

# Lex Brevis

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Western New England College School of Law, Springfield, Massachusetts

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## ABA TAX SECTION ANNOUNCES WINNERS OF NINTH ANNUAL LAW STUDENT TAX CHALLENGE

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Written By: Ann Nicholas

[www.abanet.org/tax](http://www.abanet.org/tax)

The American Bar Association Section of Taxation has announced the winners of its 2009 Law Student Tax Challenge, a contest designed to give students an opportunity to research, write about and present their analyses of a “real life” tax planning problem.

Brendan Sponheimer and James Murtha of Western New England College School of Law were awarded first place in the J.D. Division. The teams presented oral arguments before a panel of distinguished tax lawyers attending the section’s Midyear Meeting in San Antonio. The winners were honored at a reception during the meeting. Frederick D. Royal was the coach for the Western New England College School of Law team.

“We were pleased this year to have more teams than ever before competing,” said Stuart M. Lewis, chair of the ABA Tax Section. “Forty-three J.D. teams and 26 LL.M. teams submitted their solutions to a challenging, complex tax

planning problem that involved individual and business entity issues,” he said. “Students were asked to advise a fictional client on how to handle partnership tax matters, as well as tax issues that may arise in divorce proceedings,” he said. “The students greatly benefited from the feedback and counsel they received from some of the best tax lawyers in the country,” Lewis said, adding, “Students said their experience with the tax challenge gave them a taste of real-life practice in this area.” The Law Student Tax Challenge was developed and is administered by the section’s Young Lawyers Forum, and is designed to reflect everyday tax issues that might arise for practitioners. The contest features J.D. and LL.M. divisions, both of which compete in two-person teams that research the tax issues involved, and then submit technical memoranda and client letters with their solutions. The teams’ written submissions are judged by tax practitioners from across

the country and the teams with the best written submissions are chosen to present their tax planning strategies before the competition judges at the Section’s Midyear Meeting.



### Other WNEC awardees in the J.D. Division:

**Best Written Submission:** Neill O’Brien and Casey Nunez, Western New England College of Law. Frederick Royal, coach.

**Semi-finalists:** Neill O’Brien and Casey Nunez, Western New England College of Law. Frederick Royal, coach.

# Meet Our Wonderful Staff at the Registrar's Office!



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The Registrar's Office at Western New England College School of Law serves both current students and alumni in a variety of important ways. In addition to being responsible for maintaining academic records, the Registrar's Office is also responsible for schedule preparation, course registration, exam administration, grade processing, transcript requests, and processing bar applications.

The staff in the Registrar's Office is dedicated to the highest standards of student service and we strive to respond to inquiries promptly and professionally. The Registrar's

Office takes pride in the quality of our service; we value accuracy, efficiency, confidentiality, and the ability to keep up date with technology and innovation.

The Registrar's Office is here to welcome students when they first arrive at the law school and we continue to serve our alumni throughout their careers. If you ever have a question and are not sure where to begin, feel free to stop by the Registrar's Office. We will either be able to answer your question or point you in the right direction for assistance. We look forward to continuing to serve students and

alumni with integrity and professionalism. In our ongoing effort to improve the quality of our services, your comments and suggestions are encouraged.

Terry Chenier  
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# Environmental Law Coalition's trip to NAELS Conference in New Orleans

Anastasia Simmons, 1L

On the weekend of March 4<sup>th</sup> to 7<sup>th</sup>, two students from the Environmental Law Coalition attended the National Association for Environmental Law Societies annual conference in New Orleans, Louisiana. The conference was a nationally attended conference with speakers varying from residents affected by environmental conditions to authors of books addressing environmental concerns to the designer of the ultra light and new hypercar.

The NAELS conference was held by Loyola School of Law in New Orleans and was entitled "Staying Afloat: Adapting to Climate Change on the Gulf and Beyond." There were several days of jam-packed speakers and panelists. Dr. Beverly Wright of New Orleans spoke of the extreme disproportionate effect Hurricane Katrina on the people of Louisiana. Poor, black, single mothers were the most affected. Richard Louv spoke of the negative affect the lack of natural environment has on the development of our children, a condition he coined as "nature-deficit disorder." This conference truly highlighted the interconnected nature of the environment with every other issue plaguing America and the world.

The conference also focused on many legal issues that are occurring today.

One appalling issue that was presented was the situation of the town of Mossville, a town surrounded by power plants. The residents of Mossville have numerous health issues from asthma

to endometriosis to many types of cancer. Doctors can definitively say that these health issues are caused by the elevation of a certain chemical in their bodies; the chemical being three times the normal amount. The power plants use this chemical but supposedly properly dispose of these chemicals. The air sensors set up by the government and regulatory agencies have not picked up these chemicals. So what we have is power plants emitting a chemical near a residential neighborhood, residents becoming sick from that same chemical, but no "proof" that the power companies are at fault. Legally, regulatory agencies cannot step in because there has been no proof of negligence. Legally, the residents cannot sue because there has been no proof of negligence. Legally, common sense and logical inferences are not enough to hold the power plants liable. Legally, this is a problem without a clear solution in the near future.

My favorite presenter was Amory Lovins, a man who, I think, should be an inspiration to all of us.

He has found a way to be environmentally friendly in an economic manner. He has helped to retrofit current buildings to make them more eco-friendly, and has saved millions of dollars in doing so by decreasing the need for current heating and cooling methods. His own home, in the Rocky Mountains, has no furnace and no air conditioner, yet he is able to grow tropical fruits in his house. He saved money in building his house by not putting in those amenities and replacing them with eco-friendly measures. He also is able to sell energy back to power companies, literally making money on his investment.

The conference was an amazing opportunity to learn about social, political, economic and legal issues currently abundant in America and the World. It taught me ways to be more aware of environmental issues and taught me of the interrelatedness of current issues of the world. I would like to thank the Environmental Law Coalition and the Student Bar Association for funding the majority of the expenses of the trip.

To learn more about the conference attended please visit the NAELS 2010 website: <http://law.loyno.edu/national-association-environmental-law-societies-annual-conference>

# True Life: I'm In Law School

**Rachel Sposato, 3L**

As law school draws to a close for me and the rest of the graduating class of 2010, I reflect on the lessons (both serious and funny) that we have learned over the last three years. In this edition of "True Life: I'm in Law School," we're going to take a look back at some of the memorable lessons/moments of life that would not have occurred, but for law school. So sit back, *relax*, and ingest some food for thought with *True Life: I'm in Law School*.

1.) In order to become a successful lawyer, one DOES NOT need to become a successful alcoholic...or any type of alcoholic.

2.) Grades will almost never be posted before the first day of the new semester.

3.) When asked a legal question, the answer has changed from "I don't know" to "It depends."

4.) No one will ever be able to figure out Prof. Baker's pattern of cold calling in Property.

5.) When going out to bars Thursday-Saturday night begins to lose its appeal that is progress.

6.) No one will ever be able to pull off a bowtie quite like Prof. Leavens.

7.) Class participation (including cold calling) improves speaking skills.

8.) The friends and significant others that stuck with you throughout law school are truly the good ones to have in your corner.

9.) Sometimes it takes the trials and tribulations of law school to figure out who you really are.

10.) There will never be room in the community fridge for one's lunch/dinner.

11.) Gaining legal work experience is as important (if not more) as attending class, especially when finally job searching.

12.) A visit to the college bookstore is a guaranteed downer for the rest of the day.

13.) One will never consider green for a wall coloring ever again.

14.) Always pack an extra sweater/sweatshirt for class regardless of the time of year.

15.) There is not always a definite answer.

16.) Sadly, the social aspect of law school disturbingly mirrors that of high school.

17.) That we now see the many shades of gray in life will forever be a mutual benefit and detriment.

It is time now for me to bid adieu, as I eagerly await graduation in May, the bar exam in July, and the desperate hope of a job. Congratulations Class of 2010; good luck to the rest!

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## A Farewell From Your 2009-2010 SBA President

**Jason Levine, 3L**

My fellow students: I have been given the opportunity to say a brief goodbye and am grateful for the opportunity. During this year, the SBA and the student body has made great strides to help bring this law school to its fullest potential. This year, we made some much needed changes to the SBA Constitution, taken the first of two steps to raise the Student Activity Fee, fought for changes in the conflict policy, set up vital procedural rules and begun to lay framework for a second law review.

Above all, the SBA Council and the Executive Board fought day in and day out for what we as individuals felt was in the best interest of the students and the law school. I would like to thank the Council for all its hard work and patience throughout the year. I would like to thank our Committee members and our volunteers for all their time and effort. I also want to thank the E-Board for their selfless dedication to not only their own positions but also to helping me day in and day out. I cannot thank all of

you enough nor express my gratitude in the space given.

Lastly, I want to thank all of my fellow students. This would never have been possible without any and all of you. It was an honor to be your SBA President. It was a joy to be your classmate. It will be pleasure to be your colleague. I wish you all good luck on your finals and all of your future endeavors. Thank you for all you have given me. – Jason Levine

# First Annual WNEC Law Charity Dodgeball Tournament

## Stephanie Malikowski, 2L

I am so pleased with the turnout we had at the First Annual WNEC Law Charity Dodgeball Tournament. I would never have imagined that the Student Bar Association Charities Committee would have had so much support. Over 80 students and faculty participated and more than \$800 was raised for Save the Children.

I myself participated in a dodgeball tournament in Westfield, Massachusetts last fall to benefit a local youth scholarship. Despite the fact that our team was comprised of relatively young and fit individuals, we found ourselves getting destroyed by teams of adults almost twice our age. I

had a blast and realized that dodgeball is a sport that many can participate in. One need not have athletic prowess to be a great player. A friend on my team suggested that a tournament at WNEC would be an excellent idea and a good means of bringing the school together. I thought it would be a perfect fit and a great way to bring a new event to the school.

Since dodgeball is a game that most of us remember playing in grade school, I thought it only appropriate that all of the tournament proceeds go to a youth charity. I chose Save the Children because of my knowledge of their excellent programs that help youth across the globe. The tournament was

also being planned as the aftermath of the Haitian disaster was unfolding. Save the Children was listed as one of many organizations that were helping the survivors of the earthquake, with their efforts primarily focusing on youth.

What thrilled me the most about the tournament was how much enthusiasm I saw in all of the players. The team names, the hours spent on uniforms (even down to matching headbands!), and formulated plays. It was an excellent way for students to let loose and let off some steam. I hope that the tournament becomes an annual tradition of the law school for years to come.

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## Dressing The Part

## Whitney Holovach, 2L

It is inevitable that we, as future lawyers, will need to go on important job interviews. Whether the interview is for a summer internship, a clinic or a permanent position, looking professional and put together is more important than you may believe. Last semester while working in an office, I actually overheard my supervising attorney mocking an interviewee's outfit with nearly the entire office. It was at that moment I realized that I should share my nine fashion commandments with those at WNEC Law. Though not backed

with any scientific evidence, I have compiled these commandments through the years while keeping up with fashion trends, shopping an obscene amount and having a sister who works in the fashion industry. Whether you are fashion savvy or not, it is important to take these points into consideration when dressing for an interview or for a day at work.

**Commandment #1 – Tailoring is a must!** It is nearly impossible for any person to buy a well made suit, jacket or pair of pants and have it fit

them right off the rack. Though many attempt to do it, it should not be done! Walking into an interview or work with sleeves or pants that are too long or too short makes you look sloppy. Looking put together will allow the interviewer or boss to concentrate on your intelligence and personality, not on your disheveled wardrobe.

**Commandment #2 – Do not wear revealing clothing!** There is nothing more distracting or distasteful than having skimpy clothing in the workplace. This one

obviously mostly pertains to women. Cover up your cleavage and wear skirts that come to at least the top of your knee. I also follow the general rule of covering up your shoulders. Mostly all offices are air conditioned so do not try to use the excuse that in the summer time it is hot. Wear a cardigan over your shoulders while in the office as it is just more appropriate and professional. Oh and though not considered revealing per say, collared button down shirts should ALWAYS be tucked in. Not tucking these shirts in, especially for men, is ridiculously sloppy and unappealing.

**Commandment #3 – Wear clothing that fits!** Alright, let's face it. We have all tacked on a few pounds here or there as a result of law school. This doesn't mean that the clothing that doesn't fit you as well anymore should still be worn. Like that button down shirt that pulls across the chest. You can find a nice dress shirt at ridiculously low prices at places like Marshall's and TJ Maxx. So instead of attempting to squeeze into a shirt that pulls open and allows an employer or an interviewer to see your undergarments or skin, just buy one that fits!

**Commandment #4 – Dress for the occasion!** Ultimately, when in doubt, dress up. However, if the interviewer or employer indicates some sort of style within the office, please take such advice into consideration. If the interviewer states that business casual is the dress in the office, wearing a full suit may be pushing it too far. Dressing for an office is not what it used to be. More and more offices are leaning toward a business casual look; however, it is never inappropriate to ask how the dress is in the office prior to your first day of work. It is better to ask than to dress too casual on your first day.

**Commandment #5 – Be comfortable!** Not only must you look nice for an interview or for work, but you should feel comfortable in your clothing as well. Though people believe it, it is not true that just because you are dressed up you should be uncomfortable. Buy clothing that compliments your body in styles you are comfortable wearing. Wear shoes that you do not mind staying in all day. Being more comfortable in your clothing and shoes will make you more confident, whether it be for an interview or for the workday. Confidence in how you look will allow you to concentrate that much more on your interview or your daily work.

**Commandment #6 – No jeans!** Though jeans may be appropriate for a casual Friday if your office has such a policy, jeans are NEVER appropriate for the work week and especially not for an interview. While it is usually appropriate to attend an interview in trousers and a blouse, it is never, and ultimately will never be appropriate to wear jeans to work or an interview. As a general rule, avoid jeans in the workplace.

**Commandment #7 – Cover inappropriate tattoos or piercings!** There is nothing worse than looking unprofessional when your interviewer or boss catches a glimpse of your tattoo or piercing. Clearly, dainty piercings such as those in your ear or even a tiny stud in your nose should be fine. However, if you have gauged ear piercings or a tattoo that is large and visible, remove or cover these things up, ESPECIALLY for an interview. Many people have different views on tattoos and piercings and you want an interviewer or an employer to make judgments on you based on your ability and work ethic, not the large hole pierced into your ear or the

crazy tattoo on your neck or arm. For an interview or work, err on the side of conservative in regards to tattoos or piercings.

**Commandment #8 – Jewelry should be tasteful!** There is nothing wrong with putting on jewelry for an interview, ladies; however looking like you're going clubbing with huge hoop earrings and bangle bracelets may be overdoing it just a bit. I am not going so far as to suggest you wear pearls either. But whatever jewelry you decide should be subtle, tasteful and appropriate for the workplace.

**Commandment #9 – Hair and makeup should be refined!** While it is clearly not necessary to wear your hair in a bun to interviews anymore, it is important that your hair is nicely done, whether up or down. Your hair should not be hanging in your eyes, as this is distracting to your interviewer, employer and possibly even to you. Obviously no hats in the workplace or on an interview and ladies, keep the hair accessories to a minimum. A tiny clip may be appropriate but an elaborate headband or accessory may tip the scales. Oh and NO SCRUNCHIES. It's not 1990 anymore. Makeup was made to enhance natural beauty, and it should do just that. Wearing bright colors should be reserved for nights and weekends. In the workplace or on an interview, wear neutral tones to enhance your face, not dark or bright tones to distract or scare anyone. Your makeup should be subtle and fresh looking.

I hope you found the commandments informative and useful. These are minor, inexpensive changes that will make you look professional and boost your confidence in the process. Remember, appearance matters. So make sure on every interview or job day you are dressing the part!



# Twombly/Iqbal Pleading: A Thing of the (not-so-distant) Past?

**Walker Stutzman, 1L**

In an effort to prolong outlining my 1L Civil Procedure class, I meandered into the law school cafe, hoping to continue a debate started with a colleague of mine regarding the *Twombly/Iqbal* standard of pleading. After our friendly debate, I went inside and started re-reading the cases to further the discussion. In doing so, I stumbled upon the topic of this piece, the Notice Pleading Restoration Act of 2009, a bill currently pending in the Senate. This bill, in essence, attempts to restore notice pleading in civil actions. Specifically, this bill intends to hold the decision made in *Conley v. Gibson*, 355 U.S. 41, that “a complaint should not be dismissed on a failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* *Conley* further states, “the Federal Rules of Civil Procedure [FRCP] do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a ‘short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” The *Conley* standard, established in late 1957, is the “notice pleading” that civil courts have employed until *Bell Atlantic v. Twombly*, 550 US 544 (2007).

During the half-century before *Twombly*, the proverbial “bar” set for plaintiffs has been relatively low, compared to what it is at today. *Twombly* elevated that

bar, stating, “a formulaic recitation of the elements of a cause of action will not do.” *Iqbal* states, regarding the “plausible” standard of pleading, “actual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This case overturned the standard established in *Conley*. That standard was further raised after *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009), where the Supreme Court, in a 5-4 split, held “to state a claim based on a violation of a clearly established right, respondent must plead sufficient factual matter to show [a cause of action].” The *Iqbal* decision furthered *Twombly* to embrace all civil actions, not just those of anti-trust nature. The *Twombly/Iqbal* standard of pleading, in my colleague’s eyes, has over-balanced the scales of justice in favor of the defense, allowing for hardly anyone to enter a complaint. Anthony Tarricone, in his piece “In Defense of Truth-Seeking,” states “[These] fundamental procedural changes will make it impossible for some plaintiffs to plead their case, and ...could seriously impede from obtaining the evidence needed to reveal the truth and prove their claims.” 45 Nov. *JTLATRIAL* 9. Terricone continues, urging that “the rights of Americans are not eliminated through seemingly innocuous changes to procedural rules.” *Id.*

Senator Arlen Specter introduced the bill on July 22, 2009, just two months after the *Iqbal* decision was handed down. The bill’s purpose is, “[t]o provide that

Federal courts shall not dismiss complaints under rule 12(b)(6) or (e) of the Federal Rules of Civil Procedure, except under the standards set forth by the Supreme Court of the United States in *Conley v. Gibson*, 355 U.S. 41 (1957).” The bill attempts to restore the pleading system plaintiff’s attorneys’ have known and loved: good old-fashioned notice pleading. But what impact does this bill have on modern jurisprudence? Does it undermine the Supreme Court’s role in the “Separation of Power” trifecta? If the bill is rejected, is *Twombly/Iqbal* the new direction of civil pleading to rule for the next fifty years? There are several outcomes this law student can see that could have monumental impacts on modern jurisprudence.

The bill’s rejection reaffirms sovereignty of the Supreme Court, but offers a different task to the Civil Advisory Committee. The bill’s rejection could force the Civil Advisory Committee to reevaluate both Rules 8 and 9. Based on *Twombly/Iqbal*, can Rule 8 still say “a short and plain statement of the claim showing the pleader is entitled to relief?” This rule seems to be in opposition of what *Twombly/Iqbal* held, and is arguably outdated. Further, does Rule 9 change entirely? Should the AC include into the exhaustive list of “fraud or mistake” the notion of “give us more than what you *want* to disclose?” Playing close to the chest seems to be “so 1957.” But is it too much of the Court to ask of a plaintiff to reveal “why are you here?” How much clout does a

complaint stating “the defendant intentionally battered me” offer to the court? Is it too much for a plaintiff to say “Jeff slapped me across the face after he lost a bet because he was upset” in his complaint to the court? Is the Court in *Twombly/Iqbal* really asking that much?

Another anomaly with *Twombly/Iqbal* pleading is the departure from specific language of the FRCP by certain justices. Brother Scalia, where art thou? The contextualist approach, which defines Justice “Nino” appears abandoned in *Iqbal*. Scalia, not-surprisingly, sides with Justice Kennedy, Roberts, Thomas and Alito on the *Iqbal* case. However politically motivated his stance, the seeming departure away from “the text says what it says” may indeed prove the text of Rule 8 no longer serves its purpose.

The bill’s passing also purports a message to the Court: “Your decisions don’t matter when we don’t agree.” Such a bill repealing a Court’s opinion so quickly after its deliverance has potential to lull the court and

undermines the whole purpose of the Court’s function. How much effort will the Court exude if, at the drop of a unfavorable hat, its decisions that are scrutinized for months are washed away with the rising tide of legislative bureaucracy? The passing of the bill also appears to deadlock the advisory committee and the Court into a “Scalia-esque” interpretation of Rules 8 and 9. Does this bill promote the first Rule of Civil Procedure, to “secure the just, speedy, and inexpensive determination of every action and proceeding?”

The answer from this law student is rather Darwinian in nature. Much as early bacteria, simple-celled organisms, or a “separate-but-equal” ruling, some things are just outdated and their purpose is no longer necessary. The *Twombly/Iqbal* standard forces attorneys to use a little more than was previously required to survive a motion to dismiss. Since when was demanding a little extra so hard to deliver? The *Conley* standard most certainly served its purpose for the court. Indeed, it’s fifty years of service was greatly appreciated. However, it is now time for the new

era of pleading. The Court has moved on. So early in its development, we have yet to really *see* the *Twombly/Iqbal* standard prove its mettle. *Twombly/Iqbal* acts as the fulcrum of the scale, only now, the scale appears more even. *Twombly/Iqbal* has the task of balancing the inherent right to “one’s day in court.” Allow for another analogy. Pleading is the car pool lane. *Conley* pleading is the open lane. Really, anyone can jump in and drive in it. After all, it is there, and is intended to be driven on. *Twombly/Iqbal* is the “two or more people” sign prohibiting certain cars (who may not belong there in the first place) from accessing that lane. Without *Twombly/Iqbal*, we have a “traffic jam in the carpool lane,” because any and every car can take it most certainly will if it is the easiest path. And doesn’t that really defeat the entire *purpose* of the carpool lane? Much is *Twombly/Iqbal* pleading. Without a standard that says “provide more than the form” for pleading, we are demanding our courts to be tied up with the task of being janitor, rather than gatekeeper. It’s the Court’s job to control access, not to sort trash and recycling.

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