

BEYOND AN UNREASONABLE DOUBT: OWNING YOUR SEAT AT THE TABLE & PRESENCE IN THE ROOM

*Judge Qiana Denise Lillard**

“What is that from BLACK’S law dictionary?” a classmate commented from the back of the room as I mispronounced a word out of sheer nervousness the first time I was called on in Civil Procedure class as a first-year law student. As a few people snickered at his racist play on words, I felt my face warm with confusion and anger. I thought to myself: “There is no way someone would be so boldly racist in 1998. There is no way my classmates are laughing at this foolishness.” My instinct was to walk right up to this guy after class, call him out on his racist behavior, and let him know that I had received my undergraduate degree just that past spring with honors from the University of Notre Dame and surely was more than capable of reading the English language. Instead, I tried my best to convince myself that I must have misheard him. Later, however, I discussed what happened with a white female classmate, and she confirmed that he did in fact make the foul racist joke. She also confirmed that several of my classmates snickered as if they found his racism humorous.

As an undergraduate student I was well-known for student advocacy, work that was recognized when I received the Student Leadership Award. As an officer in the campus NAACP and the Black Student Union, I devoted a considerable portion of my undergraduate years to ensuring that Notre Dame was a more welcoming and inclusive place for students of color. My law school classmate’s attempt to gain attention at my expense was exactly the type of behavior I spent four years battling against on campus. Nearly all of my undergraduate extracurricular activities were devoted to diversity, inclusion, and anti-racism. I spent so much time on these activities that at times I felt I had missed out on the opportunity to just be a student. So much so that when I decided to return to Notre Dame that fall for law school, I vowed to myself that things would be different. I decided that I would not get involved in the

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racial politics of campus life. I was going to just focus, as my Grandpa would say: “*On getting my lesson.*” Over were my days of student activism. I was going to be a regular law student. Besides, it was only the first week of class and if I confronted this guy, I feared I would be the one labeled a troublemaker.

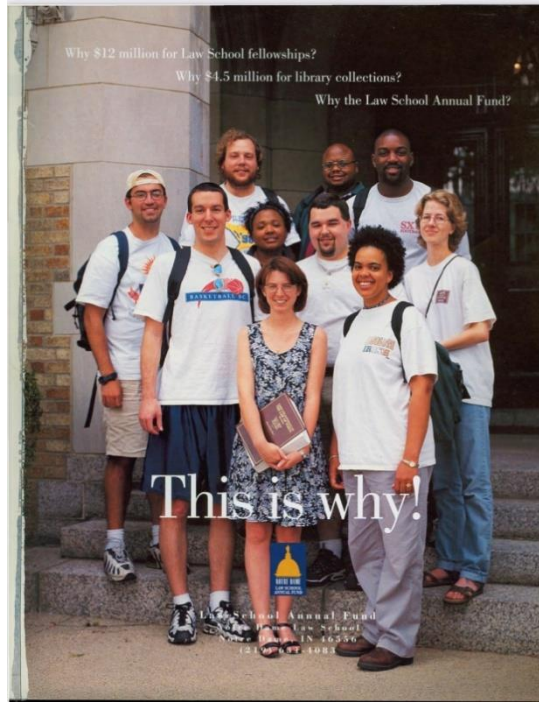
As the first year of law school wore on, the same classmate continued to show flashes of racism through jokes, comments, and other behaviors. There were only three Black professors in the law school at the time. One of whom was Vincent Rougeau.¹ Professor Rougeau went on to become the Associate Dean of Academic Affairs at NDLS and is now the Dean of Boston College Law School. However, in the fall of 1998, he was a brand new NDLS professor. Despite the fact that he graduated *magna cum laude* from Brown University and earned his J.D. from Harvard Law School,² every time he spoke the same student and his friends sat at the back of the classroom mocking Professor Rougeau. The student would compare Professor Rougeau’s voice to that of rapper Shock G from the popular nineties hip-hop group Digital Underground. In one startling act of foolishness the group showed up to class with a radio blasting the Digital Underground hit “The Humpty Dance” before Professor Rougeau arrived. Many of my classmates in the section seemed to think that this stunt was harmless. That it was fun. When in fact it was blatantly racist and disrespectful behavior.

In 1998, all first-year law students were required to take two semesters of legal writing. The courses, taught by Professor Teresa Godwin Phelps, were divided into two sections. In the fall, students took Legal Writing I which focused on the basic mechanics of persuasive legal writing. In the spring, the course was Legal Research and Writing II (Moot Court).³ In this course, Professor Phelps focused on appellate advocacy and each student was required to prepare and argue an appellate brief. For this coursework students were assigned to work in pairs. Professor Phelps then asked the pairs to line up on either side of the room to come forward and receive assignments as appellant or appellee and for further pairing for the moot court portion of the course. My partner and I, the only two Black students in the class, watched in amazement as the racist jokester jockeyed himself in line on the opposite side of the classroom to ensure that he would be paired to compete against us. I wonder if he assumed that, because of our race, we would be easy opposition, but not only did we defeat him in the competition, I proudly took the award as first speaker.

1 The other two professors were Father Reginald Whitt and Research Librarian Dwight King.

2 *Vincent D. Rougeau*, BOS. COLL. L.: FAC. DIRECTORY, <https://www.bc.edu/bc-web/schools/law/academics-faculty/faculty-directory/vincent-rougeau.html> (last visited Feb. 10, 2021).

3 94 NO. 2 NOTRE DAME LAW SCHOOL, 1998–99 BULLETIN OF INFORMATION 8 (1998).



I now realize that I entered Notre Dame Law School with naïve expectations of what the social atmosphere would be like. I was prepared for the competitive academic environment and fully expected to encounter the occasional cultural insensitivity from a less enlightened classmate who did not have experience interacting with people of diverse backgrounds. But I had assumed that by the time one reached graduate level education the students would have matured enough to not stoop to petty racist stunts or regurgitations of racial stereotypes as jokes. However, as the first year of law school wore on, the reality began to set in that nothing I had experienced in four years as an undergraduate compared to the, at times, openly racial, hostile environment at NDLS. Perhaps it was because the students were older and more set in their ways. Or maybe the competitive nature of law students naturally made things more adversarial. It may have even been because 1998 was the height of the conservative backlash against affirmative action policies in law school admissions.⁴

4 For a further overview of attitudes towards affirmative action in higher education admissions circa 1998–2000, see Carol M. Swain, Robert R. Rodgers and Bernard W.

Indeed, I found myself in debates with classmates who openly expressed their assumption that my presence in the class was the result of affirmative action. In 1998 there were 183 students in the first-year class at NDLS. Of those 183 students only five of them were Black. Of those five Black students, two of us were “Double Domers,” one was a 1998 St. Mary’s College graduate, one was a South Bend native, and the other was from Florida. The demographics of our class seemed to me to clearly demonstrate that NDLS wasn’t using affirmative action in its admission practices or doing much else to effectively recruit or retain Black students. In fact three years later in 2001, there were only two Black students in my graduating class.⁵ The numbers for Latino 1Ls were similarly low in 1998 such that with African American and Latino law students combined, at best estimates, Black and Brown students accounted for six percent of the first-year law school class. How anyone could look around the woefully ethnically homogenous classrooms and come to the conclusion that the five Black students were there due only to affirmative action was absurd.

There were many challenging moments dealing with issues of diversity and lack thereof during that first year of law school. At that time David T. Link, now Fr. Link,⁶ was the dean of the law school and also taught a first-year course called “Introduction to Law and Ethics.”⁷ Dean Link, a member of the Notre Dame Law School faculty beginning in 1970, served as dean from 1975 until 1999. During his tenure he established a tradition of challenging his first-year ethics students by leading discussions around the representation of unpopular clients. Dean Link used United States Supreme Court cases that dealt with the issue of freedom of assembly as a springboard for these discussions. And as he recalled to his biographer Maura Poston Zagrans in *Camerado, I Give You My Hand*, published in 2013, it was his practice to select a student to represent each side of the issue and then lead the two in a debate.⁸

In the fall of 1998 Dean Link chose one of the only Black students in the class and challenged him on whether he would represent Neo Nazi organizations and specifically the Grand Dragon of the Ku Klux Klan. The incident was so remarkable to Dean Link’s storied career and history at the university that he recounted it from his perspective in his biography.⁹ This moment in class sparked a spirited debate that extended well beyond the four walls of the law school. What Dean Link viewed as a teachable moment on

Silverman, *Life After Bakke Where Whites and Blacks Agree: Public Support for Fairness in Education Opportunities*, 16 HARV. BLACKLETTER L.J. 147, 161–65 (2000).

5 The St. Mary’s graduate dropped out after her first year, the Florida State graduate transferred to Ave Maria Law School, and the other Double Domer graduated a year later in 2002.

6 David T. Link was ordained a priest in 2008 after his retirement from NDLS. MAURA POSTON ZAGRANS, *CAMERADO, I GIVE YOU MY HAND* 184 (2013).

7 NOTRE DAME LAW SCHOOL, *supra* note 3, at 19.

8 ZAGRANS, *supra* note 6, at 150.

9 *See id.* at 150–52.

ethics also served to highlight the isolation felt by the few students of color in the room. One Monday night after that ethics class, several minority law students gathered at the home of a classmate for a study group. However instead of studying, we spent the entire time rehashing not only what Dean Link had done to our classmate but challenging him on why he felt compelled to say he would represent the Grand Dragon of the Ku Klux Klan. Although we all had different views on the situation, one thing we all agreed on was that it was quite an uncomfortable position to have to debate such an issue with the dean of the law school.

And yet, despite the overt racism we endured from a small group of classmates and the dubious teachable moment from the law school dean, we found our home at the law school. After the Ku Klux Klan ethics-experiment debate, our study group morphed into a weekly Monday night dinner. We declared a moratorium on studying for a few hours and devoted the evening to decompressing. Our group, made up of Black and Latino first-year law students, gathered each week at a different person's house for a purely social purpose. These dinners were often reflective of the cuisine of our respective hometowns or cultural traditions. While this usually included a homemade meal, when one of our classmates hosted, afraid his lack of culinary skills might kill us, he circulated a menu from a local soul food restaurant in advance so we could choose our own meal that he then ordered. Another classmate, a Latina from south Texas, taught us to make homemade guacamole and enchiladas. These Monday night dinners weren't just about food; they were also about building comradery and having a safe place for freely exchanging ideas and sharing our histories and life experiences.

The same classmate who taught us to make authentic Mexican cuisine also felt safe to explain the carpal tunnel braces she wore to take notes in class were due to years spent working in fields as a migrant farm worker with her family growing up. Our classmate who could now afford to cater dinner from the local soul food restaurant for the group shared stories of how as a child he was so poor he and his mom used to search garbage cans for food. It was a place where I felt free to share my frustration that I had been advised by career services to remove my braids before on-campus interviews because my natural hair style would be considered unprofessional by most law firms. Those Monday night dinners were a welcome solace where we fed our souls, renewed our spirits, and forged bonds as friends that gave us strength to face whatever challenges the week ahead at NDLS might bring.

Over the years the Monday night dinners expanded beyond our 1L friendship circle to include all BLSA members. It became an official tradition that continued at NDLS long after we all graduated. Despite the small numbers of the students of color at NDLS there was very much a familial atmosphere that was a natural byproduct of the experience. Prominent Black law school alumni, such as Judge Anne Claire Williams '75 and Judge Willie Lipscomb '75, were regular visitors to campus and always made sure to spend time with the Black law students whenever they were in town. To many people they were legal icons, but to us they were Judge Anne and Judge Willie.

They encouraged us to rely on one another, to share notes and old exams, and to hold each other accountable to ensure academic success. They reminded us not to be deterred or distracted by the voices of those who questioned the legitimacy of our seat at the table. They reminded us that the hateful voices of people who doubted us were just noise that we could not allow to distract us from our goals. They encouraged us to remember that more than anything, our academic and professional success would be our best response to both veiled and overt racism. Through their example, I could see that if I used my time at NDLS wisely I would reap great rewards in the future.

There were other sources of support for Black students as well. Research Librarian Dwight King regularly welcomed the BLSA members into his home for dinner with his wife and children. Every spring during BLSA Alumni Weekend, Judge Roland Chamblee '73, J.D. '77¹⁰ and his wife Angie '73 hosted a reception for alumni, BLSA members, and prospective law students in their home. The hospitality shown by the Chamblees and Knights opening their hearts and homes to the Black law students further created opportunities for not only bonding and networking but reinforcing the concept of the Notre Dame Law School family. You see, while we were navigating what was in many ways an oppressive experience, we were also being buoyed by other members of that same community. We were encouraged. We were lifted.

In part, that was because we were able to find opportunities to engage in true discourse in the midst of our disagreements. While our classmate who was involved in the ethics demonstration ended up leaving Notre Dame and earning his law degree from another law school, he developed and maintained a close relationship with the dean that is also highlighted in Father Link's biography. Indeed, Dean Link was a favorite of the elder Black Law School Alumni. Many of them, like Judge Lipscomb, often told stories of their wonderful relationship with Dean Link and all the efforts he made to increase diversity in the law school over the years. Those efforts were admirable, but they were not enough.

While I had come to Notre Dame Law School determined to stay under the radar, as I looked around that first year of law school and saw so few people who looked like me, I realized that if things were going to improve at NDLS for students of color, I couldn't just go to class, keep my head down, and get my lesson. At that time, first-year law students had a course load that required sixteen credit hours in the fall and seventeen credit hours in the spring.¹¹ With these academic demands, it was hard to figure out how to become involved without suffering academically. I recall looking to then Professor Patricia O'Hara for guidance on how I could effectively manage my time so

10 See Roland Chamblee '73, '77 J.D. *Receives Public Service Award*, NOTRE DAME L. SCH. (Dec. 21, 2018), <https://law.nd.edu/news-events/news/roland-chamblee-73-77-j-d-receives-public-service-award/>.

11 NOTRE DAME LAW SCHOOL, *supra* note 3, at 8.

that I could be involved in causes that matter to me without feeling like my academics would suffer.

Professor O'Hara was the first woman to graduate top in her class from NDLS, the first woman to be named an officer at the university, and was soon to become the first woman named dean of the Law School. She was someone I knew well from my days as an undergraduate student leader. Because of my relationship with her I felt comfortable reaching out to her for guidance and support. We talked about how increasing my involvement in student organizations would not only force me to designate time exclusively for studying, it would also give me a place to target my concerns so that I would feel less frustrated. She reminded me that my voice needed to be heard and if I tried to just remain silent I wouldn't be true to myself or true to my purpose for being at NDLS.

I decided to give less of my energy and thoughts to the negative aspects of law school life and instead focus on the opportunities for improvement. The rude guy at the back of the class making racist jokes for attention was never going to be my friend. The ill-informed person assuming the five Black people in our law school class were only there because of the color of our skin would probably never see the error in their way of thinking. But, I realized that their ignorance did not have to define my law school experience.

By the time I reached my third year at NDLS not only had I begun living on campus and working as the Assistant Rector of Badin Hall, I was also in my second year clerking in the Office of General Counsel, actively involved in the Notre Dame Legal Aid Clinic, volunteering with Big Brother's Big Sisters of St. Joseph County, and President of the Black Law Students Association.

I learned many lessons as a student at NDLS that continue to serve me well as I navigate the legal profession today. While you can't control the lens that someone sees you through or what ignorance or vitriol they project your way, you can control how you react to it.

Recently I attended a mixer hosted by a local bar association. I was wearing business attire and a typed nametag identifying myself by name and title that was provided upon my arrival by the organization hosting the event. For this mixer, judges' nametags were marked with a purple ribbon that said "judge" in bold, gold letters so that they could be easily identified by attendees. While mingling, a young, white, male attorney approached me and, despite my prominently displayed name tag, asked if I worked for Judge Lillard. When I told him that I was Judge Lillard he replied, "Oh you must be a new judge." We quickly determined that I had been a judge longer than he had even been a licensed attorney. I thought at this point he would just politely walk away and end the conversation but, alas, he was not discouraged. He began his next line of inquiry questioning if I was a member of the organization or attended many of the events as an explanation of how he possibly could have failed to recognize me or read the name tag I was wearing. Despite my assurances that I was in fact a member and frequently attended events, he remained unconvinced until the executive director walked up and

greeted me warmly by name saying “Judge Lillard it’s so nice to see you again. Thank you for always supporting our events.”

As the young man’s face turned red with embarrassment and he slowly slinked away, the incident stood as a reminder that over twenty years later, despite all my hard work and professional accomplishments, there are still some people for whom my gender and my race will cause them to question if I have earned my seat at the table. And yet, I learned long ago that despite others’ preconceived notions, ignorance does not define me or who I am as a jurist. Despite what my classmate in 1998 may have thought of how I came to be a member of NDLS class of 2001, his ignorance did not define me.

Today we live in a country that seems more divided than ever along political and ideological lines. I can only imagine what it must be like for a first-year law student of color during the 2020–2021 academic year. Students are trying to balance the academic demands of the current law school curriculum in the middle of a global pandemic, a presidential election like no other, and a controversial Supreme Court appointment with strong ties to the law school. I imagine that just as I did in 1998, today’s first-year Black law students find themselves questioning if they should focus on “getting their lesson” and avoid the call to student activism and speaking out against ignorance and social injustice.

But as Professor O’Hara reminded me, I hope they see that their voice matters. It is through interacting with those who have had different life experiences and perspectives that we expand our minds and our world views. I hope that students of color know that if they remain silent they will not be true to their purpose and presence at NDLS. As Judge Anne and Judge Willie taught me, I hope they know that their academic and professional success is the best response to people who question their seat at the table and their presence in the room. And, importantly, I hope they know that even as they navigate what may be a challenging place within the law school, they are supported, they are lifted, and they are encouraged. Because they, like all the students at the law school, are Notre Dame.