



## Barnett Attacks Individual Health Insurance Mandate

By JOSEPH JEROME '11  
MANAGING EDITOR

Professor Randy Barnett gave the Sixth Annual Friedrich A. von Hayek Lecture in a triumphant mood. His topic, “Commandeering the People: Popular Sovereignty and the Health Insurance Mandate,” addressed the questionable constitutionality of the Patient Protection and Affordable Care Act as a dramatic expansion of Congress’s Commerce Clause powers. Just prior to the lecture, Barnett’s argument received a strong endorsement from Judge Roger Vinson of the U.S. District Court for the Northern District of Florida. Hours earlier, Judge Vinson had sided with 20 states by permitting a lawsuit against the so-called Obamacare to proceed to trial, referencing Barnett’s forthcoming paper, which served as the basis for this lecture, in the opinion. For the packed audience inside Greenberg Lounge, Oct. 14 may have been any other rainy fall day, but for Barnett it marked a victory for a sensible legal read-



ing of the Constitution. Barnett addressed first how the health insurance mandate was not authorized by prior Commerce Clause jurisprudence and second why it would be dangerous for the Supreme Court ultimately to extend the Commerce Clause’s reach in this case. The first 20 minutes of his presentation served as a Commerce Clause crash-course. He touched upon cases that dealt with child labor, minimum wages, maximum work hours and the use of the Necessary and Proper Clause to expand the Commerce Clause’s reach into purely intrastate activities.

“Until 1995, we believed Congress could do whatever it wanted under the Commerce Clause,” he said. Then, in *U.S. v. Lopez* the Supreme Court invalidated a law prohibiting gun possession near schools because it did not relate to economic activity in general. According

See **BARNETT** page 7

## Panel Discusses Brennan’s Legacy



By HANNAH BAKER '13  
CONTRIBUTING WRITER

The panel on the legacy of Justice William Brennan, held last Thursday by the American Constitution Society, gave a multifaceted look at the man who lived up to the panel’s title: “The Most Influential Justice of the 20th Century.”

Seth Stern, author of the just-published *Justice Brennan: Liberal Champion*, spoke first, beginning with his central theme. “Conservatives sometimes accuse liberal justices of going hog-wild, reading their personal opinions into every law,” Stern said. But many of Justice Brennan’s most radical opinions weren’t reflected in his personal opinions. He was uncomfortable with abortion and, more disconcertingly, with women’s rights. For much of his tenure, Justice Brennan refused to hire women as law clerks, relenting only after one of his former clerks lambasted him for failing to live up to his own high ideals.

Justice Brennan was stereotyped as an Irish Catholic to a degree unimaginable today. It’s true, Stern admitted, that “Justice Brennan was not the tallest man, and, as he aged, he took on a bit of an elfish appearance”. But this can’t account, Stern said, for the image of Justice Brennan in the press as “a happy little leprechaun.”

In general, Justice Brennan did not like reporters. But he had great trust in Stephen Wermiel, Stern’s co-author. In fact, Justice Brennan was so certain that Wermiel could keep his roles as biographer and *Wall Street Journal* reporter separate that he allowed Wermiel

to use the Supreme Court office photocopier alone, with a tempting pile of confidential documents sitting right nearby. Wermiel never peeked, Stern said. Justice Brennan’s trust was not easily earned by a reporter, but once earned it was wholeheartedly given. “Whether this violated any norms ... or statutes ... is another matter,” Stern jokingly added.

Next up was Geoffrey Stone, a former clerk of Brennan’s, and now a visiting professor here at NYU. He spoke about Brennan’s now out-of fashion judicial philosophy. Brennan actually *was* a judicial activist, Stone explained. The idea that judicial activism means making the constitution mean whatever one wants it to mean is, Stone said, “a parody of reality,” whereas Brennan had “a healthy good sense of when he ought to interpret muscularly.”

Justice Brennan’s activism was activism with a purpose contemplated by the framers, who wanted the courts to protect against the majority. He was aggressive in enforcing rights against oppressive powers. But Justice Brennan’s vision of the role of the court “eventually was so tarred by a PR campaign that it became anathema. The vision of a court who did nothing but call balls and strikes became attractive.” Today, Stone said, “dialogue from a liberal perspective has largely disintegrated — a liberal is now seen as simply someone who opposes a conservative”

In keeping with the tone of his remarks, Stone had only one discomfiting anecdote to relate. The transition from Chief Justice Warren to Chief Justice Burger was

very quick and very uncomfortable for Justice Brennan. One Friday, after a long conference discussing cases with the new Burger court, Justice Brennan broke down crying when he met with his clerks. “They’re destroying it, they’re just destroying it,” he said.

Eliot Polebaum, the third to speak, and a partner at Fried, Frank, Harris, Shriver & Jacobson, was more cheerful but determinedly non-controversial. “I never heard Justice Brennan say a nasty word about Chief Justice Burger,” he said firmly. The other clerks chimed in to say that they had heard a few of those.

Polebaum talked about Justice Brennan’s custom of having an hour of coffee with his clerks every morning. Former clerks would drop by, and there was always a lively exchange of views.

Justice Brennan, Polebaum said, loved his certiorari petitions. While most justices let their clerks deal with them, Justice Brennan would wait in the hallway for the mail cart carrying the petitions, take them into his office, and emerge a few hours later “having gone through them with a buzz saw”

Lawrence Pedowitz, a former prosecutor and current partner at Wachtell, Lipton, Rosen & Katz, remembered how Justice Brennan was protective of all the clerks. When Justice Douglas occasionally flew into a rage and fired his clerks for getting citations wrong, they would go to Brennan for comfort. Justice Brennan would hug them (he was a hugger) and tell them to go back in a couple days. Sure enough, Douglas had always forgotten the offence.

### COMMENTATOR CANDID

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Joseph Jerome

Saturday spent studying above ground at the New York Public Library Reading Room.

Infra

deutsch  
english  
français

Page 3: Is it really so bad that Americans only speak English?

Page 4: Escape the NYU Bubble with these study spots.

Page 7: AMC’s *Rubicon* is a uniquely schizophrenic show, full of drama and intrigue.



# Fall Ball Drink Ticket Policy of “You Only Drink Twice” Is Paternalistic and Dangerous, Leading to Binge Pre-Gaming

By MICHAEL MIX '11  
EDITOR-IN-CHIEF

Because of *The Commentator's* production schedule, we laid out this issue before Fall Ball and you are likely reading this article after it. Therefore, I cannot actually recount anything that transpired at the annual law school Halloween event, except for, perhaps, that there are going to be a lot of people dressed up like Snooki and The Situation. However, I am nevertheless basing this column on the two Fall Balls that I have attended. I imagine this year's party will be no different. In fact, I know it will be no different because, as usual, students will only get two drink tickets. In my opinion, this is a colossal mistake.

I understand the administration's rationale for only giving students two drink tickets. First, they think they can control how much students drink. Students who drink less are less likely to destroy that portrait in Greenberg which looks like *Die Hard* actor Alan Rickman (seriously, it is really freaky). Second (and perhaps more importantly), the law school can control its own liability if someone does hurt a person or an object in the law school, because NYU didn't serve that person seven drinks.

However, given the nature

of 20-something law students, this approach is both unsafe and asinine. Everybody knows that because they can only

people feel forced to consume a tremendous amount of alcohol in a short time so that they will be sufficiently drunk for the

## Comment

### The Guy Behind The Guy Behind the Guy

drink twice at the actual party, students will therefore pregame heavily for Fall Ball. The journals are sponsoring a pre-game party in a law school building, for goodness sake. Many other groups of friends will head to someone's apartment and try to down a ton of wine, beer and hard alcohol in the two hours leading up to arriving at Fall Ball, because they know that they can only drink twice during the course of the subsequent few hours.

As a result of this massive pre-gaming, many (if not most) students show up to Fall Ball completely hammered. However, as the law school should know, pre-gaming is extremely dangerous, because

whole night. I personally know of several people who have been drunker at Fall Ball than at any other point during the year. I have twice seen a courtyard full

Normally I'd be fine with the law school not caring how much we drink, but when their rules essentially force us to binge drink, jeopardizing our health, the rules need to change. A portrait or a bathroom mirror is replaceable, but students are not

of sick people as Fall Ball ended. The culprit here is not drinking in general; it is pre-gaming.

In addition to being dangerous, the drink ticket limit is strangely paternalistic. The law school otherwise trusts us to go to law firms' cocktail parties, all with unlimited alcohol, and not to embarrass ourselves or the law school. As far as I know, we do a pretty good job there. Also, the law school does not does not impose drink limits at SBA Thursday parties or the end-of-the-semester parties, where I almost never see people as drunk as they are during Fall Ball. It does, however, now ban alcohol at Law Revue. Given that these events is that Fall Ball and Law Revue take place inside the school while the others do not,

it means that the law school doesn't actually care how drunk we get at law school events; instead it only cares about damage to Vanderbilt Hall. Normally I'd be fine with the law school not caring how much we drink, but when their rules essentially force us to binge drink, jeopardizing our health, the rules need to change. A portrait or a bathroom mirror is replaceable, but students are not.

I think there is a happy

medium where the law school can take alternative measures to still limit alcohol but to discourage destructive pre-gaming. The first step is to increase the number of drink tickets given to each student at Fall Ball. There does not have to be unlimited beer and wine, but if students know that they can have five or six drinks at Fall Ball instead of two, they will be less likely to feel the need to binge drink beforehand. If money is an issue (and it shouldn't be when students' safety is at stake), then the school should charge a nominal fee for each drink. Moreover, the school can instruct the bartenders not to serve anyone who seems dangerously intoxicated. Making more alcohol available at Fall Ball would encourage students to get to Fall Ball earlier and to pre-game less.

Whatever the law school does, there will always be some people who pre-game and there will always be some people who will be incredibly drunk. In the aggregate, though, increasing the amount of drink tickets will cause the greatest good for the greatest number by eliminating the need for many to binge drink beforehand. And if that prevents NYU Law students from getting dangerously sick, it is definitely worth it, no matter the cost.

## thecommentator

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We Know You Took Pictures at Fall Ball. Next Issue We Are Planning a Fall Ball Picture Collage. We Need You to Help Us.

Send Your Fall Ball Pictures to  
*The Commentator!*  
No Picture is Too Embarrassing

Email your picture or pictures to Managing Editor Joseph Jerome before Nov. 6 at joejerome@gmail.com



The Commentator Talks With Author Nicole Krauss

By JENNIFER RODRIGUEZ '11  
STAFF WRITER

Evening light filtered in through the brownstone's windows. The backlight and the art nouveau detailing on the panes framed the dark-haired, skinny-jeaned author. At her book party, Nicole Krauss found herself standing before a room full of NYU writing students, faculty, and her two parents. "This is a strange and anxious time for me," she began.

The NYU Lillian Vernon House hosted a reading and reception to celebrate the release of Krauss's third novel, *Great House*. The "strange and anxious time" consisted of the days prior to the book's dissemination to stores across the nation. Krauss need not have been so nervous. Critics are fawning over the novel, and it is currently a finalist for the 2010 National Book Award.

At the microphone, Krauss continued in a lyrical voice. "My autobiography is not of interest to me as a writer," she said. "I am interested in territory that is unknown to me, that will knock me off-balance."

As such, though the experience of her son's birth motivated her to write *Great House*, the novel does not revolve around a new mother. Rather, in writing the novel, Krauss abstracted her emotions and laid them over the exquisite architecture of her newest story. The narrative follows a single desk through four households, many years, and disparate circumstances to link several characters in an intricate and beautiful narrative. One might easily envision that this leap from experience to inspiration signals

a complex and ambitious, yet sensitive and elegant writer. That is Nicole Krauss in a nutshell.

After her reading, she politely submitted to a brief interview. It is reprinted here:

*You are about to release your third novel, Great House. Are you more confident as a writer now than when you started your first novel? Has your writing process changed?*

I'm less confident. My sense of the process has deepened. I am more aware of the pitfalls and the failures.

*Writing is a solitary activity that courts loneliness in writers. Do you feel this loneliness, and does it translate into your work?*

Yes, and the loneliness does translate in to my novels. It has to do with my personality. ... As a solitary person, I was drawn to writing. I think people are drawn to certain professions for

certain reasons. For people with this personality, writing becomes a way to communicate that is not available to them in real life.

*You began writing as a poet, but now you are a novelist. Do you ever feel beholden to structure and plot, and does this inhibit your ability to be enraptured by language?*

I bristle at the word beholden. Freedom is the most important thing to me as a writer. It's true that in writing novels you give up freedom. With every choice you make, you give it up. Until, near the end of the novel, you have very little freedom left. But does it stop me from being enraptured by the language? No. For me, language is like a character in the novel in the same way as it is in poetry.



Excerpts from Studying Abroad: A Robust Defense of Monolingualism

By DOUG MARTIN '11  
STAFF WRITER

FLORENCE, Italy — People often lament that Americans of all ages do not seem to speak as many languages as their foreign counterparts do. People from other countries, especially those in Europe, are often seen as much more educated, worldly and cosmopolitan than Americans. "People from other countries speak English. How come Americans don't speak other languages?" is a common refrain. One does not generally hear citizens of other countries asking this question. It is Americans, either excusing their own inadequacy or trumpeting the superiority of other countries' school systems. Personally, I'm a bit tired of the insincere humility of this sentiment.

First of all, let me tell you that many people in other countries do not speak English, nor any language other than their native tongue, for that matter. I do not have any specific data or percentages, but I can tell you from personal experience that many do not. Second, let us not forget that many Americans do in fact speak languages other than English — often because English is their second language. But the heart of the argument seems to be that higher percentages of persons outside the U.S. (and again, especially in Europe) than inside the U.S. speak more than one language. Why is this?

It is not that language education is not encouraged or not available in the U.S. I took three

years of French in high school and two in college. Most of those courses were obligatory as part of a foreign language requirement. I did not go to some private high school either; public school was good enough for me. I also did not go to a small liberal arts college; I graduated from Texas A&M University, one of the largest state universities in the nation. However, while I understand a lot of French, I would

them learned Euro anyway. How many Europeans do you think would speak something other than Euro?

On our side of the pond, imagine that just about every state in the Union spoke its own language: Texan, Californian, Floridian, etc. Also imagine that one of the leading states with the largest city on the continent, New York, actually spoke Euro as its native language. I would be willing to bet that many Americans would speak or at least understand languages of their neighboring states, but as a *lingua franca*, most would probably learn Euro. They would

have no other choice if they wanted to branch outside their states. When Europeans came to visit, people would likely speak to them in Euro, not in Rhode Islander or even in Californian. Similarly I have been working on my French and Italian since I arrived in Italy back in August. When I speak these languages, however, people usually just answer me in English, which makes it very hard to improve.

To be honest though, I think it is great that English is becoming the world's language. I know it is valuable to cultures to preserve their languages as part of their heritages. But if everyone only spoke in his or her native tongue, then we could not communicate with each other. I have seen Swedes and Italians communicate together in English because it is the only language they share. Lucky for us, I suppose, that the world language happens to be ours. Even so, I am sure American schools will continue to subject their students to Spanish or French language versions of *Finding Nemo* for years to come.

Comment

Your Girl's Favorite Columnist


The real reasons behind the language gap seem obvious ... Americans do not speak any other language because we do not need to.

neither call myself a French speaker nor bilingual.

The real reasons behind the language gap seem obvious, but perhaps it is this simplicity that has obscured them so often. Americans do not speak any other language because we do not

need to. Let's compare Europe and the U.S. for a minute, and switch some facts around. Imagine that all of

Europe spoke the same language — we will call this imaginary language Euro — as their first language. Imagine that Euro was the language of media, literature, music, academia, government, etc. Now imagine that there was another large country immediately adjacent to Europe — perhaps Russia or non-European Russia — that predominantly spoke Euro. Now imagine that all of northern Africa spoke one other language, but many of



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*Pictured: Blackstone Fellows 2009 - David S., Shannon R., Justin O.*

Commentator

## CROSSWORD Solution

*This Commentator Crossword solution was omitted from the Oct. 18 issue. Our apologies for keeping you waiting for two weeks. -Eds.*

R	E	F	S		A	M	T		M	A	D	D			
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# Out of the Bubble: Neighborhood Study Spots Beyond the Law School

By JENNIFER RODRIGUEZ '11  
STAFF WRITER

There's a reason many students choose NYU Law over Columbia: the neighborhood. It's easy to forget this fact when you arrive and face the reality of The Curve. It's true that law school is tough. But that's no reason to spend it all in Vanderbilt. There are several oases of quiet (and WiFi) within walking distance of campus. Studying at these places is a great way to become immersed in Village life and work on your course outlines at the same time. Below is a brief guide to the bookstores, cafes and other study spots in the area — for the NYU Law student who wants to get out of the bubble and into the City.

## Aroma Espresso Bar

*The largest, most successful espresso bar chain in Israel comes to New York.*  
**Address:** 145 Greene Street, at Houston  
**Hours:** Monday - Saturday: 7 a.m. to 11 p.m.; Sunday: 7 a.m. to 9 p.m.  
**Wifi:** Free  
**Eat:** Sambusak (Mediterranean pastry filled with feta-cheese) with a side of middle eastern salad.  
**Sip:** Turkish coffee served with a small piece of chocolate.

## and Café

*It's what Barnes and Noble would be like in a kinder, gentler world: an organized, clean and charming indie bookstore.*  
**Address:** 52 Prince Street, between Lafayette and Mulberry Streets  
**Hours:** Monday - Saturday: 10 a.m. to 10 p.m.; Sunday: 10 a.m. to 9 p.m.  
**Wifi:** Free  
**Eat:** Fontina, pesto, arugula,

a.m. to 11 p.m.; Friday - Saturday: 7 a.m. to 1 a.m.; Sunday: 11 a.m. to 8 p.m.  
**Wifi:** Free  
**Eat:** New York cheesecake  
**Sip:** Peppermint Tea for the conservative. Butter Truffle for the curious.

## The Smile

*Take the stairs down to this rustic-artsy basement café and small-eats spot popular with the fashion set.*



Once Upon a Tart

and roasted red pepper sandwich on 5-grain bread.  
**Sip:** A pot of green, black or herbal tea, or a *café au lait*.

## Once Upon a Tart

*Tiny tart shop perfect for a quiet*

**Address:** 26 Bond Street, between Lafayette and Bowery Streets  
**Hours:** Monday - Friday: 8 a.m. to 12 a.m.; Saturday - Sunday: 10 a.m. to 12 a.m.  
**Wifi:** Free  
**Eat:** Roast-beef sandwich with horseradish, arugula and cherry tomatoes.  
**Sip:** Basil lemonade with your food. Ristretto, a smaller, more-concentrated form of espresso, after.

## Think Coffee

*Second home of Mercer Residents, NYU undergrads and Village hipsters in general.*  
**Address:** 248 Mercer Street, between West Third and West Fourth Streets  
**Hours:** Monday - Friday: 7 a.m. to 11:30 p.m.; Saturday - Sunday: 8 a.m. to 11:30 p.m.  
**Wifi:** Free  
**Eat:** Grilled cheese sandwich with farmhouse cheddar and vine-ripened tomato.  
**Sip:** Organic, fair-trade and shade grown coffee.

## V Bar

*Classical music-infused study haven by day. Bustling wine bar by night.*  
**Address:** 225 Sullivan Street, between West Third and Bleecker Streets  
**Hours:** Monday - Thursday: 9 a.m. to 2 a.m.; Friday: 9 a.m. to 4 a.m.; Saturday: 10 a.m. to 4 a.m.; Sunday: 9 a.m. to 2 a.m.  
**Wifi:** Free until 6 pm  
**Eat:** Cheese and olives plate with french bread.  
**Sip:** Chai tea latte.



Housing Works Bookstore and Cafe

## Housing Works Bookstore and Café

*Nineteenth-century library style, with used-books, a café and a cause. All profits going to Housing Works Inc., which provides housing to low-income New Yorkers living with HIV and AIDS.*  
**Address:** 126 Crosby Street, between Houston and Prince Streets  
**Hours:** Monday - Friday: 10 a.m. to 9 p.m.; Saturday - Sunday: 12 p.m. to 7 p.m.  
**Wifi:** Free  
**Eat:** Pain au Chocolate  
**Sip:** Passion Tea

## McNally Jackson Bookstore

*study session by yourself.*  
**Address:** 135 Sullivan Street, between Houston and Prince Streets  
**Hours:** Monday - Friday: 8 a.m. to 7 p.m.; Saturday: 9 a.m. to 7 p.m.; Sunday: 9 a.m. to 6 p.m.  
**Wifi:** None  
**Eat:** Savory tomato Provencal tart or Sweet pear almond tart  
**Sip:** Ginger Iced Tea

## Tea Spot

*Cozy and spare brownstone right across the street from Vanderbilt.*  
**Address:** 127 MacDougal Street, between West Third and West Fourth Streets  
**Hours:** Monday - Thursday: 7

# NYU Law SLAP Football Standings as of Oct. 28

Team	Record	Point Differential Per Game
Sack Lunch	4-0-0	27.3
Dicta in a Box	3-0-1	21.5
Cade's Cadets	5-0-0	19.5
Prima Facial	4-0-0	17.3
Bob Loblaw's Law Blogs	4-0-0	16.5
In re: Diculous	5-0-0	16.5
The Cupcakes	5-0-0	12.2
Cunning Litigants	3-0-1	8.0
Uncivil Procedure	4-1-0	14
Shock & Law	4-1-0	12.7
The Unestoppables	4-1-0	-0.8
Back That Pass Up	3-1-0	11.3
Team John Wicker	2-1-0	4.7
Krypton Crew	3-2-0	-9.0
APALSA	2-2-0	-5.0
Charg'rs	2-2-1	-11.7
Uno Ballers	2-3-0	-7.3
The Laidlaw Bombers	2-3-0	-16.8
Trespass on the Face	1-2-1	2.3
Lynn Lu's High Rollers	1-3-0	0.5
Revenge of the FSA	1-3-1	-16.3
International Cleat	1-4-0	-3.0
FSA	1-4-0	-18.5
Minimum Contacts	1-4-0	-22.3
Offensive Batteries	0-5-0	-13.8
Return of Betsey's Ballers	0-3-1	-14.7
The Texicans	0-3-0	-18.0
Hung Jury	0-4-0	-29.5
The Trannies	0-4-0	-33.0
Tall Boys	0-4-0	-37.0
Tintolating	0-3-0	-37.5

Remember on Page 2  
When We Told You to  
Send Fall Ball Pictures to  
The Commentator?

Well We Feel So Strongly  
That We Are Telling You  
Again.  
Please Help Us Out.

Email your picture or pictures to Managing Editor Joseph Jerome before Nov. 6 at joejerome@gmail.com



# A Vote in Support of Judicial Integrity in America’s Heartland

By JOSEPH JEROME ’11  
MANAGING EDITOR

As something of an eternal college student, every two years each election makes me pause and wonder *where* I should cast my vote. Considering I split time between the Hawkeye State and now the Empire State, I am presented something of a stark choice. “Home” for me will always be Iowa, but certainly what happens in Albany or in lower Manhattan generally impacts me more.

If I’m honest with myself, the reason I kept my voter registration in Iowa was due exclusively the value my vote had in presidential elections. I never managed to study in a swing state. Two years ago, with all the drama of hope and change, it was unfathomable for me to choose voting in a creaky Manhattan polling station over mailing a vote for Barack Obama back to Iowa where it mattered more. This year, however, the drama and intrigue of a presidential election has been replaced by a general malaise about government in general.

Count me as a near-casualty of the so-called Democratic

“enthusiasm gap.” Absent a nagging sense of civic pride, I was about ready to sit out this election. Like 60 percent of my fellow citizens, I think our country is going off the rails. I have no faith in our government to do any better, and I’m disillusioned and/or disgusted with Republican and Democrat alike. Sure, on the whole, I might be more disillusioned and disgusted if Carl Paladino won the New York gubernatorial race rather than if Terry Branstad, a distant relative of mine I hear, boots Chet Culver out of Des Moines.

But I still decided to vote absentee in Iowa. Why? Because I value the rule of the law over the popular mob.

Last year, the Iowa Supreme Court took the decidedly bold step in *Varnum v. Brien* of declaring the equal protection clause of the Iowan Constitution required

mony to the gays. I was stunned since despite its “swing status,” Iowa is hardly a progressive state. Still, the Supreme Court’s legal decision was a good one, and on the second day, locusts did not visit Iowa’s fields and the Mississippi did not turn to blood. Subsequently, 92 percent of pragmatic minded Iowans concluded gay marriage did not much affect their lives at all. It remains

something of a contentious issue, but social conservatives have been unable to use the decision as a rallying cry.

Unable to get rid of gay marriage, social conservatives in Iowa have turned their wrath against the Supreme Court justices that permitted it. While most Iowans are concerned about the economy and, as always, agriculture, a dedicated group of activists intends to oust three of the seven Supreme Court justices.

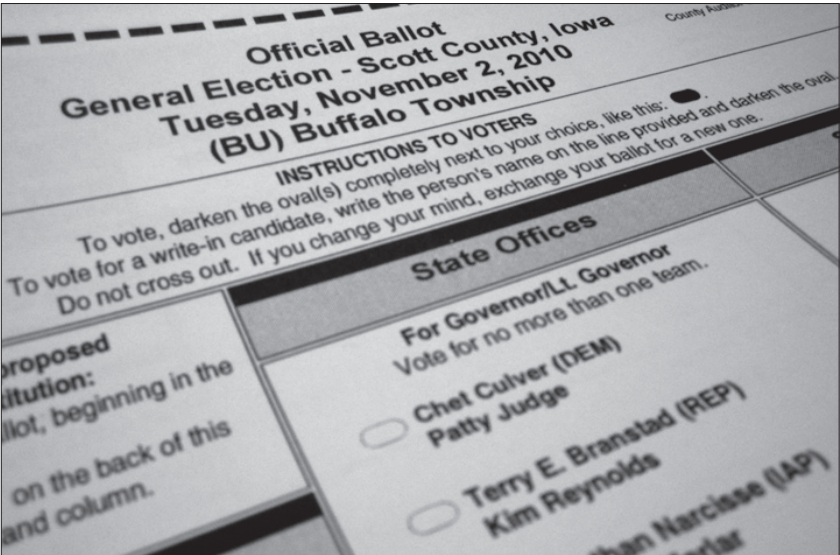
Iowa currently has a merit-based selection system for state judges but their subsequent retention is put to popular vote. No Iowa Supreme Court justice

riage ruling, but it would put the literal fear of God into the state judiciary if it should run afoul of conservative causes.

How is that justice? One of the greatest threats to justice in the United States, according to former Supreme Court Justice Sandra Day O’Connor, is the diminished independence of our state judiciaries. Justices, she

warned at NYU two years ago, must only be “constrained by what the law says and requires, free from outside influence.”

The proposed destruction of Iowa’s judicial meritocracy over an issue that does not even affect the majority of Iowans is a travesty. So once more, I cast my vote in Iowa. Not because I care about who holds the House or the Senate come next January, but because while I may have lost a lot of hope in our elected leaders, I still hold onto some naïve admiration for our justice system. As for New York, there is evidently some sort of gambling ballot initiative. I’m strangely ambivalent.



## Comment

### The Reluctant Law Student

the state to permit same-sex marriages. Yes, semi-conservative, religious Iowa, deep in the heartland, opened the doors of matri-

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# Law School Isn't All Bad — A Look at Some of the Finer Things in Life

By MICHAEL MIX '11  
EDITOR-IN-CHIEF

I tend to complain a lot. Let me rephrase — I complain **A LOT**. Little things really bother me. For example, I am the kind of person whose blood boils when I see smart quotation marks and dumb quotation marks used interchangeably throughout a document (for the indoctrinated, smart quotation marks are curly while dumb quotation marks go straight up and down). This often comes across in my columns, as I often complain about aspects of the law school I don't like, such as laptop bans, professors not taking breaks at the ideal time (note to new professors — you have to take a break, and you should take it exactly 50 minutes into class) and when the administration neglects to communicate to 3Ls about our bar requirements.

Therefore, it is not often that I get to say nice things about anything. Because I haven't written a gimmicky column in a while, and we really needed to fill up a lot of space in the first eight-page issue of the year (tell your friends to write for *The Commentator* so we can have more eight pagers!), I am going to make a list of five things that the law school

does *right*.

**1. ABRA** — I was incredibly skeptical at the end of my 1L year when I learned about the new ABRA system for choosing 2L and 3L classes. Frankly, I thought it would be

fantastic. Students are taught by actual professors who have recent experience in the field, as opposed to being taught by 3Ls like at some other top schools (it's pretty laughable to think that I could coherently teach a legal writing course). Moreover, the program smartly deals with some of the non-writing aspects of being a lawyer, which is key, given that most of us hope to not be stuck behind a computer for our entire careers. I know people complain that Lawyering is too much work (a viewpoint which I criticized last year), but it is probably the most important class we take as 1Ls. I can barely tell you anything about the *Erie* doctrine, but I certainly remember how to negotiate.

**3. Super Fun Time** — I was recently at a reunion for my college newspaper, *The Cornell Daily Sun*, when I ran into someone I knew who graduated NYU Law Class of 2010. He reminisced about how much he missed law school, and he enjoyed NYU just as much as college, if not more. Where else could that happen? Do people at other law schools even hang out with

each other? Do they even know their peers' names? I know that at a lot of other top law schools, students spend almost all of their time in the library and probably don't even remember what beer tastes like. I have made a great group of friends here, and I certainly find time to go out with law school folk, whether it be the SBA parties, SLAP football, trivia night or just a random weekend.

**4. The Faculty** — I know that a lot of our peer schools have quality faculty, but I think NYU takes the cake. Just look at some of the famous professors who teach here, in no particular order: Richard Epstein, Kenji Yoshino, Barry Friedman, Arthur Miller, Bryan Stevenson, Jeremy Waldron, Burt Neuborne and Ronald Dworkin. We also have a number of up and

**5. The Commentator** — Just kidding. But seriously, join our staff.

**5A. The Polo Grounds** — This might seem pretty inconsequential, but I really enjoy that fact that for some random reason, there are two photos of the Polo Grounds on the walls of the second floor of Furman. For those of you who are bandwagon fans of the Yankees, or for those of you who legitimately don't know anything about old time baseball, the Polo Grounds was the name of four different stadiums in upper Manhattan stadium where the old New York Giants (baseball) played before they moved to San Francisco and made the 2010 World Series. The dimensions changed a few times over the years, but when it closed, the stadium was 279 feet in left, 475 feet in center and 257

I know that at a lot of other top law schools, students spend almost all of their time in the library and probably don't even remember what beer tastes like.

coming stars, including Rachel Barkow and Sam Rascoff. The faculty isn't perfect, as I have had a number of mediocre professors over my three years, but it is a great feeling to know that I have the ability to take a class or hear a lecture from one of these legal stars.

in left and that long in center, Skip Bayless might kill someone on live TV. For some reason unbeknownst to me, there are two pictures of this stadium in our law school.

Well there you have it; I said something nice for a change. Don't get used to it.

## Comment

### The Guy Behind The Guy Behind the Guy

absolute chaos, with no one knowing how much to bid. However, even though we were basically flying blind that first year, the system actually worked and didn't cause the law school to implode. In addition, it is a lot easier to bid now that the law school releases what the clearing prices were in previous years. The system actually is not that complicated to use, and I got all the classes I wanted this year. Even though it isn't perfect, and it sounds like the band that sang "Fernando," I have no problem with ABRA and the way we pick classes.

**2. Lawyering** — In the interest of full disclosure, I was a Lawyering TA last year, and I am on the Student-Faculty Committee on Lawyering this year. However, I honestly believe that the program is



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## Rubicon Isn't Fast-Paced, But Is Worth Watching



By MICHAEL MIX '11  
EDITOR-IN-CHIEF

Did you know that the highest-rated series premiere in AMC history is not *Mad Men* or *Breaking Bad*, but is instead *Rubicon*? Most likely you didn't, given that while everyone I know dissects every infinitesimal moment in *Mad Men* as if it was the Zapruder Film, I barely know anyone who watches *Rubicon*. That is a shame, because it is one of the best shows on TV that no one is watching.

To understand what makes *Rubicon* unique it is necessary to understand a little bit about what happened behind the scenes during the inception of the show. The show was created by Jason Horwitch, who envisioned it as a slow-burning conspiracy theory and a throwback to 1970's thrillers such as *Three Days of the Condor* and *The Parallax View*. Horwitch helmed the pilot episode, which starred James Badge Dale (best known from *The Pacific* and Season 3 of *24*) as Will Travers, a brainy employee of the American Policy Institute (API), a fictional organization that analyzes data for government agencies. Will begins to investigate the death of his mentor David Hadas, and finds that there might be a greater conspiracy afoot.

That was all well and good, but after the pilot, Horwitch left the show due to creative differences with AMC; the network replaced him with Henry Bromell, a TV veteran. Bromell was left in an unenviable position, and he admirably took a step to change the underlying nature of the show. As the season progressed, the conspiracy plot still remained, but Bromell focused more on character development, especially the secondary characters, who were pretty thinly drawn in the pilot.

The end result is kind of a schizophrenic show that combines the conspiracy and thriller elements of a show like *24* with the moral ambiguity, workplace conflict and character development of a show like *Mad Men*. Somehow, Bromell has made it work, and this season has been immensely entertaining.

Part of the reason for this success, as mentioned before, is that Bromell has given us a cadre

of richly drawn supporting characters. The standout of the show is Kale Ingram (Arless Howard), Will's Ben Linus-esque boss, a mysterious former operations man for the CIA who helps Will along the way, even though the audience is never quite certain of his motives. The other standout supporting character is Truxton Spangler (Pulitzer Prize-winning playwright Michael Cristofer), the head of API and the show's main villain. Cristofer doesn't have much acting experience, but he has done a great job playing Truxton as slightly over the top (but not too over the top in an Al Pacino way). Truxton has also had a series of amazing speeches over the course of the season.

The other great parts of the show are the interactions between Will's underlings at API: Miles Fiedler (Dallas Roberts), Grant Test (Christopher Evan Welch) and Tanya MacGaffin (Lauren Hodges). It took the show a few episodes to give these characters something interesting to do (and it took me awhile to even learn their names or their roles at API), but by the end of the season, all three were three-dimensional, with interesting stories regarding their lives outside the office. The show has also done a great job delving into the moral grey area of these three making fairly important counterterrorism decisions by sifting through boxes of documents and almost never getting close to the field.

As for Will himself, I think that Dale has done fine playing him over the course of the season. I was initially worried because when he was on *24*, Dale played sort of a meathead, but he is totally believable here as a genius inexperienced in actually espionage. A lot of scenes this season have revolved around Will staring blankly at things, something that Dale does especially well. As far as leading men go, Dale is not going to blow anyone away with his acting, but he does a good enough job to keep the show interesting.

The show definitely has its weaknesses, though. One of the main characters, Maggie Young (Jessica Collins), who is the assistant for Will's team, never really did anything interesting the entire season. The writers tried to give

her plot arcs, such as the ongoing battle between Maggie and her ex-husband over their daughter, but nothing has really stuck. Another character, Katherine Rhumor (Miranda Richardson), spent most of the season investigating the suicide of her husband, but it took way too long for her plot to intersect with Will's. This is probably a result of the change in the show's leadership, but the Katherine scenes felt extraneous and forced. Another problem with the show is that for bad guys who appear so smart, their minions are incredibly sloppy. Given his ties to the intelligence community, one would think that Truxton would have hired people who could do at least half-decent job tailing Will, who isn't even trained as a field operative. Similarly, even though he does not have any field experience, Will is laughably bad at espionage, making a host of silly mistakes. But these complaints are minor, and haven't really tempered my enjoyment of the show.

*Rubicon* certainly is not for everyone. Those looking for a fast-paced, complicated thriller will be disappointed. The plot moves forward at a glacial pace and the resolution to the season was a bit ambiguous. But if you like good acting and good writing, you should definitely go back and check out Season 1. One episode in particular that stands out is "The Outsider," in which Truxton and Will go to Washington, D.C. to try to keep API as an independent organization (including an awesome Truxton speech in which he uses a tie as a metaphor for API's role in the intelligence community), while Miles, Grant and Tanya wrestle over whether to recommend killing a possible terrorist in the Middle East based on a truckload of documents. That episode illustrated that the show could succeed even when largely ignoring the central plot.

Now that the first season is over, I am not really sure where the show is going to go from here. Instead of starting another conspiracy, I'd prefer a *Mad Men*-like approach where the characters and their interactions drive the story. Whatever Bromell chooses, it is definitely worth catching up on this show and watching next season.

## BARNETT: Mandates Reach Beyond Commerce Clause

Continued from page 1

to Barnett, after *Lopez* courts must evaluate the Commerce Clause by looking at a given activity and determining whether or not it is "economic." This simple, stark dividing line "provides a workable doctrine to evaluate the appropriate fit between means and ends without having to look at whether the law is more or less necessary," he said.

Barnett's criticism of the health insurance mandate rests upon the simple fact that "it converts an inactivity--not to buy insurance--into an activity to decide not to buy health insurance." Prior cases, he noted, involve voluntary activity: possessing a gun, operating a hotel, perpetrating gender-motivated violence. "They all involve activity, not inactivity," he said. Prior Commerce Clause jurisprudence did not equate economic decisions to actual economic activity. "Doing something and *not* doing something are not the same thing," Barnett said. "This is basic common sense." The health insurance mandate, he argued, "obliterates" this distinction. He stated the only way the Supreme Court could rationally uphold the mandate would be to use nothing less than legal alchemy.

"None of us can think of any such personal mandates that have been imposed upon us by the Commerce Clause before because it's never been done," Barnett said. Alongside jury duty, taxes and a military draft now sits health insurance. "[They], however, are fundamental duties of citizenship," according to Barnett, "and not some convenient regulation of commerce." Barnett conceded that some might argue that the mandate is necessary, as requiring everyone to buy

health insurance is essential to the broader regulatory purpose of providing expansive health care to all. However, even if that is the case he wondered how a mandate could be considered proper. Noting that doctrine is lacking because mandates are so categorically "unprecedented," Barnett focused on the Supreme Court's sharp criticism and rejection of congressional commandeering of state sovereignty in the name of regulating interstate commerce. "This principle was ultimately grounded on the 10th Amendment," he said.

Barnett emphasized that the 10th Amendment also reserves rights to the people themselves. "Might mandating the people not improperly infringe upon popular sovereignty?" he asked. "Mandates are different than regulations--and, indeed, even prohibitions," he said. "Making you do something is really a step beyond."

In the spirit of Hayek's examination of the proper role of government in society and individual liberty itself, Barnett concluded by defining the sides of this debate between a "very capacious notion of the duties owed by a citizen to the state" and America's traditionally limited but fundamental notion of citizenship. He worried that this transformation would not only weaken government accountability in the long term but would "open the door to an infinite variety of mandates in the future, obliterating once and for all the scheme of enumerated powers."

In the future, Barnett mused, nothing could stop Congress from ordering American citizens to buy government-owned GM-made cars. "This is not merely another regulation imposed by their friendly federal government," he concluded, "but it crosses an important line between limited and unlimited government power."

### COMMENTATOR CANDID



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POLAROID034

A pigeon takes a good look at the city beneath him from atop a New York City building.



## A New Burger and Wine Bar Brings Gourmet Casual to NYU

BY STAVAN DESAI '11  
ASSOCIATE MANAGING EDITOR AND  
ELYSE FEUER '11  
STAFF EDITOR

Those that know us know that the *Commentator* food critics are big fans of the restaurant *Lure* (Mercer and Prince Sts.). When we found out that the *Lure* team was opening *Burger & Barrel*, a semi-casual burger and wine bar, we had to check it out. We have had the opportunity to go to *Burger & Barrel* on two occasions now, and are happy to provide the low-down on a number of dishes on their still-changing menu.

The atmosphere of *Burger & Barrel* is a bit difficult to describe. The restaurant describes itself as casual, but the atmosphere gives off a more upscale casual vibe. The restaurant is relatively dark and has more of a wine bar feel than that of a casual burger joint. One interesting touch we noticed was that the restaurant uses a variety of different chairs throughout the establishment, ranging from simple wooden chairs to leather armchairs that reminded us of a cigar lounge. The variety of furnishing, along with some other touches, made the environment slightly more casual, but in the end we both thought the atmosphere was more formal than advertised.

To start off our meals, we sampled some of the various libations *Burger & Barrel* has to offer. *Burger & Barrel* has about seven beers on tap, about 10 specialty cocktails, about 20 wines by the glass and a large list of wines by the bottle. Their menu and wine list are still not on their website, so it is difficult to accurately quote prices, but the wines by the glass ranged from \$8-\$30 and the cocktails ranged from \$12-\$15. Their Sazerac cocktail was nicely balanced and something that whisky drinkers will enjoy. *Burger & Barrel* also offers a few wines on tap, which are wines still in metal barrels and poured straight from the barrel into the glass. We asked the waiter what the advantage to a wine in the barrel is and he let us know that it merely cuts down cost and makes the wine more

“green” because it’s not bottled. He told us there would be no difference in taste between a wine in the barrel and a wine in the bottle. We tried the Red Hook Winery chardonnay out of the barrel, but it tasted diluted and watered down; the flavor may have been due to the fact that it came from the barrel or, more likely, was just the wine itself.

The service at *Burger & Barrel* was quite good and friendly. The servers were always attentive and pa-



Stavan Desai

tient as we asked questions about the menu and drinks. We also appreciated the table wipe between courses at a more casual establishment.

The menu at *Burger & Barrel* is varied and provides a number of different dishes spanning several food genres. The Warm Shrimp Topped with Prosciutto (\$16) had nice flavors of garlic, leek, and citrus. The shrimp, however, was a little overcooked. We also thought the dish could have used some more texture or crunch and therefore the prosciutto could have been crispier, but overall the dish was successful. We were also happy with the Tuna Tartare, which was topped with avocado and a dollop spicy pickled sauce and came along-side homemade waffle chips. The quality of the tuna was excellent, and the avocado had a little kick to it. We thought the dish could have used a little more salt (a criticism we had throughout the meal) and that the restaurant could have been more generous with their use of the spicy sauce, which really made this dish stand out as one of the best of

the night. Our final appetizer was the Meatballs and Ricotta (\$14), which was served with grilled country bread. We thought the meatballs were nicely cooked, but otherwise lackluster. The meatballs came in a marinara sauce that, while fresh, tasted like nothing more than crushed tomatoes and overwhelmed the rest of the dish. A little more spice and flavor in the meatball or the tomato sauce, and more salt, would have done wonders. The ricotta, which was served on the side, was salty and helped flavor the rest of the dish when eaten together on the bread. The texture was creamy and smooth. We appreciated the sizable portion of fresh ricotta, but we thought the portion of bread was lacking.

We also tried several entrees and had generally positive experiences. The Fried Chicken (\$19) was actually a fried Cornish Hen, and came with a shed potatoes, gravy, and coleslaw. We thought the fried chicken was nicely cooked, a little greasy at times, but had an outstanding, crispy crust. The mashed potatoes were a little off-putting because they were very heavy, dense and lacking flavor, as if very little cream or butter had been used. The potatoes were saved however by a nice gravy on top.



Stavan Desai

Since this is a burger bar (you didn’t think we’d forget did you), we had to try some of their burger and sandwich offerings. Their signature Bash Burger is hailed as a 2009

NYFF Award winner and comes with caramelized onion, bacon jam and American cheese. We thought the burger was good but could use some improvement. We thought



Stavan Desai

the burger could use more texture, although it was cooked nicely. We also thought the meat could have used a meatier flavor, perhaps by choosing a better quality mix of meats. The burger jam could also have been a bit stronger and more

have been a little smaller. However, we were both very happy with the dish. Each of the sandwiches we had were topped with two onion rings, which we really enjoyed; we wished they had offered the onion rings as a side on the menu. The onion rings were nice and crispy without being too greasy.

For sides, we really liked the sweet potato fries (\$5), which had a soft inside and a crunchy outside. The regular fries were also quite good, but the sweet potato fries were excellent. We should note that fries also come with the sandwiches, even though that is not indicated on the menu. When we ordered the sweet potato fries, we were not given an option to substitute, and ended up having a lot of fries at the table. We also tried the special side dish of Brussels Sprouts and Slab Bacon. This side had potential, but suffered from many of same salt and pepper seasoning issues as previous dishes. In fact, we ended up taking this side home, seasoning it with salt and pepper, and sautéing it for a few minutes to crisp the Brussels Sprouts a little

more. The result was an outstanding side dish that we wished was served to us at the restaurant.

In sum, *Burger & Barrel* is a decent, yet relatively expensive, meal that has the potential to be good. The variety of the menu provides something for everyone, but most of the dishes had execution problems and were slightly off the mark in the seasoning department. If these easily fixable problems are in deed rectified, the result will be a smart casual wine bar that serves a mix of both gourmet and comfort foods.

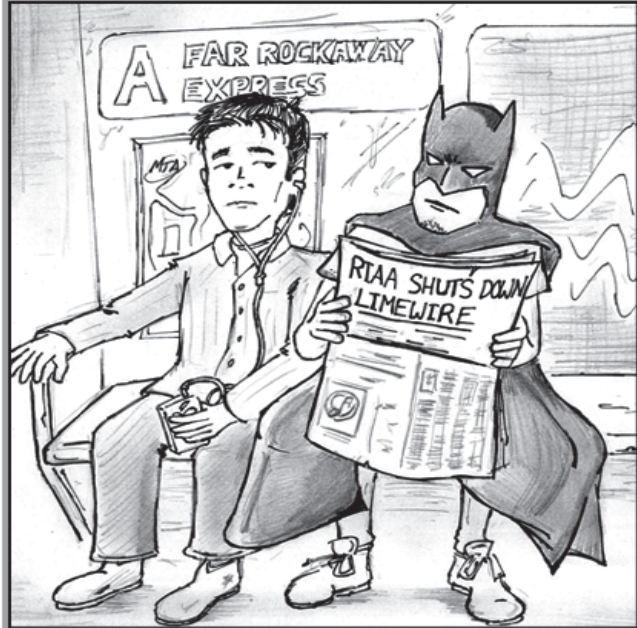
*Burger & Barrel* is located at 25 West Houston Street (corner of Houston and Mercer Sts.). *Burger & Barrel* is open seven days a week for lunch and dinner, from 11:30am until midnight on the weekdays and 2am on the weekend. 212-334-7320. Credit cards accepted.

*Want more inspired ideas about where to dine in New York City? Check out our food blog at [IdCrossTheStreetForThat.wordpress.com](http://IdCrossTheStreetForThat.wordpress.com).*

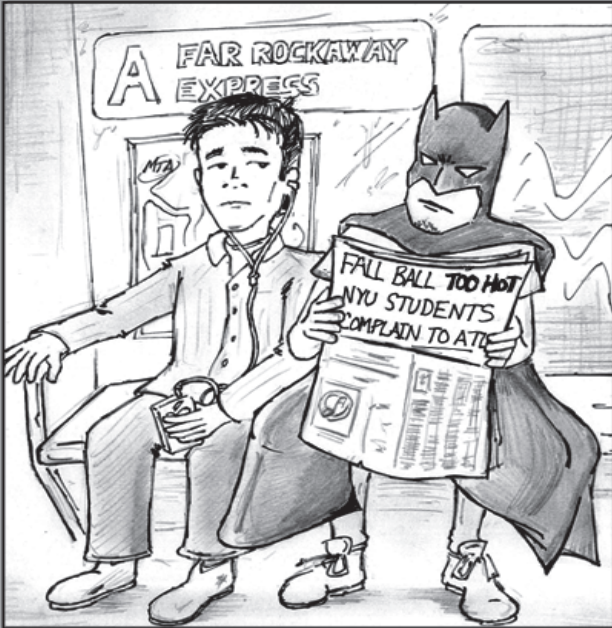
## Comment

### I’d Cross the Street for That

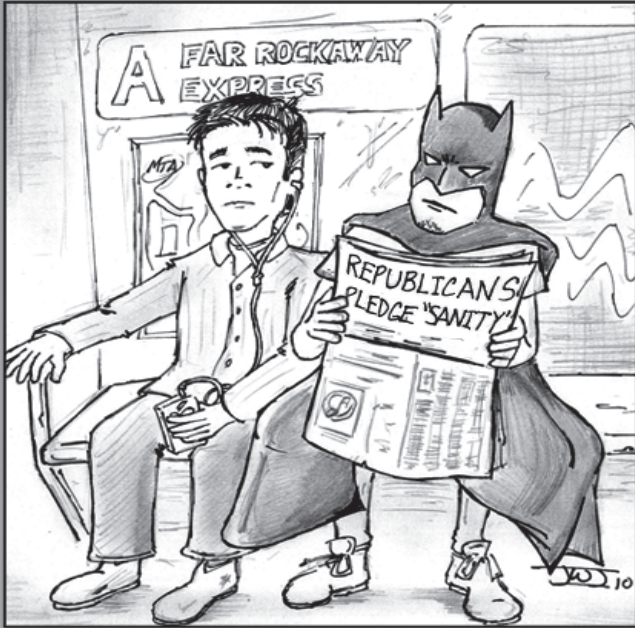
### Far Far Away from Home...



Day before Halloween on the A Train



Halloween on the A Train



Day after Halloween on the A Train