. SCH., 1996-97 THE AALS DIRECTORY OF LAW TEACHERS 302, 489 (1996); SECTION ON MINORITY GROUPS, ASSOCIATION OF AM. L. SCH., 1976 DIRECTORY OF MINORITY LAW FACULTY MEMBERS 28, 34, 43 (1976); ASSOCIATION OF AM. L. SCH., 1970 DIRECTORY OF LAW TEACHERS 379 (1970).

2. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 95 (118th ed. 1998).

I. ON "TEACHING" IN THE FIRST FEW YEARS
OF MY ACADEMIC CAREER

When I arrived at the University of Wisconsin in Madison, no one even suggested that I should seek some coaching on how to teach. Fortunately for me, the first semester I was on leave because I had some preexisting commitments to make presentations at some major labor law functions. Luckily, those commitments turned into publications in law journals or other acceptable publication forums.³ I was also asked to compile teaching materials for a full three-credit course in this new and emerging field of law, equal employment opportunity. Also to my advantage was the fact that I was fresh from the wars in Washington, and that as the first Black law professor at the law school, I was a curiosity. I responded to forty-five invitations to speak in classes or at other academic functions. In short, I taught the equivalent of a three-credit course, even though I had no official teaching duties. The evaluations from those presentations were also included in my tenure file.

How do you teach? I tried to pattern myself after a number of my former professors who were still actively teaching, including the two who taught me the fundamentals of labor law. I quickly realized that I couldn't teach "Labor Law," even the little that I realized I really knew, in a three-credit course of forty-five hours. As far as I know, this Employment Discrimination course was the first full three-credit course of its kind taught in any law school in the spring of 1970.⁴ It was so new that the Association of American Law Schools (AALS) did not even recognize it as a course in its own right and for years listed it under "Civil Rights" in its directory,⁵ and before that, it was listed under "Constitutional Law." Because my first course was listed under "Civil Rights," I became known as a civil rights lawyer for thirty years—even though I really am not.

3. See James E. Jones, Jr., *The Bugaboo of Employment Quotas*, 1970 WIS. L. REV. 341; James E. Jones, Jr., *Federal Contract Compliance in Phase II—The Dawning of the Age of Enforcement*, 4 GA. L. REV. 756 (1970); James E. Jones, Jr., *The Role of Law in Improving Minority Group Employment Opportunities*, 16 LAB. L. DEV. 198 (1970); James E. Jones, Jr., *To Rouse "A Slumbering Giant"—Government Contracting and Equal Employment Initiatives for the 1970's*, 17 LAB. L. DEV. 151 (1971).

4. See generally James E. Jones, Jr., *The Genesis and Present Status of Affirmative Action in Employment: Economic, Legal, and Political Realities*, 70 IOWA L. REV. 901 (1985).

5. See ASSOCIATION OF AM. L. SCH., 1976 DIRECTORY OF LAW TEACHERS 1048 (1976). In 1995–96, the AALS called this body of law "Employment Discrimination." See ASSOCIATION OF AM. L. SCH., 1995–96 THE AALS DIRECTORY OF LAW TEACHERS 1093 (1995). In 1997–98, it was listed under "Employment Law." When I last taught it, it was part of "Protective Labor Legislation." See ASSOCIATION OF AM. L. SCH., 1997–98 THE AALS DIRECTORY OF LAW TEACHERS 1150 (1997).

I don't know which dead European said this, but I think it was Anatole France: "The whole art of teaching is only the art of awakening the natural curiosity of young minds."⁶ To that maxim I added my own notion that as a teacher of a substantive law course, I was obliged to make the maximum effort to cover the substantive fundamentals. I had no difficulty identifying those fundamentals in the equal employment opportunity field, since when I came to Wisconsin in 1969 I knew all the EEO law there was to know. I had participated in its development and was familiar with the building blocks upon which the law rested. I also taught administrative law, even though I had never taken it as a student. I first struggled to emulate one of my professors who had taught administrative law, but I discovered fairly early on that I could not be someone else, and that I didn't want to be someone else even if I could be. In short, I found my own voice. I also found my own strategy, which was to cover the fundamentals and to pitch my method to the middle of the class. My objective was to address the fundamentals of the substantive law, and my method was to explore the processes by which the law was made and by which the law grew, its doctrinal strands and paradigms, and analogies from other areas with which the students would be familiar.

I must confess that I did not principally use the lecture method, and I expected informed participation from my students. Although I hoped to stimulate the students' curiosity, I felt at the beginning, and do even more so today, that law teaching is not the entertainment business. Entertainment is an appeal to the baser instincts—violence, sex, song, and dance—for popularity and for ratings.⁷ The teaching of law should uplift our students to a higher plateau of understanding what the function of law in a civilized society is and must continue to be. We teachers should aim to expose students, by whatever means we can, to what they must know in our particular fields, not to what they want to hear. It is vital that we coach them and correct their obvious errors, not hand out compliments that may mask their deficiencies. It is a neat trick to do it and retain your popularity, especially in these days of student evaluations. Doing it right can carry substantial risks.⁸

6. Anatole France, *The Crime of Sylvestre Bonnard*, quoted in FAMILIAR QUOTATIONS 550:10 (16th ed., Little, Brown and Co. 1992).

7. See generally DAVID SKOVER & RONALD COLLINS, *THE DEATH OF DISCOURSE* (1996) (commenting on entertainment's effect on society); see also Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997); Arturo L. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, 1994 GONZ. L. REV. 1.

8. See, e.g., John D. Copeland & John W. Murry, Jr., *Getting Tossed From the Ivory Tower: The Legal Implications of Evaluating Faculty Performance*, 61 MO. L. REV. 233 (1996) (describing legal implications of faculty performance evaluations); Aloysius Siow, *Tenure*

II. WHAT SHOULD YOU TEACH?

I didn't have to worry much about what I should teach since I was recruited to Wisconsin to teach labor law in the Law School, with a quarter-time appointment in the Graduate School of Labor and Industrial Relations. However, I encountered another difficulty. Although my mentor, who taught only labor law, was expected to retire, he refused to give up his courses until he was absolutely forced to do so. Since I considered equal employment opportunity law to be labor law (as I still do), I was teaching a course nobody wanted.

But after all, I am not the model law teacher. I suggest to the younger generations that you teach courses in the mainstream of legal education if possible. At least one, and preferably two, classes in your normal teaching load should be right in the core of the legal curriculum. In your other course offerings you can pursue your special interest if it is outside the mainstream. In short, do not deliberately marginalize yourself.

In the early years—1970 to 1980—minority law professors faced certain difficulties. I suspect that ninety percent of the minority teachers were channeled into teaching courses with a civil rights label attached to them. In addition, we were directed into public service on behalf of our universities, communities, and others, in areas relating to the “problem”—a code word for the race problem. We ran the great risk that the community service we did would dry up all our spare time for research and writing. In addition, publishing in newly emerging areas of law, even those that were popular with the law journals, was not always the safest and quickest way to tenure. As you know, mainly students run law journals, and in the early days, so few students had any background in civil rights that getting a major article accepted and published without some student editor butchering it out of ignorance often involved walking a tightrope.

It is my distinct impression that over the last five years, interest in mainstream civil rights issues has diminished while interest in their spin-offs has quickened. I recognize, however, that many have benefited from writing in the areas of critical legal studies, feminist legal studies, critical race theory, and to some extent now, “queer theory” and sexual orientation issues. I am frankly disappointed that these various movements spend more time “legitimizing” themselves than they spend adding to a body of knowledge that will be useful to working lawyers. I lament the fact that in the last decade at least, if not longer, so much of our minority legal talent has devoted itself to tilting at windmills appropriate for faculty

lounges, but has contributed next to nothing to what I would call “combat scholarship”⁹—scholarship that might make a difference in how we address the critical legal *problems* we are facing in courts, administrative agencies, and legislative bodies.

So then, what is teaching law? It is research and scholarship, classroom teaching, and public service. Let me suggest an approach to scholarship and teaching that I found extremely useful:

1. Research in the areas in which you teach;
2. Make speeches (presentations in various community forums, radio, TV, wherever you can) on what you research; and
3. Work over those speeches and refine them and footnote them in such fashion that after multiple revisions they become suitable for publications.

This simple synergism not only will help you get tenure faster, but if, as in my school, your pay increases depend on “what have you done for us lately,” and “who else is trying to steal you away,” this efficient use of your time can be most profitable.

I have one other suggestion from across the generational line. More of you should get into the business of producing casebooks. At my school, cases and materials on almost all subjects are not considered

9. See generally ALFRED W. BLUMROSEN, *MODERN LAW: THE LAW TRANSMISSION SYSTEM AND EQUAL EMPLOYMENT OPPORTUNITY* (1993) (examining real-world implementation of equal employment opportunity laws); HERBERT HILL & JAMES E. JONES, JR., *RACE IN AMERICA—THE STRUGGLE FOR EQUALITY* (1993) (offering perspectives on race and inequality, past and present); Robert Belton, *Burdens of Pleading and Proof in Discrimination Cases: Toward a Theory of Procedural Justice*, 34 VAND. L. REV. 1205 (1981) (explicating a framework for allocating burdens of pleading and proof in discrimination cases); Robert Belton, *Causation and Burden-Shifting Doctrines in Employment Discrimination Law: Some Thoughts on Hopkins and Wards Cove*, 64 TUL. L. REV. 1359 (1990) (discussing causation and burden-shifting doctrines in employment discrimination cases); Alfred W. Blumrosen, *Affirmative Action in Employment After Weber*, 34 RUTGERS L. REV. 1 (1981) (examining the implications of *Weber* for affirmative action in employment); Alfred W. Blumrosen, *Strangers in Paradise: Griggs v. Duke Power Co. and the Concept of Employment Discrimination*, 71 MICH. L. REV. 59 (1972) (discussing the effect of *Griggs* on discriminatory employment testing); Alfred W. Blumrosen, *Strangers No More: All Workers Are Entitled to “Just Cause” Protection Under Title VII*, 2 INDUS. REL. L.J. 519 (1978) (arguing that a ‘just cause’ standard applies to personnel decisions); Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 MICH. L. REV. 1077 (1991) (critiquing Black electoral success strategies); Eric Schnapper, *Affirmative Action and the Legislative History of the Fourteenth Amendment*, 71 VA. L. REV. 753 (1985) (arguing that “the legislative history of the fourteenth amendment is . . . dispositive of the legal dispute over the constitutional standards applicable to race-conscious affirmative action”).

scholarship, but are considered teaching. Why leave the casebook teaching field to others? You can affect the thinking of countless students more through your casebooks than through your law review articles.¹⁰ Many more students are likely to read the materials in the books than they are to read articles, unless you incorporate them into your course, a practice I don't recommend. It is my experience that most professors who include articles in their courses end up slanting their courses toward their own view of what the law should be, away from the law as it actually is. It is my duty to teach students labor law, not "Jones' theories of labor law." You should teach the law, not the professor. It is not possible to practice law effectively simply knowing one professor's theories about it. When teaching a course, first lay out the law. Then, if there is time, add grace notes such as articles. Don't sacrifice breadth of coverage. If you want to teach articles, teach a seminar. If everything we write deals with minority issues, we will be read mostly by ourselves or by our critics, and rarely by our students.

I will repeat this because I think it is important: Break out of the mold and teach in the core curriculum, in areas such as civil procedure, contracts, property, tax, trusts and estates, criminal law, administrative law, land use, international transactions, and in crossover areas such as constitutional law, legal process, federal jurisdiction, remedies, etc. You can write casebooks in these areas.¹¹ The most effective way to write

10. See, e.g., James E. Jones, Jr., *Why Teaching—The Rewards of the Academic Life*, 10 ST. LOUIS U. PUB. L. REV. 231, 235–37 (1991) (describing the influence of author's casebook on employment discrimination).

11. Many minority law professors have influenced generations of students through casebooks. See DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* (3d ed. 1993); ROY BROOKS, *CIVIL RIGHTS LITIGATION: CASES AND PERSPECTIVES* (1995); CHARLES DAYE, *HOUSING AND COMMUNITY DEVELOPMENT* (2d ed. 1989); MICHAEL OLIVAS, *THE LAW AND HIGHER EDUCATION: CASES AND MATERIALS ON COLLEGES IN COURT* (2d ed. 1997); SAMUEL L. THOMPSON, *BUSINESS PLANNING FOR MERGERS AND ACQUISITIONS* (1997).

Harry T. Edwards, Chief Judge, U.S. Court of Appeals, D.C., co-authored four course books as a law professor. See HARRY T. EDWARDS & VIRGINIA DAVIS NORDIN, *HIGHER EDUCATION AND THE LAW* (1979); HARRY T. EDWARDS ET AL., *LABOR RELATIONS LAW IN THE PUBLIC SECTOR: CASES AND MATERIALS* (4th ed. 1991); HARRY T. EDWARDS & JAMES J. WHITE, *PROBLEMS, READINGS, AND MATERIALS ON THE LAWYER AS A NEGOTIATOR* (1977); DONALD P. ROTHSCHILD ET AL., *COLLECTIVE BARGAINING AND LABOR ARBITRATION: MATERIALS ON COLLECTIVE BARGAINING, LABOR ARBITRATION, AND DISCRIMINATION IN EMPLOYMENT* (2d ed. 1979).

I co-authored five editions of *Discrimination in Employment* between 1970 and 1987. See JAMES E. JONES ET AL., *CASES AND MATERIALS ON DISCRIMINATION IN EMPLOYMENT* (5th ed. 1987). At one point, this book was in use at 55 colleges and universities. Similarly, Professor William B. Gould IV's course book, *A Primer on American Labor Law*, has been through three editions. See WILLIAM B. GOULD, *A PRIMER ON AMERICAN LABOR LAW* (3d ed. 1993).

them seems to be in cooperation with others. You can select materials for casebooks in all of these substantive areas that have fact patterns involving minority and/or gender issues. Include some of your "special thing" in these stodgy old core course books.

Since most of my writings have been in the areas of equal employment and affirmative action, you might ask, "Why didn't you practice what you preach?" To some extent I did, since equal employment law is labor law, or at least it was in the past. As Chairman of the Labor Law Group Executive Committee for four years (1978–1982), I was the Editor-in-Chief of six books and supplements on labor law, including one on employment discrimination.¹² My earlier writings were necessary to fill the void in labor law and employment discrimination scholarship. Part of my motivation for writing them was the fact that I had some summer support for writing in that substantive area.¹³ (I don't take pay for what I don't deliver.)

III. THIRTY YEARS IS LONG ENOUGH FOR US TO ESTABLISH OUR LEGITIMACY IN ANY AND ALL FIELDS OF LAW

In phase II of minority participation in mainstream legal academics, which I declare we are now in, we should invade the core curriculum. To some extent we already have. The 1993 AALS meeting demonstrated this both by its choice of subject matter (the affirmative action and equal employment opportunity sections), as well as by minority participation across the board in all substantive areas.¹⁴

We have also demonstrated our legitimacy by our numbers. In 1975, there were 245 people on the Association of American Law School's list

12. See ROBERT N. COVINGTON & ALVIN L. GOLDMAN, *LEGISLATION PROTECTING THE INDIVIDUAL EMPLOYEE* (1982); JAMES E. JONES, JR., *REFERENCE SUPPLEMENT, DISCRIMINATION IN EMPLOYMENT* (1979); JAMES E. JONES, JR. & WILLIAM P. MURPHY, *DISCRIMINATION IN EMPLOYMENT: 1982 SUPPLEMENT* (1982); WILLIAM P. MURPHY, JULIUS G. GETMAN & JAMES E. JONES, JR., *DISCRIMINATION IN EMPLOYMENT* (4th ed. 1979); CORNELIUS J. PECK, *CASES AND MATERIALS ON NEGOTIATION: CIVIL AND CRIMINAL LITIGATION, BUSINESS AND COMMERCIAL TRANSACTIONS, LABOR RELATIONS, MISCELLANEOUS DISPUTES* (2d ed. 1980); EDWIN R. TEPLÉ & ROBERT B. MOBERLY, *ARBITRATION AND CONFLICT RESOLUTION* (1979).

13. Most law teachers are on academic-year salaries. If you do not teach summer school, you need income from some other source such as "summer support." I was funded for two months each summer as Director of the Center for the Study of Equal Employment and Affirmative Action from 1974–1993. Since that support funded most of my research, my publications were largely in these substantive areas.

14. See generally ASSOCIATION OF AM. L. SCH., *PROCEEDINGS OF THE 1993 ANNUAL MEETING* (1993).

of minority legal educators.¹⁵ The minority section was still provisional, I believe, and of the 245 only 190 were full-time.¹⁶ Of the 190 full time educators, only 143 were full-time teachers.¹⁷

In 1996–97, the Association of American Law Schools' directory included a listing of minority faculty. I counted approximately 1013 persons, including 338 professors, 280 associate professors, 169 assistant professors, 29 visiting professors, and 53 lecturer/instructors, in addition to deans and other types of faculty members.¹⁸

Let me suggest the need for continued expansion of our horizons. The Teachers of Color Conferences should devote some time to encouraging their stars to participate in all sections of the AALS that address substantive issues. The conferences should also be laboratories for encouraging leadership in legal education, for encouraging membership in the AALS Board of Governors and the major committees, and for encouraging candidacy for the presidency. We are fortunate to be meeting at a historic time in a historic location. Rennard Strickland was the first Native American to be president of the AALS. In fact, according to Dean Strickland, he is also the first, second, and third Native American to be dean of an American law school.¹⁹ Over the last thirty years of our increased presence, there have been minority deans of law schools in addition to Howard, Southern, Texas Southern, and North Carolina Central—the traditional minority law schools.²⁰ Over the last six years, there have been, on average, sixteen law schools with minority deans. We have established and nurtured academic programs to produce qualified minority teaching candidates, and Beverly McQueery Smith is the incoming President of the National Bar Association.²¹ We should encourage minorities to participate in the American Bar Association in their

15. See SECTION ON MINORITY GROUPS, ASSOCIATION OF AM. L. SCH., 1975 AALS DIRECTORY OF MINORITY LAW FACULTY MEMBERS 7 (1975). In 1975, Derrick Bell was the chairperson of the Section on Minority Groups. See *id.* at 1.

16. See *id.* at 7.

17. See *id.* at 1.

18. See AALS DIRECTORY OF LAW TEACHERS 1996–97, *supra* note 1.

19. Telephone Interview with Rennard Strickland, Dean, University of Oregon School of Law (Oct. 20, 1998). See also *infra* text accompanying note 24.

20. See generally Richard A. White, *Women and Minority Faculty: Six Year Comparison*, ASSOCIATION OF AMERICAN LAW SCHOOLS STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS 1997–98 (visited Nov. 18, 1999) <<http://www.aals.org/statistics/rpt9798w.html>>.

21. The National Bar Association was established in the 1920s by African American attorneys because the American Bar Association would not admit them to membership. See J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844–1944 556 (1993).

substantive sections. Who knows? Before he retires, Rennard might be President of the American Bar Association.

In closing, my message to all generations, and in particular to those in the junior generations such as Tony Farley²² and Cynthia Lee,²³ is that they must adopt the position that legal education is their house. They are legitimate occupants, and they are legitimate candidates to be head of household. I suggest we get away from the preoccupation with defending our legitimacy and start to groom ourselves for positions of leadership. I think there is much to learn from Marilyn Yarbrough's generation, which is also that of Tonya Banks, Daniel Bernstine, Linda Greene, and of course, Rennard Strickland.²⁴ Let us get on to preparing for phase III, in which 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.

22. See, e.g., Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457 (1997).

23. See, e.g., Cynthia Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367 (1996).

24. Marilyn Yarbrough was the first Black woman dean at the University of Tennessee Law School. She is currently a professor of law at the University of North Carolina at Chapel Hill. University of North Carolina Law School Web Site (visited Nov. 18, 1999) <<http://www.law.unc.edu/fac/yarbroug.html>>. Tonya Banks has a named chair at the University of Maryland. See 1997-98 THE AALS DIRECTORY OF LAW TEACHERS, *supra* note 5, at 240. Daniel Bernstine was Dean of the University of Wisconsin Law School from 1990-97, before he became President of Portland State University. See 1996-97 AALS DIRECTORY OF LAW TEACHERS, *supra* note 1, at 253. Linda Greene was Assistant Vice Chancellor at the University of Wisconsin Law School, and is currently Evjue-Bascom Professor of Law and Associate Vice Chancellor for Academic Affairs. University of Wisconsin Law School Web Site (visited Nov. 18, 1999) <<http://www.law.wisc.edu/facstaff/biog.asp?First=Linda&Last=Greene>>. Rennard Strickland was the first Native American Dean of three different law schools. He was Dean of the Oklahoma City University School of Law from 1995-97, Dean of the Southern Illinois University School of Law from 1985-88, and he is currently Dean of the University of Oregon School of Law. University of Oregon School of Law Web Site (visited Nov. 18, 1999) <<http://www.law.uoregon.edu/faculty/strickland/default.shtml>>.