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# The Opinion

<http://law.buffalo.edu/orgs/opinion>

THE OPINION  
UB Law School  
101 O'Brian Hall  
Buffalo, NY 14260

Vol. 47, Issue 1

October 2009



## Advice to a First Year Law Student

*By Garry Muldoon, Esq.*

*Class of 1976*

As you start your law school career, consider the following as avuncular advice from a stodgy friend of the family.

I realize that things have changed. When I attended law school back in the day – best I can recall, we didn't say "back in the day" back then – Shepard's citations was a set of maroon-covered books that contained seemingly endless rows of numbers. That was the Gutenberg era, in which I have one foot still firmly planted. Computerized research was unknown; the apex of law-office technology that I encountered then was an IBM Selectric typewriter.

But enough reminiscing. A few things have changed, but others have stayed the same. (I think there's a French expression for that). Here goes. These are not the secrets of success in law, but more along the line of things you should avoid.

1. Do not use an emoticon in a memorandum of law.
2. Throughout your law school years you will encounter gunners -- those students who feel compelled to constantly raise his / her / its hand to offer an answer or opinion on everything. Do not become one of these "people."
3. Resist the temptation to use legal expressions in your everyday speech. In October, don't say "Prima facie, it would appear that the Red Sox will win the Series." (The sentence improves only marginally when Yankees is substituted.) Similarly, if you ever respond to your siblings, "With all due respect," they have the right under common law to smack you upside the head.
4. At some point in your first semester you will realize that you have referred to that big green monument in New York Harbor as the "Statute of Liberty." When this happens, book a trip home or, barring that, arrange for a better-than-average weekend drunk.
5. Do not correct your parents when they use the word "consideration" the way every other normal human person uses it. You are the one who is taking Contracts, and are the odd one out.
6. At some point, reread Moliere's *Le Bourgeois Gentilhomme* and how he marveled at realizing how he had been speak-

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## What Does The Student Bar Association Do For You?

*By Elizabeth Hersh*

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A lot actually! The Student Bar Association (SBA) is responsible for organizing many of the activities, speakers, clubs, journals, committees, and moot courts in which we all participate at UB Law. Funded primarily by the UB Sub-Board, as well as a small part of each law student's tuition, the SBA is also a student resource, acting as a liaison between students and the administration. And of course, the SBA plans social activities to make sure that we all have a little fun in law school, too.

Most students are only aware of the SBA in relation to the big name social activities scheduled throughout the year. The SBA hosted the annual Cruise Down the Niagara River on the Miss Buffalo II yacht, which was a great opportunity for students from every class to mix and mingle. In less than a month, the SBA will host Halloween Night Out in Allentown where students don their best Halloween attire and frolic from one social venue to another. During Spring Semester, the SBA sponsors the Barrister's Ball, which is similar to prom, but classier (hopefully), and during finals week, the SBA provides bagels, cream cheese, and coffee to help make finals week a little less painful for all of us, and at the right price – free! Decompression, the grand finale at year's end, is also organized by the SBA. This event is fantastic, not only because finals are over, but because the SBA

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# The Student Newspaper of the University at Buffalo Law School

## Advice Cont.'d

ing prose all his life without knowing it. There is some application of the title character's perception with legal reasoning. You can figure it out.

7. Do not start writing your memoirs in your first year of law school. Scott Turow did; you are not Scott Turow. By the way, I don't recall the term "1L" being used back then, either. Use it among your friends, if you must, but not during any job interviews.
8. There is a difference between the concepts of *quantum meruit* and *quantum valebant*. After your first year of law school, you should forget this difference. Trust me, it will not be on the bar exam. People who enjoy making prissy distinctions like this are to be avoided.
9. There is only one way to say the word "*res*." Hint: it is not pronounced as if it was a peanut butter cup. As for "*prima facie*," the only way to pronounce it is the American way. Not the Texas way, not the British way, not the Latin way. The American way.
10. You will find that being told that you "think like a lawyer" is a compliment, but that being told you "write like a lawyer" is the opposite.

## SBA Cont.'d

goes all out with *gratis* food, beverages, and the event even raises money for charity. Wow!

Additionally, the SBA sponsors, and co-sponsors many of the speakers which come to UB Law. Last week, many students attended the "How to Succeed in Law School" lecture given by the engaging Professor Freer, which was co-sponsored by the SBA and Bar-Bri, and last year, students were treated to a very special group conversation with Ralph Nader. Twice a year, the SBA arranges Town Hall Meetings where students can voice their concerns and address their comments and questions directly to a panel of UB Law Administration members and faculty which in the past has included Dean Makau Mutua, Vice Dean of Academic Affairs James Gardner, Registrar and Director of Records and Registration BobbyJo LaDelfa, Vice Dean of Admissions and Financial Aid Lillie Wiley-Upshaw, Director of the Law Library Beth Adelman, and others.

Behind the scenes, the SBA works to ensure that student groups and committees are able to accomplish their goals each year. The SBA funds an impressive twenty six clubs and journals, and this does not include the six new clubs which are starting this year. In May, clubs and journals propose budgets for the following year, and the SBA approves some or all of the requested amounts. Special attention is paid to groups which take their own initiative for fundraising, as the SBA is especially inclined assist clubs financially who are most willing to help themselves. The SBA is very supportive of new clubs at UB Law, and the main criteria for starting a club is very simple: come up with a type of club whose purpose does not substantially overlap with an already existing club, find twenty law students who believe the club should exist, prepare goals and objectives, and propose a budget. Of the journals, the SBA funds the Public Interest Journal, Environmental Law Journal, Journal of Gender, Law, and Social Policy, and the Human Rights Law Review. The SBA also funds most of the moot court competitions, including the Frederick Douglass Moot Court, the Jessup Moot Court including the Jessup and Niagara Cup Competitions, and the Buffalo Moot Court Board which includes the Desmond Moot Court competition, and the Wexler Criminal Law Moot Court. The SBA also forms committees comprised of student volunteers to maintain an open dialogue between students and staff. For example, last year the Institution Location Committee solicited feedback from students, faculty, and the community, to discuss the advantages and disadvantages of moving the Law School downtown, or to the South Campus.

The SBA has set a few new goals to make the 2009-2010 school-year a great one. They would like to increase their online presence by enhancing the website which you can visit at [UBlawstudent.com](http://UBlawstudent.com). Ideally, the SBA would like to establish a program so that students can purchase tickets for different law school functions online with a credit card, because many students do not carry much cash, let alone checks. This year, the SBA would like to improve the Health and Wellness fair which was held for the first time last year with great success. The fair featured massages, a lunch, and talks on topics such as diet and exercise during finals – all for free.

The SBA works to ensure that our law school experience does not end outside the classroom, and the organization provides students with opportunities to integrate into the law school society. If you have any questions or concerns you would like the SBA to address, the SBA office is located on the first floor of O'Brian Hall, across from the elevators.



## **The Brick Wall** *By Heather Neu* [heather.neu@gmail.com](mailto:heather.neu@gmail.com)

As this year flies by, third-year students worry about classes, their job search, the scary Bar, and the fun bar. If we are concerned with our extracurriculars, many of us are not thinking long-term. When discussing long-term plans for an organization, I heard multiple 3Ls say, "Who cares? We won't be

here." True, but "we" could create a difficult situation for the 2Ls.

Now, before any 3Ls reading this jump to conclusions, the following incident does not concern any current students. I am speaking about a recent predicament in which I found myself. Last year, members of a journal made the dubious decision to elect me into a position of power. You know how it goes, I came in enthused and excited about the upcoming year with a long list of goals my fellow executive board members and I developed. Then, I ran into a brick wall – a wall that haunted an amazing managing editor and me for the first two

months of school.

This brick wall was the edition of the journal that should have gone to print in May. Instead, the publisher did not

Wall pg. 4



# The Student Newspaper of the University at Buffalo Law School

## LETTERS TO THE EDITORS

### A note from the Editors-In-Chief:

Welcome to "The Opinion," the only student-run newspaper of SUNY at Buffalo Law School. We hope that you find this paper to be both informative and entertaining. It is our goal, as Eds., to provide a source where law students can read about happenings in the law school, legal current events, and general legal opinion articles; all of which are written by your fellow law students.

We encourage all law students to participate in "The Opinion." Each issue will feature a specific current event topic, and we ask for all law students to write a "letter to the editor" stating your opinion on the topic. This issue's topic is "universal healthcare."

Also, law students are encouraged to write to the paper if they like or dislike a fellow student's article. The comment will be printed (subject to the author's consent to having the comment printed), alongside the author's relevant section of the article, and a response to the law student's comment. Please, and this should go without stating, be lawyerly and respectful about comments to the authors.

If you wish to advertise in "The Opinion," please contact us as soon as possible, so we can isolate ad-space for your Company.

Again, thanks for reading.



Small businesses play a really important role in the local economy, yet they're disadvantaged by the current health care system which works in the favor of larger businesses. I think it's really important that health care reforms don't burden small business owners. I was pleasantly surprised to see that the proposed reforms allow small businesses to choose from many different low-cost plans. They also provide for exemptions for very small businesses, and offer tax credits to businesses that do provide health care to their workers. Hopefully these reforms will allow more small businesses to start and grow, spurring both jobs and creativity in Buffalo!

By Emily Catalano

### Universal Healthcare: What's Your Opinion?

The Oldsmobile  
By Sara Korol, Guest

We live in a modern welfare state: a fact which must be acknowledged before any meaningful debate takes place. To those who do not think that it is in everyone's best interest to give individuals regular access to health care, to those who think that there is a finite amount of health care out there and that it's ok to bring something tasty with you to class when you don't have enough to share with everyone, I will say this. Even if you insist on treating health care in purely economic terms, it still makes sense to have everyone covered.

Insurance can spread risk only if those who are least likely to need it pay alongside those who are most likely to use it. Your car is most expensive to insure when it is new. Once you drive it off the lot, it loses value and becomes cheaper to replace. Most would agree that in a world where car insurance was not mandatory, the owner of a 2010 Mercedes-Benz would still buy insurance but the owner of a 1980 Ford Courier probably wouldn't. We mandate car insurance to protect the owner of the Mercedes who may get into an accident with the owner of the Courier who may not have thought it necessary to insure a vehicle worth so little. But not only. If we didn't mandate car insurance, be assured the rates would go up because insurers would suddenly find themselves replacing a lot of new cars.

The health insurance market operates not unlike the car insurance market but on its head (sick people = new cars). You are most expensive to insure (or replace) when you are old and sick and perhaps not working anymore (no pun intended). And maybe despite your lifestyle you could presumably get VERY sick, which would incur bills far beyond the value of any car many of us would ever hope to drive. Yet as young people we, the 1980 Ford Couriers, are very inexpensive to the health system. We do not have much of an incentive to pay for health care we may not use. Since we aren't very good at thinking long-term as individuals, we must create laws that maximize the net gain to society: mandated health insurance. At first it may be more expensive, but in the long-term, if people don't go YEARS without seeing a doctor, acute emergency care will be replaced with less intensive, less expensive health management.

Next Topic Will be Announced Soon!

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# The Student Newspaper of the University at Buffalo Law School

## Wall Cont.'d

receive it until August. Five months may not seem like such a big deal, but it is when your organization's budget disappears at the end of every academic year. So, this approximately \$3,000 expense needed to come out of this year's budget.

This giant, unplanned hit to our budget loomed large. How were we going to pay our publisher? Would we be able to publish this spring? If we couldn't publish, could our organization even exist? Would the administration's first steps into increasing the supervision of journals lead to our demise? If it did, could I even really blame them?

Okay, I admit I am being a little melodramatic; however, on top of my other concerns - not failing, finding a job so I could pay back my student loans, enjoying my last year in law school, finding time to sleep - this was the proverbial straw. Remember when everyone said third year would "bore us to death?"

By some miracle (and the unexpectedly high price online article banks pay for the use of journal articles), everything worked out. The publisher printed and delivered what should have been last year's edition, and the funds are ready and waiting for this spring's edition. However, this ordeal left me a little less enthused and excited than I was when the year began. I credit a stellar membership, enthusiastic in their own right, for reinvigorating me.

I hope people can take away something from my complaining for the last six or so paragraphs - do not set up obstacles for those coming behind you. If you are trying to win a race, that's one thing; but in your organizations, everyone is on the same team. When your name and reputation are associated with something, you care. So will the people next year and the year after that.

Think back to a situation where you were the new kid and unsure of what exactly you were doing. Think how much worse it would have been if your first task involved solving an unexpected and complex problem without any guidance and very few people to offer any advice.

So many reasons exist for doing the best in your organizations. If you're in a position of power, you accepted it knowing the responsibilities - live up to that. If you're an egomaniac, think of the legacy you could create for yourself. As 3Ls, we know the ropes; we should impart our wisdom upon the young'ins. At the very least, go back to our childhood lessons, leave things no worse than when you got them. I know I would have appreciated that.



## Healthcare: A Complicated Debate

By John Ford

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Healthcare is not simple. Yet many of the arguments on both sides of the current political debate over healthcare reform are incredibly simplistic and often either irrelevant or erroneous. It's simply irresponsible to assume that mandated insurance for every man woman and child in the United States will solve all of our healthcare problems, or alternatively that the fabled invisible hand of the market will take care of the same. I began by attempting a thorough evaluation of the healthcare system as it currently stands, in order to compare it to what it might be a few months or a year from now. I quickly discovered that this could not be accomplished with any kind of quality within the deadline set for this piece. Indeed it was what I discovered while trying to do this research that lead me to the conclusion that our healthcare system is insanely complicated. This may be by design, or not. It could be that it's just necessary for a system that purports to provide healthcare to 300 million people to be very complicated. On the other hand, it is probable that the complexity is the result of the inelegance of the legislative process and the patchwork results that process tends to create when not creating something from scratch all at once. But I digress.

I find it easier to cut through this complexity by starting with first principles. What is the purpose of a healthcare system, and health insurance. The latter question is much easier to address. Health insurance brings a fundamental benefit to the public by spreading the cost of healthcare not only over many people, but over time. If we start with the assumption that not everyone is sick at the same time, then what health insurance does is allow Ashley the Farmer's healthcare costs to be paid when she gets sick. Ashley's costs get paid by the premiums of all the other paying customers of his health insurance provider. This is under the assumption that when Ed the Accountant loses a limb in a freak calculator accident, his costs will in turn be paid by Ashley and the others who are now healthy. In the middle of all of this, of course, is a health insurance company. I won't get into the problems that arise when everyone, or even a lot of people get sick at once.

The perspective from which I think many people on the left come from is one of a public good. The theory goes that this isn't just a matter of Ashley, or Ed, getting sick, and then getting better. It's a matter of the health of the public as a whole. The idea being that we should try to keep as many people as healthy as possible with sufficient (preventative) medical care and that this will help to improve society in sectors other than health. For example a healthier workforce is a more efficient workforce. Another public benefit might be that because people have healthcare coverage, they would deal with health problems earlier on, when they are both more likely to be solved, and cheaper to solve. This further has the net effect of freeing up resources. This is the theory at any rate. And in order to accept the theory, one must accept the underlying belief that healthcare should be used as a tool to further the general welfare. Where I think a lot of conservatives object is in the idea that in any reform that occurs, the government should be the ones running the show, or at least most of the show. The argument goes that the government is inefficient at administering things, and a competitive environment brings down costs. This argument may, or may not be true. In some ways it is, but in pure administrative costs terms, it is not. Canada's healthcare system spends perhaps around 1% of its costs on administration and overhead, Medicare spends around 2%. The average private insurer spends around 13%, and large HMOs can spend upwards of 30% on administrative costs.

However, there are other reasons why government administration might be inefficient. First of all, a nationally mandated and administered system would be hard pressed to change according to the needs of a given region or locality. In

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## Health Cont.'d

addition, there are pressures and constraints on a government-run operation that simply are not there in a private operation. Bureaucratic entrenchment or resistance can occur. In addition, it's just plain harder for a government agency to fire an inefficient or bad worker. This suggests that the solution to the "problem" (if in fact you agree that there is one), is a non-government run organization, replicating the administrative structure of Medicaid, and operating at-cost.

A friend of mine, Jordan Walbesser, and I were discussing this very issue. After following a train of thought very similar to the one above in our discussion, we came to the part where I will take credit for causing my friend to think something. Jordan thought that maybe the solution was a non-for-profit model that has been successful in many other areas. It has the benefit of being run like a corporation, but at-cost. These kinds of organizations could fill the healthcare insurance gap on local levels, without any need for government administration, while maintaining a national network in order to keep the benefits of institutional knowledge. Essentially this kind of organization would be a community-based cooperative, but for healthcare insurance. There might even be call for some limited subsidization of organizations of this type from Federal and State government.

Even if this solution were to work, however, it must be pointed out that what we have been talking about is how to pay for healthcare, not how to provide it. There are entirely separate problems here like the lack of adequate medical personnel to sufficiently handle the entirety of the U.S. population, and the prioritizing of medical services. Solutions are manageable when the political process is either avoided, or more optimistically, cleansed of the counter-productive jockeying for position that erodes or ends most initiatives these days. At any rate, I am optimistic.

## OPINION INTERVIEWS

By Bianca Dangelo

### 2x4 Topic: The Law Library

[4 question answered by 2 people with different perspectives on a single issue.]

### Jim Wooten, Library Director and Daniel Aiello, 3L law student

1. The library policies are hotly debated here at UB Law, especially the idea that the library is essentially unrestricted to undergrads (sans the new 7<sup>th</sup> floor alcove). We've all heard the rational behind the open library (public university \$ + undergrad \$ = open access), but what are your thoughts on the issue?

JW: You've raised two questions, one relating to use of the Law Library by members of the public and one relating to use by students other than law students. With respect to the first question, I think the Law Library plays a vital role in making legal materials available to the public. It is only appropriate that the library of New York State's only law school should be open to the citizens of New York State.

With respect to the second question, if the Law Library is going to be open to the public, it's hard to see how we can exclude UB students, who are after all members of the public. We should also keep in mind, however, that the Law School is part of the University. We get to use the rest of the libraries at UB, so it only seems fair that the rest of UB should get to use our library.

But this doesn't mean that the Law Library is not concerned about meeting the needs of law students. We are. That's why we seized the opportunity to create the new seventh-floor reading room. But the Law Library has to pursue our goal of serving law students in the context of our responsibilities to the public and

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‡Findings are based on a Kaplan PMBR survey of students enrolled in its MBE Foundation and/or MBE Final Review course for the July 2008 bar exam.

\*\*National exam results released from the National Conference of Bar Examiners.

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Editors' Opinion Page

# The Opinion

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## A Lesson From Lincoln *By Dan Aiello, Ed.*

Abraham Lincoln was a successful attorney before becoming the United State's 16<sup>th</sup> President and one of the most adored political figures in American History. Lincoln once won an acquittal by using a Farmer's Almanac (an annual periodical containing long-range weather predications and astronomical data) to impeach an eyewitness's credibility. He argued that, on the night of the alleged murder, the

angle of the moon was at such a low point in the sky as to not give-off enough illumination for the eyewitness to positively identify Lincoln's client. Lincoln even argued in-front of the Supreme Court of the United States.

In the early 1800's, law schools were rare, and the majority of them, including Yale, taught a practical-based curriculum. Harvard was one of the first law schools to take the emphasis off practice, and put it on theory. Traditionally, if someone wanted to become a lawyer, they would work alongside members of the Bar. The "student" would be guided by a practitioner during their clerkship, and with time, would become an attorney, and the cycle would continue. While elected as a legislator representing Salem County, Illinois, Lincoln would read law books borrowed from a fellow legislator, John Stuart, while the legislature wasn't in session. Lincoln never clerked, but rather went straight to work in John Stuart's law firm. Lincoln became a successful trial attorney that easily won over a jury without ever attending law school. Do we need law school to be good attorneys?

The short answer: Yes. Today, the law is extremely vast and complex, so we need law school to develop the foundation for our profession (the other reason being that the ABA requires students to graduate from an ABA-accredited law school to be eligible to take the Bar exam). However, I think there should be more emphasis on practice skills, and less emphasis on theory. Lincoln's legal "education" can contest to the fact that, to be a good attorney (minus other variables like intelligence), the emphasis must be on practice.



I'm an advocate for more practical skill courses in law school. Every practical-based course I've taken at UB, from New York Criminal Practice to Trial Technique, has benefited me more than any theory-based course that I've taken, like criminal law and evidence. The practical courses put everything together, as they should be, in practice. The hands-on approach, in my opinion, is the best way to learn anything. The law is like mixed martial arts: anyone can buy a book that explains the situations and what to do in those situations; but if you don't have an instructor teaching you, and a partner to practice with, you're not going to really learn it.

In this economy, which pins 3L's against recent graduates, against experienced attorneys that were laid-off, students need to separate themselves from the pack. To do this, students must get as much practice experience in law school as they possibly can. I implore the faculty at UB Law to integrate a practical-based element to each course outside of first-year courses. That way, when you sit down for an interview, you can say that you wrote a motion for summary judgment and argued it in-front of a judge, took a deposition, and impeached a witness's credibility like Lincoln...and when the interviewer asks you if you did that on your internships, you can say, No, I did that in my practical-based courses at UB Law.



# The Student Newspaper of the University at Buffalo Law School

## Q&A Cont.'d

the University. If there are problems for law students or ways that we can serve you better, we are always willing to listen to constructive suggestions about how we can do a better job of meeting your needs.

DA: My thoughts are, quite simply, undergraduates should not be allowed in the law school library. Apart from silence (which all libraries attempt to offer), I can't imagine why law students would study in the undergraduate libraries. If undergraduates are taking constitutional law or business law, or the like, then I think it's fair that they use the law school's resources, but, otherwise, undergraduates don't need the law library for any purpose than silence, which is offered at their own libraries (yes, plural).

2. What do you think about the new printer situation in the library? I.e. the switch of the printing stations from the 5<sup>th</sup> floor to the 3<sup>rd</sup> floor?

JW: I did not answer the question about the shift of the printers from the 5th to the 3rd floor because this was not a Law Library decision. Printing services for students is handled by the Law School's Technology and Communications Committee, which is chaired by Professor Teri Miller. Here is a link to a blog poster Professor Miller prepared about the shift: <http://ublawtech.wordpress.com/2009/08/21/improved-printing-access-and-services-for-ub-law-students/> Any concerns, comments, or questions about the printer move, should be directed to Professor Miller.

DA: Since my first attempt at using the new printer-network in the law library was a fail, I only use my printer at the apartment, especially since I'm applying for jobs and need to use resume paper. I have no thoughts, one way or the other, on the new printer-network.

3. What do you think about the new 7<sup>th</sup> floor space?

JW: The reopening of the seventh floor should be a real boon to law students. All told there are more than 100 seats (80 at the study tables and 23 at desks in the stacks) for the exclusive use of members of the Law School community. I hope law students will use this space. And I would add that we should take care of this space as well. Only law students and employees of the Law School and Law Library have access to the seventh floor, so we have no one but ourselves to blame if there is trash lying around or if things get broken. Please help us keep this space in good shape!

DA: It's sad that we have one floor exclusively for law students, but it's a start. I think, since it's possible, to use swipe-card access for most floors, i.e., to access the Koran Center. What pissed me off about the 7th floor area is that law students leave garbage everywhere, and I found the email from Dean Saran (regarding a law student breaking the glass on a study-table) troubling. Look, if we're given something, take care of it. The argument now becomes: We can't give the law students anything, because they don't appreciate it? And like the microwave in the mail-room last year, if we don't take care of it, it gets taken away. Some law students don't take care of anything. Nonetheless, it's a decent space to study.

4. At a school that prides itself on its ability to excel despite the crumbling economy of NYS, do you feel that the administration has done enough to try and change the restrictions that the library is shackled by to create a library that is conducive for law students to study?

JW: As I said in my answer to your first question, the Law Library and the Law School want to do the best job we can of meeting the needs of law students, but we also have obligations to the public and to the UB community. So I prefer to focus not on what the Law Library cannot do, but on what we can do. If there are particular problems, please let us know and we'll see what we can do about them.

DA: When I transferred to UB Law, I was shocked that the law library no longer updates their hard-copies of reporters. What!? Anyway, I know LexisNexis and Westlaw accounts are expensive, but I used to love using hardcopies. Since we're a State school, we can't blame the administration, but the State itself. I feel we need a serious lobbying effort to get money for the law school. It makes me sick to think that the State was considering another State law school, but refuses to fund UB Law adequately enough to keep our books updated. In my opinion, the law school is good for study aids, like Gilbert CD's, but terrible on hard-copies of reporters for students that like to research using books.



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Some principles and rights are so deeply entrenched in our values that it is not necessary to have taken a Constitutional Law or Human Rights class to know that such rights are fundamental and sacred. Freedom of speech, religion, association, and freedom from arbitrary detention, intimidation, and harassment are amongst such sacred rights which are deeply engraved in our legal tradition and which distinguish our nation from oppressive totalitarian dictatorships. They are the rights and liberties that make America "America."

## DETAINED: Part 1

By Hassan Shibly  
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Thus when citizens who are members of a mainstream religious minority are exclusively detained at the border without adequate accommodation for an indefinite time, fingerprinted, frisked, and interrogated all because they attended a religious cultural conference—one does not need to have attended law school to understand that such a scenario does not sit well with the liberties and values we cherish in our nation.

Yet to my surprise, something which I had assumed could only occur in places without the "Bill of Rights" and a democratic government happened to me on one cold December night in 2004. A freshmen at UB studying Political Science at the time, I was returning with my mother and three younger siblings from a mainstream Muslim cultural convention at the Rogers Center in Toronto. The *Reviving the Islamic Spirit* conference is an annual event in Toronto which is welcomed by the Canadian Government. World renowned professors and scholars from American, Mideast, and European Universities, as well as international speakers and celebrities are invited to give lectures on Islamic Spirituality; giving back to the community; strengthening the family; and working together to build a better community based on shared common values. My family had attended this conference yearly and enjoyed the talks, entertainment, good food, and trade bazaar, along with thirty thousand other Americans and Canadians.

That year however, would turn out to be very memorable. The conference finished on Sunday night and we reached the Lewiston-Queens border bridge near midnight. We were tired and happy to be nearly home and could not wait to get into our warm beds on that cold December night. We approached the inspection booth and happily showed our passports, which states, "*The Secretary of State of the United States of America hereby requests all whom it may concern to permit the citizen/national of the United States named herein to pass without delay or hindrance and in case of need to give all lawful aid and protection*" to the CBP (Customs and Border Protection) agent, expecting a "Welcome Home!" However, when we told the agent that we were in Toronto to attend a Muslim cultural convention, the agent immediately responded: "Please pull over for a random secondary inspection." My mother asked: "What do you mean random." Jokingly I replied, "She must mean that whoever looks Muslim must 'randomly' be inspected." However, I did not expect that to be the reality!

Stay Tuned!  
Part 2 will be  
in the Next  
Issue



## "I Like Girls Who Wear Abercrombie and Fitch..."

By Kristen Ng., Ed

The LFO citing Abercrombie and Fitch indicates just how popular the brand is. However, Abercrombie has had its ups and downs recently. Is it any surprise that Abercrombie and Fitch has another lawsuit alleging discrimination against them? I would bet that most of us remember the infamous situation they were in almost ten years ago for the alleged "racist" t-shirts they were selling, one of which depicted a Chinese man with slanted eyes and a rice paddy hat, stating, "Two Wongs Don't Make It White." Is this racist, or is this just normal college frat-boy humor? Regardless, Abercrombie settled that lawsuit, amongst others (dealing with hiring processes), and they went along on their merry way.

Until now. There is currently a lawsuit pending filed by the Equal Employment Opportunity Commission on behalf of a Samantha Elauf, a 19 year old community college student from Tulsa, Oklahoma. Ms. Elauf is Muslim. Ms. Elauf applied to work at Abercrombie, but was not hired. The EEOC claims that this is because Ms. Elauf wears a hijab, which is prohibited by Abercrombie's employee dress code. The dress code states that no headgear is allowed, and it also states that the color black is not allowed as part of an employee's dress. The lawsuit states: Abercrombie failed to accommodate her religious beliefs by making an exception to the Look Policy. These actions constitute discrimination against Ms. Elauf on the basis of religion" (Times article). Ms. Elauf had gone in for an interview, wearing a hijab. She was later informed by a friend, who worked at the store, that she did not get the job because of her hijab. When Abercrombie was asked about their hiring practice, they repeated their employee dress code again- no black and no hats. Ms. Elauf is suing for backpay and compensation due to her emotional pain and anxiety.

Does Abercrombie's actions violate Title VII of the Civil Rights Act of 1964? According to Title VII, no employer shall refuse to hire based on race, color, religion, sex, or national origin. Facially, it might seem that the dress code violates Title VII. However, let's look at it from a different point of view. Many employers out there have some sort of dress code. If an employer requires you to wear a bikini top because you are selling swimsuits, can you bring a suit alleging discrimination because your religion prohibits you from exposing cleavage? This is just a hypothetical. I am not even sure where I stand on this lawsuit. However, I have worked at Abercrombie, and I do know that the purpose of their store is to sell sex. It is everywhere, from their floor models, to the pictures, to even their shopping bags. They are there to promote sex. There are various rules to their dress code. Is it discrimination if they have a certain policy that allows them to sell something? You might even argue that they are selling a lifestyle, one that attracts high school and college-aged people. The question here is, can Ms. Elauf do her job wearing her hijab? But that would lead to- what is her job, selling clothing, or selling a lifestyle. Either way, does it matter?

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