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Jury: Student's Rights Violated

Unfair 'allowances' result in missed degree, suit and \$50K

By Dan Morrison

STAFF WRITER

Professors at Queens College violated the civil rights of an African-American graduate student by flunking him while going easy on two Chinese students during a final exam, a jury in Brooklyn federal court has found.

Derek Tolbert, a high school teacher from Bayside, won \$50,000 in punitive damages from the college and two professors after one professor said he "cut slack" for Chinese students to account for errors in grammar in the exam's essay questions.

"I definitely would say that I feel vindicated," Tolbert said Friday in an interview. "It was very emotional for me, personally." The verdict was announced on Wednesday, Tolbert's 44th birthday.

Lawyers at the state attorney general's office, which represented the college, asked Judge Bernard Friedman to set aside the verdict. A decision is pending.

A spokeswoman for the attorney general's office said she could not comment pending Friedman's ruling. The two professors, Helen Smith Cairns, who chairs the Queens College communications department, and Stuart Liebman, were out of town, a college spokesman said.

The suit had asked for more than \$500,000 in compensatory damages.

Tolbert said he was stunned when he learned he had failed all four essay questions during his comprehensive exam, which was required to receive a master's degree in communications.

But Cairns and Liebman told Tolbert that he had poor writing skills and a lack of clarity, said Tolbert's attorney, Fred Brewington of Hempstead.

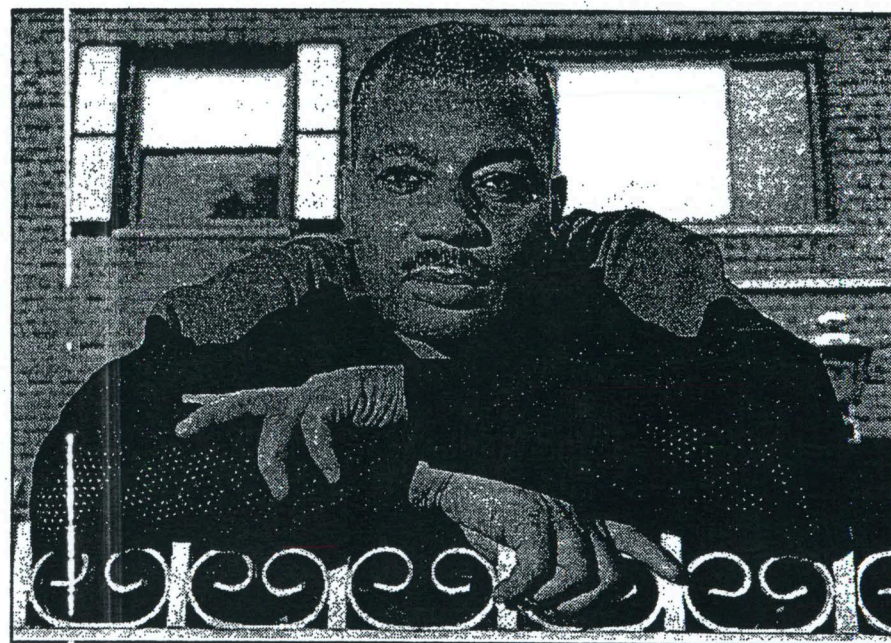
When Tolbert replied that his writing was better than some of the Chinese-born students who passed the exam, Leibman replied that graders "cut slack" for the Chinese students and "allowed for" their cultural differences, Brewington said.

Tolbert could have taken the exam again, but instead left the communications department and went on to earn his master's in English at the college. He filed suit in 1994.

A defense source said that all students in the exam were given allowances for poor or hurried grammar during the timed exam.

"He somehow got it into his head that it's his grammar that did him in," the source said. "He says, 'I know I write better than these Chinese students.'"

Six students participated in the exam. One Chinese student passed all four essay questions, the source said. Another Chinese student failed



Newsday Photo/Leslie Mazoch

Derek Tolbert at his home in Bayside. A Brooklyn federal jury awarded him \$50,000 in a civil-rights case about alleged unfair grading in a final exam at Queens College.

at least one of the four essay questions. The exam was graded on a pass-fail basis.

"Derek Tolbert failed all his exams and the jury must have thought that was on the up and up, because they did not award him any nominal or compensatory damages," the defense source said.

But Tolbert, who is studying law at

St. John's University, said it was clear that the professors had treated him differently than the other students.

"I'll say that all the facts were presented to the jury by my attorney and theirs, and the jury thought that that particular administration of the exam was not graded objectively," he said.