



Harvard Law RECORD

America's Oldest
Law School
Newspaper
35 CENTS

Volume 106, No. 7

Cambridge 02138

Friday, March 13, 1998

Don't Worry, It's Just a Drill



Cambridge Fire Department rescue workers used a manhole in front of Langdell Library to conduct confined-space training last week.

Defendant Group Funds Nesson's Daubert Project

Judges Not Informed Who Paid for Project

By Russell Mokhiber
Special to the RECORD

In the Woburn toxic-tort case chronicled in Jonathan Harr's best-seller "A Civil Action," Prof. Charles Nesson '63 fought chemical companies that had polluted the town's drinking supplies. Largely as a result of the book, Nesson has gained a reputation as an anti-corporate crusader.

But Nesson's work as director of Harvard's Berkman Center on Law & Technology might surprise fans of "A Civil Action." The center is funded in part by a \$300,000 grant from the Civil Justice Reform Group, a "tort reform" lobbying organization, representing 60 of the nation's largest corporations.

As part of the Berkman Center, Nesson has established The Daubert Project. The Daubert Project holds seminars around the country for judges about the implications of the Supreme Court's 1993 decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*

The case has been widely interpreted as a pro-defendant decision. Nesson acknowledges that seminar attendees have not been informed who is financing the project.

Eight such seminars have been held so far, including one in Jacksonville, Florida titled "The Judge's Role As Gatekeeper: Responsibilities and Powers."

More than 300 state and federal judges from Florida attended the Jacksonville seminar. Each received materials prepared by Nesson and his colleagues at Harvard. On the front cover of the materials are the words "Produced by The Daubert Project, Berkman Center on Law & Technology,

Harvard Law School."

What the participants were not told is that The Daubert Project is funded in part by the Civil Justice Reform Group.

The Group's operating committee is headed by Mike Withrow, associate general counsel at Procter & Gamble. Withrow said that Procter & Gamble has donated an additional \$100,000 to the Berkman Center.

Withrow said that his group's donation should help cover the costs of 10 state conferences in 1997 and an additional seven to nine conferences that will be held in 1998.

"All we want to do is present a balanced program," Withrow said. "We want good science."

Edward Ricci, a trial lawyer in West Palm Beach, said he was disturbed by the fact that the judges weren't told about the private funding.

"These guys are going around the country, offering to put this seminar on for hundreds of trial judges," Ricci said. "Nowhere in the materials do they indicate that any of this was funded privately. They give the impression that it was under the auspices of Harvard Law School."

"I find it offensive that these groups are out to reshape the thinking of the courts," Ricci said.

"And that's why they don't want to disclose the funding. If you have 400 judges walk into a lecture hall and they find out that more than half the money is coming from a specific interest group, they are going to have a greater degree of skepticism," Ricci added. "Instead, if they are under the impression that the session was a dispassionate view from Harvard, they are more likely to gobble it up."

Christian Searcy, a West

Please see **NESSON**, p. 4

LSC Candidates Sling Mud

By Sarah G. Vincent

The campaign for the presidency of the Law School Council (LSC) went negative this week as students headed to the polls for two days of voting.



Dan Fridman '99

Candidate Paul Gowder '00 put up posters around campus urging candidate Dan Fridman '99 to "get some guts" and alleg-

ing that his other opponent, Manoj Mate '00, has not stated a platform.

One of Gowder's posters alleged that Mate has not made his positions clear. "What does he stand for? Will he listen to you? Who is he?" Gowder's poster stated.

Another of Gowder's posters stated that Fridman is concentrating on easy promises while avoiding controversial subjects.



Paul Gowder '00

The poster stated that Fridman "won't take a position on the hard issues" and

"waste[s] your time" on promises to sponsor more law school mixers.

In an interview with the RECORD, Mate shot back.

"One represents the status quo, and the other represents the absolute cynic," Mate said of his opponents. "Both have lost what is crucial in this campaign: a vision for HLS."

One of the most contentious issues in the campaign has centered around the "LEC Three" controversy. The name refers to the three student members of the Legal Education Committee (LEC) threatened with impeachment by the LSC after they voted in favor of a controversial change to the Law School's attendance policy.

Gowder criticized Fridman, who currently serves as LSC treasurer, for failing to impeach the LEC Three.

"[Fridman] was on the LSC before. He couldn't get rid of the LEC Three ... what did he do?" one of Gowder's posters stated.

"I don't want to see anyone who came away from that attendance policy acting as president," Gowder said in an interview with the RECORD.

Mate also criticized the LSC's performance on the attendance policy issue, although he refrained from directly criticizing Fridman on that issue.

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Student Gets Two-Year Suspension for Fraud

By Suzanne Carter

The Administrative Board has notified the HLS community that a student has been suspended from HLS for two years, effective immediately.

The student was found to have submitted fraudulent documentation for reimbursement of expenses to an HLS administrative office, according to a brief notice issued by the Ad Board.

The Ad Board, which is composed of five faculty members and three students, is respon-

sible for matters involving student discipline. Students brought before the Ad Board are entitled to have a lawyer present during hearings, and HLS provides counsel for students with financial need.

Ad Board by-laws dictate that it cannot release the name of the suspended student.

Dean of Students Suzanne Richardson stated, "I haven't seen any student organization denied funding when they adhere to the guidelines of the Law School Council Student Funding Board."

Party Chairs Debate Campaign Finance

By Timothy Kiefer

The national chairmen of the Democratic and Republican parties offered competing proposals for campaign finance reform at a televised debate in Ames Courtroom on Monday.

Democratic National Committee Chairman Steven Grossman said, "I'm prepared to reach across ... and shake hands and to agree that from this moment on ... that you and I are

going to say neither political party is going to accept any more soft money."

In the jargon of campaign finance reform, "soft money" is donations that are not governed by federal campaign laws. Soft money is donated to political parties from individuals, corporations, and labor unions.

The Republicans traditionally get more soft money do-

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DNC and RNC chairs, Grossman, and Nicholson, air their differences in the Ames courtroom.

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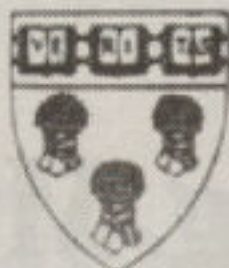
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Sportsguys, Renée, and, naturally, Fenno.

Five Years Ago in the RECORD



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Volume 96, No. 4

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Friday, March 12, 1993

Gropius Bathrooms Defiled

By Lisa Zornberg

Approximately fifty male residents of Ames and Dane Halls gathered Tuesday evening for a mandatory meeting about the disturbing defacement of two Gropius complex bathrooms. Since October, an unidentified person, who is believed to be a dorm resident, has repeatedly spread his feces on the toilet seats, stalls, walls, sinks, and floors of the men's bathrooms on the first floor of Ames and third floor of Dane.

Dean of Students Suzanne Richardson and Director of Student Life Counseling Mark Byers met with residents of the affected floors to discuss the administration's response to this situation, as well as student feelings of concern, fear, and disgust.

"This is a severe symptom of mental illness," asserted Byers, who is a doctor of psychology. "It probably indicates a thought disorder, a schizophrenic process, that has regressed into a kind of primitive behavior."

Sensitive that the unknown actor may have been one of the students in attendance, Byers and Richardson stressed that the person responsible for the defacement should seek help from the Dean of Students, the Office for Student Life Counseling, or the psychiatrists at the Law School Health Services. They ensured full confidentiality.

"I wouldn't want you to feel that this behavior was directed at you all, and that the person is sitting back and gloating at you," Byers told students. "From a mental health stand-

please see GROPIUS, page 4

Agresti to National Service Program

By Andrew Greenblatt

The Clinton Administration began tapping the HLS faculty and staff last week, and, after weeks of conjecture and gambling pools, the first to go is not Prof. Edley '78 or Prof. Tribe '66, but Barbara Agresti, associate director of the Office of Public Interest Advising (OPIA). After more than two and a half years of service at the Law School, Agresti will be moving on to Washington to become special project assistant for Clinton's Summer of Service program.

Agresti will be leaving today to begin working with Jennifer

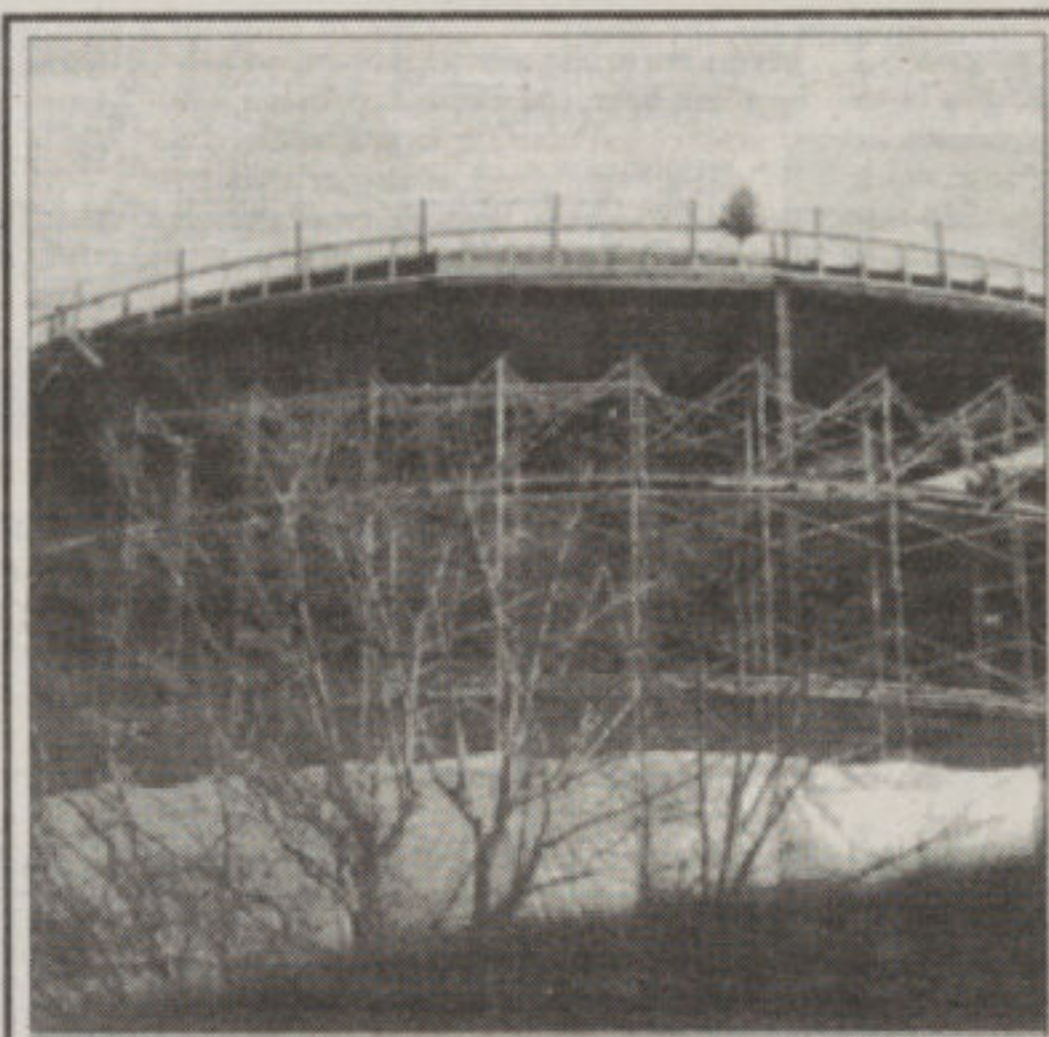


Barbara Agresti

Eplett Reilly, who will be coordinating the new public service program for 1,800 17- to 23-year-olds. Eplett Reilly formerly worked with the Echoing Green Foundation, a group that works closely with the HLS Office of Public Interest Advising in awarding grants to graduating students each year. It was through this contact that Agresti's talents became known to the new administration.

On hearing of Agresti's departure, most people voiced a mixture of sadness and good wishes. Stacy DeBroff, director of the OPIA said, "As sad as I am to see Barbara leave, I think

please see AGRESTI, page 4



With completion of the Holmes Field Building scheduled for December, 1993, faculty members are already choosing new offices. Administrative Dean Sandra Coleman expects the new offices to be ready for occupation by next January, and classrooms to be fully operational by spring, 1994.

Edley Confirms OMB Appointment

Lack of Diversity Won't Prevent Return

By Lisa Zornberg

Amid packing his bags for Washington, Prof. Christopher Edley '78 denied rumors this week that he may not return to Harvard following his leave of absence to protest the lack of diversity on the Law School faculty.

"This is false," he asserted.

In a statement issued March 9 to the RECORD and *Crimson*, Edley said: "If I do not return it will be for a complex set of personal and professional reasons, only one of



Prof. Chris Edley '78

which relates to my various dis-appointments with life on this faculty. I have been dissatisfied with appointments patterns here since I came as a student in 1973, but my inclination has always been to stay in a battle and fight, rather than avoid the war by changing my citizenship."

"Flight from strife," he added, "is a luxury to which only those who are older, with more battle scars, are entitled." Edley is one of three tenured black

tenured professors at HLS.

Edley announced to the faculty last week that he has officially agreed to become associate director of the Office of Management and Budget (OMB), and that Dean Clark '72 has granted his leave request for that purpose.

"As many of you know," he said in a memorandum to his colleagues, "I have very much wanted to build a career divided between public service and academia." Since joining the faculty in 1981, Edley has balanced course offerings in administrative law and education policy with an active role in national politics. In 1987-88, he took a leave of absence from HLS to serve as issues director in what he called "the silver medal effort by Mike Dukakis."

At OMB, Edley will supervise a career staff with budget, policy analysis, and legislative review responsibilities for numerous government agencies and departments. "Although the job is terrific, many personal and professional considerations make me quite ambivalent about going," Edley told the faculty.

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Review Censures Former President

By Greg Stohr

The *Law Review* has voted to censure former President Emily Schulman '93 and deny her the opportunity to speak at its annual banquet, but it stopped short of preventing her from writing her third-year student note.

In a secret ballot last week, the *Law Review* editors voted 41-30 to censure Schulman for her role in the controversies that erupted last year over Schulman's alleged abuse of power. In the same ballot the editors voted 47-21 not to deny her the traditional opportunity to write a student note in one of its spring editions.

Current President Van Nguyen '94 said the vote was a "purely internal" *Law Review* matter and declined to comment on its substance, but he expressed optimism that it would mark the end of a controversy that has plagued the journal since the beginning of this school year.

"I've talked to many, many editors since the vote was taken," Nguyen said. "The overwhelming majority, if not all, of them believe this is the final closing act."

Schulman did not respond to a request for a comment, consistent with her refusal to speak to

the press throughout the controversy.

The editors voted 50-20 not to allow Schulman to speak at the annual *Law Review* banquet next month. Traditionally, the *Law Review* president delivers an address at the banquet. The editors also voted 52-18 to break tradition and make its annual charitable donation in the name of the *Law Review*, rather than in Schulman's name.

The vote, which took place Thursday, March 4 and Friday, March 5, comes slightly more than a month after the release of a 109-page report on the controversy by Ralph Gants '80. In his report Gants concluded that Schulman made judgmental errors but that they did not warrant disciplinary action. One *Law Review* editor, who asked not to be identified, said that the editors wanted to wait until after Gants had reported on his investigation before they took any steps of their own.

"There was a reluctance in October (when the controversy first arose)," the editor said. "People didn't want to take any rash action. Because of the seriousness of the situation, people wanted to be sure of the facts."

A number of other *Law Review* editors either declined to comment on the vote or did not return phone calls.

Search for New Dean of Students Nears Completion

By Glennis Gill

After months of reviewing resumes and conducting interviews, the search committee for a new HLS Dean of Students has winnowed the large pool of applicants down to three finalists and is hoping to complete its part of the process by the end of March, according to Administrative Dean Sandra Coleman.

Following Sarah Wald's departure on October 15, 1992, Suzanne Richardson, who had been director of student activities, was appointed acting dean of students, and a search committee, headed by Coleman, was formed. The others on the committee are Director of Financial Aid Sally Donohue, Professor Daniel Meltzer '75, Professor David Wilkins '80, Rhonda Adams '93, and Neil Glazer '93.

An advertisement for the position, approved by both the committee and Dean Clark, began appearing in national publications in November. There were more than 200 applicants.

"We've completed preliminary interviews and are in the process of doing final interviews for three applicants," Coleman said. During preliminary interviews, the applicants met only

with the search committee and Dean Clark, but for these final interviews, applicants are meeting for a day and a half with many other faculty, students, administrators and staff.

Although the search committee is an integral part of the process, Coleman is careful to point out that "it's definitely the dean's appointment." She said, "We evaluate all the candidates and then the dean can choose one or decide to see others." However, Coleman added, "We hope to have someone in the position by early July."

Students have been happy with Suzanne Richardson's performance as acting dean of students. "She just stepped right into Dean Wald's shoes when she left," said Enu Mainigi '94, executive vice-president of the Law School Council. "She knew everyone, and understood all the politics and nuances, and I think she has been able to deal with all of that very effectively."

Richardson has been at HLS for fifteen years. When appointed to take over after Wald left, she said, "It's important to me to work with students... I hope to be able to carry on many of the policies of Dean Sarah Wald's office, with which I agree very

please see DEAN, page 10

Lambda Builds Support Against Military Recruiting

By RECORD Staff

Lambda is spearheading a petition drive aimed at persuading the HLS administration to stand by its refusal to permit the military to recruit through the Office of Career Services.

According to Ross LaJeunesse '98, Lambda sent a letter last week to all members of the faculty asking them to sign on to a petition that applauds OCS for "insisting that any employer seeking to use OCS resources sign and adhere to a statement of non-discrimination."

The petition also asks the administration to supplant any federal financial aid funding that might be lost with money from other budgetary sources.

"Harvard Law School must send a message that its opposition to prejudice and commitment to equal opportunity do not have a price tag. The military cannot purchase the right to discriminate on our campus," the petition states.

The letter went out late last week. To date, 15 members of the faculty have signed on — Profs. Anne-Marie Slaughter '85, Daniel Halperin, Peter Murray '67, Frank Michelman '60, Jon Hanson, Nan Hunter, Todd Rakoff '75, Lessig, Gerald Frug '63, Carol Steiker '86, Randall Kennedy, Robert Mnookin '68, Laurence Tribe '66, Joseph Singer '81, and Martha Minow.

"I know that this decision has a lot of support among the faculty and we felt it was important to give them the

opportunity to express that support," said LaJeunesse.

LaJeunesse expressed confidence that, by the end of the week, the number of professors signing the petition will have "doubled or tripled."

The petition has also been signed by over 100 students.

LaJeunesse said he believed it was important for students to encourage the administration's stance.

"Too often students only criticize administrators when they do something wrong, but say nothing when administrators do things right," he said.

"We are really pleased that Harvard has decided to place its commitment to civil rights over its pocketbook, and I thought it was important that the administration hear that."

Student Groups Join Coalition

In addition to LaJeunesse's attempts to build support among students and faculty, Rudy Reyes '98, president of the Coalition for Civil Rights (CCR), has begun a coalition-building campaign to ally Lambda and CCR with other minority groups.

"This issue is of unique concern for CCR because it goes not only to an issue fundamental to our group — which is non-discrimination on any basis — but also because the Solomon Amendment is a strategic device designed to break up a progressive coalition," Reyes said.

Reyes said he believes the Solomon Amendment is designed to pit the in-

Please see **MILITARY**, p. 13

Hemenway Petition Drive Yields 500 Signatures

Clark to Discuss Hemenway's Future with Students

By Eric Johnson

Spurred by the news that Harvard University might convert Hemenway Gymnasium into the new undergraduate admissions office, students circulated a petition last week urging the University to provide law students access to better athletic facilities.

Dean Clark '72 will meet with petition author Mike Leiter '00, Law School Council President Dina DeFalco '98, and Facilities Committee member Eric Cesnik '00 on Friday to discuss the possibility of losing Hemenway.

Leiter '00 said he was angered when he read about the possible loss of HLS's only nearby athletic facility in a Feb. 27 story in the RECORD.

On March 3, Leiter and his colleagues Kristian Borg-Oliver '00, Amanda Cohen '00, Chris Kerkering '00, Bill McSwain '00, and Sam Williamson '00 were circulating the petition in their first-year classes. The students also sought signatures from 2Ls and 3Ls at a table in Harkness Commons.

They submitted the petition's 500 signatures to Clark, Dean Jeremy Knowles of the Faculty of Arts and Sciences (FAS), and other University officials on Wednesday.

Saying quality-of-life issues were a traditional weak point in surveys and articles regarding HLS, the petition urged the administration to "improve, rather than destroy, athletic facilities at the Law School."

Leiter is not steadfastly in favor of saving the gym. A renovated Hemenway would be the ideal solution, he said, but access to other well-equipped athletic facilities could also solve the problem.

"They've got a room like a torture chamber for lifting weights," Leiter said. "The equipment is pathetic and it's really unsafe in a lot of places."

Asked why students used such a foreboding facility at all, Leiter said it was the most agreeable option.

"It's there; it's close. I think all of us try to manage our time as efficiently as possible, and if the choice is either walking 15 minutes down to the MAC or having a mediocre weight room, you might as well stay on the law school campus and save half an hour in travel time."

"To me, part of being a university is providing facilities for its students. And that doesn't specifically mean health facilities and library facilities, it also means athletic facilities," he said.

Two approaching events outside the Law School's control may determine Hemenway's fate. In April, the University will open new squash courts near Blodgett Pool, eliminating Hemenway's status as the exclusive provider of squash courts and severely curtailing the University's reasons for keeping the gym open.

This summer, the University's 25-year lease with Radcliffe College for the current admissions office space will expire. The elimination of the Byerly Hall offices would create a new, more pressing need for office space.

Visiting Students Discuss Japanese Legal Education



RECORD Photo/Harvard Asia Law Society

Kanen Doi (center) discusses the Japanese legal system as Daisuke Iwase looks on.

By Alyssa Caples

The Harvard Asia Law Society hosted a delegation of 38 law students from the University of Tokyo on a day of visits to HLS classes this Tuesday. In the evening, the visiting students gave a presentation on "Legal Education in Japan" to an overcrowded audience in Pound. The delegation spoke about many of the differences between the American approach to education and the Japanese approach.

"The characteristic of Japanese legal education at the undergraduate level is that it does not really aim to prepare you for the practice of law," said Daisuke Iwase of the University of Tokyo. The aim is to provide a general background in law for students who seek careers not only in the legal profession but also in government and private corporations."

Although students in America often enroll in bar review classes to prepare for the bar exam, in Japan this is even a more crucial step in the legal education

process. There is much criticism that the system of legal education in Japan leaves students ill-prepared both for taking the national legal exam and the practice of law in general. Iwase questioned the "significance of a law faculty that does not even provide training for those who want to become lawyers."

After four years of study in university, students who pass the national legal exam (Japan's version of the bar exam) then continue on to train for two more years at the Legal Training Institute in Tokyo. All of the students in the delegation just completed their national legal examinations.

While it may sound astonishing that everyone who passes the bar then trains at the same institution, it is not as unmanageable as it sounds. Only about three percent of bar examinees actually pass, which translates into roughly 750 lawyers a year. Thus, competition is fierce and the resources of the Japanese legal community are strained.

Another difference between the American and Japanese systems is the

timing of the bar exam. Unlike the bar exams in the various states, the Japanese exam is taken in three stages. The first stage is a multiple choice exam covering constitutional law and the civil and criminal codes, taken after the third year of study. It is at this stage that most (80%) students are eliminated from the rounds of test taking. There are two other components, a written segment and an oral examination, usually taken during or after the fourth year. These cover the same topics as the multiple choice exam, plus the commercial code and civil and criminal procedures.

Unlike exams at HLS with complicated fact patterns, these tests aren't designed to test one's ability to "think like a lawyer."

"The questions are ten lines at the longest and give no specific detail," said Iwase. "The difference here is that we in civil law countries are taught the basic abstract rules first, and then will practice applying these rules simply [using] abstract cases."

"Whereas in the first year of contracts here, you have read cases that will often have irrelevant information with regard to the issue. In our exams, no facts that are irrelevant to the answers or legal issues are given, so we are not trained to find what is relevant and what is not," said Iwase.

During the two year training period, the Japanese lawyer must choose one of three paths: private practice, prosecutorial work, or the judiciary. "Unlike the American tradition, there is little exchange between the three professions. And also, the number of people that pass the legal exam but do not pursue a career in any of the three legal professions is very small," said Iwase.

Teaching styles are also different in Japan. "Compared to Japan University, [education at HLS] is very active and exciting. In Japanese universities, the classes are all usually lecture style. It's so boring, some people sleep, but in America and at HLS, the professors will point at anyone, so everyone is frightened and alert. It's better than the Japanese boring class," said Yoko Yanase of the University of Tokyo.

Emily Reber '00, a member of the HLS Speakers Committee which worked on bringing the University of Tokyo students to HLS was pleased with the visit.

"We fulfilled our mutual goals of learning more about each other's legal education systems, legal structures and professional practices. Furthermore, we developed relationships which we will continue to build throughout our legal careers. We hope to continue this type of exchange within the international legal community and are planning a similar exchange next year," said Reber.

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Briefs

Breindel '82, NY Post Columnist, Dies

Eric Breindel '82, a New York Post columnist and conservative television pundit, died Saturday. He was 42.

Breindel, a senior vice president of Rupert Murdoch's News Corp., the company that owns the Post, died at New York Hospital after checking in several days earlier, said Marc Kalech, managing editor at the paper, who had no information on the cause of Breindel's death.

After being named a senior vice president at News Corp. in January 1997, Breindel continued to write a weekly column in the Post. As an executive, he focused on strategic policy and planning for News Corp., which also owns properties in the United States, Europe, Asia, and Australia.

He also moderated a weekly public affairs television program, "Fox News Watch," on the company's Fox News Channel. The show examined the media's coverage of major news stories.

— The Associated Press

Rep. Jane Harman '69 Promises to Reform California School System

Rep. Jane Harman '69 formally entered the race for the Democratic nomination for governor last Friday, saying she will put California's robust economy to work revitalizing the state's public school system, a report from the Copley News Service said.

The three-term congresswoman from Rolling Hills launched her late-starting campaign at a rally outside Torrance City Hall where she opened her first congressional district office in 1983.

Harman's speech was devoted almost entirely to education as she outlined broad themes of what she envisions as a school system that meets the educational needs of all citizens throughout their lives in an ever-changing society.

"Education must have the highest priority among the many priorities of the state," Harman said. "The role of the governor is to insist on this priority, to align the work of the state accordingly and, most of all, to be an evangelist for learning and to help restore a reverence for education among all of California's citizens, parents and policy-makers alike."

Harman, 52, joins Lt. Gov. Gray Davis and former airline executive Al Checchi in the June 2 Democratic primary to succeed Republican Gov. Pete Wilson, who cannot run for re-election because of term limits. Attorney General Dan Lungren is the only major Republican candidate for governor.

Merritt '62 Elected ACTC Chair

James E. Merritt '62, senior counsel with Morrison & Foerster in San Francisco, has been elected chairperson of the American College of Tax Counsel (ACTC), the Business Wire reported Monday.

Merritt assumed the chairmanship on March 1, after serving as the 9th Circuit representative on the College's Board of Regents for the past five years. Merritt succeeds Jere D. McGaffey of Milwaukee.

Prior to joining Morrison & Foerster in 1972, Merritt served as a Trial Attorney, Regional Counsel, International Revenue Service, in San Francisco from 1964 to 1968. During 1983, he served as a consultant in the Office of Chief Counsel, Internal Revenue Service.

The ACTC is a nonprofit professional association of lawyers who are recognized for their excellence in the field of taxation and for their substantial contributions to the practice of tax law. It was founded in 1981 and currently has approximately 615 Fellows nationwide.

Spring Break Court Promises Swift Justice

Vacationing college students nabbed for misdemeanors like underage drinking and disorderly conduct can expect some immediate justice in Panama City Beach. And they can avoid a criminal record by giving up a day at the beach for a day cleaning up the beach.

Starting Monday, instead of processing offenders through normal criminal channels, Bay County judges started to hold court at City Hall in this Florida Panhandle resort town. The plan mirrors a similar program used at Key West for several years.

First-time offenders can keep their records clean by doing up to eight hours of community service cleaning beaches, parks and roadways.

"They're going to pick up trash on the side of the road they probably threw down there last night," Police Chief J.B. Holloway said. "We hope their friends will see them and decide that they want to behave a little better."

Other options are pleading guilty and paying a \$175 fine or pleading innocent and having to return for trial. But the community service option carries a distinct advantage for youthful offenders.

"If they choose that then they don't have a record" Holloway said. "Mom and Daddy don't have to know about it."

Justice will be swift.

"As soon as you leave that courtroom you step onto a work van," Holloway said.

The Spring Break Court, which opens Monday, operates seven days a week until April 4. Panama City Beach usually gets about 500,000 visitors during the four-week spring break period.

— The Associated Press

Nesson's Co-Panelist Calls Project Slanted

Continued from NESSON, p. 1

Palm Beach trial attorney who was on the panel with Nesson discussing Daubert at the Jacksonville seminar, said that going into the event, his impression was that "the purpose of the presentation was to have a law professor put on an objective program about evidence."

"After participating in the program, it was my impression that Prof. Nesson was an advocate for the proposition of judges excluding expert testimony in products liability or scientific cases," Searcy said. "The method he conducted the program seemed to me to be slanted toward persuading people to be more restrictive in keeping scientific evidence out."

"I was honored to be invited to attend this program," Searcy said. "But the end effect of having someone with an agenda put on a program that purports to be academic and objective is that you mislead the audience. It reminds you of the wolf in sheep's clothing."

Nesson said that he does not tell the judges where the money for the Daubert Project comes from. "We have just said this is a Berkman Center project," Nesson said. "We haven't gone around advertising where the money is coming from."

According to Nesson, a Daubert Project proposal to the trial lawyers for funding was turned down. Nesson then traveled to Washington, D.C. and "made a presentation at one of the meetings of the Civil Justice Reform Group and after that, they put in some money." He said he would be "delighted to have continuing support" from big corporations.

Along with Emeritus Prof. Charles Fried, Nesson submitted a friend of the court brief on behalf of defendant Merrell Dow in *Daubert*.

In *Daubert*, plaintiffs sought to introduce evidence that birth defects had been caused by a mother's ingestion of the anti-nausea drug Bendectin.

Although the Supreme Court sided with the plaintiffs in *Daubert*, by setting up a process for judges to determine the

reliability and relevancy of scientific evidence, the decision has been perceived by many trial lawyers as giving trial judges important powers to exclude scientific evidence and thus undermine plaintiffs' chances in toxic tort cases.

"The *Daubert* formula, especially as interpreted by *Joiner*, strikes many trial judges as a whispered invitation to unconstitutionally invade the province of the jury in weighing the evidence of causation in toxic tort cases," said Rob Hager, a Washington, D.C. plaintiffs' attorney.

In *General Electric Co. v. Joiner*, December 1997, the Supreme Court revisited *Daubert*, deciding that a trial judge's decision to exclude scientific evidence under *Daubert* can be reversed only on the narrow grounds of "abuse of discretion."

As for any reputation of being supportive of plaintiffs in toxic tort cases, Nesson says "I don't think I'm on any side."

"I want credible verdicts," he said. "If verdicts are not credible, the whole system suffers. And in fact that is what was happening."

"There are some people who think that any expert who says 'I'm an expert in this field,' then that ought to be enough to go to a jury," Nesson said. "That has been a way that plaintiffs lawyers have been able to get to juries with cases they have put together in a sloppy fashion. If you take an unsophisticated view of this, the idea of tightening up experts can be seen as anti-plaintiff."

Nesson says that some plaintiffs' lawyers, like Boston's Rick Ellis, are winning with *Daubert*. "Rick will tell you we can work with this," Nesson said. "The Supreme Court is laying out guidelines telling us what we can do to get our cases solidly before the jury."

Russell Mokhiber is Editor of *Corporate Crime Reporter*, a legal weekly based in Washington, D.C. Adapted from an article which previously appeared in *Corporate Crime Reporter*. Used with permission.

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SEE PAGE 14

Debate Will be Shown on C-SPAN

Continued from *DEBATE*, p. 1

nations than do the Democrats. In the 1996 election, Republicans raised \$138 million in soft money while the Democrats raised \$124 million.

In 1997, the Republican/Democrat spending gap grew wider. According to DNC spokeswoman Melissa Bonney, "Democrats were outspent five to one in 1997."

Grossman's Republican counterpart, Jim Nicholson, agreed to shake on Grossman's deal, but only if Grossman also agreed to restrict union contributions.

"I would reach across and shake hands with you on two things: if you'll agree to stop taking money and that the union leadership in America stop taking money involuntarily against its rank-and-file members."

Nicholson said that under current law, unions can take money from members' dues for political purposes. He said that unions should be required to ask the union member for his or her consent before using union payroll deductions for political donations.

Unions typically give most of their donations to Democrats — 97 percent, by Nicholson's estimate.

Grossman criticized Senate Republicans for effectively killing a campaign finance reform bill sponsored by Republican U.S. Sen. John McCain and Democratic U.S. Sen. Russ Feingold '79.

"All 45 Democrats and enough Republicans to make a majority of the United States Senate support campaign finance reform," Grossman said.

Nonetheless, the bill's supporters did not have the 60 votes needed to defeat a Republican filibuster of the bill.

Nicholson defended the Republican filibuster, arguing that the McCain-Feingold bill would impinge on the First Amendment rights of political contributors.

"None other than Thurgood Marshall, in *Buckley v. Valeo*, said that spending is speech."

The *Buckley* decision invalidated certain parts of a post-Watergate campaign finance law on First Amendment grounds.

"You're depriving people of their rights, and we just don't buy that,"

Nicholson said in reference to McCain-Feingold.

Grossman said that campaign spending has gotten out of control, thereby creating voter disgust with the political process.

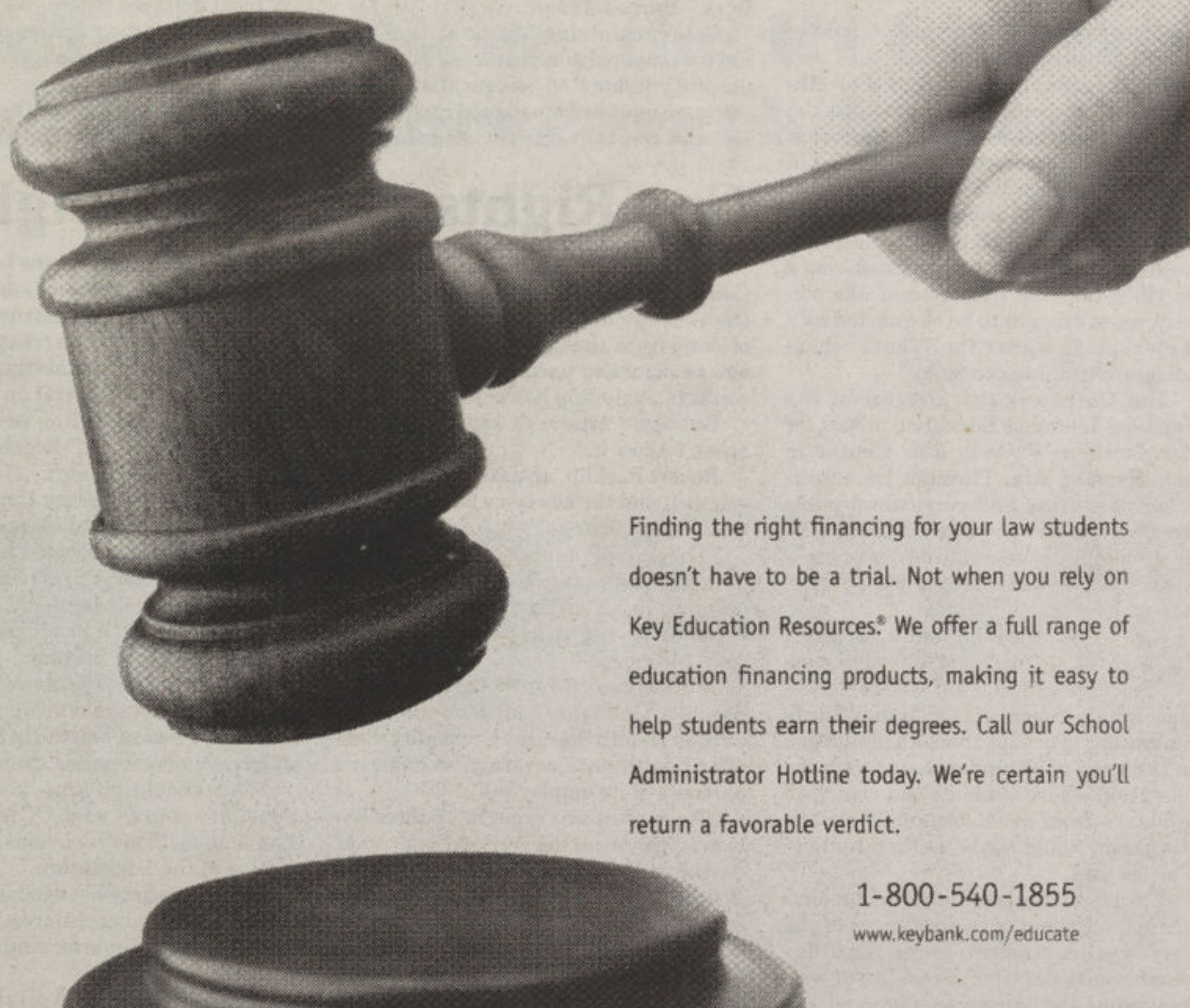
"Citizens are cynical; they have tuned out on politics because they think it is bought and paid for," said Grossman. He said that as a result, the voter turnout percentage for the 1996 presidential election was the lowest since 1924.

The debate was taped by C-SPAN and will be broadcast nationally Sunday, March 15 at 8 p.m. on C-SPAN 2.

Grossman is the president of the Somerville-based Massachusetts Envelope Company. He previously served as chairman of the Massachusetts Democratic Party and president of the American Israel Public Affairs Committee. He is a graduate of Harvard Business School.

Nicholson is a Denver home builder and a former Colorado Republican National Committeeman. He served as an Army Ranger in Vietnam where he was awarded the Bronze Star. He is a graduate of the University of Denver's law school.

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Across the Country



News From the East, West, and Mid-West

Senators Tackling Microsoft Have to Learn Lingo

WASHINGTON (AP) — Senators critical of Microsoft Corp. say they know a monopoly when they see one.

They know less about Internet browsers, channel guides, computer codes, software-operating systems, and other high-tech gizmos.

That's one of the reasons folks on both sides of the recent congressional debate over Microsoft's alleged stranglehold on the Information Superhighway used more familiar terminology to illustrate their points.

"This is like General Motors having the power to dictate what type of gasoline you put in your car or what interstate you can drive on, even controlling the on-ramps to get on the highway," said Scott McNealy, president of one of Microsoft's arch-enemies, Sun Microsystems of Palo Alto, Calif.

The Justice Department has accused Redmond, Wash.-based Microsoft of unfairly using the dominance of its Windows operating systems to block compe-

tition for a related product that allows access to the Internet, the company's Internet Explorer browser.

Critics say Microsoft eventually will run competitors out of business by offering its browser free with Windows software.

"They have targeted us. They have done almost everything they can think of to put us out of business," said Jim Barksdale, president of Netscape Communications in Mountainview, Calif., which makes Netscape Navigator, a rival browser that consumers must buy separately.

Barksdale's biggest beef is Microsoft's agreements with computer manufacturers that install Windows operating system, which forbid the removal of the Internet Explorer browser.

Microsoft Chairman Bill Gates says including the browser with Windows is no different than selling a car equipped with tires and a radio.

"In the same way that when Ford makes a car, it includes an engine. When

you get the Wall Street Journal or New York Times, it includes a business section," he said.

"We do not let people rip out parts of the product. We do, however, let them add any amount of software, including Netscape browsers, they want," Gates said.

Barksdale said Gates leaves out a key element in his automotive analogy.

"He forgets the fact there are many, many different car manufacturers. You can buy Toyota. You can buy Chevrolet. You can buy Ford. There is a competitive market," he said.

"If there was only one car manufacturer, but they allowed you to go out and build a better engine — buy the car, take the engine out of the car and go get this other engine — which one would they choose?" Barksdale asked.

Gates said that comparison is faulty because it only takes 5 seconds to delete Explorer and download Netscape.

"In 5 seconds or five years, nobody is going to go to that much trouble," Barksdale countered.

"The fact is, the engine technology would dry up and that car would have an internal combustion engine that has the technology of 1922 and it wouldn't work," Barksdale said.

Gates maintains Microsoft does not have a monopoly on operating software, despite Windows' 85 percent share of the software market for personal computers. He says constant, rapid changes in the

industry make it impossible to maintain control.

"This is a market where no one can restrict output. This operating system is based on ideas and no one owns the factory of ideas," he told the Senate panel Tuesday.

Gates noted the fate of past industry giants.

"IBM was thought by many, including many antitrust lawyers, to be invincible," he said.

"There were those who wanted regulation because they feared that this company had a lock on the ideas that would unleash the Information Age.

"But the people who feared IBM were wrong. We learned then what we should never have doubted: that technology is ever changing."

The critics say that was a different time.

"When IBM was dominant, very few of us touched computers. Today, everybody does," McNealy said.

Microsoft got its start providing software to IBM.

Microsoft's dominance of the market today makes it nearly impossible to develop a competing operating system like Windows, McNealy said.

"I just don't see where you will switch your basic operating system. It would be just about as easy to change the national language of the United States of America," McNealy said. "The only thing I'd rather own than Windows is English."

NAACP Criticizes Teacher's Re-Enactment of Slave Auction

OKLAHOMA CITY (AP) — It was a black history lesson that went awry.

A fourth-grade teacher wanted her all-black class to gain a greater knowledge of slavery by having them participate in a mock auction.

Oklahoma City school officials and some parents said the students didn't seem bothered by the in-depth lesson, but local black leaders had a different reaction.

"It's an issue that's far too sensitive to have children re-enact. There's plenty of good material that could be used to teach black history, but this wasn't a positive move," said Juanita Wiles of the National Association for the Advancement of Colored People.

Since the February incident, the teacher has apologized to school officials, her students, and the local chapter of the NAACP, conceding that the exercise showed poor judgment.

Questions persist about how teachers can expound on controversial subjects to their young, impressionable students in a way that's educational and politically correct.

"Many times teachers have really good motives when they introduce those topics, but it just ends up blowing up in their face," said Carolyn Crowder, president of the Oklahoma Education Association.

Crowder, who was a fifth-grade teacher before she was elected OEA president, said teachers should stick to the facts when they discuss controversial subjects with their students.

"In my own teaching experience, I've found that you want to make the topic as realistic as possible, but it's very important to keep your opinion out of it. Also, don't allow some students to push their views on other students. The teacher must make sure there are clear rules about opinions and facts," Crowder said.

Wiles, also a former teacher, said

teachers need more training on how to handle sensitive subjects.

Topics regarding the history of all ethnic groups are addressed throughout the school year and teachers need to know that some issues were meant to be handled in a delicate manner, Wiles said.

"Teachers need to be well-trained to know how to confront these issues," she said. "For example, the holocaust was a horrible, horrible tragedy and like slavery, wasn't meant to be re-enacted as a fun event. It wasn't fun. That's where adequate training comes in."

Jim Carnes is the director of the Teaching Tolerance Education project for the Southern Poverty Law Center in Montgomery, Ala. Through its educational magazine and curriculum packages, the project provides teachers with practical classroom resources for promoting respect for differences and appreciation of diversity.

Carnes said the community can play a big role in how racial issues are addressed.

"Teachers can find out what role slavery or anti-slavery played in the school's community. Perhaps there's a plantation in the area or an underground railroad operation where students can visit with guidance from an historian. That way, the lesson would not be as threatening," Carnes said.

Carnes said he strongly recommends against any kind of re-enactment of slavery or other sensitive issues regarding race because the topic, "is too latent with dangerous and damaging emotional content."

Both Carnes and Wiles agree that it would be a mistake to say slavery or the holocaust was the full extent of the Jewish and black experience.

"You can't say that these horrible things were the end of the story because these people survived at great odds and contributed to society at large," Carnes said.

Gay Rights Benefits Weighed

SALEM, Ore. (AP) — The Oregon Court of Appeals is considering whether the state should join a growing number of employers that extend health coverage to domestic partners of unmarried workers, including homosexuals.

But state attorneys say Oregon law doesn't allow it.

Robert Rocklin, an assistant attorney general, said the key issue is marital status, not gay rights.

"They simply cannot prove that there is any discrimination based on sexual orientation," Rocklin told a three-judge panel reviewing an appeal from a lower court ruling.

Multnomah County Circuit Judge Stephen Gallagher ruled in 1996 that Oregon Health Sciences University must offer health care coverage to domestic partners of its employees.

The lawsuit was brought by three lesbian employees at the Portland institution.

The state Public Employees Benefit Board has voted to extend health and other benefits to unmarried gay and heterosexual partners of state employees, conditional on whether the court allows that.

The board administers benefits for about 45,000 state employees.

Mylia Wray, administrator of the board, said based on the experience of employers elsewhere, adding the domestic partner coverage would increase costs by one-half of 1 percent or less.

The state will spend about \$180 million this year on employee insurance premiums.

The state argues that the law provides for coverage for employees and "spouses," which means married partners.

The state legally can treat people differently based on marital status "because the state has an interest in promoting marriage and providing benefits that mirror legal burdens," Rocklin said in a brief filed with the court.

But Portland attorney Carl Kiss, representing the three women plaintiffs, said that policy is unfair because homosexuals cannot legally marry to obtain benefits.

"Their inability to marry is based on a central part of their identity," he told the appeals court Tuesday.

The head of the Oregon Citizens Alliance, who has put several anti-gay rights initiative measures on the ballot, said the courts are overstepping their bounds.

"This should be a no-brainer to the appellate court," said OCA Chairman Lon Mabon. "This is obviously the jurisdiction of the Legislature."

He said society always has rewarded families for raising children "so why are we rewarding people for simply living together."

Mabon said the OCA continues working to collect signatures on a proposed initiative petition that would define a family as a married man and woman. It would forbid the state from recognizing homosexual marriages and ban extending benefits to unmarried people.

The group needs to collect 97,000 signatures by July to qualify the measure for the November ballot.

Former NBA Star Elmore '87 is an Attorney First, Ballplayer Second

By Eddie Grauman

Few HLS graduates — including the Supreme Court justices, top politicians, and distinguished academics — can claim to have achieved fame before even beginning their legal careers. Len Elmore '87 is just such a person, having attained success in a most unlikely profession for an Ivy Leaguer — as a professional basketball player and broadcaster.

Before deciding to study law, Elmore spent 10 seasons as a pro, beginning his career in 1975 with the Indiana Pacers of the ABA and finishing in 1984 with the New York Knicks of the NBA. Elmore spent time with three other teams along the way.

Prior to his professional career, Elmore was a three-time all-ACC player at the University of Maryland and was a first-round draft pick of both the Pacers and the NBA Washington Bullets.

Elmore is perhaps best known for his weekend job as a men's college basketball analyst for ESPN. He has also done television broadcasts for CBS and Jefferson-Pilot/Raycom Sports, and has been a monthly sports commentator for NPR's "Morning Edition."

While many people would consider playing in the NBA a highlight of one's career, Elmore very much thinks of himself as a lawyer first and ballplayer second.

"I'm an attorney who happens to know, understand, and love the game of basketball," he said in a recent interview.

"I've wanted to be an attorney since junior high," he explained. Regarding his decision to study law, Elmore noted that he grew up in a time when there were many positive legal role models on tele-

vision — on shows such as "The Law and Mrs. Jones," "The Defenders," and "Perry Mason" — and that he saw that lawyers could be "instruments of change" in society.

Elmore took the LSAT in his final year in the NBA, and was somewhat shocked at being accepted to HLS. Asked why he picked Harvard, Elmore quipped, "I think Harvard picked me."

Elmore considers his time in law school a formative educational experience.

"I probably found myself more as a law student than as an undergrad," he said.

Elmore was actively involved in the clinical program, and in African-American and public interest law student organizations. Elmore also appreciated the fact that he was not singled out because of his background.

"I didn't feel as though I was treated differently," he said.

One notable exception was that he was barred from playing intramural basketball. He coached a team instead.

Some of Elmore's fondest memories include Prof. Charles Nesson's [63] Evidence class, Prof. Randall Kennedy's class on Race and the Law, participating in the second year Ames competition, and arguing in front of Prof. Alan Dershowitz.

Although he enjoyed the "mix of people" in his class, Elmore regretfully observed that he keeps in touch with very few of his classmates.

"Overall, I could have made more of an attempt [to know them]," Elmore said. Amazingly, he managed to do sports broadcasts on the weekends during his 2L and 3L years, usually leaving Cam-

bridge on a Friday night and returning the next evening.

Upon graduation, Elmore began working at the Brooklyn District Attorney's office. As a prosecutor, "I had an opportunity to bring that [prosecutorial] discretion to bear — to do justice, not just to convict," he said.

While at the D.A.'s office, Elmore joined the newly formed Law Enforcement Investigation Bureau, one of the first investigation units in the country dedicated to policing law enforcement officials. "A lot of our cases were highly political," he said, citing police brutality and sex crime cases as examples. "Our office was kind of ahead of its time."

Although Elmore liked his work at the D.A.'s office, financial constraints ultimately prompted him to move on.

"I enjoyed it," he said. "Unfortunately, it's difficult to make a living on \$28,000 to \$30,000 per year." As a result, he began working for a small firm in Washington, but soon realized that his interests were elsewhere.

At that point, he and some associates founded Precept Sports and Entertainment, Inc., a sports management and marketing company that represented professional athletes in contract negotiations and endorsement opportunities.

Elmore was troubled by the lack of African-American agents in the business. "We wanted to prove there was a high level of competency [in the African-American community]," he explained. Elmore's clients included NBA players (such as number one pick Joe Smith), baseball players, and Olympic athletes

(including medal-winning gymnast Dominique Dawes).

After four-and-a-half years as an agent, however, Elmore's distaste for the business caused him to sell Precept. He found a "complete lack of ethical constraint" in the field of sports representation.

"My counterparts were willing to do anything [to land a client]," he said. Moreover, he felt he wasn't getting through to the athletes themselves, who were often surrounded by a coterie of hangers-on and self-interested family members.

"Unfortunately, our message wasn't resonating with the young people we wanted to provide direction to," Elmore said. "They pushed the agent aside because I was the voice of reason."

Elmore said he believes the overwhelming influence of money is the primary problem in professional sports today. "Potential athletes are given an awful lot and they lose their sense of accountability," he said. "There is a warped value system there."

His foray into the professional sports business behind him, Elmore now works as a partner in the Baltimore office of the Washington, D.C.-based firm Patton, Boggs, while still doing weekend college broadcasts for ESPN. He commutes home to New York as often as possible, and keeps busy trying to raise a family in addition to his legal and broadcasting work.

In keeping with his desire to better his community, Elmore's legal practice is focused on urban development. His clients include Lockheed Martin and Texaco.

"I want to help these companies develop in urban centers. I see the inner cities as emerging markets," he said.



Len Elmore in
1985

After this issue, the RECORD goes on a three-week hiatus.

Fenno, Renée, and all your RECORD friends return April 3.

Harvard Law RECORD

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HLS Made the Right Call

The United States military's ban on gay and lesbian soldiers may very well be the most pernicious form of injustice in our country today.

Each year, over 1,000 dedicated soldiers are dishonorably discharged from the military on account of their sexual orientation, their careers ruined, their lives destroyed. But perhaps even more sadly, the "Don't Ask, Don't Tell" policy is this country's most egregious reminder of the fact that, in a very real way, gays and lesbians are still treated as second-class citizens. Not only interpersonally, but institutionally.

The rationale for the policy? Military morale and efficiency would be destroyed if heterosexuals were forced to serve alongside gays and lesbians. In essence, the sexual insecurities of twenty-year-olds — their irrational intolerance — becomes the basis for a government policy which is irrationally intolerant.

In recent years, homophobia has been called the last acceptable prejudice. Imagine the "Don't Ask, Don't Tell" policy as applied to Jews and the reason for this will become crystal clear — America would never, in this day and age, tolerate such blatant discrimination against any other group of people. It's time that people of conscience start demanding that gays and lesbians no longer be treated in this manner either.

Last month, Sally Donahue and the Office of Career Services did just that. By denying the military the opportunity to use OCS for recruiting purposes, HLS has sent a clear message that it will not sell out its non-discrimination clause or its gay and lesbian students at any price.

This bold move may cost the University some money — about a million dollars, if the government decides to utilize the Solomon Amendment to its fullest. Of course, its doubtful that the Clinton administration would ever enforce the amendment, and even if it does, Harvard has a strong case in arguing that it is in compliance. The Amendment only demands that recruiters be given "access" to the University, which the military can get by being invited on campus by a student or professor.

Either way, HLS must stick to its guns and send a message that its opposition to prejudice is unyielding. With the \$181 million recently raised through the Capital Campaign, it's surely something Harvard can afford to do.

HLS is no utopia for its gay and lesbian students. With not a single openly gay professor, and with topics relating to gay and lesbian issues virtually absent from class readings and discussions, HLS is far behind where it should be on issues of sexuality. But on this issue at least, when the dust settles and the pages of history are written, Sally Donahue and the HLS administration will be able to say that they made the right call. Kudos for being on the right side of justice.

— Seth Persily

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—First Amendment, U.S. Constitution

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• Letters •

Appreciate the "Imperfect," Go to Class, Alumnus Urges

As a student at the Law School in more hedonistic times, I read with some amusement your editorial on the new attendance policy. It provoked some random reflections that may be of interest in the current "dialogue."

First, there is only a fortuitous coincidence between intellect and an ability to truly educate students. The legendary teachers at Harvard — James Chadbourne and Phil Areeda '54 — possessed a selfless commitment to students and to legal education that is rarely evident from a curriculum vitae, irrelevant to a student-faculty preoccupied with political correctness, and fundamentally inconsistent with the shameless self-promotion that often "qualifies" one for tenure.

Second, I am not aware of any HLS student or faculty member who would be allowed to teach in the public schools without supplemental teacher training. It is part of the hubris of the Law School and most intellectuals that you can teach "stuff" simply by knowing "stuff."

Third, notwithstanding its many flaws, HLS remains one of the finest "legal trade

schools" in the world. There is no point in paying to be there while tenaciously defending your right to be elsewhere while classes are going on.

Finally, it is asymptomatic of society's lack of intellectual discipline and responsibility to insist upon credit for classes at which one is not in attendance. The law school experience is more than passing exams — otherwise it could be converted into a correspondence school. The most valuable aspects of a law school education at a place like Harvard are learning to listen (even when you think you know enough to be bored), to critically assess what you are being told by faculty and peers, respecting your community enough to participate in it, and learning to put up with arrogant, maladroit, and sometimes boring persons such as teachers in position of authority. You will spend the rest of your career dealing with such persons — get used to it.

There is a lot to be learned at HLS, not the least of which is appreciation of

the potential contribution of the "imperfect." If anyone seriously believes they will be smarter or better off "staying home" rather than attending classes with teachers and students as interesting as those at Harvard, I strongly suggest that they should reassess their career choice.

At the end of the day, our profession requires us to service clients to the best of our abilities without regard to whether their needs are "interesting" to us or whether they are fun people. Intellectually and personally, our effectiveness and vitality relates to our ability to make the most of every situation. If what is going on in the classroom is boring, it is in part the responsibility of the teacher, partly the responsibility of the students who sit there and don't make things "happen" in class, and partly because of the "superior intellects" who turn their backs on their community and stay home. It is passivity and arrogance that creates boredom — now and forever more.

Go to class.

Justin D. Simon '72
Washington, D.C.
March 2, 1998

• Correction •

In the March 6 issue of the RECORD, a letter to the editor "HLS Military Policy a Solomonic Solution" omitted the signature of the letter's co-writer Winsome Gayle '00.

FEEDBACK!

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An Open Letter to the Dean and Faculty of Harvard Law School

For the last several weeks, Law School Council representatives have been receiving complaints from students who have not received their grades. Now, over three weeks after grades were supposed to be reported to the Registrar and over two months after the end of the Fall semester, many students still have not received complete grade reports.

This is unconscionable, not only because the delay evinces a cavalier disregard for students' wishes on the part of the tardy professors, but also because grade delays have an adverse impact on the availability of employment opportunities for students whose grades remain unreported.

The Graduate programs, especially, feel the impact of late grade reporting. Many graduate students come to Harvard seeking to change their employment status and apply for jobs during the winter and spring semester. Most U.S.

firms hire LL.M.s in the Spring, rather than during the Fall recruiting season, hoping to see LL.M.s' grades before hiring them. When professors report grades late, LL.M.s are left with incomplete grade reports and placed in the uncomfortable position of competing at a disadvantage to LL.M.s from other univer-

sities. These LL.M.s from other universities are allowed to take a greater number of classes and receive their grades on time, thereby gaining a double advantage in the job race.

2Ls seeking judicial clerkships are also at a disadvantage when their grades are unavailable for so long. Many, if not most, federal judges choose clerks dur-

ing March, some even earlier, and some will not even consider applications that do not include second-year transcripts. Those 1Ls who choose to enter the highly competitive market for firm jobs are in a position similar position to that of the LL.M.s. Firms have nothing on which to judge these applicants other than undergraduate grades, which are uniformly excellent and therefore not differentiable. Harvard students should not be limited in employment opportunities to those firms who do not insist on receiving grades from applicants.

At an institution that prides itself on its high employment rate, it seems counterproductive and arrogant to assume that students from Harvard with incomplete grade reports will be favored over students from other institutions with complete grade reports. It is difficult enough to be part of a system that al-

lows a full month and a half between the end of finals and the reporting of grades; with such a grand grant of time, professors have a moral duty to report grades on time.

It should be noted that Registrar Kane has been very helpful and pro-student in the effort to complete grade reports in a timely manner. He has been persistent in hounding delinquent professors for their grades, and supportive in the employment effort. The Graduate Program has been helpful as well by offering to provide letters to prospective employers explaining that LL.M. grades are not available. But these efforts are not enough. The Registrar should be given some recourse against professors who insist on flouting the conditions of their employment by turning in late grades.

The preceding letter was submitted by Law School Council Secretary Betsy Rosenblatt '99. The Council voted unanimously to authorize a committee chaired by Ms. Rosenblatt to author this letter.

ANSWER SHEET

for the \$25,000 KeyCite "The Key to Good Law" Scholarship Contest

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SUGGESTION #2

Have KeyCite cover the full range of negative and positive treatments ...like SHEPARD'S on the LEXIS-NEXIS services.

SUGGESTION #3

Have KeyCite provide thorough editorial analysis of every citation ...like SHEPARD'S on the LEXIS-NEXIS services.

SUGGESTION #4

Have KeyCite provide point-of-law analysis for non-West official reporters ...like SHEPARD'S on the LEXIS-NEXIS services.

THESE HALLOWED HALLS

By Kate Arms '98

RECORD Columnist

FROM THE SUBLIME TO THE RIDICULOUS

The HLS parody is not the only silly thing happening on campus this weekend, far from it. This is the final weekend of performances of the Hasty Pudding Theatricals' 150th production, "Paradise Lost and Found: A Bermuda Love Triangle." Shows are Thursday, Friday, Saturday and Tuesday, March 17 at 8:00 p.m., Saturday at 4:00 p.m. and Sunday at 3:00 p.m. Tickets are \$27 for Friday, Saturday and Sunday performances, \$25 all other days. Performances take place at the Hasty Pudding Theatre, 12 Holyoke St. Call 495-5205 for information.

This year's script is unusual in that it includes a cross-dressing woman in addition to the usual drag queens. The

woman is Lady Pudding-on-Airs, a female who assumes a male identity in order to join a Shakespearean acting company. As a companion to the 150th production, the Harvard Theatre Collection has arranged an exhibit honoring the Hasty Pudding tradition, "The Hasty Pudding Club: In Celebration of 150 Productions." In the Theater Collection gallery in Pusey library, the exhibit can be seen weekdays from 9 a.m. until 5 p.m. The exhibit tracks the history of the organization through scrap books, production posters, photographs, playbills, set designs, lighting plots and recordings.

The Hasty Pudding Club dates from 1795 when a group of Harvard undergraduates started gathering for non-din-

ing hall food and singing. The club was organized to foster social affections, friendship, and patriotism. Early in the 1800s, the Club became a debating society and then started staging mock trials. By this time, the sense of humor of the Club was already settled. One of the most popular mock trials was the case of Aeneas v. Dido for breach of promise. Club Secretary Oliver Wendell Holmes was only one in a long tradition of secretaries who took minutes in rhyme.

In 1844, the first play was performed. The tradition developed from straight forward productions of contemporary farces and vaudeville sketches to original musical works. In the early 20th century, the current style of extravagant productions was introduced.

The poster art shows a history of elaborate, fanciful posters advertising shows with titles such as, "Of Mines and Men," "Keep Your Pantheon," "Foeman of the Yard," "Cardinal Knowledge," and "A Hit and A Myth." In addition to the history of productions at the Hasty Pudding Theatre, the collection documents some of the history of the Man and Woman of the Year awards. Dating from 1951, the Woman of the Year award has been given to Elizabeth Taylor, Faye Dunaway, Julia Roberts, Ella Fitzgerald, and Rosalind Russell, among others. The



Man of the Year Award was first given in 1967 and has honored Robert Redford, Kevin Kline, Mel Gibson, Harrison Ford, and former Hasty Pudding actor, Jack Lemmon. Photographs in the collection include Harrison Ford on parade as Medusa and Sylvester

Stallone accepting his Hasty Pudding Pot wearing a long blonde wig and a stuffed bra over his jacket. The Stallone picture by itself is almost worth the walk over to Pusey.

In the same spirit as the Hasty Pudding show, the current production in the Loeb Experimental Theatre is a 1960s farce about sex and morals. Featuring men and women in drag and prancing around in their underwear, "What the Butler Saw" by Joe Orton is a send-up of British prudishness with the flamboyance that only one who knows the system too well can create. The play's laughs start as Dr. Prentice's wife unexpectedly returns as he is undressing his secretary. The cover-up which follows includes gender switching and identity confusion. Themes of the play include questions of sanity and madness and sex in linen closets. This is one show which should be good for many laughs. Performances are March 12 at 7:30 p.m., March 13, 14 at 7:00 p.m., and March 13, 14 at 9:30 p.m. Free tickets are available at the Loeb Drama Center Box Office.

Reasonable Mona

By Alfred Steiner

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Spike

By Margie McWilliams



Musings and Vagaries

By Renée Kaplan '99

Staff Columnist

LOST EXAM, ANYONE?

First there is the sense of something sick grabbing you around the heart. A harsh puff of cold air tightly enveloping your aorta, slowly invading your whole chest cavity so that you feel like you have to swallow and blink or your chest will explode. It is like slow-motion nausea creeping in methodically. Initially, you double-click on the icon, presuming that the strangely small number of K next to the file name is just some random piece of information, unrelated to the actual content of the file — after all, the document, as you just finished it, was a good fifteen pages long, which ought to be taking up a respectable chunk of disk space. The computer must just be wrong or something — it does that sometimes, right? Then, as the computer churns and you wait for the file to open, you might feel a small spasm of anxiety in the pit of your stomach, but it's probably just the time running short and the unspeakable relief of almost being done: 4:30 p.m. equals freedom and it's been a very long, draining day. It is as the file suddenly flashes open and you see only one paragraph at the top of the page and a great deal of white space below, that the rush of sickness hits you full on. Where there was once — literally minutes, seconds, bloody nano-seconds ago — a complete take-home examination for a four-credit, core law school course, there is now, at 4:20 p.m. on a bleak day in December, nothing but a few sentence fragments.

Then, when you actually realize what happened — that you have lost your exam, and that it is irretrievable — it is

like looking into the abyss and seeing yourself at the bottom, way down at the murky, black-as-ink bottom, battered and prone, but miserably conscious. It is something like the sky falling on your head, or the world crashing in. It is like all those vacant idiomatic expressions meant to evoke some great conventional tragedy suddenly coming to vivid life in your small, undeserving world. You suddenly understand what it is to be helpless and guilty all at once, something like being trapped in a dark cinderblock room with no doors, no windows, no way out — just air and consciousness. For you are alone and unpleasantly alive, and unpleasantly forced to deal with the un-

able to do it again — and the hair-pulling, head-knocking, nail-biting, teeth-gnashing knowledge that you have to do it again anyway. You may experience an eternal-feeling half-hour interlude in that teeth-gnashing, teary phase during which you are convinced, with every single plodding letter that you type, that you simply just can't do it again. It is a perfectly sterile half hour in which the visceral resistance to starting over battles with the shame of not trying, each canceling the other out and leaving you just staring, anguished, at the blank screen.

Needless to say, you never want this to happen to you: it sucks. The next morning, you will have to draft a succinct memo to the Administrative Board explaining precisely what sort of computer error occurred, and what steps, if any, you took to try to retrieve the document — and then hope for the best. But don't hope for

empathy, don't expect understanding, and don't expect much of an appeal process either. As much as the formal gestures on the part of the Registrar's office and the Dean of Students may seem to indicate some notion of a hearing, some sort of procedure that might involve the consideration of some degree of your mitigating circumstances, perhaps some evidence of your good faith, and a smidgen or two of good character, well, that's not really the case. In fact, the sanctions are pretty much mechanical. Exam turned in less than an hour late? You get to keep your grade, but it will appear on your transcript with an asterisk indicating, in precisely



these words, that "Examination Turned In Late." Exam turned in more than an hour late (and it probably almost always takes more than an hour to re-write an eight hour take-home exam)? Then if your grade was an A or a B, you get a P for pass instead, and if it was a C, D or F then you get to keep the grade — and either way, you also get an "Exam Turned In Late" asterisk too. So any employers or judges screening your transcript amidst the several hundred other Harvard Law School transcripts they'll wade through in ten minutes, see that slacker-girl here not only decided to take a core law school course pass/fail, but she also turned the exam in late for some strangely unspecified reason. Doesn't look so hot for slacker-girl on the motivation and the responsibility fronts.

It's a game of double jeopardy, a dual-whamee dynamo: off with the grade and on with the opprobrium, a big "P" and a little scarlet asterisk. It's sort of like the mystery meat of punishments, a big helping of a stiff, hearty sanction. Don't ask what's in it, just eat it, because even if it isn't good for you, you deserve it — they warned you — and the administration can't sit around concocting a specially-made dish for every miscreant that appears before them, now can they? After all, if anyone messed up in all this it had to be slacker-girl, so slacker-girl's gotta pay. The bottom line, the Ad Board will remind you, is that the administration warns you left and right and in fliers of all different colors, to back up and print out, to take all sorts of prophylactic computer measures and otherwise generally practice safe computing, because in the end, they cannot be responsible for computer errors. And, Word of the Slacker-Girl, they mean it.

It is a perfectly sterile half hour in which the visceral resistance to starting over battles with the shame of not trying ...

pleasant situation. In the melodramatic moment, it is bad, bad, very, *really* bad.

Then after sobbing at some length with shoulder-wracking, pillow-drenching, snot-smearing abandon, you have to sit down in front of the computer and start all over again. Registrar says that you have until 12 o'clock that night to hand in the exam — and then we'll see, you're told. One hour after having just pondered, thought out, organized, wrought, reshaped, phrased over, reworded, and saved regularly for eight rather all-consuming hours, you now have absolutely nothing to show for it except the black, all-engulfing anguish that you won't be

really. But I need an evil plan to destroy something that students enjoy, and there's just not much around here that fits the bill."

"Well, then you should go after the athletic facilities," suggested Fenno. "After all, Hemenway is the only thing that has kept me from just going crazy and bombing this place. The school sucks. All we've got is the gym. Actually, that sucks, too. But there's a broken down Stairmaster in a corner which offers me a full view of Terry Fisher in all his glory, and it's home."

Posner seemed genuinely moved by Fenno's attempt at lyrical schmaltz and sat in stunned silence. The moment would have been perfect, except that Fenno couldn't keep a straight face after about 10 seconds and began laughing demonically. Posner sighed in relief.

"I was beginning to worry about you there. I'd hate to have to release you by reason of insanity. I already lost one minion that way. A pity, too; Gowder was assimilating so well into the culture here. Well, at least he'll get elected LSC President and maybe do me a favor now and again."

Fenno slit her eyes in a conditioned glare. "Uh, Dick? You don't get out much, do you?"

"Anyway," said Posner, his liver-spotted hand slinking toward his painkillers, "you have a job to do. I suggest you get moving." Fenno scoffed. "Ricardo, I don't think you understand. Maybe you haven't heard, but Matt Warren is running that show like the trains in fascist Italy. That guy is more compulsive than Martha Minow in a room full of multilith materials. I never woke up at 10:30 to deal with Big Daddy Alvin, and you can be damn sure I won't get out of bed just for the joy of screwing with his anal son."

Posner looked to be on the verge of tears. When he spoke, all that came out was a plaintive whine: "That Breyer takes my seat on the High Court, and now this! I just can't win, can I?"

"Nope," replied Fenno. "And I've got time-sensitive errands to run, so why don't you just cut me free and go drown your sorrows in some of Sodexo's top-notch White Zinfandel?"

"Fine," said Posner, wearily motioning to his very own Brandon Walsh one

last time. "But would you tell me where it is you're off to?"

Fenno smiled as her bonds were loosened and she headed for the door. "I don't know what Paul Gowder's smoking, but whatever it is, I intend to find some before it's all gone. Later Posey!"



Fenno was not a happy camper, and she was not about to hide it from Richard Posner. "Let me get this straight," she growled, "you drugged me, kidnapped me, and made me miss Richard Simmons's guest stint on 'Regis and Kathie Lee' for *what*?"

Posner blinked in surprise. "Wait a second, I could swear you looked different just a minute ago — oh. Never mind. Look, would it be too much trouble for you to pick a gender and stick with it?"

Fenno yawned. "Not gonna happen. Welcome to the sexual revolution of the '90s, Neanderthal. Besides, it wasn't a minute — more like a week. You gotta learn to suspend disbelief, cowboy. It's only fair, since that's what you require of all of us who are force-fed your opinions." Posner groaned, and quickly motioned to his henchman, a nubile Jason Priestly lookalike who came running forward with a bottle of Tums. Posner chewed a few and chased them with a quick swig from a bottle labeled "Shasta County Nectar." Fenno was almost beginning to enjoy this.

Posner grunted and did his best to reassemble his menacing look. "All right, Fenno, you can play your little inclusivity games all you want, but you're not about to weasel your way out of this one. You will stop the Parody for me, unless you enjoy the prospect of spending the rest of your legal career in Argentina and Denmark."

"Argentina and Denmark?" Fenno asked, puzzled. Posner smiled. "Let's just say we have connections."

"Look Little Ricky, I don't get it. What do you have against the Parody?"

"Oh," replied Posner, "nothing much,

Quote of the Week

"I keep coming back to Cohen versus California — not because I like to say, 'Fuck the draft.'"

— Prof. Richard Fallon making an argument in favor of freedom of expression in Con Law class.

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Revisiting the Past to
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April 3-5, 1998
Cambridge, Massachusetts



Conference Highlights

Panels

- **Careers in International Law**

On Saturday, April 4, 1998, panelists will provide information on careers in international law. The global interdependence of financial, political and legal sectors will be the focus of this informative panel.

- **Entrepreneurship: Starting and Operating Your own Business**

- **Town Hall Meeting**

This meeting will feature a notable speaker. Through the meeting, we will explore the conference theme of revisiting the past, learning and committing to the future.

Workshop

- **Financial Management and Planning**

Panelists will address innovative ways in which to achieve sound financial management and financial independence. Investment strategies and alternative legal careers are some of the topics to be addressed.

- **Emerging Areas of the Law**

- **Keynote Speakers**

Confirmed Speaker:

Patricia Williams

Professor of Law, Columbia University Law School

Invited Speaker:

John Hope Franklin Ph.D.

James B. Duke Professor Emeritus of History,

Duke University

- **An Evening of Entertainment**

Join us in celebrating the HBLSA's 30th Anniversary with an exciting live performance!

- **Social and Networking Events**

Friday night opening reception/buffet
Career Cocktail and Hors d'Oeuvres
Saturday Night Alumni Banquet

- **Alumni Awards Banquet**

In commemoration of Harvard BLSA's 30th Anniversary and the Spring Conference 15th Anniversary, special recognition will be paid to designated alumni. Their professional success stories have inspired us and serve to guide future generations of African American leaders.

Agenda

Friday, April 3, 1998

11:00 a.m. - 5:00 p.m.	Registration
Location	Hauser Hall Lobby
5:00 p.m.	First Keynote Speaker
Location	Ames Courtroom, Harvard Law School Campus (alternative location is Austin North)
6:30 p.m.	Buffet Dinner
Location	Ropes-Gray and John Chipman Gray Rooms, Pound Hall, Harvard Law School Campus
9:30 p.m.	Entertainment
Location	Longy School of Music, Garden Street, Cambridge

Saturday, April 4, 1998

8:30 a.m. - 9:00 a.m.	Continental Breakfast Buffet
Location	Hauser Hall Lobby, Harvard Law School
9:00 a.m. - 11:00 a.m.	Morning Panel and Workshop: "Careers in International Law" "Starting and Operating Your Own Business"
Location	Hauser Auditoriums and Pound Hall rooms 100, 101, and 102, Harvard Law School
11:30 a.m. - 1:00 p.m.	Lunch
Location	Ropes-Gray and John Chipman Gray Rooms, Pound Hall, Harvard Law School
1:30 p.m. - 3:30 p.m.	Afternoon Panel and Workshop: "Emerging Areas of the Law" "Financial Planning and Management"
Location	Hauser Auditoriums and Pound Hall rooms 100, 101, and 102, Harvard Law School
4:00 p.m. - 5:30 p.m.	Town Hall Meeting
Location	Ames Courtroom, Harvard Law School
6:30 p.m. - 8:30 p.m.	Career Cocktail and Hors d'Oeuvres
Location	Charles Hotel Ballroom, Harvard Square
8:30 p.m. - 11:30 p.m.	Banquet with Keynote Speaker Patricia Williams
Location	Charles Hotel Ballroom, Harvard Square

* Registration will be ongoing in the lobby of Hauser Hall until 5:00 p.m. on Saturday.

Sunday, April 5, 1998

10:00 a.m. - 1:00 p.m.	Alumni Brunch and Alumni Awards Presentation
Location	Ropes-Gray and John Chipman Gray Rooms, Pound Hall, Harvard Law School

On behalf of the Harvard Black Law Students Association (HBLSA), we invite you to the 15th Anniversary of our Annual Spring Alumni/Career Conference.

It has often been said that the key to one's future is an understanding of one's past. Learning from our past, however, requires much more than reading about our former leaders and attempting to follow in their footsteps. Rather, learning from the past, entails making a commitment to familiarizing and adapting our diverse histories to better cope with the challenges ahead. In the paraphrased words of Colin Powell, we must reach back to our communities, reach down to our roots, and reach out to the future.

In commemoration of its anniversary and the 30th Anniversary of Harvard BLSA, this year's Spring Conference will trace the aspirations of African-American leaders and the strategies they have implemented to achieve their goals. In line with the conference theme; **"Making a Commitment: Revisiting the Past to Focus on the Future"**, the Conference hopes to also prepare students to take their rightful places within the historical continuum. We have assembled panelists from around the country who will address these pressing issues and who will help us to strategize and better prepare for our future.

We hope that you will join us in celebrating our 15th Anniversary and HBLSA's 30th Anniversary. This year's conference promises to be informative and exciting.

See you in April!

Kieran Morrow

Kieran Morrow
Conference Co-Chair

Paul Oostburg-Sanz

Paul Oostburg-Sanz
Conference Co-Chair

APALSA Debates Lambda Petition

Continued from *MILITARY*, p. 3

terests of gay and lesbian students against those who receive federal financial aid funding, specifically the most needy students who receive Federal Perkins loans and work study.

"Basically, the Solomon Amendment is a wedge, it's trying to wedge in between gay and lesbian students and poor students and drive a wall between them. We cannot allow either group to suffer at the expense of the other," said Reyes.

Reyes expressed hope that all CCR-affiliated groups — APALSA, BLSA, the Jewish Law Students Association, La Alianza, Lambda, NALSA, the South Asian Association, the Women's Law Association, and the Women of Color Collective — will sign on.

To date, NALSA (Native-American Law Student Association), La Alianza, and SPIN (Student Public Interest Network) have joined. Reyes said he expected the endorsement of BLSA (Black Law Student Association) and the Women's Law Association shortly. Other groups will be voting on the issue this week.

Debate Arises Over APALSA Endorsement

Within the Asian Pacific American Law Student Association (APALSA), a debate has arisen over whether the organization should sign the petition.

In a referendum e-mailed to members, juxtaposed with a letter from CCR/Lambda urging members to vote "yes" are four reasons offered on why members should vote "no".

"APALSA is an organization that purports to represent and promote Asian Pacific Americans of all ideologies: moderate, conservative, and liberal. ... Many APAs at HLS oppose military recruitment on campus, and many APAs support military recruitment on campus. If you vote yes on the proposal, however, APALSA will effectively be latching on to one political view and alienating another ...," the e-mail stated.

The APALSA referendum also made note of the fact that financial aid to many students may be jeopardized by the policy, that HLS students interested in the military "should not be relegated to second class status by HLS," and that a

"no" vote would actually be a "neutral" vote on the part of APALSA, because the organization would not be taking a position either way.

Reyes disagreed with the argument that failing to endorse the petition is a neutral position.

"You're either for discrimination or you're against it," Reyes said.

"You either collaborate or you resist."

The deadline for the APALSA referendum was set for this Thursday.

To date, Harvard is one of only four University's nationwide which has not given the military full recruiting access in wake of the Solomon Amendment. The Amendment, passed by Congress in March 1997, provides that an "institution of higher education ... [which] has a policy of denying military recruiting personnel entry to campuses, access to students on campuses, or access to directory information on campuses" risks the loss of Title IV Federal Financial Aid Funding.

Sally Donahue, Director of the Office of Career Services, estimates that the financial aid at risk to HLS would be "about a million dollars."

Fridman Declines to Go Negative

Continued from *LSC*, p. 1

"LSC mishandled the issue," Mate said. "Students got blindsided because of a low information level."

Mate said LSC should have been more instrumental in the process by distributing flyers in Harkboxes and circulation petitions.

Fridman, the third candidate in the race, has thus far declined to criticize his opponents. Fridman said that he opposes the new attendance policy and that he has been working with several faculty members in an effort to reverse

the policy next year.

"Faculty need to be flexible with students," Fridman said. "Everyone got in here for a reason and has strong interests which they want to pursue. We're adults and paying a lot for this education. We know what is best for us."

Fridman said he has gained support among Profs. Duncan Kennedy, Charles Nesson '63, Joseph Singer '81, and Bruce Hay '88 to reverse the attendance policy next year.

In contrast to the presidential election, candidates for the other LSC slots are running unopposed. Amy Oliver '00,

Section IV representative and member of the Financial Aid Committee, is running unopposed for vice president. Jonathan Kilman '00, Section III representative and member of the Academic Affairs Committee, is running unopposed for treasurer.

The three-way presidential competition is also a change from last year's election, in which the candidates for president, vice-president, and treasurer all ran unopposed.

The winner of this year's presidential election will be announced Thursday night.

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"OFF THE RECORD"

By Eric Johnson '00
RECORD Columnist

VOTE FOR ERIC — REVOLUTION, UNREST, BETTER COFFEE

Hi, my name is Eric Johnson and I am running for Law School Council President, Vice President, Treasurer, and any other offices they have on the ballot this week.

Because I didn't really get this idea until the weekend, you'll have to write me in. Thanks.

We all know that LSC has been ineffective and weak — like one of the skinny, dangly arms of a Tyrannosaurus rex. Meanwhile, the giant yellow teeth — encrusted with the carrion sinews of Stegosaurus meat — remain locked under the lips of the massive student jaw. (Or something like that.)

There's no doubt that LSC tried their best. When the faculty threatened a mandatory attendance policy, LSC members valiantly and courageously reacted by impeaching each other and holding fascinating constitutional hearings. Strangely, however, the Council completely failed to have any effect.

And now it is time to cut off this diseased limb.

My first and only act as president, vice president, and treasurer will be to disband LSC and replace it with a secret committee accountable to no one. I would hand-pick the membership of this committee based on loyalty to me and trivia mastery of 80's B-movie "Red Dawn."

I would use the Unofficial Bar Review Committee as my model. I wouldn't use

the actual people from Bar Review. They've screwed up too many times. Remember the cold awful night they scheduled Bar Review in Rhode Island or some damn place?

BUT, people went anyway. See? Secret committees get things done. And democratic government has no place at this school. If LSC was in charge of bar review, you know it would never happen. Old-fashioned oligarchical strong-arm leadership works, and I am ready to provide that.

My solution to every problem would be to have student strikes and sit-ins.

They say "attendance policy?" We say, "Attend this!" Then we put our gluteal muscles to the rug in Dean Clark's office.

I happen to know this will be an extremely effective means for real change at HLS. The mandatory attendance policy, you see, tipped the hand of the faculty. Their fatal weakness is the need for a captive audience. We deny them that, and they will cave.

The faculty craves our attention: the eager hands, the conspiratorial titters, the subtle smiles of legal epiphany — they cannot live without it. As soon as they see those big empty classrooms they

will crumple like a cupless shortstop taking a bad bounce off natural turf.

Next challenge: I want full funding for public interest NOW. That's not because I give a bat's chirp about public interest. It's because I'm tired of getting asked for change everytime I walk through the Hark. I haven't seen panhandling like this since I was in Berkeley in '89.

The administration's position is this: They would like to help, but HLS only



are holding out on us.

We have a student strike: Boom. Like blood from granite! You watch.

The third thing we tackle: The World's Worst Coffee. Sodexo's coffee in the Hark tastes like it's been brewed through the remains of sunburnt earthworms. Maybe some people appreciate the extra touch of the particulate coffee grounds at the bottom of every cup. But I doubt it.

Terrible coffee is one thing. I used to be — and this is true — an overnight Top-40 disc jockey. I drank some damn bad radio-station coffee in those days. But you know what? I wasn't paying \$1.05 for a cup of it.

We bring to bear a special species of student strike for this — a student sleep-in. Boycott the coffee, and use the top of your head to show professors what lack-

of-caffeine does to your lightning-like analytical skills.

Let us start now to build a better law school through protest, subversion, and permanent revolution.

We are the school! TOGETHER, we can... SHUT IT DOWN!

Thank you for your vote.

Let us start now to build a better law school through protest, subversion, and permanent revolution.

has a half-a-billion dollars sitting around, and HU only another \$10 billion, and therefore, the public interest folks should look to the fabulously rich and recklessly extravagant students, and ask them to fund the world's legal needy.

Noble, certainly. And yet, I think they

THE VERDICT

DARK CITY

By Michael Bennett '98
Movie Reviewer

Dark City is dismal. After a promising introduction, the film slips down a vaseline coated slope that leads directly to gibberish blabbering. So much potential. So little to show for it.

The premise is intriguing. Inhabitants of a city perpetually caught in night have lost significant portions of their memories. Apparently oblivious to the fact that the sun never rises, these folks wander about the city during working hours, carrying on their jobs and duties, working on this and that. Regularly time ceases to flow for the city dwellers and bits of their memories are swapped, save for two individuals: John Murdoch (Rufus Sewell) and Dr. Schreiber (Kiefer Sutherland). The cause is a grand experiment of which Dr. Schreiber is the reluctant and involuntary conductor. Its goal is to distill the essence of the human soul so that it may be incorporated into an alien species.

It sounds silly, but for the first 15 minutes or so the film was carving new cinematic space. Its editing was so furious, camera work so kinetic, that it flowed like a barrage of music videos mixed with speechless commercials. Disorienting, full of head fakes and celluloid jujitsu body blows. But, alas, it's cursed with the half-life of some exotic isotope. Before 250 eyeballs, the film broke down as if under the stress of some powerfully acidic saliva. By the time half an hour had run by, the film was starting to show symptoms of sarcoptic mange.

The first mistake was employing Kiefer Sutherland. He's a deadweight to this work. The only positive contribution he makes is contrast: when he's not

on the screen you realize how detrimental his presence really is. He's a rusty set of cinematic shackles.

The film was unabashed about taking bits and pieces from our collective iconic memory. A good v. evil scene is so reminiscent of "Return of the Jedi's"

The dark city itself is a Burtonic, Bob Kanish Gotham amalgam that would make Bruce Wayne homesick.

Luke/Emperor/Darth menage à trois that no one would've been surprised to see a Chewbacca cameo. The leatherclad, frightfully pale, mystical folks behind the experiment are a rip on the Cenobites of Hellraiser. The dark city itself is a Burtonic, Bob Kanish Gotham amalgam that would make Bruce Wayne homesick.

The remainder of the work cuts and pastes from Caro and Jeunet's "City of Lost Children," Apple's infamous 1984 introduction commercial of the Macintosh, and anything Orwellian. Its last 20 minutes — so poorly strung together that the audience laughed out loud — viewed like a crackhead's attempt at an advertisement for an L.Ron Hubbard book or some FDA approved psychotropic drug; lots of bright colors, volcanic-like eruptions, sunshine, and crazy people breaking through walls and then congregating near the bluest of waters. Around its perimeter is sprinkled hints of Genesis and its monotheistic mantra, "thinking is creating." It's a collage of hijacked snippets from the visual vomitorium of USA's post-primetime

"Up All Night" line-up. It's bad.

The film tries to self-resuscitate on two levels: it's leading lady and an old humanist argument for human sanctity. Jennifer Connelly, John Murdoch's wife in some memory permuta-



tions, does wonders for the film and gets a big, fat check mark in the visual box, if not the acting one. Unlike the vast majority of big-screen thespians, Connelly hexes the viewer not with stunningly perfect measurements but rather with a rustic beauty that a normal woman walking down the

street might display. She has a infinite stash of unique perspectives to offer the camera, each one mildly out of phase with our community norms for the raw, film-quality aesthete.

Her accomplice is an idea that argues against the distillery techniques of the experimenters. It vehemently opposes the notion that the essence of a human

may be precipitated, studied, and transferred or replicated. It is a unique phenomenon, the soul, though not a superior one. This statement is a refreshing one, especially coming from the scientist, anthropocentric universe of science fiction. Pluralism for the cosmos.

The only other noteworthy and positive thing about

the film is its decadent computer animation. Like software packages, each successive sci-fi movie tops the last in raw bits whipped into submission by some Silicon Graphics Indigo machine and put to service on the

screen. The magicians behind "Dark City" lend new meaning to Kurt Cobain's allusions to planting and growing buildings. Skyscrapers stretch themselves upward like fungus at the mere thought of a new cityscape. A recycling of the concrete jungle every 20 hours or so. When the audience realizes that the experimental city is afloat in space, brilliant vistas of star-infested vacuum are milked for every ounce of glory. A shock wiggles through the crowd at this revelation, as if any and every city that we know is not afloat in space once you consider the Big Picture.

"Dark City" puts up a fight, but it is a hollow and empty one. The positives are so outweighed and overwhelmed by the negatives that some thought automatically goes to considering how it could have ever been released, much less made.

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ROMANTIC LAW

By Paul Gowder '00
RECORD Columnist

The latest trend in trash novels...

Sir Faux-sner paced furiously in his chamber on the top floor of Blackacre towers. He could no longer keep his desire concealed. No! He would leave Blackacre and search for his one true love, the least cost avoider! Besides, those peasants were getting annoying. The fools! Because he had a great treasury from running Blackacre efficiently he would crush their puny revolution! Nay, he would deal with them later, for first he must find — her! The one woman who could avoid accidents with no externalities!

Oh, but that he could leave his wife, the ugly and inefficient Reality. Were it not that she were the king's daughter! Why, in his mind and in his writing he had already divorced her.

"Why, oh why did I marry her?" he shouted to the empty room. "We never got along from the day we met." Before he lost all hope of finding his true love, he came up with a brilliant idea. "The cost to society from her imprisonment is negligible — yet, I gain a lot of utility ... to the dungeon!" But wait — she is the King's daughter, and the King has power. But it is efficient! What was he to do?

The King could easily insure against the loss of a daughter, but the King was also the one who granted Sir Faux-sner his estate, his position as the Royal Judge, and his tenure in the Academy of Accountancy.

How to solve this problem? The King had no love for efficiency, for the King knew that efficiency would not always be in his self interest, as he was a risk-neutral rational egoistic hedonistic utility maximizer with no abnormal psychologi-

cal traits, no family or other loved ones and perfect knowledge who never makes mistakes and who never considers "utility" to others "utility" to himself because of his innate misanthropy, like all of his subjects in the great Kingdom of Dystopia except the Royal Judge, who of course was without bias and interest of any kind and with no concern for distributive effects among the people including his benefactor the King. (Try saying that one in a breath!) Why, the only way to rid

himself of the shackles of Reality and find his least cost avoider would be to overthrow the king so everybody would have equal negotiation power! But that would mean his own nobility was a transaction cost! No, there must be a better way.

He would hire a lawyer to convince the King to give up his own interest! It would have to be a devious mercenary, one who did not believe in "all that drivel about fairness and all that drivel about justice," who would only care about "getting paid" and proving that crushing and killing Reality is Good For Dystopia. Yes, with such a powerful weapon he could go to Ike Turner on that Reality wrench, and the King would



thank him!

your least cost avoider and sneak her into thy bedchamber with you — you can slip right by Reality. If you didn't see this, you're stupid."

It took them little time to find Faux-sner's dream woman. They had heard rumors of a great queen in the region who would internalize any harm done in her society. Her name was Laura Stephanie Debbie (LSD) Hallucination, and they finally met her as she was sucking up an oil spill by sheer force of will. Kidnapping her, they drug her back to Blackacre to serve Lord Faux-sner.

He had a night with Hallucination of which we shall only say, "The precise details are irrelevant to the legal point we must decide, and in the interest of both brevity and dignity we shall describe them only generally." (Scalia's opinion in *Oncale v. Sundowner Offshore Services* — no cite yet, but you can get it on Findlaw: the same-sex harassment case) When Faux-sner awoke, she was gone. "My least cost avoider, where did you go?" he shouted. Hearing his cries, Reality rushed in. Forgetting himself, Faux-sner blurted out "I was doing LSD, what happened?" Reality slapped Faux-sner in the face, knocking his marbles out, he forgot his equations and the land of Blackacre was forever inefficient and equitable. "All he needed was a good smack."

Oh, but that he could leave his wife, the ugly and inefficient Reality.

SPORTSGUYS

STORMIN' MORMONS ROLL

By Naim Bulbulia '98
and Josh Swartz '99
RECORD Columnists

The Stormin' Mormons (4-0) recaptured the #1 spot in the B-League polls with a decisive 58-50 victory over Joe Mary Had a Little Lambert '00 and his Cambridge Metro Stars. The Metro Stars led at the half before Josh Chicken Little '98 and Rick Patterson of Sam '99 ignited a run that put the Mormons ahead to stay. Lambert was quoted as saying, "I, I mean we, we will beat them in the playoffs."

The Flaming Rats remained undefeated by cruising past the Five Assed Monkeys, 57-40. As usual, Moon Ofer Parador Elitzur '99 and Chris Newkirk '99 carried the load for the Rats. On their upcoming showdown with the Godfathers of Dunk, Elitzur boldly predicted, "They've been intimidating people all year with their gangster-style of basketball, and the Rats just don't scare easily."

Speaking of the Godfathers, they downed previously unbeaten Ball and Chain, 45-38. Michael Kalt of Personality '99 finally earned some playing time

and proved to be the defensive spark that the Godfathers so desperately needed. Godfathers point guard Matt J. Giles Band '99 complained to the Sportsguys, "What's with Joe Lambert getting all the press this year? I'm the MVP of the B-League."

Surprisingly, the Short Guys kept their unblemished record intact with a lethargic 50-43 triumph over Hotel



Slamma Jamma, 49-31; Boomin' Fat cruised past the Sacrificial Lambs, 53-30; Soul Bucket struggled, but prevailed over the Kenneth All-Stars, 35-26; Bye cruised past Specific Performance, 49-22; the Loose Canons beat the Tortmasters, 55-38; the B-Sharps and Gwar outscored Title IX's Revenge, 66-48; the Psychological Boys stomped



the Ice Weasels, 69-23.

In C-League action, The Prom Court improved to 4-0 with a 51-43 win over Smoke and Mirrors. Naim The Raging Bulbulia '98 put up 35 for the Court, including eight three-pointers, while Smoke and Mirrors was led by the off and on-court tandem of Katherine Father Dowling '98 and Matt She Wears the Pants in This Relationship Krupnik '98. In a triple overtime thriller, El Niño outlasted They Killed Kenny, 53-48 despite the efforts of Dan Chevy Glazer '98 and Elizabeth UNC is going to win it all Mitchell '98. Smoke and Mirrors rebounded later in the day with a 53-51 upset of the CRC Hellens, ruining a showdown between the Hellens and The Prom Court.

Most important, in A-League action, the Rainmakers crushed a depleted En Fuego squad, 54-32. The top-ranked Rainmakers opened up the game with a 17-4 lead behind Sir Richard Moberly '98 and The Ryan Game Scarborough '98 and never looked back. When asked if he was surprised by his team's early

Surprisingly, the Short Guys kept their unblemished record intact with a lethargic 50-43 triumph over Hotel Gropius.

Gropius. Ari Bruger's Bagels '99, Steven Balsamic Vinaigrette '98, and Steve Pituitary Glanz '98 helped paced the Short Guys victory. Flagrant Delicto also improved their record to 4-0 with a 69-23 beating of hapless Wematonyah.

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A-LEAGUE

- #1 Rainmakers (4-0)
- #2 Black Plague (3-2)
- #3 Serenity Now (3-2)

B- AND C-LEAGUE

- #1 Stormin' Mormons (4-0)
- #2 Godfathers of Dunk (4-0)
- #3 Cambridge Metro Stars (3-1)
- #4 Flaming Rats (4-0)
- #5 (tie) Short Guys (3-0)
- The Prom Court (4-0)

