

Two Emory Law alumni pave the way for private schools in Georgia, including Emory University, to desegregate

by Wendy R. Cromwell

# Opening Doors

**T**here was nothing about either man that indicated a rebellious nature.

Henry L. Bowden 32C 34L 59H and Ben F. Johnson Jr. 36C 40L 05H were products of the Depression, World Wars and the segregated South. They shared a love of the law and of Emory University.

Yet, as co-counselors in *Emory v. Nash*, Bowden and Johnson would challenge segregation and ensure all students had an equal opportunity to study at private schools in Georgia, and at Emory in particular.



**TWO YEARS BEFORE THE CIVIL RIGHTS ACT OF 1964** outlawed Jim Crow laws, Emory peacefully paved the way for the integration of private schools in Georgia with a quiet tax law case.

"Emory was ingrained in Dad," says Henry L. Bowden Jr. 74L of his father. "He loved that school and felt like it was under attack. There was a financial stake with the court's decision. He was protecting his school."

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"My father was convinced the South would not flourish with segregation and that Emory would never achieve a great university or law school if it didn't fight against segregated society," says Ben F. Johnson III 64C, chair of Emory's Board of Trustees.

#### **Working together**

Although the Board of Trustees wanted to integrate, its hands were tied until the tax exemption issue could be resolved.

When Bowden, the board chair and University general counsel, began preparing *Emory v. Nash*, he turned to one of the state's tax experts to help him—the new dean of Emory Law.

"It was a smart thing to bring Ben Johnson into the case," says Bowden Jr., an Emory trustee. "Ben Johnson believed in integration. He was the state and local tax expert. It's what he taught. This was a state tax issue."

"Mr. Bowden wanted him because Dad was someone known around the state," Johnson III says. "He worked for Emory and had the tax expertise needed."

The two attorneys took the emotion out of the case by framing it as a tax code question focusing on statutory construction.

"Bear in mind, the co-counselors weren't taking a favorable ruling for granted," says Jeanne Johnson Bowden 77L, Bowden's daughter-in-law. "They were mindful of their duty to the University and didn't want the case adversely to affect Emory or other private schools. Emory did invite the other private schools to join the lawsuit, but they declined."

After losing in DeKalb County Superior Court, Emory

appealed to the Georgia Supreme Court. The University presented legislative history that argued harmonized the two statutory provisos in such a way that the statute was upheld, but, as applied to Emory, the University would be allowed to integrate without losing its tax exemptions.

"Dad and Ben Johnson presented the easiest way for the court to rule in Emory's favor," Bowden Jr. says. "They were determined to save the tax exemption."

Alternatively, Emory wanted the Supreme Court to reverse the trial court's ruling that proviso two, if properly construed as being unconstitutional, was "unseverable" and "invalidated" the private college tax exemptions. Emory argued that proviso two if construed to be unconstitutional was severable from the statute so that the tax exemptions granted to the private colleges survived.

The Supreme Court decided the case on the basis of statutory construction, striking both provisos as being in "irreconcilable conflict," and ruled the statutory exemptions survived. The court held that, "Emory, as a private school, can accept colored students without jeopardizing its tax exemptions." (*Emory University v. Nash*, 218 GA. 317, 322-323)

In September 1962, there were no protests on campus after the Supreme Court decided Emory and other private schools could integrate. On Oct. 1, 1962, the court denied DeKalb County's request to reconsider its decision.

"They got the job done when it needed to be done," Bowden Jr. says of the legal team. "It was a progressive ruling."



**Henry L. Bowden 32C 34L 59H was determined to protect his school, Emory University, while paving the way for integration.**

The first full-time African American students enrolled in Nell Hodgson Woodruff School of Nursing.

"One of my father's favorite sayings was, 'I'm here to protect the integrity of your aspirations,'" Johnson III says.

"He knew he needed to be testing limits to preserve those aspirations.

"Dad and Mr. Bowden were friends," Johnson III says. "I know my father probably told him at times he was 'here to protect the integrity of your aspirations.'"

"They obviously made a great team and carried the day," Bowden Jr. says.

#### **Henry L. Bowden 32C 34L 59H**

Bowden grew up during the Depression in the segregated South. A principled man, he wanted the best for Emory University and for Emory to be the best. Integration was a hurdle.

A pragmatist, Bowden was determined Emory would not lose its tax exemption status.

"He was steeped in Emory tradition," Bowden Jr. says. "After he graduated from Emory Law, he worked for a copyright attorney and traveled around Georgia, Alabama and Florida. He would send back reports on Emory graduates in the cities he visited—'man-on-the-road' accounts."

Bowden grew up near the University, and his father attended Emory.

"My father was not a Phi Beta Kappa student," says Bowden Jr. "But he was an all-round student. He was an athlete, belonged to a fraternity, was editor of *The Wheel* and worked in the gym."

Bowden would serve as chair of the Board of Trustees from 1958 to 1979. "He went from being the youngest board member to being the oldest," says his son.

When Emory's general counsel unexpectedly died, Bowden became general counsel, in addition to serving as city attorney for Atlanta from 1960 to 1978 and having a successful law firm, Lokey and Bowden, from 1937 to 1995.

**"HE WAS A PRAGMATIST, A HUMORIST AND A SMART GUY. HE WAS NOT AN IDEOLOGUE. HE BELIEVED IN GOD, HIS CHURCH AND EMORY." —Henry L. Bowden Jr. 74L about his father, Henry L. Bowden 32C 34L 59H**

"Daddy's life was intertwined with Emory," Bowden Jr. says. "He was an unusual kind of guy. He was a pragmatist, a humorist and a smart guy. He was not an ideologue. He believed in God, his church and Emory."

Bowden also was friends with Atlanta's captains of industry and recruited them to serve on Emory's Board of Trustees. Bowden wanted trustees who would work and be good stewards of Emory's growing endowment.

"Remember, Atlanta was the city 'too busy to hate,'" Bowden Jr. says. "At this time, Robert Woodruff, Ivan Allen, Ben Johnson Jr., my father and others—all

#### **Emory v. Nash**

After the 1954 *Brown v. Board of Education* mandated the integration of public schools and universities across the South, private schools in Georgia were believed to be required by law to remain segregated or lose their tax exemption status.

The state constitution and tax code granted tax exemptions subject to the requirements that private schools are open to the general public and "that all endowments to institutions established for white people shall be limited to white people, and all endowments to institutions established for colored people shall be limited to colored people."

**Nov. 3, 1961** The Emory University Board of Trustees publicly declares the University will accept all qualified persons without regard to race, color or creed when it could do so without jeopardizing its tax exemption privileges that are essential to its survival.

**March 21, 1962** On behalf of a qualified African American applicant, the University sues Fulton County and state tax officials asking that the second tax proviso not be applied to Emory, or if found unconstitutional be severed from the exemption statute. The case is dismissed because of improper venue.

**May 1962** Emory files suit in DeKalb County on the same grounds. Emory argues though it has never accepted African Americans, the University's charter does not limit it as a school for "white people." Emory argues the provisos can be harmonized under the statute's legislative history to allow the University's integration. If the second proviso does apply to Emory, the University argues it is unconstitutional under the 14th Amendment's Equal Protection Clause and according to Georgia law precedent should be severed from the statute in such a way to preserve the tax exemptions for private schools.

**June 13, 1962** DeKalb County Superior Court Judge Frank Guess rules Emory will lose its tax exemption if it integrates. Emory immediately appeals.

**July 10, 1962** Oral arguments take place before the Georgia Supreme Court.

**Sept. 14, 1962** Georgia Supreme Court issues a unanimous ruling for Emory. The court holds the University can accept African Americans without jeopardizing its tax exemptions and that the trial court erred in its ruling and in refusing to grant the injunction Emory sought.

**Oct. 1, 1962** Georgia Supreme Court denies DeKalb County's motion for a rehearing.

**January 1963** Two African American students, Verdelle Bellamy and Allie Frances Saxon, enroll in Emory's Nell Hodgson Woodruff School of Nursing and become the first regular full-time African American students.

**Fall 1965** Marvin Arrington and Clarence Cooper transfer from Howard University School of Law and integrate Emory Law's day program.

[Desegregation Documentation Collection] Manuscript, Archives and Rare Book Library, Emory University.

## Leading the Way in Finding Qualified Minority Students

ONCE EMORY UNIVERSITY could integrate, Dean Ben F. Johnson Jr. 36C 40L 05H focused on finding capable minority students for the law school.

"He knew the deck was stacked against black students getting into white law schools because of the low LSAT scores," says Ben F. Johnson III 65C of his father. "He was determined to find out if they could do the work. Were they able to do the legal work sufficiently to earn an Emory Law diploma?"

"Their actual performance on the test was not a good predictor," says Michael DeVito, a former Emory Law professor who served on the LSAT board for 20 years.

Dean Johnson and DeVito developed a format—Pre-Start—that offered students with low LSATs from historically black colleges the opportunity to prove themselves during the summer. The program was funded by the Field Foundation.

"The first one in 1966 had one course, torts, which I taught," DeVito says. "I had other faculty members grade the exams as well to make sure the students could meet the standards of Emory University."

Pre-Start differed from Harvard University's program in that students

took three law exams and had to average a 70 in the class which would be applied toward their degree.

"If we passed, we were admitted into the fall class and our expenses were taken care of through a stipend for the first year," says Atlanta attorney Antonio Thomas 69L.

"I had no idea what a law school exam would be like," says classmate Perry Little 69L, a retired senior judge for the Florida Circuit Court. "I had never seen or read one. It was definitely helpful."

Of the 12 students in the 1966 program, nine were admitted. Eight graduated.

"The program was absolutely a good predictor of those who could do the work," DeVito says. "It had a remarkable graduation rate. We only lost one student for academic reasons."

In 1967, Johnson and DeVito expanded Pre-Start to three courses with three professors, believing that "the combined judgment of three people would be a better predictor than the judgment of one," DeVito says.

"We didn't have a special program for African Americans once they were admitted," DeVito says. "We didn't pay special attention to them. They had

to meet the same standards as other students."

Emory Law suspended the program in 1968 when it participated in the first Council for Legal Education Opportunity (CLEO) program, based in part on Pre-Start. The program resumed in 1969. The Field Foundation ended its funding in 1971.



"The legacy of Pre-Start is that it allowed us to consider a profession that we might not have thought about," Little says. "You look back now and say wow. We didn't have time to think of ourselves as being pioneers. We just took it day by day."

"The program's legacy is CLEO and its graduates," Thomas says. "There may have been a CLEO later on. Maybe others would have been as creative. But, Emory was the first and you can't take that away. I don't think many people realize the impact it has had."

progressive—were working to benefit Atlanta."

A trustee at Clark College, now Clark-Atlanta University, and Wesleyan College, Bowden would later lead the way in integrating the Atlanta City Attorney's office.

"Dad was a right-thinking guy," Bowden Jr. says. "Among my dad's strengths were his good judgment and a strong sense of ethics. As a result, while he was not always right, he generally came out on the right side of things."

For his leadership in integrating the school, the American Association of University Professors awarded him its prestigious national award for academic freedom, the Alexander Meikeljohn Award, in 1963.

### Dean Ben F. Johnson Jr. 36C 40L 05H

"There was not a lot to distinguish him," Johnson III says. "He was a product of the South and of segregated society. Father grew up in Atlanta and never really had any exposure outside Atlanta until World War II."

"Before World War II, he worked at Sutherland, Tuttle & Brennan under Elbert Tuttle, who would become the chief judge of the old 5th Circuit and one of the great heroes of the Civil Rights Movement," Johnson III says. "My father

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was affected tremendously by Tuttle and World War II."

Dean Johnson sought to raise Emory Law's prominence and defend the rule of law. His biggest obstacle was segregation. His tools were an intricate knowledge of Georgia tax law and a willingness to ask "why not?"

According to his son, Dean Johnson "wanted the law to do its job."



Dean Ben F. Johnson Jr. 36C 40L 05H (right) was determined to raise Emory Law's prominence. His hurdle was segregation.

"I remember he used to invite leading lawyers to speak to students for Law Day," Johnson III says. "One year, he invited Earl Warren, then a U.S. Supreme Court justice. This was after *Brown v. Board of Education*. Warren drove in from the airport past billboards demanding his impeachment.

"He wanted his students to see what doing right meant," Johnson III says, "He wanted to develop a conscience in his students about the law. How can you be a lawyer and ignore the law of the land?"

Dean Johnson realized the law was not going to be respected if there were no African American attorneys.

"Blacks felt disenfranchised from the legal system because there weren't any black attorneys or judges," Johnson III says. "They needed role models. For the law to be enforced, we needed an effective legal system, which meant we needed black lawyers.

"To integrate the legal profession, you had to integrate legal education," Johnson III says. "My father decided Emory Law was the law school to stand up for the law. It would be the champion of the rule of law."

Dean Johnson did not stop at integrating Emory University. After opening the doors to all, he and Professor Michael DeVito created Pre-Start to find qualified African American students when the LSAT failed to do so at the time.

Forty years later, Emory Law would receive the Council for Legal Education Opportunity's Pioneer in Diversity Award for helping create CLEO and its summer institutes.

"He wasn't trying to get credit," Johnson III says. "He

was just trying to make his point and do what was right. Clearly, the integration of Emory Law is one of his greatest achievements. He never sought any credit for anything he ever did."

### Integrating Emory Law

The first African American students in Emory Law's day program transferred from Howard University in 1965, three years after *Emory v. Nash*. At the time, Emory also had a night program, which had one African American student.

The Hon. Marvin Arrington 67L and the Hon. Clarence Cooper 67L had an auspicious beginning to their Emory Law careers.

"On the first day of class, our car—Marvin's old Renault—broke down," says Cooper, a federal judge for the Northern District of Georgia. "We missed our first class. When we arrived, our classmates were outside the building waiting on us. I know they were wondering what had happened to us."

Arrington, now a Fulton County Superior Court judge, was not happy at Howard. He returned home for the summer to work at the Post Office. That summer, he visited Emory Law, then in Carlos Hall.

"I went into the building with its façade of Georgia marble and elegant central staircase," says Arrington in his book, *Making My Mark*. "... An older gentleman stopped and asked if he could help me. I told him I was a student at Howard Law School. He introduced himself as Dean Johnson and invited me to his office.

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"We had a constructive conversation, in which he got out of me my grade average at Howard was 76," Arrington writes. "Within a few minutes, he asked me if I would consider coming to Emory."

"Marvin wanted to transfer and kept me abreast of what was happening," Cooper says. "I wished him well, but I had a scholarship and was going to be on the law review at Howard. Marvin kept telling me he didn't want to do it by himself. Mother told me to go out there and talk to the dean."

Cooper met with Dean Johnson, who persuaded him to transfer by alleviating his concerns.

"I thought it was too late to transfer," Cooper says. "He said he had heard about my grades and not to worry. He said he would help with tuition. I felt good about him as a person and made the decision during the interview to do it."

"I don't regret transferring to Emory Law," Cooper says. "I was asked to do it and felt I had an obligation to fulfill. My number was called."

He and Arrington were well received by other students, Cooper says. "Everyone was friendly and cordial. It was almost perfect. I think they welcomed us."

In his book, Arrington concurs saying almost everyone worked to help them succeed though there were incidents during their two years.

"Dean Johnson did a great thing," Cooper says. "A person could really talk to him. He was open and receptive. He would lend a helping hand, and he set the tone. He

treated everyone the same."

"We didn't feel like pioneers at the time," Cooper says. "We did pave the way for others, but at the time you do it, you don't feel that way."

"I had never attended an integrated school before," Cooper says. "My high school was segregated. It was a great experience."

Though the dean and other professors would play an important role in his legal training, Cooper did not know of Johnson's and Bowden's contributions to integrating Emory.

"I was a classmate of Ellen Bowden [Bowden's daughter 62C 67L], but I never knew about her father or Dean Johnson leading the way in integrating Emory," Cooper says. "We never discussed that."

"I like knowing they were true trailblazers."

## CLEO Honors Gozansky and Emory Law

**FOR ITS 40TH ANNIVERSARY**, the Council on Legal Education Opportunity honored Emory Law and Professor Nathaniel Gozansky for their efforts in providing law school opportunities to African American students.

"Lawyers are social engineers," Gozansky says. "To change society, we needed to change the mix of advocates. That's what CLEO did."

CLEO's focus was to open legal education to all. Emory Law, through its Pre-Start Program, had lead the way in identifying qualified African American students who did not fare well on the LSAT.

"The LSAT is the best indicator we have, but it's not perfect," says Michael DeVito, founding director of Pre-Start and the first associate director of academics for CLEO. "There are good students who don't predict well on the exam."

Modeled in part on Emory's Pre-Start, CLEO held four summer institutes in 1968. If students did well, they would be admitted by participating law schools. The first institutes were at Emory, Harvard University, the University of California at Los Angeles and the University of Denver.

"Pre-Start and CLEO gave the most effective program to diversify legal education and thereby the legal profession," DeVito says. "It was a labor intensive way, but it was the only way until the LSAT could better identify more capable minority students."

"CLEO was excellent preparation

for my law experience," says Georgia Congressman Sanford Bishop Jr. 71L. A Morehouse College graduate, Bishop attended the Emory institute and chose Emory because he wanted to practice law in Georgia.

"I remember taking torts in the

been dead," Gozansky says. "We saved that program. Not for the fanfare, but just because it needed to be done. We were in the right place at the right time."

Today, CLEO is far different from the original summer institutes. Its main focus is providing scholarships to minority students, DeVito says.

"The program has matured nicely," Gozansky says. "They have adjusted the program to continue to meet the needs of today's students. Now, CLEO gives minority students the support they need to maximize their success."

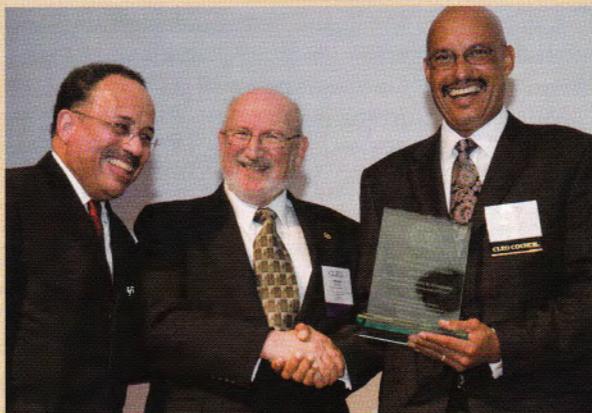
CLEO has broadened its approach without any increase in federal funding, drawing the majority of its funding from private donors,

Gozansky says.

"One could argue that CLEO has it easy," Gozansky says. "But, it's a simple task to get the doors open. It takes more creativity to keep them open."

"CLEO has a tremendous legacy," Bishop says. "Look at tremendous progress in cultural values and equal opportunity that have been made, but we still have work to do. CLEO was an affirmative action program that worked."

**Learn more about Gozansky's efforts to save CLEO, page 7.**



**Professor Nat Gozansky (center) accepts his CLEO award in December at the 40th anniversary reception.**

CLEO summer program," he says. "I had some reservations initially about law school itself, but discovered that I was as well or better prepared as my classmates."

Gozansky, who replaced DeVito as associate director for academics after the first year, was honored for his work to save CLEO after President Nixon moved to abolish the Office of Economic Opportunity, which funded CLEO.

"If we hadn't been able to transfer the funding to the Department of Education, the program would have