the commentator

The Student Newspaper of the New York University School of Law

Volume XLIII, Number 7 **January 20, 2010**

NAACP LDF Litigation Director Debo Adegbile Discusses Post-Racial America and Voting Rights at PILC Lecture in Greenberg

By Nikki Reisch '12
Contributing Writer

Debo Adegbile '94 said he experienced only a momentary wave of "post-traumatic stress" walking through NYU's law library on his way to give the first Public Leaders' Lecture of 2010. Speaking to a full house in Greenberg Lounge on January 11, Adegbile described the path that led him from his days as a student at NYU to his current position as Director of Litigation at the NAACP Legal Defense and Education Fund (LDF). But most of his talk, "Post-Racial America, Aspiration or Actuality: Minority Voting Rights Today," was devoted to the complex issues of democracy, race and power that make up his daily docket at LDF.

Beyond providing him with a chance to fly on the Concorde to consult with French cosmetic companies in a lipstick formula patent infringement case, seven years in private practice afforded Adegbile the privilege of working on pro bono cases with Judge A. Leon Higginbotham, former Chief Justice of the U.S. Court of Appeals for the Third Circuit. Adegbile said it was through his collaboration with Judge Higginbotham and LDF attorneys, as the "baby" on the litigation team in a landmark gerrymandering case, that he became a civil rights lawyer. In 2001, LDF approached Adegbile to join as a staff attorney; he has been there since.

Adegbile's remarks focused on LDF's 2006 effort to secure Congressional reauthorization of Section 5 of the 1965 Voting Rights Act (VRA) — a provision in the legislation which requires selected jurisdictions in all or part of 16 states to obtain federal preclearance before taking any actions that modify voting practices. The national campaign, which Adegbile coordinated, took him from districts across the country to hearings on Capitol Hill, and eventually, to the Supreme Court.

Opponents of reauthorization claimed that because people are no longer being murdered for exercising their right to vote, legislative protections against discriminatory voting practices are no longer necessary. But Adegbile was unequivocal in his view that racial bias remains a significant factor in the American political system, making Section 5 a core provision of civil rights enforcement in voting and an important check on persistent discrimination.

Adegbile does not deny that many areas have witnessed significant progress, from "extreme exclusion to vital inclusion" of minority voters, but maintains that continuing intimidation and systematic dilution of minorities' political voices have detrimental effects on the polity. Documentary evidence of ongoing discrimination was used in LDF's favor during their legislative campaign. Congress approved reauthorization by an overwhelming majority but the battle wasn't over. Days after the bill was signed into law, a suit was filed in federal court challenging the statute's constitutionality. The case, *Northwest Austin Municipal Utility District Number One v. Holder*, went up to the Supreme Court, where Adegbile argued before the nine justices.

The Texas appellants pointed to Obama's election as evidence that racial bias in the political system has been eradicated, making Section 5 of the VRA obsolete. Justice Scalia's questioning followed in this vein. In a series of rhetorical queries, he asked Adegbile whether Virginia wasn't the first state in the union to elect a black governor and whether it doesn't currently have a black chief justice of its supreme court, seemingly implying that such markers of progress obviate the need for legislated voting-rights protections. Adegbile replied that the election of one of only three African-American governors since Reconstruction, and even the election of a person of color to the presidency, does not mean that people across this country no longer face problems when they go to the polls. "There have been African-Americans to rise to high office throughout our history," Adegbile acknowledged, "but that occasion of a single person sitting in a seat doesn't change the experience on the ground for everyday citizens."

The case invoked fierce debate between racial justice activists insistent that Section 5 of the VRA remains an effective way to combat continued inequality in voting, and advocates of states' rights, who claim that the act's interference with voting practices in covered jurisdictions is an unconstitutional extension of federal power. Adegbile feared that this latter argument would resonate strongly with certain justices on the Court, who, in a series of decisions since the mid-1990s, have cut back on Congressional power to act under the Civil War Amendments out of concern that legislators were enlarging constitutionally protected rights, amending the Constitution "through the back door." Fortunately, Section 5 did not succumb to this Court-Congress power struggle. The Court skirted the issue of the act's constitutionality, ruling only on the Texas district's eligibility to "bail out" of Section 5 coverage. While Adegbile thinks it would overstate the case to say the Court upheld the constitutionality of Section 5, the statute "ran the gauntlet and lived to tell."

Although the tone of his lecture was not light, Adegbile captivated his audience with a frank and informative discussion of the challenges that remain in "post-Obama election" but not "post-racial" America. He concluded with an observation that could well have been part of his reply to Justice Scalia or others who suggest that there has been sufficient progress on race relations: "Equality is not something that can be measured by getting to a place and stopping. Each generation has to play a part in it. If we can make things more equal and vindicate the most important principle in our democracy, we should continue to do so."

Exam Snafu Resolution Unknown

By Joseph Jerome '11
Managing Editor

First year exams are never a pleasant experience, but the drama surrounding the Section 2 Contracts exam created a particularly unwelcome beginning to winter break for students. In an email to the section on Friday, Dec. 18, outgoing Vice Dean Murphy informed Section 2 that Professor Jide Nzelibe, visiting from Northwestern, had reused practice questions distributed at Northwestern on the actual examination. Citing a "clear violation" of school policy, Vice Dean Murphy wrote that Prof. Nzelibe's mistakes "raises a serious problem about the integrity of the exam and the application of our mandatory curve."

In a hastily convened meeting with Section 2 students on Dec. 18, the administration and discussed the situation and allowed students to express their feelings; Prof. Nzelibe attended the meeting to personally explain what had happened.

"At the time I administered the exam, I did not think the exam was otherwise available at Northwestern or anywhere else," Nzelibe said. "Obviously, this was a regrettable error on my part."

His error appears to have been confidentially if fairly resolved. Options initially discussed included grading the exam as was, grading the exam as pass/fail, and forcing the entire section to sit for a second contracts exam upon return to the law school for the spring semester. Though declining to announce the administration's ultimate resolution, Vice Dean Murphy insisted that "the situation was resolved in a way

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Students were surprised to see Vanderbilt Hall decked out with a brand new paint job. The walls were painted gray, the doors were painted green, a series of brass rails were installed in order to display posters.

Lawyering Program: I Like You Just the Way You Are

By Michael Mix '11
Editor-in-Chief

If a tree full of bad news falls in the forest, how do you ensure that no one hears it? Have the tree fall when no one is paying attention, of course. Congress and the White House are masters of this practice as they frequently release bad news on Fridays or holidays. This thought ran through my head at the end of last semester, when during the throes of finals studying, everyone received an e-mail from the administration regarding the Special Committee to Review the Lawyering Program. I am sure that most people just deleted or ignored that email, as I almost did. But given my oodles of time over Winter Break, I revisited it, and several points piqued my interest. I am not sure if sending the e-mail during finals was intentional, but ignoring it would be in error, given its potential implications for the program. (Full disclosure: I am a Lawyering TA and am in the Lawyering Pedagogy Seminar, yet this column was my own idea and of my own volition.)

The main thrust of the charge seems to be that the committee should investigate whether Lawyering should be more integrated in the first-year curriculum, which the author reiterates several times throughout the document. However, in my opinion, Lawyering is important because it is completely autonomous from the substantive first-year courses, which can often become repetitive and somewhat monotonous — read case after case and wait to get called on. In my large classes, even though I was doing my reading every day and listening to class discussion, I still felt somewhat isolated from the conversation given that I was one out of 90 students in my section. Lawyering, on the other hand, is constantly dynamic. The class constantly forced me to participate on a daily basis, keeping my mind sharp and giving me a forum to disseminate my ideas. I am fine with integrating some elements of Lawyering (such as ethics and professional responsibility issues) into the substantive courses, but I hope that does not mean watering down Lawyering to make it more like the first-year curriculum.

Furthermore, I like the fact that with a few exceptions, the Lawyering exercises force students to conduct research in areas of the law that the first-year curriculum does not cover. Surely, I used my knowledge of torts for the World Trade Center assignment, and my statutory interpretation skills for ICWA, but I had to look up some international law during the negotiation and discrimination law for the mediation. In actual legal practice (I assume), lawyers are often given assignments that stray from their comfort zone and force them to conduct research in new and unfamiliar areas of the law. I do not see the point of sheltering first-year students from this reality.

The Charge to the Special Committee also mentions the possibility of breaking up Lawyering into "half sections meeting less frequently." I think this would be an enormous mistake. The size of the Lawyering classes seems perfect to me. Even though a class of 28 students might seem large to a high-school or middle-school student, it is a tremendous improvement over 90-person sections. Making Lawyering too small might prevent class discussion from flowing, which never happened with 28 students. Also, from a social perspective, I liked the chance to become close to 27 of my peers, many of whom became a close-knit group. I fear that smaller classes will not have this social dynamic. In addition, I would be remiss if I did not mention that Lawyering classes usually constitute flag football teams, and I have no idea what would happen to SLAP football with smaller classes.

While keeping the size of the classes the same is extremely important, keeping the frequency of the classes constant is absolutely imperative. Lawyering meets fairly infrequently as it is, and I remember some class discussions that could have used more class time. Furthermore, the chance to read, discuss and react to my peers' writing was incredibly valuable in the evolution of my own legal writing, and I would not want to diminish this time. I'll be the first to admit that I am not a huge fan of every single Lawyering exercise, but this does not mean that overall class time should be decreased. Instead, the committee should solicit students' opinions as to which exercises were not valuable and how time can be utilized more efficiently.

Lastly, I think that the core curriculum of Lawyering should stay the same. NYU's Lawyering Program is unique in that it combines traditional legal research and writing with nontraditional elements such as interviews, negotiations, mediations, etc. I sincerely hope that the administration is not trying to curb these nontraditional aspects when it writes that Lawyering should achieve "institutional objectives with regard to preparing them to move forward in their education." If so, the Special Committee should put on their Harry Chapin eight-track and listen to "Flowers are Red." Just because Lawyering doesn't conform to the notion of a traditional legal-research-and-writing course does not mean it should be abolished. Rather, the Special Committee should realize that our Lawyering program is on the cutting edge. Research and writing are integral parts of a legal education, but so are the psychology and dynamics of group interaction, whether with a client, a colleague or with adversaries.

Lawyering is not perfect, so a special committee can be of definite use. But as I have tried to show, making drastic changes to Lawyering could have potentially disastrous consequences (and as evidenced from the newly painted gray walls and green doors at the law schools, NYU Law has a proclivity toward drastic changes). I hope that the special committee realizes this and instead discusses ways to make Lawyering more efficient, instead of recommending a dramatic overhaul.

Comment

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240 Mercer Street
New York, NY 10012
212.998.6080 (phone)
law.commentator@nyu.edu

Wanted: Cross-Cultural Lawyer Love — "Foreign L.L.M. Students Seek Lawyerly Affection from J.D.s"

By Marija Pecar LL.M. '10
Staff Writer

Enjoy: long walks around library basement, regular naps on carrels adjacent to Alaska Law Review, snuggling with Internal Revenue Code Volume 2, miscellaneous procrastination during class, Captain Crunch and Starbucks pumpkin lattes.

Rather than delving into an intricate dissection of our ideological disparities, I feel that the record should be set straight on certain preliminary issues, so that we may dive into 2010 in peaceful mutual coexistence.

First: Yes, yes we LL.M.s *do* spend a not-insubstantial part of our time in the library chatting … in an assortment of accents, at a range of speeds and a variety of volumes. And no, our primary purpose is *no*t to annoy you or sabotage your meticulous study efforts and/or Facebooking.

Despite rumors to the contrary, LL.M.s like their J.D. comrades. Our easily audible chit-chatting is simply our way of including you and making you feel part of our extended family, as well as entertaining you with tales of our escapades — and possibly commenting on some of you own.

That said, when the conversation you overhear is in a different language or we are throwing suspect glances in your direction, then it is anybody's game and chances are, we might well be talking about you.

Second: When we kiss each other, or lean forward in attempt to smooch one of you, we are generally just saying hello, or attempting to. Please refrain from spastically twisting your head or engaging in other obviously uncomfortable physical contortions in attempt to avoid our rapidly approaching lips before hurriedly packing up your possessions and fleeing the scene of the attempted crime. It is perfectly fine to stand there and accept the kiss. Even if there's no mistletoe in the vicinity and we are not, to the best of your knowledge, otherwise amorously involved with each other. Generally, to spare all parties involved any undue embarrassment, the deposit of the aforementioned kiss will usually purposely be aimed at the air circulating in the region next to your check, or if our aim happens to be somewhat off, possibly on your ear.

(P.S. Be warned that the frequency and zeal of said kissing occurrences will tend to escalate in the post-holiday period, to compensate for the long interval devoid of all international smooching activity.)

(N.B. It does not follow from the aforesaid that the same logic applies in the context of SBA gatherings or other dubious social contexts. At such times, our standards of social etiquette and customary cultural norms are, in a similar manner to yours, temporarily displaced. This is attributable to the great generosity in beverage-sponsorship known to be exhibited by the venerable SBA at such occasions.)

Third: No, we don't know what "Lawyering" is. And no, we don't have any "section" friends. But we *do* all have a law degree under our belts or underneath our skirts, and can thus share in your excitement over estoppel, empathize with the pain of proprietary restitution and be amazed at the wonders of a miscellany of legal gems. More importantly, we have an open mind, and that, we feel, can go a long way.

So, don't forget that, despite our differences, we too are members of the Britney-worshipping, Happy-Meal generation, and that we too enjoy and appreciate the cultural value of Jersey Shore, even if we might at times have to be reminded of the difference between the Mets and the Lakers, and probably need to be told what a "gunner" is. So, be prepared to have patience.

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Avatar Spectacular, Makes James Cameron the Da Vinci of Cinema

By Brian Byrne LL.M '10
Staff Writer

The science-arts divide has split the connotation of the term genius. In the arts realm, critical appraisal is necessarily a subjective endeavor. By contrast, science seeks to discover unknown truths, and thus, strives to operate on an objective playing field. This dichotomy means that referring to Isaac Newton as a genius will likely produce fewer quibbles than applying the same label to Andy Warhol. Criticizing verifiable discoveries is difficult (unless you are a creationist). Therefore, once a scientist has been branded a genius, the status approaches inviolability. Meanwhile, the artist remains vulnerable to criticism forever more, as each new generation applies its own subjective judgment criteria.

Complicating this web of analytics is the rare category of individual who excels in both arts and science. Leonardo da Vinci probably carries the title of genius with ease in both fields. However, notwithstanding that many of his scientific drawings are now displayed as art, da Vinci's paintings remain separate in terms of career output. In other words, da Vinci's singular label of genius is earned independently in both the arena of scientific discovery and the arts realm.

At this juncture, one may rightly question how any of this relates to Avatar, but consider this: in making this movie, James Cameron has fused art with scientific innovation. The resultant movie can thus be judged objectively in terms of technological advancement and subjectively in terms of subject matter. More importantly, the same analysis applies to Cameron himself, as to whether he deserves recognition as a genius.

To make Avatar, Cameron co-invented a new dual camera 3-D system that stands to revolutionize the entire movie industry, at least with respect to action-heavy blockbusters. Cardboard 3-D specs with their obnoxious red and blue lenses can be cast to the museum of tacky retro as cinema changes gears to immerse a new generation of audiences in the unfolding story. Watching Avatar in 3-D, the immersion is intense and facilitates pure escapism. As for the visuals, the experience is mind blowing and I cannot think of any movie that has ever come close to the level of awe-inspiring impressiveness on display. Avatar is technically stunning and has unquestionably raised the bar for all big-budget movies seeking to employ CGI technology to entertain the masses. Consider the Lord of the Rings: I doubt that anyone post-Avatar could still find the visuals in that trilogy remarkable. Nonetheless, Tolkien's storyline may still sustain them and this brings me neatly to Avatar's subjective appraisal component: namely, the plot.

Future humans travel to a distant planet to mine a valuable resource. Reflecting the age-old and topical reality that the extraction of resources from under the nose of natives may require heavy-handed tactics, a marine is sent undercover to learn of the tribe's weaknesses. I should mention that the natives are aliens and going undercover means using your mind to control a biological vessel (an avatar), which is, as far as the natives are concerned, biologically equal to themselves. Cue soul-searching, a cross species love-story, spectacular battle and flying scenes and messages about the unification and interdependence of nature. The likeability of the storyline is simply a matter of taste. I thoroughly enjoyed it, but others may perceive it as politicized drivel. Even if one were to adopt such a harsh hypothetical opinion of the plot, I still contend that the sheer spectacle of the movie would be the overriding memory.

Overall then, how does Cameron fair in the genius leagues? Without question he is a visionary in terms of advancing what it means to exhilarate an audience. He has compiled thousands of his own fictitious creations into a movie that is enjoyable, memorable, and virginal in terms of entertainment. However, the assessment does not end here. Cameron's commercial success as a director is staggering. He has now directed the two highest grossing movies of all time: Titanic and Avatar, respectively. Surely his acumen for extracting dollars from wallets must factor into the judgment. On that point, I have every confidence that the executives at 20th Century Fox routinely refer to Cameron as a genius. However, as is often the case, genius is accompanied by perfectionism and eccentricity. Cameron represents to Fox what Susan Boyle (SuBo) represents to Simon Cowell: a "cash-cow" that must be milked delicately. Just as Cowell recognized early on that he had to approach SuBo gently to avoid startling her back into her cave, Fox knew it had to wait patiently for years while Cameron tinkered about in *his* cave producing Avatar. The lesson learned in each instance is that the exploitation of talent is profitable but true exploitation requires first that the talent be understood. I use the word talent rather than genius, only because I'm exercising my subjective right to deny SuBo the label. I have no such hesitancy when it comes to Cameron. As far as I'm concerned, the man is a genius: subjectively, objectively and commercially. If you have not already done so, I urge you to see Avatar and decide for yourself.

EXAM: Professor Apologizes

Continued from page 1

that I believe all students in the class agree was fair."

"Other than the initial drama, it seems like the end result won't be all that different from what would have happened under normal circumstances," said Section 2 SBA representative Edward Han, without divulging the details of the agreement.

While all sides are claiming the situation has been resolved as fairly as possible, the botched exam was one in a string of law school exam issues that received notoriety last fall at the Oregon and Minnesota. Clearly, a degree of issue recycling is endemic to the law school examination model, but, as this episode clearly demonstrates, woe to the professor who underestimates the resourcefulness of first years at exam time. Unfortunately, the brunt of Prof. Nzelibe's mistake fell upon Section 2, fair resolution or no.

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