



Photo courtesy Richard Chase

Former Dean James Vorenberg '51 (center) at the dedication of the Vorenberg classroom in Langdell Hall on Oct. 22, 1999. The event, attended by many members of the faculty and cybercast by the Berkman Center for Internet and Society, featured remarks by Dean Clark '72, Hale and Dorr partner Jerome Facher '51 and New York Times columnist Anthony Lewis, among others.

Nader '58 versus The Man

by Kimberley Isbell

As 2Ls and 3Ls prepared to scatter to the four corners of the country for callback interviews, consumer activist and former Green Party Presidential candidate Ralph Nader '58 addressed a standing-room-only crowd in Ames Courtroom, where he encouraged students to help "turn this giant ship of Harvard Law School around so that it can go down in history as one of the greatest instruments of justice and systemic stamina and institution building of any group in the United States."

"It will not be done without a critical mass of students doing it," Nader told the audience October 29.

Throughout his talk and the question-and-answer period that followed, Nader encouraged students to look at HLS and their future corporate employers critically.

What does HLS Stand For?

Recalling a speech he attended while a student at HLS, Nader challenged the audience to answer the question "What does Harvard Law School stand for?"

"When I was here I saw the Harvard Law School as an item of immense legal resources in an urban setting of decay and injustice," Nader said. Expressing his view of the potential of HLS and what it could stand for, Nader continued, "Let's make sure that in the future the Law School becomes the luminous source of enlightenment and gives proper attention to priorities to build structures of justice."

To reach this goal, though, HLS would have to overcome inertia and a school culture only nominally different than when Nader attended. Currently, HLS is an automated assembly line, churning out graduates to grease the wheels of the corporate machinery rather than a workshop designed to craft members of a profession dedicated to the pursuit of justice, Nader said.

Nader laid the blame for this at the feet of increasingly high debt loads and a curriculum geared towards the specialized skills needed to serve the interests of corporate clients over the generalized skills that could be used to improve the situation of the masses.

Echoing the concerns of students fighting for LIPP reform, Nader asked, "What happens to a generation of law students when they are ready to take a pioneering leap, when they still have a residue of idealism, but are forced to drop it to go to work for some huge firm in order to pay off their debt?"

Is this 1999 or 1958?

To support his contention that the

curriculum contributes to the corporatization of law students, Nader offered a few anecdotes and observations about his time at HLS.

"When I took Property One here at Harvard, we started with an estate called the Black estate. It was a prototype estate worth \$1 million, big money in those days, and because it was a \$1 million estate it had a lot of complexities to it, and that's what we cut our teeth on," Nader recounted, "We went through that entire course, took the exam, and went on to other things without knowing a single thing about the probate system, which was maladministered, looted, gouged, in terms of small estates. That is, we learned how to construct an estate plan for the rich, and who cares about the 95 percent of the rest of the people?"

According to Nader, the effects of this kind of education were undesirable. "We were taught to become smart by becoming narrow. It demeaned the whole tradition of the law," he said, continuing, "We were never accused of showing foresight, probably because we couldn't footnote it."

After three years of the narrowing effect of a curriculum geared towards the needs of the elite, students left HLS ready to join the ranks of large corporate law firms. "It was the triumph of narrow expectation levels, as Harvard Law School measured success by what big law firm we were recruited by," Nader said.

After Graduation

Nader warned the law students in the audience not to allow their consciences and senses of social justice to be dimmed by their experiences at HLS, and encouraged them to consider careers in the public service.

"When you go into your law firm, you want to ask yourself, are you going to be able to say no to clients

Please see NADER, p. 4

Berkman Center rebuffed Copyright case dismissed by District Court

by Francesco R. Barbera

In a brusque seven-page opinion, a federal judge dismissed a lawsuit challenging the constitutionality of copyright legislation enacted by Congress in 1998. The suit was filed with the assistance of the Law School's Berkman Center for Internet & Society.

The suit, *Eldred v. Reno*, was brought by several publishing-related organizations to challenge the Sonny Bono Copyright Term Extension Act (CTEA), which retroactively and prospectively extends copyrights for 20 years. The act covers every copyrighted work not yet in the public domain, a category which includes most works copyrighted in 1923 and renewed in the 1950s.

The complaint, submitted by Profs. Charles Nesson '63 and Lawrence Lessig and Lecturer Jonathan Zittrain '95 together with attorneys at Hale & Dorr LLP, alleged that the law infringes plaintiffs' First Amendment rights. It also asserted that retroactive copyright extension is beyond Congress's enumerated powers and violates the public interest doctrine.

In her memorandum opinion, Judge June L. Green of the United States District Court for the District of Columbia rejected these claims and granted the government's motion for judgment on the pleadings.

In a statement to the RECORD, Lessig criticized the opinion for failing to address plaintiffs' claims. "She did not engage the argument, and her statements about the First Amendment in particular just cannot be correct," he said.

Judge Green dispensed with the plaintiffs' First Amendment argument in three sentences, noting simply that "there are no First Amendment rights to use the copyrighted works of others."

The judge likewise rejected the plaintiffs' enumerated powers argument, finding that the law fell within the broad discretion

granted Congress under the Constitution's copyright clause, as well as Supreme Court precedent. The plaintiffs had argued that the law's retrospective application violated both the "limited times" and the "to authors" phrases of the copyright clause.

The plaintiffs' final and most innovative claim was that the CTEA violated the "Public Trust Doctrine" which, according to their second amended complaint, "holds that government may not transfer the public property of a commons into private hands in the absence of any public benefit in exchange." The plaintiffs argued for an extension of this principle from its traditional application in the area of public lands to "the reallocation of public rights in intangible property, such as copyright."

Judge Green refused to take the bait. She disposed of the claim by holding that the doctrine is only applicable to state title over navigable waters.

Lessig affirmed that the Berkman Center is already gearing up for an appeal. "The great virtue of the opinion is that it is short, and came out quickly. That means we get to the Court of Appeals quickly," he said.

Ashley Morgan '00, co-chair of the Copyright's Commons — a coalition which advocates for the public domain and a plaintiff in the case — said the opinion "was not that surprising."

"We were asking her to say that the act is unconstitutional — and it was unlikely that she was going to make such a dramatic decision," said Morgan. "On to the appeals court."

Though Judge Green's legal interpretations might be construed as less than daring, the same cannot be said for the Berkman Center's approach to lawyering in *Eldred*. In its preparation for the case, the Berkman Center established a website at www.openlaw.org which gave the public access to drafts of briefs and established discussion groups for people to hash out

ideas and thoughts on the case.

According to Lessig, the open discussion groups were used extensively at the early stages of outlining briefs in the case. "We got many ideas from that conversation, and saw many mistakes," he said.

When it came time to writing the briefs, drafts were circulated among 25 participants who had expressed interest in helping with the process.

"Both parts of the process were extremely helpful," said Lessig, while noting that there are still some "bugs" in the system which need to be worked out.

Lessig noted that the open law experiment reflects the general philosophical mission of the Berkman Center. "Much of our work has been to emphasize the power of the open process," he said. "We hope that this process can be used by others with similar suits, enabled by technology that makes it possible to litigate through open processes."

NEWS COMMENTARY

Named gifts cost a pretty penny

Rename Langdell library for low, low \$50 million

by Justin Herdman

Money talks. It is a simple proverb, and one evinced time and again in the law school classroom, from discussions of high-priced defense attorneys to debates on independent counsels with bottomless coffers.

And now proving that even the lofty realm of academia is addicted to cash-laced come-ons, HLS has announced on its website a menu of "Named Giving Opportunities" which offer alumni eternal campus renown in exchange for a pocketful of greenbacks. From Langdell Library to a book preservation fund, alumni can pay to have their names carved into just about any non-living entity on the Law School's campus.

The sexiest item on the list is

the opportunity to rename the Harvard Law Library. With the pricetag set at a cool \$50 million, the honor has apparently been reserved for someone not practicing law.

The next level of named gifts will set a charitable alum back \$25 million. With the rare opportunity to rename the International Graduate Student Fellowship Program or the Low Income Protection Plan Program, many graduates could feel compelled to cough up such a massive chunk of dough.

Other multi-million dollar billboards include the Library's Reading Room (\$10 million), an Academic Research Center (\$10 million), the Faculty Law Library (\$5 million), and Professorships (\$3 million a pop). Assuming that a "Student Residence Center" is a dormitory building, even a hall in Gropius Complex could be re-

named for \$5 million. Just imagine the lifestyle changes that would flow from living in Bill Bennett [71] Hall.

Relative bargains on the list include \$50,000 for naming a Study Room, or a mere \$10,000 to affix a title to a Book Preservation Fund.

The web page is clear to point out that contributions need not represent an act of narcissistic self-love. "Named gifts may... honor a spouse or other family member, a colleague, a favorite professor, a firm, or other persons or organizations deserving recognition."

Lest concerned students fear spending long hours deep within the bowels of the Dershowitz Library, the page notes that "The specific terms of these gifts are determined in consultation with the Dean."