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The Opinion

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Bush Nominates Miers to fill Justice O'Conner's Seat

SEE PAGE 6



BEECHER TO RECEIVE 2005 JAECKLE AWARD

SEE PAGE 3



# The Opinion

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

Vol. 44, Issue 2

The Student Newspaper of the University at Buffalo Law School

October 2005

## UB welcomes Louisiana Law Students

Three students from Katrina affected schools attend the Law School this Fall



Above, Loyola Law School in New Orleans recovers from Hurricane Katrina, three students have joined UB until classes can resume

By Caroline Brancatella, '07

A few unexpected days off due to weather or a small cafeteria fire can be a pleasure for law students. A citywide evacuation, massive governmental failure, and cancelled fall semester is not. It calls for last minute scrambling to continue a law school career on schedule.

Such was the situation for nearly 1,800 law students attending Loyola New Orleans and Tulane University, both schools in the heart of the hurricane ravaged city that announced nearly a week after Katrina hit the Gulf Coast that their institutions would be closed for the Fall semester.

As a result, more than 160 law schools across the nation, including the University at Buffalo, opened their doors to New Orleans based individual to attend as transfer or visiting students. Initially, Tulane was willing to only allow second and third year students to pursue course work at other schools, but later decided to permit the same

opportunity to first years.

At UB, three women, two from Tulane and one from Loyola have joined the student body for at least the semester.

"The faculty and fellow students have assisted the visiting students in getting acclimated and catching up with their coursework," says **Vice Dean for Student Affairs Melinda Saran** of the transfers.

She adds, "What I found most interesting is that all the law students arrived with their lap tops, even though some came with little else."

**Sara Johnson**, a second year student visiting UB for the semester from Tulane described the unexpected turns her school year has taken.

"We really never thought this would happen," she said. Having evacuated for Hurricane Ivan during her first year in New Orleans, which

CONTINUED ON PAGE 2

## Election Wrap-up: Eighteen vie for 1L seats

The UB Law Student Bar Association has put the final pieces in place for the upcoming year of student government with the completion of class director elections held the last week of September.

With the SBA reporting a voter turnout of nearly three hundred students, the classes elected a total of 25 directors -- six representing each class and one from the LLM program.

The first year students put forth the most competitive field with 18 students vying for the six available positions. Those 1L's who emerged as the winners include **Burton Phillips, Shannon Elwell, Alexander Wright, Shelly Tsai, Michael Hernandez, and Emily Conley.**

Among the 2L's elected were **Monica Campbell, Jacia Smith, Adam Bushey, Ray Walter, Victor Gonzalez, Jason Almonte.** Smith, Bushey and Almonte are returning for their second stint of service in the SBA having also acted as class directors last year.

**Leonardo Sette-Camara, Scott Bi-**

**zub, Renee Root, Lexi Maloney, Paul Parisi, Jenny Mills** will be representing the third year class with Sette-Camara returning for a second year.

elections. The energy and interest shown by the candidates and the voters was impressive," said SBA president Ryan Crawford of the elections.



4 Directors return from last year's Board

**Roxana Bray** was elected from the LLM program.

"On behalf of the Student Bar Association Executive Board, I would like to say thank you to all the UB Law students that participated in the recent class director

He continued, "I look forward to serving with the newly elected class directors. I believe that with the elected directors' dedication and passion, we can accomplish a great deal in the SBA over the course of this school year."

Returning second year class director **Jason Almonte** said of his goals, "This year, I would like to work with my fellow classmates on designing more programming that really involves each of the classes. I would like to work with the current SBA e-board, who is dedicated to facilitating programs for students, and bringing SBA access up to par."

Ray Walter, a newly elected 2L spoke about why he chose to get involved, "I

decided to run because law school is a place where we spend a majority of our time for three important years of our lives, therefore, I wanted to give something back to the law school community and work to improve it."

Class directors will be responsible for attending all SBA meetings and organizing law school sponsored events. Highlights from last year included the Barrister's Ball, SBA Movie Night, Bowling for Finals, 1L Escape, Karaoke Night, Decompression and nearly a dozen more.

*infra*

SBA President's Corner ..... 2

Commentary..... 4

Faculty Spotlight..... 7

Docket..... 8

# The Opinion

October 2005

Volume XXXIV, Issue #2

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# GAO Report: Textbook Prices on Rise

About a month ago, while most students were still on summer break, the Government Accountability Office (GAO) released a new report on the rising price of college textbooks. The GAO, Congress's research arm compiled the report at the request of Congressman David Wu (D-OR).

The report reinforces what students already know: textbook costs are skyrocketing, publishers are using practices including textbook bundling to drive up costs for students. Textbook prices have risen at twice the rate of annual inflation over the last two decades, an average of 6 percent each year since 1987-1988, compared with overall price increases of 3 percent per year.

The report further found that textbooks and supplies are a significant cost for students and GAO found the cost of textbooks and supplies as a percentage of tuition and fees is 26 percent for a fulltime student attending a 4-year public institution, 72 percent for a fulltime student attending a 2-year public institution and 8 percent at a 4-year private institution.

Lastly, the GAO found the practice of "bundling" CD-ROMS and workbooks to textbooks to be a significant factor in why textbook prices have increased so dramatically. The report also cites a pro-

liferation of new editions as another factor in textbook price increases.

Fortunately, there are simple things students can do to save money on their textbooks now, and at the same time, push for changes within the textbook



publishing industry.

Some advocates suggest that students should not fall prey to the textbook publishers and should do what they are best at: shop around, be creative about where they get their books.

Here are some ways students can save money and change the textbook industry:

•**Use an online bookswap that allows students to buy and sell used books directly from each other.** The Student Bar Association teamed up with the undergraduate Student Association last year to provide students with a bookswap at UB.

•**Ask your professors for the previous edition's syllabus.** All too often publishers put out new editions without making substantive changes to the content. Every time a publisher produces a new, more expensive edition that has new page numbers, the professor has to create a new syllabus. Ask your professors if the previous edition was mostly the same. If so, ask if you can have a copy of the old syllabus. Then find a used copy online or from other students who took the class.

•**Ask Professors to Order Textbooks Early.** If the campus bookstore knows before the end of the quarter/semester that the professor is going to use the same book the next quarter/semester, the bookstore will pay more for used copies because they know they will be able to resell them. Encourage all of your professors to use the same book for as long as possible and submit their textbook orders to the bookstore before the end of the quarter/semester so students can sell their used books for more money.

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UB.Opinion@gmail.com

## Tulane Students Adjusting to UB life

CONTINUED FROM PAGE 1

turned out to be less damaging than predicted, Johnson and many of her classmates assumed that Katrina would be the same situation -- a few days off from classes and the inconvenience of finding some place to stay.

Johnson feels that the weekend timing of Katrina affected the speed with which people reacted to it. "On Friday night I was with friends. No one was really watching TV or checking online. I wasn't worried because normally my mom's on top of this stuff and calling to tell me. Then suddenly it was 'you need to leave now.'"

She emphasizes how slow the evacuation process can actually be -- trying to pack up an apartment, waiting to get gas, the volume of traffic leaving the city. "I just packed a weekend bag," she says. "I literally came here with a couple of pairs of shorts and flip flops."

Eventually Johnson traveled to Austin, TX, and flew home to Buffalo. What has become of the belongings in her second floor apartment, she is not sure. Although she has been told that 7 1/2 feet of water filled her neighborhood, the satellite pictures she has looked at online do not show that much damage -- at least on the surface.

"The mold grows so fast you would never believe it," she says. And the mold, like so many other things in the city, smells -- a putrid scent that may never leave couches and linens.

Then there are the refrigerators left full of food. "Some people have found maggots three feet deep," she says. In short, even though an area may not have

been directly underwater, the peripheral damage can still make an apartment a total loss.

One thing that has been less challenging for Johnson is finding a place to attend law school for the semester. "It was so convenient. There is a law school fifteen minutes from my parents' house."

"I e-mailed Dean Saran Friday night and had an answer back by Saturday morning. I arrived in Buffalo and registered for classes all on the Tuesday the semester started."

That does not mean that Johnson was eager to leave the Crescent City. "I didn't want to leave, because I felt that once I left I couldn't do anything to help."

She says that many students went to schools in places where they had connections. More than 100 went to Louisiana State University and much of the faculty and the entire staff of the law review re-located to the University of Texas Law

School.

Tulane is planning a normal spring semester, as well as a summer session for those students who decided to pursue other paths during the fall to continue law school on schedule. One concern for all students is recruitment and summer positions -- interview selections were abandoned in the wake of the disaster and while Tulane is offering help, many students are left in a job search free for all.

In the meantime Johnson is planning to return to Tulane in January and would like to travel there to assess the damage "after hurricane season is over."

Until then she says, "My main concern is when I go back in January where am I going to live."



Courtesy: Lawcrossing.com

## SBA President's Corner

Dear UB Law Community:

Another month has passed, and the UB Law academic year is well underway. The foliage has begun to turn, and the pace of activity around the law school has quickened. Over the course of the last month many exciting events have taken place at UB Law. The season of moot court competition, trial team activity, and journal work is upon us. Additionally, student group activity has risen to a new level, the student groups here at UB Law are working hard to bring forth meaningful and exciting programming. Attendance for student group and Student Bar Association events has risen significantly, representing a strong and active student body.

From an extremely significant and educational event like the Jewish Law Students Association's program "Justice at Dachau," to a simple recreational cruise down the Niagara River, UB Law students are always interested in being active and involved. UB Law students recently demonstrated their compassion and generosity by raising over \$1,600 for the victims of Hurricane Katrina. UB Law is truly an environment inspired by leadership through service.



Ryan Crawford, '06  
SBA President

The recent class directors election produced a competitive, yet positive, demonstration of student government. I wish to congratulate and thank all those who ran for office. I look forward to working with all the new directors. The student government has many issues that

stand before it; and with the leadership of the newly elected officers the potential for improvement of our community is boundless. This academic year promises to be an exciting and fruitful one.

Additionally, I would like to welcome Michelle Schwach of Loyola, Sara Johnson of Tulane, and Clarissa Zadar of Tulane. Michelle, Sara, and Clarissa were displaced by

Hurricane Katrina and they are now attending UB Law. The UB Law community is fortunate to have Michelle, Sara, and Clarissa among us.

Please remember that the SBA is a student government organization dedicated to serving the UB Law community. We are here to help all law students enjoy their law school experience to the fullest, please stop by the SBA office or email me directly with any thoughts, questions or concerns.

Sincerely,  
Ryan Crawford  
Student Bar Association President  
Rpc8@buffalo.edu

# Beecher to Receive Jaeckle Award

Community leader **Thomas R. Beecher, Jr., '59** will receive the 2005 Edwin F. Jaeckle Award from the Law School and the UB Law Alumni Association at a luncheon to be held Oct. 22 in the Hyatt Regency Buffalo.

The award, for UB Law alumnus Edwin F. Jaeckle, Class of 1915, is the highest honor the UB Law School and the Law Alumni Association can bestow. It is given annually to an individual who has distinguished herself or himself and has made significant contributions to the UB Law School and to the legal profession.

Prior Jaeckle Award winners include **Hon. Charles S. Desmond, Frank G. Raichle, Jr., M. Robert Koren, Manly Fleischmann, Hon. M. Dolores Denman** and UB President **William R. Greiner**.

The luncheon and award presentation at 12:30 p.m. will follow the morning-long UB Law Alumni Convocation, an annual continuing legal educational program beginning at 8:30 a.m. The convocation's focus this year is "Emerging Developments, Changes and Updates in Bankruptcy Law, Jury Trial Innovations and Aging and the Law." The full morning program is approved for 3 CLE credits in ethics and professional practice.

**Nils Olsen**, law school dean and professor, praised Beecher, noting that "Tom's service to the community and the university has been exemplary. Few have devoted as much time and effort to improving the lives of others through his many leadership roles over the course of his long and distinguished career. His guidance to the UB Law School through his membership on the Dean's Advisory Council has helped us enormously. He is an exceptionally worthy recipient of the Jaeckle Award."

Beecher is a partner in the Buffalo law firm Phillips Lytle, where he concentrates his practice on estates and trusts,

corporate governance, closely held companies, foundations and not-for-profit entities. But it is his involvement in myriad business and charitable initiatives that has left the most lasting impression on Western New York.

Beecher is chair of the Buffalo Niagara Medical Campus (BNMC), a nonprofit corporation founded to cultivate a world-



Beecher, '59

class medical campus in downtown Buffalo. Under Beecher's leadership, and in partnership with its member institutions, local government, and the surrounding neighborhoods, the BNMC is implementing a comprehensive master plan for development of its 100-acre campus. This area includes the three new buildings of the Buffalo Life Sciences Complex as well as the region's premier clinical, research and academic institutions. In addition to improving the physical infrastructure, the BNMC supports scientific recruitment efforts of its member institu-

tions, while fostering entrepreneurial opportunities. Additionally, the medical campus has partnered with the neighborhoods in obtaining national foundation support for infrastructure improvement initiatives and other efforts to support development and growth.

As board chairman of Buffalo General Hospital from 1991-94, Beecher helped lay the groundwork for the hospital's merger with two other hospitals into the Kaleida Health System. He chaired that system's board in 1999 and 2000.

He co-founded BISON, the Buffalo Inner-City Scholarship Opportunity Network, which funds scholarships for low-income students seeking private secondary education. He served on the boards of directors of Canisius College and the Buffalo Philharmonic Orchestra. He is a trustee of the Messer and LeBrun foundations and is on the advisory board of the Children's Educational Opportunity Foundation.

In all, Beecher has served on the boards of a dozen companies, four foundations and more than 30 community organizations. He uses his nickname, "Trustee Tom," as his e-mail address.

The grandson of Irish immigrants who built a thriving textile business, Beecher also runs Ballynoe, Inc., which funds scholarships and educational travel for his large extended family.

He also serves on the Dean's Advisory Council and is a member of the Law School's Class of 1959.

The first part of the convocation will focus on the new Bankruptcy Abuse Prevention and Consumer Protection Act. The second part of the program will focus on new developments and recent trends in the use of jurors, including permitting jurors to ask questions and innovations to jury instructions. The convocation's final presentation will focus on aging and the law, with discussions on

# Institute Launches "State of the Region" Website

UB's Institute for Local Governance and Regional Growth has launched a new Web site for its "State of the Region" project that will incorporate updates on the project's performance indicators and data as they become available.

Guided by the motto, "you can't manage what you can't measure," the "State of the Region," founded by the institute in 1998, monitors the Buffalo Niagara region's performance in key areas through more than 100 outcomes-based indicators across 11 major topic areas. The Web site, at <http://www.regional-institute.buffalo.edu/sotr>, features a more dynamic format, enhanced tools for accessing and sorting data and user-friendly navigation options, including the organization of data by topic areas.

"The 'State of the Region' project has always been about providing Buffalo Niagara with critical, reliable data on important regional issues, and doing so in a timely manner. The new and enhanced Web site simply meets this goal more effectively, more efficiently and more often," said Institute Director John B. Sheffer, II, who will step down as institute director on Sept. 1.

One key advantage of the new format is the release of the project's performance indicators and data as they are available. Prior to this transition, the project was based on a periodic report schedule, with three reports released since 1999, including the baseline report and progress reports in 2000 and 2002. "An enhanced online presence is a natural progression for the project," added Kathryn A. Foster, associate professor of urban and regional planning in the UB School of Architecture and Planning. "The new format taps the flexibility and real-time nature of the Web to better track regional performance." Foster, who will assume the position of institute director on Sept. 1, oversaw the project as the institute's director of research from 1999 to 2002.

The Institute began expanding the project's Web presence in February 2005 by posting 22 indicator updates online. Along with the unveiling of the new Web site, the "State of the Region" is releasing five additional indicator updates across four topic areas:

- \* **Environment – 2.1 Air Quality**  
Ozone levels in the region are slightly higher than the new, more stringent national standard; Western NY's air particulate pollution declined and remains below statewide and national averages.
- \* **Environ. – 2.11 Child Lead Exposure**  
Lead screening of children under 2 has not changed materially; all Western New York counties registered decreases in the proportion of children with elevated lead levels and lead poisoning.
- \* **Gov't – 3.8 Property Revaluation**  
Nearly 2/3 of Western NY municipalities completed reassessment projects within the past three years; roughly half of all cities conducted reassessments in 2005.
- \* **Health – 6.7 Smoking Prevalence**  
The percentage of adult smokers in Western NY dropped slightly, but remains higher than statewide and national rates; counter to national trends, tobacco use among Erie County 9th graders dropped and is below the national rate.
- \* **Human Serv. – 8.3 Quality Child Care**  
Western NY registered modest gains in its number of licensed or registered child care providers and accredited child care programs; the region still faces shortage of quality facilities and programs.

# Smith Receives "Promise Prize"

Second year law student **Mark Smith** was awarded the \$5,000 "Promise Prize" at a gala hosted by the Minority Bar Association of Western New York Thursday September 29 at the Statler Golden Ballroom.

The Marie Nesbitt Promise Prize award is bestowed annually on a student of African descent who has demonstrated exceptional academic achievement and professional promise during the first year of law school at the University at Buffalo.

**Vikki L. Pryor**, president and CEO of SBLI USA Mutual Life Insurance Company, Inc. and a UB Law graduate awarded the prize.

Pryor created the award in 2002 in memory of her grandmother, Marie Nesbitt, who was a great granddaughter of slaves and whose formal education stopped at the third grade, however; because of her belief that Nesbitt was a woman of strong opinions, deeply held principles and an inspiration to others Pryor named the education award in her honor.

"My grandmother faced many difficulties in her life, but she stayed positive and inspired me and all those around her," said Ms. Pryor in an issued state-



**Left to Right: SBLI USA Mutual Life Insurance Company, Inc. President & CEO Vikki L. Pryor with Mark Smith and Lenora B. Foote, Assistant Corporation Counsel for the City of Buffalo. Created in memory of Ms. Pryor's grandmother, the \$5,000 "Promise Prize" award is bestowed annually on a student of African descent who has demonstrated exceptional academic achievement and professional promise during the first year of law school.**

ment.

"As alumni, parents, professors and mentors we now have the chance to give back to our schools, communities and the young people of today as a way of saying

'thank you' for all that we have been so lucky to receive in our own lives. The award will also help develop a network of young leaders dedicated to achieving their full potential and who will strive to give back to their communities."

"I am ecstatic, and very surprised," said Mr. Smith, about receiving the award.

"I feel good about my grades, and am confident about being an attorney, but receiving an award like this does a lot for one's confidence about the ability to succeed in the legal world. I hope that receiving this award will give me the opportunity to give back ten fold to the community and to the University at Buffalo," he added.

While at UB, Pryor was one of the early members of the BLSA (Black Law Students Association). She serves on the Dean's Advisory Council at the law school, and was honored with its 2002 Distinguished Alumna Award for exemplary performance in business.

A native of Corning, NY, Smith is a graduate of Alfred University.

# Reflections on Law School by a Third Year

By Jenny Mills, '06

Now “enjoying” our third year of law school, some friends and I were talking about the differences we have noticed as we have progressed from lowly 1L’s to (slightly less lowly) 3L’s.



## FIRST YEAR

**Orientation:** God, I’m lumped in this stupid section with a bunch of weirdos that I have to spend ALL of my time with. That one looks cute, is he single? Who are these people? Why are they here? Why am I here? Do I really need to wear a suit to picture day? Is it too late to drop out, go to library school or get a McJob somewhere far, far away?

**Fall semester:** I love my section, I hate my classes. God I hope I don’t get called on in Civ Pro today. Who the hell came up with Socratic method anyway? Sick twisted bastard.

Is there a bar night tonight? Party at Creekside/Flint? Is this CSO meeting mandatory? If I stay up all night can I maybe get this memo done? Why do I have a final 3 days before Christmas? Does anyone have an outline for Con Law? Is ethics class optional? Why does this feel like I’m back in high school?

**Spring semester:** Oh my god! I need a job. I need to get on law review. I need to get on Jessup. I need to do my appellate brief. What the hell is a contract?

Where did my life go? I hate school, I hate Buffalo, I hate people. I hate everything! Who is this lunatic and why have they let him lose upon students? What is a chicken? Is this

etiquette thing mandatory? Will “refreshments” be served? Why won’t my mentor return my calls?

Why does the person next to me always raise his hand and say something stupid? Wait? I raise my hand ... Do people think I’m stupid? Oh my god! I’m one of those stupid-annoying people! But, wait ... What I have to say is always interesting and important? Right? Right?!

I’ll trade you these two Property outlines for your Torts one. Would it be too over the top to burn my appellate brief at the Decompression party?

## SECOND YEAR

**Fall semester:** Yeah. This again. Right. Whatever. Saw a couple cute 1Ls in the law library. Maybe I will offer them some outlines. At least classes are better now, more interesting anyway. The workload isn’t bad either.

I need a job. I need a BPILP Fellowship. Where is everyone I know? I miss my section. We never see each other anymore except for in the law lib or if we start slumming it up and going to bar nights. Speaking of which, is there a bar night tonight? Please don’t be at Soho.

Wanna get some lunch? Yeah, I’ve got class too but we can just sit in the back and eat it there.

**Spring semester:** Oh yeah. Walk in the park. Three credits from bridge term and I’ve got it nice and easy. I heard Class X is an easy “A.” Nice! But wait! I said that last semester and by finals time I was nearly crying myself to sleep every night with fear of failure and stress from too much damn work to do.

Hey – I’ve got a job now. I’m set. Not

a care in the world. Are you going to class tonight? I haven’t been in a month. We do anything interesting in there? Can I have your notes? I’ve got a sweet Tax outline I’ll give you.

Ummm... who set the school on fire?

## THIRD YEAR

**Fall semester:** Why? Why, why, why am I forced to slog through another year of this madness? Can’t we do a residency program like the med school losers? I hate school. I liked being out in the real world, knowing things, doing things.

Who are all these little 1L’s? Why do they congregate around my locker? Why does the school smell like asbestos? Why can’t I find a job? Why have I suddenly realized that International Law is a joke and that because of that sad, sorry fact, I’ll never be able to accomplish what I want to?

Have you signed up for the MPRE yet? Did you hear X got an offer in NYC? How come I still don’t know what a contract is?

Can I really hold down two legal jobs, go to school, submit resumes and still sleep?

Did you see those new tables in the “food court?” Can you really call a cubicle with some mailboxes, vending machines, and a smelly microwave a food court?

Have you found a job yet? Why haven’t I signed up for Bar/Bri? If I don’t find a job and run off and join the Peace Corps, will my loans be deferred? Why do I always feel like I’m drowning? Why haven’t I been to class in weeks? God, we’ve only been back one month.

# MY RANT: Judicial Activism on Both Sides

By Rick Johnson, '07

So-called “judicial activism” is often opposed by political conservatives. However, conservatives seem to be developing a judicial activism of their own. According to the Federalist Society, when George W. Bush announced his first nominations for the federal bench, he declared, “Every judge I appoint will be a person who clearly understands the role of a judge is to interpret the law, not to legislate from the bench.”

To quote James Madison, the “court exists to execute not the will of men, but the judgment of law.”

Supreme Court Justices Scalia, and Thomas have been accused by many of “conservative judicial activism.” The Federalist Society says that many critics trace back the alleged activism to the 1995 *Lopez v. United States* decision. Some accuse conservatives of legislating from the bench by ruling to overturn decades of precedent in areas such as healthcare, disability law, environmental protection, and welfare.

One of the most recent examples of possible judicial activism was the Terry Schiavo case. Many conservatives advocated replacing her feeding tube in order to save Terry Schiavo’s life. According to *The New York Times* “Legal scholars said it would be highly unusual for the Atlanta appeals court to order the feeding tube reinserted based on its analysis of Judge Whittemore’s ruling. But the Schiavo case has surprises at every turn.

Lars Noah, a professor of law at the University of Florida, said much depended on the politics of the judges randomly selected to serve on the panel in the Schiavo

case. The court did not release the panelists’ identities, saying it would wait until after they ruled. If the panel includes two or three Republican judges,



“this gets reversed in a heartbeat,” Professor Noah said. However, six of the ten judges of the 11th Circuit Court who refused to reverse Judge Whittemore’s decision were appointed by Republicans. Furthermore, the Supreme Court, which is also made up of a majority of Republicans, refused to hear the parent’s petition.

Although most conservatives may

stick to President’s Bush’s idea of the role of a federal judge, some show that they are not entirely opposed to judicial activism. According to Simon Lazarus’ article

vatives as well.

Although many would say that conservative justices have exercised restraint the question remains whether federal courts should, as Scalia remarked, not necessarily lie over in a strict constructionist point of view?

There have been a few important exceptions throughout history such as *Roe v. Wade* or *Brown v. Board of Education* when the court did more than strictly interpret the law. Yet, cases like *Dred Scott v. Sanford*, *Plessy v. Ferguson* and *Korematsu v. United States* are those where activism could have been useful. As Martin Luther King once stated, “there are some laws of the state that are out of harmony with the moral laws of the universe.”

Perhaps, as Scalia has pointed out, the theory of strict construction should not be a fixed rule. Michael Brennan has stated in “More than Whose Axe is Being Gored?” that “The Rehnquist Court has not and correct right wing Bush nominee’s will not engage in what is called right-wing Brennanism.” Yet many people have categorized *Morrison v. United States*, interpreting the commerce clause; and *Trustees of Univ. of Alabama v. Garrett*, which interprets state sovereign immunity; as examples of recent conservative judicial activism.

Some also believe the notions of conservative judicial activism or liberal judicial activism should be rejected but also assert that the court should not necessarily, as a universal rule, fall in line with judicial restraint.

## Cellino & Barnes No More?

You may not know your grandmother's phone number, but if you have lived in Western N.Y. long enough you can probably recite the phone number of the firm formerly known as Cellino & Barnes.

Long known in the Buffalo area for their ubiquitous advertisements via billboards, television and radio segments, Cellino & Barnes made headlines last June when the Appellate Division of State Supreme Court served **Ross M. Cellino's** with a six-month suspension and **Stephen E. Barnes** with censure for advancing money to clients.

Attorneys who specialize in personal injury cases are often faced with individuals who are unable to work, preventing them from paying high medical bills or supporting a family, making the potential money from a lawsuit much needed income. Although it may seem like an act of kindness, lawyers cannot advance funds to clients because it gives them a financial interest in the outcome of the case.

But advancing money to injured parties who have a good chance of coming into a large financial settlement is not always motivated by altruism -- it is also an extremely lucrative business proposition if the interest rates are high enough. The practice is commonly known as "non-recourse legal funding" and it can be risky business since if client loses his suit, he does not have to pay the money back.

Cellino testified that to finance advances to clients his firm used a mortgage company purchased from the estate of a Buffalo attorney and gave \$21,200 to eight clients, at interest rates of 19 to 24 percent, from March until June of 1994. However, after the N.Y. State Bar Association's Committee on Professional Ethics issued an opinion that barred lawyers from owning companies that advanced money to their own clients, the attorneys ceased using the company for loans.

While technically ceasing an ethically disfavored practice, the firm still kept loaning profits in the family.

Cellino assisted his cousin, John

Balconi in setting up a company, called GTR. Balconi invested some of his own money in the company, but Cellino & Barnes' mortgage company invested nearly \$250,000.

Balconi would then loan money to Cellino & Barnes clients -- based on tips about which of the firm's cases looked like good bets -- at 19 to 24 percent interest. Cellino and Barnes were not owners of the company, but they still made approximately 15 percent on the advances.

As a result of such actions the Barnes was censured and Cellino suspended from the bar for six months, his additional punishment the result of filing a false retainer agreement in a 1997 case.

The court said Cellino was guilty of "engaging in illegal conduct that adversely reflects on his honesty, trustworthiness or fitness as a lawyer" and also of "engaging in conduct involving dishonesty, fraud, deceit or misrepresentation."

The decision has put attorney ethics in the local limelight, if only because the lawyers at the center of the case have worked so hard to make their names and faces visible.

**Barbara Sherk**, who is an attorney and coordinator of UB Law's ethics program, says that the decision reminds new attorneys to "know the rules."

"People need to know that if there is a possible ethical dilemma in their practice they should contact the local bar association or state bar association for an ethics opinion," Sherk says.

"The rules are there to protect the public," she continues. "We are a self regulating profession and we have a responsibility to the public, the court has to look at that when they make their decisions -- how does the profession keep the public's trust?"

While all first year students are required to take the first semester ethics course, no further ethics classes are required. But Sherk emphasizes that not knowing the rules is never an excuse and reminds students that when they begin to practice law there are a number of seminars and CLE programs that focus on ethics. Additionally, this spring semester UB will offer an upper level ethics class.



Barnes



Cellino

## High Court's Fall Term Preview

By Peter Parry, '08

Fall is once again upon us, and it is time for another SCOTUS term. With a few new faces on the bench the Court will be closely watched as it tackles some contentious issues. The highest court in the land will review 48 cases -- including those that involve 4<sup>th</sup> Amendment issues, controlled substances, physician-assisted suicide, abortion, campaign-finance reform, and more.

One case likely to be controversial is *Gonzales v. Oregon*. In 1994, Oregon approved a ballot initiative known as the Death with Dignity Act, which allowed physicians to prescribe lethal substances to assist in the death of terminally ill patients. In 2001 however, former Attorney General John Ashcroft and the federal government stepped in and claimed physician-assisted suicide was a violation of the Controlled Substances Act [CSA] of 1970. Ashcroft argued that dispensing controlled substances in order to assist in suicide was not a legitimate medical purpose, and threatened that any physician who did so would have their registration to distribute controlled substances revoked or be criminally prosecuted for violating federal law. The 9<sup>th</sup> Circuit held that Ashcroft's directive was invalid, writing that, "physician-assisted suicide is not a form of 'drug abuse' that Congress intended the CSA to cover."

Another drug-related case, *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal* relates to the arrest of a New Mexico man for possessing 30 gallons of tea, but not the type served with crumpets. This tea contained DMT, a powerful hallucinogenic, and was used in religious services for the Brazil-based group O Centro Espirita Beneficente Uniao Do Vegetal. The issue is whether the arrest violated the First Amendment and the Religious Freedom Restoration Act of 1993.

In *Rumsfeld v. Forum for Academic & Institutional Rights*, the Court will decide whether the Solomon Amendment, a federal law which withholds federal funds from institutions of higher education that deny military recruiters access to campus, violates the First Amendment. Due to the military's "Don't Ask, Don't Tell" policy regarding homosexual service members, the on-campus recruiters could not abide by the non-discrimination policy of the American Association of Law Schools. The Forum for Academic & Institutional Rights claims the schools are being strong-armed into allowing recruiters on campus, and thus forced to espouse the views of the military on homosexuality, which violates their right to free

speech. The 3d Circuit agreed. In dissent, Judge Aldisert, wrote that the school's First Amendment rights are not being violated because they are free to voice their opposition to the military's policies in other forums without losing funding. The Supreme Court will tell us whether he is right.

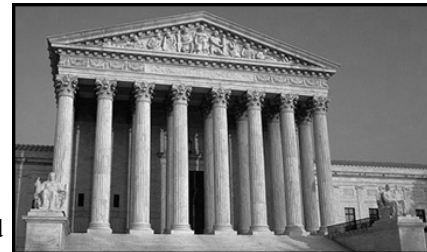
Abortion cases are always a good way to bring out the angry mobs and creative home-made signs, and this SCOTUS term has two abortion-related cases on the docket. *Ayotte v. Planned Parenthood of Northern New England* stems from New Hampshire's parental notification law, which requires that a minor's parents receive written notification at least 48 hours before an abortion is performed. *Scheidler & Operation Rescue v. National Organization for Women, Inc.*

concerns an injunction against anti-abortion protests that cross legal lines.

On the 4<sup>th</sup> Amendment front, there are a few interesting cases on the docket. In *Georgia v. Randolph* the Court will ponder this question: Can police search a home when a co-habitant consents and the other co-habitant is present and does not consent? In previous cases, the Supreme Court has held that searches based on a cohabitant's consent are fine, but it is unclear whether this holds true when the other resident is present and objects. *Hudson v. Michigan* is a case brought by the ACLU of Michigan involving "knock and announce" searches and the exclusionary rule. It raises the question of whether courts should suppress evidence seized by the police when they unlawfully enter a home without first knocking and announcing their presence.

The Court recently granted certiorari on two campaign finance cases. In *Vermont Republican State Committee v. Sorrell*, the Court will review the constitutionality of Vermont's spending limits for legislative races. *Wisconsin Right to Life v. FEC* involves a challenge to federal restrictions on corporation spending on ads close to Election Day.

The case on the docket that will no doubt receive the most attention and yet deserve it the least will be *Marshall v. Marshall*, when it will be finally decided whether Anna Nicole Smith's gold digging expedition (her marriage to the late oil tycoon J. Howard Marshall) was successful.



## Did you Celebrate our Constitution on September 17th?

By Josh Dubs, '08

Tucked away in an appropriations bill signed into law by President George W. Bush last year was a provision requiring the celebration of Constitution Day. All schools receiving any federal funding are now required to provide some sort of educational training or lecture on the document outlining our highest law: the United States Constitution.

The provision, sponsored by Senator Robert Byrd (D-WV), requires that "[e]ach educational institution that receives federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution."

Senator Byrd, who carries a pocket copy of the Constitution with him on the Senate floor, says it is more than just

knowing about the words of the Constitution.

"It seems obvious that a great republic cannot sustain itself unless its citizens participate in their own government," Byrd told a training session held by the U.S. Office of Personnel Management. "But how can they participate meaningfully if they don't know the fundamental principles on which their government is founded? How can they protect and defend their individual liberties if they don't know what they are, or how they are protected by the law of their land?"

Ceremonies were held all over the country on September 17<sup>th</sup> or the preced-

ing Friday, ranging from lectures to presentations, to recitations of the preamble, to creations of model Constitutions. Students of all different grade levels were required to learn about the law of the land.

The University at Buffalo, a public university which does receive federal funding, held a lecture led by **Professor Timothy Boyd** of the Classics Department. The first 1000 people to arrive at the home opening football game against Rutgers University received pocket copies of the Constitution, and then recited the Preamble before the singing of the National Anthem.

**Professor Lee Albert**, one of UB Law's Constitutional scholars, agrees on the importance of the event.

"In a time when traditional freedoms and

liberties are under enormous challenge and stress, it is highly significant for us to pay homage to the Constitution and its traditions. That is even more true when the membership of the U.S. Supreme Court is undergoing changes."

However, Albert believes more should be done, "Constitution Day should be a more important and prominent celebration than it appears to be."

Ironically, Constitution Day falls this year near the confirmation of its next interpreter, John Roberts. Confirmed as the 17<sup>th</sup> Chief Justice of the U.S. Supreme Court on September 29<sup>th</sup>, Roberts will play an extremely important role in Constitutional Law for many years. With Roberts' confirmation finished, the Congress will turn its attention to the Miers hearings, to replace retiring Justice Sandra Day O'Connor.



# Reciprocity Laws Among the States

By Nikki LaCrosse

When law students are choosing what areas of the law they want to practice, two questions they must seriously consider are how and where they will practice. Unlike lawyers of the early 20th century, counselors today often find themselves practicing across state, or even country, borders. However, what qualifies for a legal license in Wisconsin is not necessarily the same in California. Figuring out where a law degree can be used is a complex process.

When one bar admits a lawyer based mainly on his/her membership in another bar, it is called reciprocity or "admission on motion." It is not a standardized process. While the American Bar Association (ABA) promotes guidelines it believes each jurisdiction should follow in accepting outside lawyers, each state is free to accept or disregard those suggestions and make its own rules.

Of the 50 states and 5 territories listed on the chart "Reciprocity, Comity & Attorneys Exam" in the ABA's Comprehensive Guide to Bar Admission Requirements, 2005, 23 participate in some sort of reciprocity. Nineteen jurisdictions require that attorneys take their individual bar exams before being allowed admission to the bar, while 18 do not. Some states will allow attorneys to take the Attorneys Exam, which is only the written part of the bar exam, and still others require passing scores on specific standardized exams.

While many states do participate in reciprocity, most still require that the applying lawyer have some experience in practicing law. Requirements range from one year of work as a licensed counselor up to seven years of experience before an applicant can apply to the bar. All jurisdictions that participate in reciprocity require that incoming lawyers be in good standing with their current bar associations.

There are also a series of standardized tests offered by the National Conference of Bar Examiners (NCBE) that are often components of an application to a state bar. The Multistate Bar Exam (MBE), Multistate Essay Exam (MEE), Multistate Professional Responsibility Exam (MPRE), and the Multistate Per-

formance Test (MPT) are the most commonly used tests for bar entrance, and some states require an applicant to pass one, or more, of these exams despite, or in lieu of, having reciprocity from his/her home state. The MBE and MPRE are the most common exams used, with only three or four jurisdictions opting to use other exams.

A handful of jurisdictions offer reciprocity only to other, specific jurisdictions. For example, Idaho offers reciprocity to lawyers licensed in Oregon, Washington, Utah, and Wyoming only, while Maine limits reciprocity to attorneys from New Hampshire and Vermont. A complete chart of states participating in reciprocity can be found on the ABA's website at <http://www.abanet.org/legaled/publications/compguide2005/chart9.pdf>

One way that lawyers can avoid joining the bar in another state is to receive a designation of *pro hac vice*, which is when a lawyer not licensed in a state is allowed to practice law there, usually for a specific case or client. Again, the requirements for the waiver differ greatly from state to state, but they normally require that the lawyer have several years of recent experience in the state where he/she is licensed. Registration with the courts is required, as is a fee to cover the subsequent investigation into the personal character, legal standing, and educational background of the applicant. A signed declaration to follow the laws of that state is also standard. Some states require that a licensed member of the bar act as co-counsel, while others only require the name of a local attorney who can provide assistance to the visiting lawyer. While appearing *pro hac vice* is significantly less rigorous than passing the bar; nevertheless, it is an involved process.

Corporate attorneys may also be able to avoid the maze of reciprocity regulations provided that their practices are limited to work directly concerning their employers and that they do not have any other clients. The term "in-house" may be applied to these corporate attorneys. Again, each state has its own rules and regulations regarding the practice of law under these conditions, but they tend to be less rigorous than those for reciprocity.

According to Becky Sutton of the Indiana Board of Law Examiners, who

coordinates all the applications for "foreign attorneys" seeking to practice law in Indiana, most lawyers "will do anything to avoid taking the bar exam." Although there are many criteria for an Indiana law license, Sutton states, "I don't think it is any more than they [lawyers] expect. Even if it is handled differently in other states, they would still have to go through a process." In her state, even those counselors meeting all of the requirements to practice in Indiana must re-register their Foreign Licenses for five consecutive years before they will be issued a license.

The state does have a Business Counsel License that has less-stringent requirements, but in-house lawyers cannot use their time in Indiana towards filling the five-year foreign-license requirement that leads to bar acceptance. Sutton warns, "They could practice [here] for 20 years, and they'll still have to apply for a Foreign License."

In-house lawyers are plentiful enough in the U.S. that there are publications devoted just to them. Lawyers Weekly, Inc., publishes three regional versions of In-House magazine across the country and reaches approximately 25,000 lawyers in 10,000 companies. In a column for New England In-House, Andrew D'Amico, General Counsel and Vice-President of Brookstone, Inc., notes, "The fact that a company lawyer is both the participant and an observer of the corporate activities supported makes this brand of lawyering unique." He also comments, "This lawyer has to provide legal advice while assisting in the conduct of a business."

Law students or attorneys from other countries may also be admitted to U.S. bar associations in 33 of the 55 states and territories governed by the ABA. Each of those jurisdictions has specific requirements for foreign applicants to meet, some of which include training in English common law, additional education at an ABA-approved school, and admission to the bar of another U.S. bar association. — *Lawcrossing.com*

For more information about the National Conference of Bar Examiners

Log on to:

[www.ncbex.org](http://www.ncbex.org)

## White House Counsel Miers Nominated to High Court

President Bush announced the nomination of White House Counsel Harriet Miers to Sandra Day O'Connor's seat on the U.S. Supreme Court earlier this month. Miers lead the White House's vetting process for both of President Bush's high court appointments, but while she screened potential candidates, the President had other staffers screening Miers for the post.

Many Washington insiders see Miers as an odd pick because she has never served on the bench. However, her supporters are quick to point out that the late Chief Justice also had never been a judge before his appointment. Nonetheless, many court watchers are at a loss as to what will occur during confirmation hearings -- slated for early November -- because she has never publicly opined.

Her judicial philosophy is a blank slate in the eyes of both Democrats and Republicans, which is why she is being attacked on both the left and the right.

After the announcement, some in Washington expressed shock and called her appointment a sign of weakness from a president hit hard in the press for recent controversies such as the handling of Katrina, Iraq, gas prices and the investigations of top advisor Karl Rove and Republican Majority Leaders Bill Frist (R-TN) and Tom Delay (R-TX).

Conservatives fear that Miers has not staked out a position on hot button issues such as abortion. Liberals are equally concerned. While noted Democratic leaders such as Harry Reid (D-NV) have expressed support for Miers, others have great unease about not only her beliefs, but her qualifications.

Miers has had a long and distinguished professional career. Prior to her appointment to the Court, she served as White House Counsel. Before joining the President's staff, she was Co-Managing Partner at Locke Liddell & Sapp, LLP, chair of the Texas Lottery Commission, the first woman president of the Texas State Bar, and the first female president of the Dallas Bar. She also served as a Member-At-Large on the Dallas City Council.

Miers received a bachelor's in Math JD, both from Southern Methodist Univ.

## Chemistry 101 Meets "Who Wants To Be A Millionaire"?

*Clickers help improve attendance, give professors instant feedback*

Along with laptops and cell phones, more than 4,000 University at Buffalo students this fall will be packing a piece of gear into their backpacks that may make them feel like they're on "Who Wants to Be a Millionaire?"

Slender, handheld devices, sold as "Audience Response Systems" (but everyone calls them "clickers") are making large-lecture-hall classes at UB less impersonal and more effective for students and professors alike.

The clickers, which students use to answer questions posed by a professor during a lecture, help give the instructor instant feedback on whether the class is comprehending the topic at hand and whether he or she should make appropriate adjustments. They make classes more interactive and, some professors are finding, improve student attendance.

"Students love them," notes Troy Wood, Ph.D., chemistry professor in the UB College of Arts and Sciences, who saw attendance in his chemistry class last se-

mester jump by 30 percent once he started using clickers.

"They said in their evaluations that they came to class more often because they knew we'd be using it," he said. "And students in other sections said they were upset that they weren't using it."

Wood says he was sold on using the clickers because he immediately saw the analogy with the TV game show, "Who Wants to Be a Millionaire?" where audience members use clickers if asked by players for assistance in answering questions.

"In the show, sometimes the audience is really sure, but sometimes it's evenly split," says Wood. "When my students are split in how they're answering my questions, then I have to step back and think about it. If fewer than half the students can answer the question correctly, then they're not getting it."



Wood's pilot project with the clickers was funded by UB's Educational Technology Center, part of the university's library system, which, along with UB's Instructional Technology Services of

the Computing and Information Technology division, will make a recommendation on whether they should be used more widely on campus.

To date, clickers are being used at UB in introductory courses in the departments of chemistry, biological sciences, physics, political science and psychology that typically have a large number of students.

The clickers are packaged with the textbooks for a particular class and students are instructed to bring them to lectures. A wireless receiver installed in the classroom instantly records students' responses to multiple-choice questions posed by their instructor and provides a summary of results to the professor indicating how many students responded cor-

rectly or incorrectly. The sum of these responses also allows the instructor to determine how many students did not respond.

"Now I've got instant feedback," says Wood, "I know whether they're grasping the material or not, and it gives the students an opportunity to interact in the classroom because they can answer questions related to the material." Wood says he wanted to use the clickers because he's always looking for ways to make the large lecture setting friendlier.

The data that the clickers help provide are particularly helpful when Wood prepares exams.

"I can go back and review what percentage of students got which concepts right," he says. "The data correlate with a given lesson. So if I can see that they've got a particular concept mastered, I won't ask a question about it on the exam. But if there's evidence that they were struggling with something, I'm going to ask a question just like it."

— *UB Newswire*

## Faculty Spotlight

## Tomkins spends her summer cycling for fun and a good cause

By Jessica Keltz, '06

Ask **Suzanne Tomkins** what she did on her summer vacation, and she'll have an interesting answer for you: She rode her bike across the country. A combination of factors made this the right year for Tomkins, clinical associate professor in the UB Law School, to make the trip from Washington State to Massachusetts.

"I really enjoy long-distance cycling, and every year I usually do a trip for a week or two," she said. "The idea of going cross-country really appealed to me. Both of my children are older now, so it seemed more the right time of life to do it."

In addition, Tomkins recently turned 50, and the trip seemed a good way to celebrate that milestone. As she explored the possibility of biking across the country, she found that the touring company CycleAmerica offers the option of riding for a charity. As president of the board of directors of the YWCA of Niagara County and the longtime director of the law school's Family Violence Clinic, Tomkins found it easy to choose a beneficiary.

Her ride raised thousands of dollars—she can't say for sure how much because checks are still coming in—for Carolyn's House, a new facility of the YWCA of Niagara County that provides

transitional housing for homeless women and their children.

"What made this project unique is that it involved so many of the different clinics at the law school," Tomkins said. The Affordable Housing Clinic helped to secure low income housing tax credit funding for the project. The Community Economic Development Clinic helped it get its 24-hour, seven-days-a-week day care service off the ground. And this fall, the Family Violence Clinic will send a student there to help the women learn about their economic options.

Carolyn's House gets its name from Carolyn Van Schaik, a community activist and attorney. The facility itself, located at 542 Sixth St. in Niagara Falls, used to serve as a residence for student nurses at Niagara University, and before that as a convent for nuns. Tomkins said it stood neglected for 10 years before its current incarnation.



Professor Tomkins

"When I left in June, it was still under construction," she said. "When I first saw it that morning (in August) it was just amazing to me. It's a beautiful facility."

The building includes different sized apartments, including studios for young women aging out of the foster-care system. "I think it will be a good atmosphere for them," Tomkins says, citing the social services and job training that will be available on site.

As it happened, Tomkins' cycling group passed through Niagara Falls on the day of Carolyn's House's ribbon-cutting ceremony in August.

"It was pure serendipity," she laughs. "I was able to route them by Carolyn's House and a lot of them were able to tour the facility," she said. After the tours, Tomkins stayed behind for the ceremony and caught up with her fellow riders farther down the road.

All told, Tomkins rode 4,300 miles over the course of about two months, from

June 18 to Aug. 20. She said she averaged 80 miles per day.

The trip began in Seattle, then moved through Washington, Idaho, Montana, Wyoming, South Dakota, Wisconsin, Michigan, Ontario, New York, Vermont, New Hampshire and Maine before ending in Gloucester, Mass. Tomkins said the trip, though challenging, could be undertaken by anyone in good physical condition who had eight weeks to devote to the ride. She said the other riders came from "all walks of life," and many were either teachers or retired. Some riders would travel for a week or two, while others went the entire way. At any given time, about 40 people were riding and the median age was about 55, she said.

The touring company carried their gear and provided the route, meals and a place to camp each night.

"They would try to route us on very rural, scenic roads," Tomkins said. "We really went through some of the most beautiful parts of the country." Tomkins said she enjoyed getting to know her fellow riders, as well as seeing the country.

"Sharing those physical challenges, and spending so much time with people you didn't even know before the tour—it forms a close bond," she said.  
— UB Reporter

## Faculty Profile: Professor Mutua

By Mahreen Gillani, '08

If you are interested in international law, chances are you have probably taken a course with **Professor Makau Mutua**. He not only teaches a number of classes related to international law, but he also initiated and directs the International Law Concentration and is director of the Human Rights Center at the Law School.

Everyone is shaped by events and experiences in their life that changes them forever and Mutua is no exception. As a child growing up in Kenya, Mutua recalls that he couldn't stand to see people suffering from poverty, he did not like to see religion used as a vehicle to oppress people and he loathed to see women oppressed by men.

He was educated at the University of Nairobi and the University of Dar-es-Salaam. As a student activist in 1981, Kenyan soldiers took Mutua into custody and tortured him for participating in a protest for the government to open up its doors to other political parties in the government. At 19 years of age, he had to escape Kenya and became a refugee in Tanzania only to find out that Tanzania and Kenya had made a secret agreement to return refugees to each other. Once again, Mutua found himself a refugee and Tanzanian troops were looking for him.

This time, however, he had bigger plans. This time he was going to Harvard Law School. Perhaps Mutua's skill as a lawyer could first be seen when he convinced the Tanzanian Embassy to issue him a visa to study at Harvard, even though he lacked the finances. His winning argument was, "How can someone get into Harvard and not go, if you get into Har-

vard, you have to go."

Arriving four weeks late to school with \$22 in his pocket, he found himself in Cambridge, MA. He remembers finding a Resident Assistant who showed him into his room, and from there, he spent his time working as a security guard at the law school from 12am to 7 am and, attending classes after.

Admittedly, even though Mutua always had a passion to do human rights work; he started his legal career began at White & Case, a prestigious New York law firm. He found that although he was receiving generous paychecks, the work was unfulfilling and soon after left for a post as associate direc-

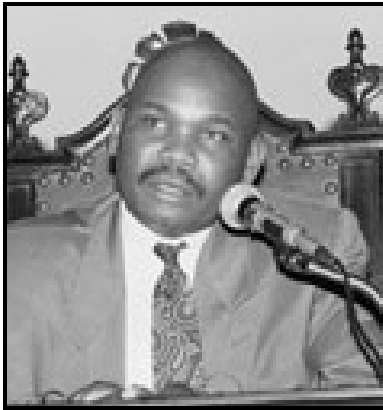
tor Human Rights Program at Harvard and writing reports on human rights issues. He also went on to serve as the Director of the Africa Project at the Lawyers Committee for Human Rights.

In 2002, he returned to Kenya and made recommendations to the new government on how they should respond to and deal with atrocities committed by the past government. He serves as the Chair of the Kenya Human Rights Commission.

Mutua believes that it is crucial for countries to tell the truth, acknowledge and identify the perpetrators; this he said is the national catharsis that is necessary for any country to be able to move on in peace.

Perhaps, Mutua's greatest contribution to the human rights field has been his success in legitimizing dissent within the field of human rights.

CONTINUED ON PAGE 8



Professor Makau Mutua

## ON the UB Social Scene

## The Law School 'Bar Night'

By Lisa Ball, '08

Walking around the halls of O'Brian, I've heard many adjectives used to describe various 1L's experiences during their first days of law school. Some people are scared, others excited, most are a bit of both, and a few more are still trying to figure out what exactly is going on.

Meeting so many people with such diverse life experiences has been exciting, chaotic, nerve-racking, and mostly a lot of fun. However, I have found that no matter how different my own life is from those of my fellow students, there is that one thing, one special part of the week that we can look forward to with anticipation, excitement, and a bit of relief: a night out at the bar.

Being thrown into law school with piles of paper to fill out, books that are heavy to carry, and information coming at you from a million directions, sometimes requires you take a break and come up for air. After all, there are only so many productive hours of work one can accomplish a day.

Why not take one of those "less productive" hours and spend them doing something fun like hanging out with your friends over a nice cocktail? And what better place to do this than at a bar night where you can not only hang out with some of the new friends you've made, but meet some students who have already been through what you're experiencing?

The first bar night hosted by the SBA took place at 67West, at the corner of West Chippewa and Franklin Streets in Buffalo, where UB law students old and new packed the bar to the brim. It was so nice to be able to meet new people and hear about their stories from first year.

It was also genuinely encouraging to see how many people had gone through

the same things my new friends and I were experiencing, and had emerged seemingly unscathed. The fact that most students readily offered up their help and encouragement was also a huge relief. Cheap beer and good music added to the atmosphere, in which new friends were made, and good times were had.

The next bar night at Mister Goodbar, at Elmwood and Forrest in Buffalo was also a resounding success in the opinion of many 1Ls.

**Kara Addelman '08** enthusiastically praised the night saying, "it is so nice to be able to take a break from a long week, and just relax and meet new people."

**Mary Stermole '08** also thought the event "created a great atmosphere to talk with other students, and to meet people outside of class."

In light of the great time had by most students at the events, I would really suggest that 1Ls who didn't attend try and make the time to attend one in the future. Why not enjoy good company at a bar with drink specials and a nice open patio -- you'll be able to bunker down in the library soon enough when it snows in four weeks!

The bar nights seemingly provided a much needed respite for many 1Ls who were understandable exhausted after a whirlwind three weeks. After briefing cases and writing memos all week it is always nice to be able to do something that requires no stress or instruction -- drinking a pitcher (or several pitchers) of beer with some friends.

Because at the end of our journey, I suspect we'll remember what happened "that one time at the bar", more than we'll remember "that one time at the library".



# On the Docket: The Solomon Amendment

By Anayat Durrani

The U.S. Supreme Court will consider a case that will decide whether universities can bar military recruiters from their campuses, without giving up federal funding.

The justices will revisit a 2004 decision by the 3d Circuit Court of Appeals that found the Solomon Amendment unconstitutional because of the military's "don't ask, don't tell" policy, which violates the schools' policies against discrimination based on sexual orientation.

The 1996 federal law known as the Solomon Amendment allows the government to deny federal funding to any school that does not provide "equal access" to military recruiters on its campus. The law was established to allow the military equal access to campuses and students. However, many law school campuses say the Solomon Amendment conflicts with the right to free speech. At issue is the military's controversial "don't ask, don't tell" policy, which al-

lows gays to serve, as long as they hide their sexual orientation.

The first version of the 1994 law named after then Rep. Gerald Solomon (R-NY) offers federal funds to universities on the condition they provide military recruiters the same access to their campuses as they do for other employers. The government had granted funds to universities as long as military recruiters were allowed on campuses. However, following the terrorist attacks of September 11, 2001, the Defense Department demanded universities provide equal access

to military recruiters and threatened to withhold several hundred million dollars' worth of federal funding if they failed to comply. The Supreme Court will hear the

case this fall.



Former Rep. Solomon

The Forum for Academic and Institutional Rights (FAIR), a consortium of law schools that is challenging the constitutionality of the Solomon Amendment, said it prevents schools from realizing an anti-discrimination policy because it forces them to open their campuses to military recruiters who do not accept openly gay individuals. Some of those associated with the nationwide coalition include the faculties at Georgetown University Law Center.

"Georgetown's position is that all employers who come to recruit on campus must abide by Georgetown's non-discrimination policy in employment," said Chai R. Feldblum, a law professor at Georgetown University

Law School. "That includes non-discrimination based on sexual orientation—a rule the military doesn't meet. Georgetown allows the military to recruit solely because of the duress of the Solomon Amendment." Several other law schools and law faculties nationwide share the same view. Clark Freshman, a professor at the University of Miami Law School said Miami had a policy to comply only to the extent required by law.

"It made several efforts to minimize the damage, including posting signs reminding students of the school's antidiscrimination policy and stating that the military was only allowed access because of the threat of the loss of federal funds," said Freshman.

Many law student organizations have been active in making their feelings known about the Solomon Amendment and military recruiters on their campuses, even if their schools have not. A decision in *Rumsfeld v. FAIR*, No.04-1152 is expected in July 2006. — *Lawcrossing.com*

## Pro Bono Students America

By Andrew Tan

Law school students seeking to work for public interest causes or looking for something valuable to add to their resumes may not know where to start. However, there are some organizations that provide essential information on public interest groups.

Pro Bono Students America (PBSA), now known as Public Service Law Network (PSLawNet), is an organization whose purpose is to help law school students find paid and unpaid positions in public interest groups, law firms with pro bono practices, governmental agencies, etc., where they can develop a wide array of marketable legal skills.

The organization is subscribed to by 150 law schools across the United States. As a result, law school students can use its online database to search for opportunities, at various locations around the world, based on criteria that they provide. In addition, PSLawNet provides information on public interest events and job fairs, hosts panels and programs on public issues, publishes information on postgraduate fellowships in its annual edition of *The Comprehensive Fellow-*

ship Guide - The Ultimate Resource for Lawyers and Law Students, and presents awards to nominated students who provide exemplary pro bono service.

The type of work that law school students will find depends largely on what organizations or agencies they volunteers at. Examples of assignments include research, attending administrative hearings, and drafting complaints. In the case of student fellowships, grants are given to students who have designed pro bono projects for the specific public interest program they wish to volunteer for. Fellowships give students the chance to solve specific legal problems in their communities, experience working as a public interest lawyer, and more opportunities to mentor others than most law firms will allow. The types of fellowships that can be found through PSLawNet include project-based and entrepreneurial fellowships, organization-based fellowships, policy fellowships, and research fellowships.

The experience gained through public service gives law school students an opportunity to use their knowledge to assist their communities to deal with unmet needs. This experience is often

extremely varied because most public interest groups will assign students to different tasks. However, fellowships are also important because they provide more depth to a particular field. This is advantageous because students will get a better idea of what the field they selected for their project entails. According to the PSLawNet website, it is recommended that students dedicate at least 50 hours per placement, but some students might find themselves in positions that require investing more than the suggested amount. Regardless of whether or not students elect to undertake fellowships or regular volunteer positions, employers will like the idea that their potential employees already have experience and/or a broad range of skills.

The PSLawNet database contains more than 12,000 organizations, which are updated twice a year based on feedback received from participating students and from program administrators of each organization. Information on opportunities offered and how to search for public interest positions through PSLawNet can be found at [www.pslawnet.org](http://www.pslawnet.org) — *Lawcrossing.com*

Continued:

## Faculty Profile: Makau Mutua

CONTINUED FROM PAGE 7

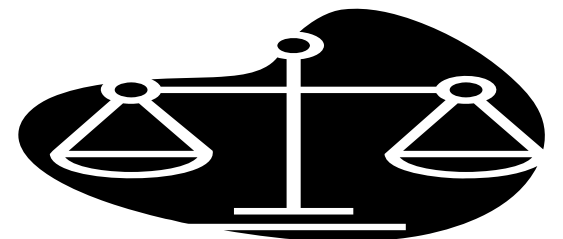
He has written numerous articles and lectured many audiences on the need to change the human rights corpus and expand human rights to include rights that other cultures hold highly.

He strongly believes that the Eurocentric core of the human rights corpus needs to be transformed into a universal multicultural corpus in order for it to have world-wide legitimacy.

His advice to students interested in human rights?

To imagine their careers in a broad, not narrow sense and to stay determined. He advised that the path of law goes beyond the known traditional path; there are many fields that students interested in human rights can go into, including but limited to law firms, non-governmental organizations and international organizations.

# The Docket



**Thursday, Oct. 20-Sunday, Oct. 23**—Conference on The Roles and Representations of Walls in Reshaping of Chinese Modernity. Co-sponsored by the Baldy Center for Law & Social Policy, UB Albright Knox Art Gallery. Contact: Tom Burkman ([burkman@buffalo.edu](mailto:burkman@buffalo.edu))

**Friday, Oct. 21**—Desmond Moot Court Competition Final Round, Letro Courtroom, O'Brian Hall, at 6:30pm. Banquet for Desmond competitors, judges and Buffalo Moot Court members immediately to follow. Contact: Amber Storr ([astorr@buffalo.edu](mailto:astorr@buffalo.edu))

**Saturday, Oct. 22**—UB Law Alumni Convocation followed by the Jaekle Award luncheon, Hyatt Regency, 8:30am to 2pm. Contact: Dean Ilene Fleischmann ([fleisch@buffalo.edu](mailto:fleisch@buffalo.edu))

**Monday, Oct. 31**—Conference on Historicizing Capitalism: Historical Political Economy as Critique of Neo-Classical Economics. Organized by Professor Steinfeld, Pierre Gervais (Univ. of Paris), and Christine Desan (Harvard Law School), in 545 O'Brian Hall, 9am—4pm. RSVP for lunch. Contact: Ellen Kausner ([ekausner@buffalo.edu](mailto:ekausner@buffalo.edu))

**Wednesday, Nov. 2** — Wechsler Moot Court Intramural Competition. Contact: Liz Tertinek ([tertinek@buffalo.edu](mailto:tertinek@buffalo.edu))