



RECORD Photo / Cheryl Hudson

Prof. Charles Fried and Stanford University Law School Prof. Kathleen Sullivan '81 discussed their views on the tenor and decisions of the United States Supreme Court during its last term. The discussion was moderated by Kennedy School of Government Prof. Fred Schauer.

Fried, Sullivan Reflect on '94 Court

By Katrina C. Randolph

Did the 1994 Supreme Court exemplify political maneuvering or jurisprudence at work? Or did the court simply tear down a crumbling wall and build a new one?

"It's like an organism which is constantly shedding cells and growing new ones," said Prof. Charles Fried, who also is an associate justice on the Massachusetts Supreme Judicial Court.

Monday, Fried and Stanford University Law School Prof. Kathleen Sullivan '81 engaged in a discussion before hundreds of students about the 1994 Supreme Court and the individual justices. They talked about recurring themes of the term and characterized individual justices' voting patterns and ideologies.

During the 1994 term, the

Supreme Court received 7,132 petitions for a writ of certiorari; the court heard arguments in 93 of those cases and issued 82 full opinions, said Yellow Light Breen '96, a Harvard Law Review editor. The most important cases involved "debates about the locus of decision-making authority," said Kennedy School of Government Prof. Fred Schauer, who served as moderator.

Sullivan said some look at the court as a bastion of politics, with justices tending to be on the right or left side of issues such as race, abortion, religion and federalism.

"The court tried to get all three branches out of the race business," said Sullivan, referring to *Adarand v. Peña* (minority preferences), *Miller v. Johnson* (voter redistricting) and *Missouri v. Jenkins* (school desegregation). Sullivan also pointed out that the court

avored states' rights over federal power in *U.S. v. Lopez*, when it limited federal commerce power.

However, Sullivan suggested that the justices' tendencies actually evidenced their preference for rules or standards.

The way to understand this court is that the Reagan-Bush administrations "failed to appoint justices of rules," said Sullivan. Justices Sandra Day O'Connor and John Paul Stevens are "standards justices." Their refusal to adhere to hard-line rules creates instability, she said.

But Fried said, "I don't accept the dichotomies." He said the distinction is more between those who are "willing to tear down the whole thing and start over again in terms of what is right to them," and those who are not so willing.

please see **COURT**, page 11

Poll Ranks HLS Next-to-Last In Best Schools For Women

By Hope Yen

Harvard Law School ranked virtually dead last in a National Jurist survey on the best law schools for women, highlighting a weakness many students and professors have long noted — the need for more women faculty.

Though few students seemed to have seen the rankings and others noted its overly simplistic criteria, many said the Law School certainly could do more to improve the educational environment, particularly by continuing its aggressive recruitment of top-notch women professors.

"The report doesn't surprise me," said Hannah Kilson '97, who co-chairs the Women of Color Collective. "Harvard is Harvard. I am certainly committed to making it a more hospitable place for women, but the only reason I'm here is because I think its degree will afford me opportunities over the long term, not because I'm hoping to find a supportive environment for women of color in the legal profession."

"It is a sad thing that if women want to go to top 10 schools, the trade-off is they have to give up being in a more hospitable environment," she added.

Suzanne Nossel '96, a Women's Law Association executive board member, said the survey is useful despite its limitations. "I do think that it's an important impetus to look at

problems faced by women at the Law School which are several-fold and significant," she said.

Nossel urged the Law School to be more attentive to the problem by examining the impact of different teaching methodologies on women, as well as supporting initiatives by women's groups.

Among the 168 law schools in the survey, Harvard ranked 167th, falling right behind the University of Chicago Law School and beating out only Brigham Young University's law school. The best law schools for women, according to the poll, are North Carolina Central, CUNY/Queens, and Boston's Northeastern University.

Criteria used by The National Jurist, a magazine for law students, included the percentage of women faculty and students; how equal to male counterparts women students perceived themselves as being treated (on a scale of 1-4, with 4 indicating the most equal treatment); and the percentage of women in "leadership positions," defined here as the Law Review and student bar association.

The "equal treatment" score was determined from a Princeton Review-sponsored survey last year of 18,000 students who were asked to rate their school. Other data also represent 1994 figures, except for those on the Law Review.

Shanie Latham, a Jurist reporter who compiled the

please see **SURVEY**, page 4

Cyberporn and the Law

Ames Teams Ready for Finals

By David Weiss

Are the 0's and 1's which make up the transmission of an obscene computer similar enough to the image itself to justify making that transmission a crime?

Who should determine whether the computer images sent are obscene — the community where the computer bulletin board is located, or the community in which the pictures are downloaded?

Should the operator of an electronic bulletin board be liable if a subscriber downloads items posted on the board into a computer in another state?

These are among the many

cutting-edge questions that will be debated in the final round of the 84th Annual Ames Moot Court Competition, which will be held tonight at 7:30 p.m. in the Ames Courtroom.

The record for *Richard Smith v. United States of America*, which was written over the summer by Ames

Fellow David Becker and Prof. Charles Nesson '68, is based on *U.S. v. Thomas*, a case currently

pending before the 6th Circuit Court of Appeals. In the hypothetical case, Smith had established a computer bulletin board in New York and offered access to users over the age of 18 for a fee. The board posted several

please see **AMES**, page 2

Animal Rights Activists Condemn Agribusiness

By Josh Strathman

While agribusinesses pursue profits and efficiency, they also produce high costs in other areas, animal activists said Tuesday.

"The most obvious cost is to the animals involved," said Michelle Lerner '97 of the HLS Student Animal Legal Defense Fund.

Representatives of various interests opposed to factory farming discussed the negative impact of agribusiness on animals, the environment and rural communities and also touched on the failure of the legal system to offer sufficient remedies.

Director of Education for the New England Anti-Vivisection Society Melissa

Feldman elaborated on the costs to animals. Seven million animals are kept in the U.S. for agriculture, mostly in factory farms, she said.

This means, she said, that most meat and poultry products

"The fundamental problem non-human animals have ... is that [they] have no legal rights," said Steven Wise.

available in stores emerged from settings in which "basic natural behaviors [were] often denied," like the freedom to walk, turn around, stand or stretch.

Feldman also criticized the living space — often not much greater than the dimensions of the animals themselves — allotted by agribusiness to livestock. She said other abuses include inadequate veterinary treatment, cruel butchering practices and painful marking and control methods.

The overcrowding and neglect endemic to factory farming not only results in animal suffering but, when coupled with agribusinesses' excessive use of growth hormones and other pharmaceuticals, also turns out products which pose health risks to consumers, said Feldman.

"The fundamental problem non-human animals have ... is that [they] have no legal

please see **PANEL**, page 3

Justice Louis Dembitz Brandeis Team

for Petitioner

Oralists

Harry Chernoff



Age: 28

College: Harvard

Personal Fact: Studied political science in India.**Thought:** "The challenge is to explain something you've been living with for several weeks to someone hearing it for the first time."

Jay Prabhu



Age: 25

College: Boston College

Personal Fact: Did moot court in high school and college.**Thought:** "You have to use the judges as a vehicle to get your points across."

Theodore Geisel Memorial Team

for Respondent

Oralists

Bathsheba Crocker



Age: 26

College: Stanford

Personal Fact: Cross-registered at Fletcher School of Law & Diplomacy.**Thought:** "I'm not petrified. I'm a little nervous. It's scary."

David Schwimmer



Age: 26

College: Yale

Personal Fact: Not the guy who plays Russ on hit show "Friends."**Thought:** "The judges will surprise us. You have to be ready for anything."

Matthew Bodie



Age: 26

College: Princeton

Personal Fact: Lived and worked on a commune.**Thought:** "It's been a great learning experience. Dave Becker is a genius."

Gia Lee



Age: 25

College: Harvard

Personal Fact: Likes to go camping.**Thought:** "It's been an incredible amount of work. I'm taking a nap."

Sam Liccardo



Age: 25

College: Georgetown

Personal Fact: Tutors high school students in Dorchester.**Thought:** "The team that wins the brief wins overall — that's what you hear."

Richard Schragger



Age: 25

College: U Penn

Personal Fact: Has a masters in legal theory from University of London.**Quote:** "This year's Ames has been pretty scandal-less. Which is good, as compared to scandal-full."

Colin Stretch



Age: 26

College: Dartmouth

Personal Fact: His football team, "Learned Hands," repeated as HLS champions this year.**Thought:** "What makes Ames special is working with people you like working with."

Kimberly Parker



Age: 25

College: Princeton

Personal Fact: Roommates with team oralist David Schwimmer.**Thought:** "It's weird to be one of the non-oralists — you want to scream out the answer yourself."

Mark Quarterman



Age: 36

College: Yale

Personal Fact: Spent two years in African village for Peace Corps.**Thought:** "We've convinced ourselves that what we're arguing is very much a part of settled law."

Jeff Simes



Age: 27

College: Yale

Personal Fact: Taught computer science in New York City public school.**Thought:** "The spectators should look for blood. Everybody's going to be drawing blood."

Ames Finalists to Debate Cyberspace, Interpretation Issues

continued from AMES, page 1

computer images of a pornographic nature, including pictures described as "He Has Sex With a Pig!, Kinky," "Kinky! Horny Girls Have Sex With Horses!" and "Mother and Father Have Sex With Their College-Aged Daughter!"

A postal inspector downloaded the three images into a computer in Ames City as a part of an investigation of Smith's bulletin board. Based on the investigation, Smith was subsequently charged with and convicted of violating 18 U.S.C. §1465, which prohibits transportation of obscene material in interstate commerce.

Smith appealed the conviction, arguing that §1465 does not apply to computer transmissions, that venue in Ames was improper and that his conviction violated his First Amendment rights. The Court of Appeals for the Ames Circuit ruled against Smith on all of his claims, and he now has brought his case before the U.S. Supreme Court.

"The case involves a mix of issues," said Nesson. "It has a classic statutory interpretation issue which is more or less built around the fact that Congress wrote a statute to get at one issue and it is being used to address another.... The question of very broad interest is whether the advent of global electronic networks will require rethinking of issues of jurisdiction and venue."

Many first-year students will recognize this case, as it was the basis for one of the brief writing assignments in the Introduction to Lawyering course this semester. "This was the first time it has been done this way," said Becker. "We wanted to generate some enthusiasm for the Ames finals and make the experience one that the audience could identify with."

Becker added that while the 1Ls did analyze some of the issues in this case, their research was limited to on-line services, and their briefs were geared toward district court argument rather than appellate court argument.

The case will be judged by a three-member bench: U.S. Supreme Court Justice Stephen Breyer '64, D.C. Circuit Court of Appeals Judge Stephen F. Williams and 11th Circuit Court of Appeals Judge Rosemary Baskett. Presenting the case for the petitioners will be the Justice Louis Dembitz Brandeis Team, which consists of Matt Bodie '96, Harry Chernoff '96 (oralist) Gia Lee '96, Sam Liccardo '96, Jay Prabhu '96 (oralist) and Rich Schragger '96. The respondent's case will be argued by the Theodore Geisel Memorial Team, which is composed of Bathsheba Crocker '96 (oralist), Kim Parker '96, Mark Quarterman '96, David Schwimmer '96 (oralist), Jeff Simes '96, and Colin Stretch '96. Awards will be given for best oralist, best brief and best overall team.

Stevenson Fighting Bias and Executions in Alabama

By Craig Buckser

Alumni in Action: This is the first article in an occasional series.

While most HLS graduates head for the big law practices in the Northeast and West, one alumnus has devoted his life to defending people who have been sentenced to death.

Discrimination against racial minorities and the poor is pervasive in the criminal justice system, said Bryan Stevenson '85. Nowhere is this bias more prevalent and salient than in the imposition of capital punishment.

A protégé of Stephen Bright, Stevenson is considered to be one of the best death penalty lawyers in the nation.

Stevenson is director of the Equal Justice Initiative in Montgomery, Alabama, which he founded this year. "The Equal Justice Initiative focuses on race and poverty bias in the criminal justice system," he said.

The EJI primarily defends people on Alabama's death row, but also litigates cases in which African Americans have been excluded from juries. In addition, it seeks to educate people on the existence of discrimination on the basis of race or poverty in the criminal justice system.

Stevenson was the first director of the Alabama Capital Representation Resource Center, which is closing in a few weeks because Congress is eliminating funding for the 20 resource centers nationwide. The EJI will try to replace the Alabama Resource Center in defending the rights of people on death row in Alabama.

"I am appalled that there are people on death row that are dying because they cannot get legal assistance," Stevenson said. "The quality of legal representation determines whether they live or die. I find it compelling to practice law in an area where there are desperate needs."

Animal Rights Not Protected Enough by Law, Activists Say

continued from PANEL, page 1

rights," said Steven Wise, vice president for long-range planning of the Animal Legal Defense Fund, in discussing the legal difficulties in redressing cruelty to animal infractions.

Wise said that most state anti-cruelty laws were criminal statutes. He viewed these laws as problematic because they rely on state prosecutorial discretion; often carry weak penalties, are rife with exceptions and are frequently obsolete. Furthermore, he said, action under these criminal statutes was often impeded by difficulties in proving subjective state of mind elements.

Wise and Feldman noted that federal statutes that might be used to address the abuses of factory farms suffer from many of these same problems: obsolescence, lax enforcement and broad exceptions.

Furthermore, civil remedies are similarly problematic since private claimants "need to show human harm [derived from animal suffering] significant enough to justify suing on behalf of non-human animals" in order to have standing, said Wise.

Robbin Marks of the Natural Resources Development Council spoke about the costs agribusiness imposes on the environment. She said that the "waste lagoons" constructed to deal with the massive quantities of feedlot waste were subject to leakage and occasional spills. Furthermore, according to Marks, waste from these sites is often spread on surrounding fields faster than the agronomic rates (at which vegetation can absorb the waste and prevent runoff) permitted by the Clean Water Act.

The result, said Marks, has been the

"I am troubled by the way the criminal justice system tolerates racial bias," he added. "We encounter overt racial bias in many of the cases we work on. I cannot accept a legal system that tolerates bias against people of color and poor people."

Stevenson said racial discrimination in the application of capital punishment occurs on the basis of the race of the victim. White lives are valued more than black lives, so one who murders a white person is more likely to receive the death penalty than one who murders a black person, he said.

Stevenson's dedication to combating discrimination on the basis of race and wealth stems from his experiences as a youth. He was raised in southern Delaware, where race and poverty often

work in a field that does not bestow significant financial rewards on attorneys. "I have always thought that it was more important to be about something and get nothing for it than to be about nothing and get something for it," he said.

Stevenson's career has been replete with nonpecuniary rewards. "Challenging race and poverty bias and giving hope to marginalized people is wonderful," he said. "So is combating people who have treated others unfairly and getting them to treat other people with respect. It is moving one step closer to equal justice."

Some of Stevenson's most priceless moments have involved convincing young people accused of capital murder who believe that they deserve to die to have the will to live. Another defining

"I have always thought that it was more important to be about something and get nothing for it than to be about nothing and get something for it," he said.

determined people's life chances.

"Even if capital punishment were free of bias, I would not approve death penalty," Stevenson said. A highly spiritual man, Stevenson opposes capital punishment on moral grounds. "The death penalty is an expression of hopelessness to what we can do to redeem people who have done terrible things," he continued.

"I don't think we would have the death penalty in American if we were free of race and poverty bias," Stevenson said. "It is a tool used by politicians who aren't prepared to deal with the causes of violent crime. The political utility of the death penalty would be eliminated if there were no discrimination against the poor and people of color."

Stevenson is more than willing to

moment was walking out of the prison with Walter McMillan, an innocent African American client who had spent six years on death row.

Stevenson's career has also had low moments, including facing executions and witnessing the "indifference of judges, legislators, political leaders to the reality of their ignorance and unwillingness to confront difficult problems, such as refusal to acknowledge bias thoughtfully and honestly."

For Stevenson, these moments are not unbearable because he has won some victories. He remained optimistic of his ability to solve bleak problems.

From the time Stevenson began law school, he knew he wanted to work to help the disadvantaged. "My experience as a student working for the Southern

Center for Human Rights compelled me to seek death penalty work," he said. In contrast, Stevenson worked at a law firm for part of a summer, but he found that he had no interest in a career at a law firm.

"Harvard Law School provided me an avenue for being exposed to work," Stevenson said. He took a race and poverty class with Prof. Elizabeth Bartholet '65. The clinical aspect permitted him to work for Stephen Bright at the Southern Center for Human Rights.

"In law school I was challenged to think critically to think of what I did as a lawyer," Stevenson added. "It was an orientation. A lot of folks felt differently about issues of race and poverty. The environment encouraged me to evaluate things critically."

Stevenson recommends that students interested in pursuing a career in death penalty defense use summers to work with criminal defense organizations. "Get exposed to the workings of the system through organizations and clinicals," he said. "Focus on practical issues of bias and reform. Seeing the problems up close gives you a renewed interest in the law. These things have urgency when you meet people whose life hangs in the balance. It inspires law students to use their degrees in a meaningful way."

He added that interested students should talk to attorneys in the field, for there is no shortage of demand for death penalty lawyers. "It can be a gratifying experience," he said.

Stevenson has no qualms in representing people on death row. He said that doing so is easy because the issue is one of life or death. "Even for clients who have done some terrible things, I find the death penalty tough to accept," he continued. "I never met someone whose life I did not value." However, many of his clients are dangerous and should be punished and incapacitated,

please see STEVENSON, page 11

FolkTree and LampLighter present O.J. SIMPSON TRIAL PROSECUTOR Christopher Darden

Friday November 17th • 8 PM
at Sanders Theatre

45 Quincy Street

Harvard University in Cambridge

Tickets are \$25 and \$100.

\$100 ticket includes catered reception with
Christopher Darden at Sanders Theatre
from 6 PM to 7 PM, plus preferential seating.

All seats reserved. Free parking at Broadway Garage.

TICKETS ON SALE NOW

Sanders Theatre Box Office or Charge by Phone 496-2222	Out-of-Town Tickets or Charge by Phone 492-1900	Charge by Phone 1-800- THE-TICK
--	---	--

A portion of the proceeds to benefit local shelters for battered women

Chef Lee's



GOURMET CHINESE FOOD

296-298 Beacon Street
Somerville, MA 02143

WE DELIVER

\$1.50 delivery charge in
Cambridge and Somerville

876-7666

10% OFF

with student ID and
purchase of \$20 or more.

5% OFF

with student ID and
purchase of under \$20.

"This is one of the best Chinese
restaurants around."

Harvard Law RECORD

"Chinese food with originality."

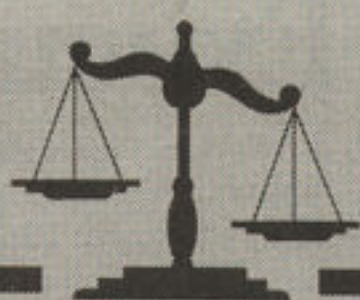
Boston Globe

"Easily the best Chinese
restaurant..."

The Gotta Eat! Guide

GROUP RATES
NEGOTIABLE

BRIEFS



Criminal Justice Institute Sponsors Symposium

Lawyers and law enforcers gathered at HLS Tuesday to discuss "Police, Lawyers and the Truth."

More than 250 students, lawyers, judges and police officers gathered for the symposium, which was sponsored by the Criminal Justice Institute. Prof. Charles Ogletree '78, director of CJI, said the symposium grew out of a discussion he had with Prof. Alan Dershowitz about the role of perjury in the criminal justice system.

New York Police Chief William Bratton, in the keynote address, said police officers must be trained and supervised, and must be taught that the truth counts. He also said police need to learn to withstand the pressures of the justice system.

Defense lawyers and prosecutors no longer strive for the truth, said Bratton. Rather, he said, their goal is to win at all costs.

Criminal justice Prof. James Fyfe of Temple University said that while it is difficult to make generalizations about police officers, it is also "naive" to assume that police officers who are dishonest on the streets will be honest on the stand.

-from the Crimson

Riley Named New Harvard Police Chief

Francis "Bud" Riley, a lieutenant colonel and commander of the Division of Investigations and Intelligence of the Massachusetts State Police, will assume the post of Harvard police chief on Jan. 2, according to university officials.

"We are delighted that Bud Riley is coming to Harvard," said Vice President and General Counsel Margaret Marshall in a written statement.

Reaction to Riley's appointment within the police department was positive, and law enforcement officers have hailed him as a gain for the University.

Riley will replace Paul Johnson, who announced last year that he would retire.

-from the Crimson

Voters Elect Cambridge City Councillors

An unofficial count of "number one" votes cast in Tuesday's election suggests that four progressives endorsed by the Cambridge Civic Association (CCA) and liberal Mayor Kenneth Reeves '72 will retain control of the Cambridge City Council.

"I'm gone from gloom and doom to pleasant surprise," said CCA President Geneva Malenfant.

Reeves, Councillor Francis Duehay '55 and Councillor Anthony Galluccio each are assured a seat on the council, as the candidates exceeded a quota of 1,884 votes.

Reeves led all candidates with 2,261 number one votes. Duehay received 2,078 votes and Galluccio received 2,033.

All votes in excess of the 1,884-vote quota will be transferred.

Conservative James McSweeney Jr. is presently in ninth place with 1,243 votes, but many believe the votes transferred from other candidates will make school committee member and CCA-endorsed candidate Henrietta Davis "leapfrog" over McSweeney.

-from the Crimson

Congressman Frank to Sponsor Financial Aid Conference

Congressman Barney Frank (D-Mass.) will sponsor a conference, "Financing a Higher Education — Now or For the Future," on Nov. 18 from 10 a.m. to 1 p.m. at Bridgewater State College.

The purpose of the conference is to provide information to students, prospective students and parents on meeting rising costs of higher education.

Information on financial aid sources and workshops offering practice sessions on completing financial aid forms will be featured at the conference.

More information about the conference will be available in early November. The conference is free and open to the public. No reservations are necessary.

Kemp Advocates Private Ownership

Advocating private ownership of capital and denouncing excessive taxes on income, former secretary of the U.S. Department of Housing and Urban Development Jack Kemp addressed a crowd of about 300 last night.

"I'd like to make a case tonight for a universal idea," Kemp said in the hour-long speech sponsored by the Institute of Politics. "It is universal not because it appeals to everyone, but because it will work everywhere."

Kemp is currently the chair of a commission under House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Robert Dole (R-Kan.) that was established to substantially change the tax code for the 21st century.

Kemp's lecture, entitled "America on the Eve of the 21st Century," was a part of the Gustav Pollack Lecture series. The series is designed to "be given from time to time by a qualified person" to stimulate interest in government.

-from the Crimson

Darden To Speak At Harvard

O.J. Simpson trial prosecutor Christopher Darden will speak at Harvard University's Sanders Theatre at 8 p.m. tonight.

The Los Angeles Deputy District Attorney will offer his perspective on "the trial of the century." Darden's talk will be followed by a question-and-answer period with the audience.

A portion of the proceeds from Darden's appearances will benefit a local shelter for battered women.

HLS at Bottom of Poll On Schools for Women

continued from SURVEY, page 1

results, said the factor that seemed to hurt Harvard most was the relatively few women professors.

"I say probably the number that really killed [Harvard] is the faculty percentage, because it's so low," she said. That factor, Latham said, seemed to be crucial in many women's minds in determining which law schools were best for them.

"Most people I talked to thought it was really important," she said. "For women, it gives them a role model, women who are excelling in the law. For men, it shows them that women have a place there in the law school and the profession."

Of the big-name law schools, Stanford Law School ranked highest at 26th, based on its higher percentage of women faculty (36 percent), and leadership score (100, indicating that 50 percent of the "leadership positions" were held by women). Stanford women, who gave their school a 2.66 for equal treatment, make up 45 percent of the student body.

At Harvard, 11 women professors currently make up 15 percent of the 72-member faculty, compared to a national average of about 30 percent, according to the Association of American Law Schools.

HLS women also comprise 39 percent of the student body, who gave a score of 2 for equal treatment. On leadership, HLS women earned a 65.17, due in part to their low representation on the Law Review.

Other top schools also ranked poorly overall, including Columbia Law School, which ranked 118th; Yale Law School, which was 145th; and University of Virginia Law School, which ranked 162nd.

University of Pennsylvania Law School, where Prof. Lani Guinier co-authored a study that found men there were three times as likely as women to be in the top 10 percent of their 1L class, ranked 139th. Penn women gave the school a 2.95 for equal treatment.

Pledging to improve "diversity on all fronts" in faculty hiring, Dean Clark '72 has said he planned to work particularly hard in hiring more women professors. Last year, he told the Harvard Law Bulletin, "I want my deanship to be remembered as the time when there was a quantum leap in the number of women on the Harvard Law School faculty."

Since becoming dean in 1989, Clark has helped recruit and hire seven women professors and assistant professors, bringing their total number to 11. In addition, three women are visiting professors this year, including Guinier, who has been considering a tenured HLS position.

Many student leaders praised the efforts, saying they would like to see Clark recruit many more qualified women professors, including minorities, who have never been represented on the

core HLS faculty of professors and assistant professors. Clark has said he would like a core faculty of 78 by the year 2000. Currently there are 72 professors.

"The new faculty positions provide an opportunity for the school to change the demographic character on all levels — gender, race and substantive background," Kilson said. "I wonder what the dean will do with this opportunity at this kind of historic moment for the school."

"What happens with these hires will determine the place Harvard Law School takes in the next century, whether it's a place for standard legal doctrine or a place that really tries to be on the cutting edge," she added.

Prof. Elizabeth Warren, a bankruptcy law expert whom Clark aggressively wooed here, said the Law School has taken the first major steps to build a more diversified faculty.

"It's a little like rolling a rock," she said. "The hardest part is getting it in motion, and it's hard keeping it in motion. The process in diversifying the faculty has begun and I think it will continue."

Adding more women faculty is "terribly important," Warren said, because otherwise, "think of all the smart and interesting people you wouldn't meet."

Jennifer Bonar '96, president of HLS

Republicans, also agreed on the values of diversity, but emphasized that gender should not be allowed to overwhelm another, more crucial factor.

"Women faculty are wonderful; diversity in any respect is good," she said. "But the first criterion should be qualifications."

Bonar also disputed the survey's finding that Harvard fared poorly as a law school for women.

"I certainly haven't had any complaints or felt any negative reactions as a female," she said. "I'm not one that goes

looking for problems."

Latham acknowledged the limitations of defining only the Law Review and student bar association as leadership positions. Originally, she said, the Jurist sought to factor in women representation in the moot court competition, but difficulties in obtaining the data led them to exclude it.

"I don't think the criteria are very good indicators," said Diana Suber '97, who also co-chairs the Women of Color Collective. "I can't imagine women at Harvard Law School not being active. Just because they're not on Law Review or the student bar doesn't mean they're not taking leadership stances. It would be more realistic if it looked at a wider range of leadership positions."

Joel Johnson '96, president of HLS's chapter of the American Bar Association/Law Student Division, said he didn't think his organization fully represented what should be considered "leadership positions." Gender ratios for the group are calculated by the national office, and were not available on campus.

"All you do is pay \$15 and you're signed up," he said.

"I say probably the number that really killed [Harvard] is the faculty percentage, because it's so low," Shanie Latham said.

The RECORD is much too good to be used only once.



RECYCLE!

GYM RAT

It's a Grand Old Flag

By David Koontz '96

Sports Columnist



BECAUSE it snowed a little this past Monday evening, the HLS flag football playoffs missed being the Snow Bowl by a mere 30 hours or so. As it turned out, there was no rain falling at all on Sunday, so the players only had to be a little miserable in the cold and wind instead of really miserable.

To be honest, nobody seemed too terribly unhappy after the day's games were done. Good sportspersonship and camaraderie abounded, and several observers cried at John "I'm actually more of a baritone than a" Basinger '96's rendition of the Star Spangled Banner. Unfortunately, because of the wind, nobody really heard it. And really, now that I think about it, the elements could have caused the tears.

In the end, rather than hit you over the head with the Damn, But Wasn't It Football Weather Theme, suffice it to say that the atmosphere (no pun intended) for this day of playoff action could be described easily and neatly by merely by writing the word "blustery" as many times as Jack Nicholson wrote "All Work and No Play Make Jack a Dull Boy" in *The Shining*.

That said, let me first congratulate all the participants for coming out, playing hard and not giving anybody the business or causing any trouble. I'm actually going to miss you knuckleheads who come out and beat each other up every week, and it was a pleasure to come bring you your flags and maybe referee a game here and there. The temptation was great to invoke the Commissioner's Team Always Makes the Playoffs rule, but I have too much respect for the integrity of this league for that. Well, actually, I couldn't find anyone to ref in my place.

Speaking of refereeing, a special thanks to playoff referees David "Crazy Legs" Weiss '96, who is too good a ref to be sullied with the nickname "Three Blind" Weiss, and Mike "Sittin' on a" Stefanoudakis "of the Bay" '96, who perfected the "Gimme a Break" referee's shake of the head "no" when players complained. Thanks also go to Mike "This refereeing assignment was no day at the" Beach '97, who came out to help referee one of the 9 a.m. first-round games.

Of course, the real story of the day, which some of you may be wondering about by now, is who won the thing. Learned Hands were at the top of their game and convincingly took the whole enchilada for the second year in a row. I don't know if anyone has ever repeated as flag football champion here at HLS, but I can say without fear of reprisal that the Hands are the latest to do it.

The Hands beat a terrific trio of teams to claim this title. In the first round, they beat Locus Poenitentiae, who had given them regular-season trouble. Locus was missing receiver Chris "Deep Throws with Jack" Handy '97 but played tough. "This" Justin Weiss '97 showed some tenacious line play for Locus, but the Hands played error-free football, and much of the game was played in Locus' territory.

In the second round, the Hands faced the Freshies, who claimed the fourth seed by winning their regular-season makeup game against Levitt's Too Sexy for This League just a day earlier. The Freshies were flying high after a first-round victory over the Dissenters, but the Hands were able to match the Freshies' trademark speed and accuracy to advance to the championship game.

As for the Freshies, they go into the off-season with only two things on their minds. I'm guessing here, really, but first I think they want to draw up a play where they can

Congratulations to a team that kept sports in perspective while also keeping its desire.

fake a hand-off to ALL their players on offense at once. Second, I think they want to get some louder shirts that David "Lee" Rothenberg '98 can actually see, so he can try to break Dan Marino's all-time yardage record before he graduates.

In the finals, the Hands faced the Great Danes, who in the semifinals beat the Chicano Bears, who in the first round defeated the Grad Guys, who found the grouse that ate the mouse that lived in the house that Jack built. In the semis, the Bears had faced the difficult and unfortunate task of trying to drive into the wind for the game-winning touchdown. In the finals, the Hands were able to negate the wind factor by jumping on top of the Danes for a two-touchdown lead at half-time. The Hands surprised the Danes by rushing as many as three players early and often enough to disrupt the Danes' offensive timing.

After gaining the lead, the Hands played steadily and smartly by using the 45-second game clock, which forced yours truly to keep looking at my watch and dropping my whistle in the mud in the process. The Danes scored a second-half touchdown and moved the ball, but the Hands extended their lead in the end for a 26-6 championship final. The Hands players themselves were elated and jumped around a lot, but in my exclusive interview with David Justice after the game, he said that the Hands' fans weren't as excited as last year.

The Danes, meanwhile, who wore their B-League basketball championship T-shirts for the playoffs, aren't just looking forward to next year. They're looking forward to THIS year. After all, when the snow starts, everyone comes inside to play a little roundball. After proving they can play a little pointyball as well, the Danes undoubtedly will be there this winter to defend their title. The Danes' Mike Beach '97 only regrets that he won't be able to run back any more one-point conversions for game-breaking victories. Free throws, Mike. Just work on your free throws.

As for the Learned Hands, they finish their three-year career with an undefeated regular-season record and only one loss in the playoffs, which came in their first year. I've tried to highlight their individual accomplishments as best I could, but in the end, theirs was a complete team effort. From deadly passing accuracy and sharp cuts by the receivers to seemingly never missing a flag on defense, the Hands played with fire and unshakable team unity. As the Hands' Pete "The Fighting Badger" Underwood '96 once told me, "There's nothing wrong with a little desire." Congratulations to a team that kept sports in perspective while also keeping its desire. And congratulations to a league full of teams that showed that same spirit. It's been a fun trip.

THE VERDICT

The World According to Tarantino



By Michael Bennett '98

Movie Reviewer

IF you haven't noticed, the universe of Quentin Tarantino is expanding exponentially. Luckily, for all of us movie goers, at the core of this expansion is substance, not hot air.

If terms like K-Billy's Super Sounds of the Seventies, Tony "Rocky Horror," or Alabama from Tallahassee have no meaning for you, you owe it to yourself to view (at least once) the two pure Tarantino works, "Reservoir Dogs" and "Pulp Fiction," "True Romance," for which he wrote the script, and "Natural Born Killers," whose story is Tarantino's creation. For films that contribute heavily to the Tarantino style, see "City on Fire" and "The Killer" by John Woo, "The Wild Bunch" by Sam Peckinpah and "Good Fellas" by Martin Scorsese.

The most powerful piece created by Tarantino thus far is his first: "Reservoir Dogs." Based on a simple "heist gone bad" plot and filmed mainly on one warehouse set, this movie is surprisingly explosive.

At times it seems as if Tarantino is improvising like a jazz musician.

Professional thief Joe Cabot has masterminded a jewelry heist. He and his son, Nice Guy Eddie, bring together a group of professional thieves to rob a diamond wholesaler. Although each of the men is known only to Joe and Nice Guy Eddie, they are selected on the basis that they are unknown to each other. Code names — Mr. White, Mr. Orange, Mr. Pink, Mr. Blonde, Mr. Brown and Mr. Blue — are issued to each of the men hired to commit the crime. In order that the plan is not jeopardized, the men are instructed not to discuss their backgrounds or any information that could reveal their true identity.

The plans are flawless but the job is doomed from the beginning. The thieves barely escape the store with half their number intact. As several of the robbers wait at their designated rendezvous, dissension erupts when Mr. Pink suggests a setup. What follows is masterful dialogue exchange and wonderful filming technique.

Many viewers may be put off by the film's rawness, but it's difficult to find anyone that honestly says this is not an impressive movie. Some of the scenes are unforgettable. For example, the opening diner scene. The characters' interactions here are priceless. Often, the effectiveness of good actors is negated when more than two congregate in one scene. Here the opposite is true. Lawrence Tierney, Harvey Keitel, Tim Roth, Chris Penn, and Tarantino deliver the goods. The subject matter is raunchy, but the dialogue cannot be denied.

Several very interesting feels surface repeatedly throughout the movie. At times it seems as if Tarantino is improvising like a jazz musician. Like Miles Davis or Charlie Parker, Tarantino takes bits and pieces from the masters, i.e. Scorsese and Woo, and adds his own new style to revitalize an old story. See Davis' *My Funny Valentine* or Bird's *In the Still of the Night*. Simultaneously the film is structured and is performed somewhat like a Kabuki theatre piece. There are no women characters but some of the thieves definitely have strong feminine sides. See Mr. White's motherly compassion for the injured Mr. Orange. The music is extremely important, playing more the role of an extra character than a scene facilitator or signal. The dual nature of each character, at once repulsive and honorable, is reminiscent of the gangster plays of Tsuruya Namboku IV and Kawatake Mokuami, in which thieves and murderers are also heroes.

The most intriguing Tarantino tool is time weaving. Instead of doling out the story in a linear fashion, "Reservoir Dogs" offers bits and pieces of the narrative as needed, regardless of scene sequence. This style is refreshing and often more informative than sequential scene approach.

After viewing all the works several times each, I'm beginning to wonder if Tarantino really is trying to build his own universe. Mr. Blonde's real name is Vic Vega. Is he related to Vincent Vega, Travolta's character in "Pulp Fiction?" Mr. White mentions having worked for some time with a female thief named Alabama — perhaps the same Alabama played by Patricia Arquette in "True Romance." Also, Mr. Blonde claims that his parole officer's name is Seymour Scagnetti, can this possibly be the Tom Sizemore's Scagnetti from "Natural Born Killers?" Please enlighten me with the answers to these questions if you know them. Better yet, it would be great if the Entertainment Law Club or Forum dragged Tarantino here to HLS to explain in person.

FOR 26 WAYS
to help save the
EARTH CALL
1-800-488-8887.

Ad Council
A Public Service of
This Publication

Earth Share

Koby
Antupit
PHOTOGRAPHERS

- Law Firm Photographs
- Instant Color/B&W Passports
- Commencement Portraits
- Portraits for All Occasions

Harvard Square
8 John F. Kennedy St.,
Cambridge
547-7552

Harvard Law RECORD

Founded in 1946

Katrina Randolph
Editor-In-Chief

David Weiss
Publisher

Opening the Channels Of Discussion

In the last issue, the RECORD reported that Prof. Arthur Miller '58 had rescheduled several of his classes. Many members of the Law School community, including Miller, have criticized the newspaper for exposing this issue to the public.

As the student newspaper for the Law School, the RECORD's mission is to report on issues of interest to the student body. This requires that we report on student and faculty efforts to increase public interest funding; this requires that we write about alumni's endeavors in the legal profession; this requires that we highlight major student events. And this also requires that we report on a professor whose outside concerns may be interfering with his teaching at the Law School.

The public discourse resulting from the RECORD article and separate commentary reflects something larger than the issue of Miller's personal schedule. It has induced the entire community to discuss the issue of faculty responsibility — an issue central to the debate over legal education, a debate for which Harvard has so long defined the terms. The issue existed before Dean Christopher Columbus Langdell institutionalized the teaching method that Miller has mastered, and it will continue beyond our brief part in it.

An honored institution must have the courage to criticize itself and resist the tendency to hide behind a glorified myth of its own existence. Reporting the facts is not what damages Harvard Law School's reputation; the facts which precipitated the reporting damage the school's reputation. Resigned silence is something the strongest marble pillars cannot uphold; it rots the integrity within.

The RECORD urges you to read the letters and comments about this issue. They impart important and compelling viewpoints. More importantly, they represent our greater obligation as a community to enter the public sphere and tender our share.

—Friedman
Kuohung
Randolph
D. Weiss
Yen

Staff

EXECUTIVE EDITOR.....	Hope Yen
SENIOR WRITERS.....	Jim Lank, Josh Strathman
STAFF COLUMNIST.....	Markus Hartmann
COLUMNISTS.....	Michael Bennett, David Koontz, Colin Meeder
STAFF WRITERS.....	Craig Buckser, Tara Dawood, Rob Friedman, Justin Weiss
CONTRIBUTORS.....	Calvin Gladney, Matthew Huggins, Rob Jancu
PHOTOGRAPHER.....	Cheryl Hudson, Karin Kysilka
CARTOONISTS.....	Brian Cheng, Blythe Holden, Matt Kelly, Stuart Rees, Sheila Tuller, Bill Zimmerman
GENERAL MANAGER.....	David Clark
ADVERTISING MANAGER.....	David Patton
EDITOR EMERITA.....	Victoria Kuohung

Printing By The Harvard Crimson

Editorial/Letters Policy

The Harvard Law RECORD (ISSN 0017-8101) is a publication of the Harvard Law RECORD Corporation, a non-profit, independent, student-owned and run corporation of the Commonwealth of Massachusetts. Harvard Law RECORD, Harvard Law School, Cambridge, MA 02138-9984. Telephone (617) 495-4418. Fax (617) 495-8457.

The RECORD is published weekly on Fridays throughout the academic year and is distributed free of charge to Harvard Law School Students and at a minimal charge to Harvard Law School Alumni. Copy and photo deadlines are 5:00p.m. on the Monday preceding publication. Advertising deadlines are 5:00p.m. on the Tuesday preceding publication.

Submissions may be sent to The RECORD at the above noted address, dropped in the RECORD box located in Harkness Commons, or left in the 3L Hark box of Katrina Randolph. All copy must be typed, double-spaced, and submitted on paper and on a computer disk (Macintosh or IBM). The RECORD reads and appreciates every letter we receive; we reserve the right to edit letters for space as necessary. We will return your disks. Off-campus subscriptions are available. Subscription price: \$30.00 year mailed; \$35.00 year mailed outside U.S. Individual copies: 35 cents at newsstands, 50 cents at the Law School, \$1.00 mailed, \$2.50 for back issues and reprints. Second-class postage paid at Boston, MA and additional mailing offices.

© 1995 by the Harvard Law RECORD Corporation and by the contributors.

THE RECORD IS COMMITTED TO EQUALITY AND DIVERSITY. WE STRIVE TO PROVIDE A FORUM FOR THE FREE EXCHANGE OF IDEAS. AS A RESULT, THE OPINIONS REFLECTED IN ARTICLES, EDITORIALS, AND CARTOONS ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT THE OPINIONS OF THE RECORD.

"Congress shall make no law...abridging the freedom of speech, or of the press;..."

—First Amendment, US Constitution

• Letters •

Don't Let Saro-Wiwa's Execution Go for Naught

On behalf of the "Harvard Human Rights Journal," we write to express our sorrow and dismay over the execution by hanging of author and environmental activist Ken Saro-Wiwa and eight other prominent dissidents by Nigerian ruler General Sani Abacha on Friday, Nov. 10, 1995.

These tragic deaths should stand as a reminder to us that, as lawyers, we have an obligation to serve not only our clients, but also the causes of justice and the rule of law. It also should remind each of us of the growing link between environmental exploitation and human rights.

Mr. Saro-Wiwa was a thorn in the side of Royal Dutch/Shell Group and other oil companies operating in the Niger delta region, as well as a threat to the military government of General Abacha. He led the Movement for the Survival of the Ogoni people, a group which protested the environmental despoliation of the region and the failure of the government and the oil companies to devote even a portion of the vast revenues generated by oil extraction to the benefit of the region's inhabitants. He publicized the devastation wrought by oil conglomerates who continue to sink oil wells on people's property without permission, cut roads through forests and leave a trail of pollution and acid rain which have destroyed local farms and fisheries.

Mr. Saro-Wiwa also criticized the United States for its role in perpetuating the

exploitation of the Ogoni people. He described the oil that the United States government buys from Nigeria as stolen property in that those who reside in the oil-producing region receive no compensation for the resources which are drained from their land. The United States consumes half of Nigeria's oil, which comprises approximately 12 percent of the total U.S. oil imports.

Mr. Saro-Wiwa's greatest weapon was his intellect. In addition to being a vocal and respected political advocate, he was a novelist, an author of children's books and a producer of a television series that satirized Nigeria's elite.

Although Mr. Saro-Wiwa's writings and political activity were non-violent, he and eight other environmental activists were arrested and charged with the murder of four pro-governmental tribal chiefs. The military-appointed court found no evidence linking Mr. Saro-Wiwa to the crime scene but sentenced him to death because his activism allegedly contributed indirectly to a climate of violence.

During the days leading up to the execution, Royal Dutch/Shell, which produces nearly half of Nigeria's crude oil output of 2 million barrels a day, rejected international pleas to use its considerable influence with the Nigerian government to seek clemency for the condemned dissidents. In a statement that was no doubt drafted with the help of a company lawyer, Shell said on Oct. 31 — after Mr. Saro-Wiwa and his colleagues were

found guilty — that "it is not for a commercial organization like Shell to interfere in the legal processes of a sovereign state such as Nigeria."

Ten days later, Mr. Saro-Wiwa and his colleagues were put to death.

In the days since, Shell Oil, the United States government, the Commonwealth and many others have condemned Nigeria's actions. Governments have recalled their ambassadors and imposed travel restrictions, however few have contemplated reducing their consumption of Nigerian oil. It is worth asking whether pressure applied prior to the arrest of Mr. Saro-Wiwa and his colleagues might have saved them. It is worth considering whether similar pressure should be applied in Burma and other nations where multinational corporations exploit the resources of local people and ignore injustices perpetrated by repressive governments.

Violations of human rights will persist as long as governments, multinational corporations and those who serve as their lawyers agree to turn a blind eye to these abuses. Mr. Saro-Wiwa gave his life trying to make us see what the pursuit of profit did to the people of his country. We should all work to ensure that his commitments and aspirations not die along with him.

Suzanne Nossel '96

Carol Rose '96

Editors-in-Chief, Human Rights Journal
November 14, 1995

Do We Need to Crack Down on LIPP Fraud?

I had thought that the primary issue surrounding the LIPP program these days was the amount of money it should get from the coffers of the Capital Campaign. In his recent column, however, Mr. Hartmann goes beyond this mundane debate and calls into question the entire premise of the LIPP program. Taking a page from far-right attacks on "welfare queens" and the like, Mr. Hartmann implies that law students interested in a career in public interest may be living it up on the law school's dollar while here in Cambridge. I guess Mr. Hartmann stumbled upon one of the many opulent public interest parties held in secret around town: caviar and champagne brunches, dinner at the Ritz-Carlton, expensive trips to Aruba and Cancun to "study" the problems of the poor and under-privileged. Well, I suppose the game is over — but it was fun while it lasted!

Under Mr. Hartmann's new regime of "means testing," none of these shenanigans would continue. Of course, he is somewhat unclear about the standards he would use in parcelling out LIPP dollars. Apparently, the only criterion is whether someone paid you to do something while you were in law school. If you are one of those "non-whin-

ing, hard-working folks" who have worked at a part-time job, you'll get LIPP dollars. But if you worked at the Legal Aid Bureau, participated in rigorous clinical programs or demanding extra-curriculars, or even just decided to study hard and attend all your classes... well, you slacker, you're out of luck! Your "lifestyle

**No one I know
of is borrowing
vast sums of
money because
they know the
LIPP gravy train
is right around
the corner.**

choices" didn't earn you the right to get LIPP dollars. Next time, go work at a Boston firm part-time; don't waste your energy helping the under-privileged or actually studying!

The LIPP program enables those who are willing to work for public interest salaries to do so without the additional financial strain of

loan repayments. Call me crazy, but don't people only take out loans if they need them? No one I know of is borrowing vast sums of money because they know the LIPP gravy train is right around the corner. Most students who are inclined toward public interest jobs are generally still debating whether to do public interest (and make significant financial sacrifices) or to do the traditional firm job. LIPP is seen as a backup that may make the potential financial hit less significant. Even if you knew you were going into a low-paying public interest job, you'd be crazy to borrow a lot of money right now. LIPP is currently unendowed — it might not even be there next year. Besides, how much could you really borrow, anyway? LIPP won't reimburse you for the \$100,000 you borrow to start up a venture capital company while in law school.

In his inimitable fashion, Mr. Hartmann has actually managed to discover a controversy that was heretofore unheard of. Well, there's good reason no one else has ever brought it up, Mr. Hartmann — I'll leave it to you to figure out why.

Matt Bodie '96
November 14, 1995

POSTMASTER: Send address changes to Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.

ALUMNI/AE ADDRESS CHANGES: Alumni/ae who receive the RECORD as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.

Each alumnus/a receiving a RECORD subscription through the Harvard Law School Association should be on notice that \$5.00 of H.L.S.A. annual dues are used to purchase the RECORD subscription that he or she receives. Dues paid at any time during the H.L.S.A. fiscal year that began on July 1, 1994 and ends on June 30, 1995 purchase a subscription that begins in January 1995 and expires in December 1995.

Return Address:
Harvard Law School Assn.
Harvard Law School
Cambridge, MA 02138

SECOND CLASS POSTAGE PAID AT BOSTON, MA AND ADDITIONAL OFFICES.

• Letters (cont.) •

HLS Community Reponds to Miller Coverage

Students Laud Prof.'s Dedication

As students in Prof. Miller's Civil Procedure class, we take issue with last week's editorial and front page article questioning his dedication to teaching. In fact, his enthusiasm, thorough preparation and accessibility outside of class demonstrate to us that teaching is Prof. Miller's top priority. Our classroom experience is enhanced by the insights he shares from his participation in cutting-edge litigation. The fact that many HLS professors are among the foremost practitioners in the country, as well as the foremost teachers, is not a liability. It's one reason we came to HLS.

Molly Shaffer '98
Kenneth Bamberger '98
Alexander Boldizar '98
Benjamin Fackler '98
Ryan Scarborough '98
Mark Streams '98
H. Carter Hood '98
Diana Brillik '98
Lewis Jones '98

Benjamin Sokoly '98
David Walker '98
Tara Dawood '98
Branda N. Andrade '98
Charles Coble '98
Emily Ryo '98
Robert Kim '98
Rob Friedman '98
Jillian Berman '98
Mona R. Patel '98
Mona Mitran '98
Anne Croteau '98
Benjamin R. Foster '98
Stan McGee '98
David Smith '98
Darryl Anderson '98
David Schwarz '98
David Rubenstein '98
Matthew L. Stennes '98
Chryssa Deliganis '98
Akhil Sharma '98
Sharon Remmer '98
Dean Leckie '98
Elizabeth Mitchell '98
Daniel Glazer '98
David R. Hurst '98
Ross A. Nussbaum '98
Cydonii V. Fairfax '98
Chih T. Cheung '98

Deborah Greenwood '98
Michael Sandler '98
Victor Owver '98
Robyn Sorid '98
Sharon Rudich '98
Lori Solomon '98
Andrew A. Gregory '98
William Johnson '98
Paul Oostburg Sanz '98
Marc Isserles '98
Michelle Morgan '98
Calandra Almond '98
David Quigley '98
Monisha Sequeira '98
Catherine C. Mondell '98
Benjamin L. Liebman '98
Steve Mudder '98
Tarek Farouki '98
Leah Brannon '98
Peter Guy '98
Traci Ext '98
William Griffin '98
Zack Lehman '98
Rachel Sands '98
Henry Ellenbogen '98
Arron Lavizzo '98
Diara M. Holmes '98
Rob Jancu '98
November 15, 1995

Miller a Good Reason for Coming to HLS

"Miller!" someone whispered. An instant silence fell across Langdell North as Prof. Arthur Miller walked down the stairs, seating chart in one hand, coffee mug in the other.

Harvard Law School has changed with the times, but in his three-piece suits and with his classic Socratic dialogue, Prof. Miller is a pillar, a constant academic standard. Civil Procedure comes to life in his classroom. The media, however, recently has questioned Prof. Miller's dedication to teaching based on his rescheduling of class meetings.

As a member of Section

IV, I have had the benefit of Prof. Miller's great enthusiasm for teaching, and frankly, I don't understand the criticism he's recently faced. The rumor that our class has watched videos in place of lectures is absolutely mistaken. We have had the option of watching two videodiscs as a supplement to lectures. But the accusation that TV is replacing classes too easily capitalizes on a common fear that professors will be replaced by video classrooms.

One of the worst parts of the attack on Prof. Miller is that it has been attributed falsely to his students. It

would be a mistake to say that Prof. Miller's students question his motivation. Prof. Miller is more than a Harvard legend — he is an excellent teacher. His high visibility outside the classroom may make him an easy target, but that doesn't justify the attack.

People will look at the recent onslaught against Prof. Miller and say, "That's why you shouldn't go to Harvard Law School." In fact, professors like Arthur Miller are exactly why you should.

Leah Brannon '98
November 15, 1995

Miller "Video" is Cutting-Edge Education, Not Substitute for Teaching

The Nov. 10 article entitled "Students troubled by Prof. Miller's Absenteeism" by Rob Friedman, makes two grossly inaccurate statements. First, Friedman incorrectly describes a formally assigned interactive video lesson as "a two-year-old videotaped lecture." The assignment at issue was no mere videotape. To the contrary, it was a participatory multimedia presentation, representing the cutting edge in educational technology, and specially assigned by Arthur Miller to enhance the learning experience of his students.

The second, and more egregious error, portrays Prof. Miller's willingness to integrate educational technology into the classroom as motivated by a desire to be relieved from teaching obligations. Nothing could be further from the truth. Friedman's glib comments wrongly ignore the enormous effort and dedication which Prof. Miller and the Educational Technology Department expended to create the multimedia training materials. While criticism of any new approach to teaching is expected, the use of a front-page article to spread misinformation is simply wrong.

The multimedia lessons offered by Prof. Miller were produced by combining taped

lectures with a computer to produce an interactive video experience. Computer control allows students to proceed at their own pace through the lesson and to respond to questions presented by the lesson material. Appropriate interactive video feedback and text material provide the response to student answers. Background and supplemental reading material is accessible throughout the lesson.

Prof. Miller assigned the first lesson as a review in September and assigned an additional lesson in October. The multimedia lessons were taken in groups of three and four, and interaction among students was encouraged. Students completed formative evaluations and responded very positively. Approximately 90 percent of the students responded "yes" to the question, "Did you enjoy the lesson?" Written student comments also reflect an overwhelmingly positive reaction to the material with responses to the question "What was the Most Valuable Part of the Lesson?" A sampling from the student evaluations to this question:

"Taking your time with substantive issues and clauses, ability to rewind, ability to discuss with classmates."

"Interacting with peers

in a smaller setting than class."

"Questions were good because they forced us to think about the issues and test our knowledge. Also, using the group allowed group members to explain concepts to another member who did not understand."

"We should do this more often."

These comments as well as a recently-published, highly complimentary review in the ALA Newsletter's Hi-Tech section demonstrate that, far from being cheated, the students were presented with an opportunity to supplement traditional book and lecture learning. In short, the multimedia lessons offered by Prof. Miller to his students can no more be characterized as a "videotaped lecture" than a computer can be called a slide ruler. Friedman's inaccuracies concerning the nature and purpose of the interactive video lessons can perhaps be excused. What is far more disturbing is the editor's willingness to use such misstatements as evidence to malign one of Harvard Law School's finest and most dedicated professors.

Scott Glanzman
HLS Educational
Technology Department
November 14, 1995

Outside Experience Makes a Better Prof.

Like most students, we recognize that the rescheduling of classes can be a trying experience. We write, however, to address what we view as an unfair characterization of Prof. Miller's commitment to teaching.

Ms. Kuohung (see RECORD, Nov. 10, 1995) implies that Prof. Miller neglects his first-year civil procedure class in favor of his own outside professional commitment — particularly media events. This characterization distorts Prof. Miller's commitment to both scholarship and teaching.

Prof. Miller not only has authored comprehensive and authoritative scholarship, including his treatise on Federal Practice and Procedure — a standard in the profession — but he also played a role in shaping the Federal Rules themselves. (His significant contribution to the corpus of study aid material goes without saying.) Such scholarship is indispensable to a thoughtful presentation of the subject.

Prof. Miller is also an active practitioner. He plays a central role in some of the most significant and procedurally

complex cases in the law today. He regularly advocates before the United States Courts of Appeals and has argued before the United States Supreme Court. He brings this wealth of knowledge and experience directly to bear in the classroom. Prof. Miller's expertise in legal practice unquestionably enhances his effectiveness as a teacher.

Far from reflecting misplaced priorities, Prof. Miller's professional and scholarly work enables him to create an unsurpassed learning environment for civil procedure. Only through rigorous scholarship and a continuing engagement in the practice of law can Prof. Miller make the complex and intricate operations of our civil justice system both engaging and comprehensible to his first-year classes.

No one disputes that Prof. Miller is a gifted teacher. The irony is that he is now being criticized for pursuing the very activities that allow him to maintain such a mastery of the materials he has been teaching at this law school for nearly 25 years. The worst slight is the implication that Prof. Miller somehow neglects his class-

room duties.

Prof. Miller not only devotes considerable time to classroom preparation, he jealously guards this time against intrusion from outside commitments. Effortless as it may seem to his students, Prof. Miller's renowned classroom performance is the reflection of a very real commitment to thinking about and practicing law school pedagogy.

While rescheduling may pose an inconvenience to students, and while we recognize that there is an appropriate balance among scholarship, practice and teaching, the RECORD's criticism of Prof. Miller on this score reveals its own misplaced priorities. This critique betrays a hostility towards the professional dimension of our common endeavor and ill serves the students at this institution. If it is to be the editorial policy of the RECORD to question the professional and academic priorities of faculty members, we humbly suggest that it research its positions more intensively.

Fred A. Rowley '97
Troy E. Thompson '97
November 14, 1995

Increase Faculty Diversity at HLS with Conservative, Libertarian Profs.

As we read the article in the Sept. 29 issue of the RECORD entitled "Faculty Meeting to Offer Glimpse of Future HLS," we were disappointed that Hope Yen did not address one of the most serious items still requiring Dean Clark's attention: intellectual diversity at Harvard Law School.

Yen, like many others, concerns herself primarily with Harvard Law School's attempts to achieve more racial and ethnic diversity. Of equal importance, however, is

that Harvard Law School assures its students a well-rounded cross-section of the legal and political philosophical spectrum: a diversity of viewpoints. It is self-evident that we cannot truly receive a broad legal education unless we have been exposed to voices from every philosophical strain.

With Prof. Charles Fried's appointment to the Massachusetts Supreme Judicial Court, HLS is losing one of its only full-time avowedly conservative or lib-

ertarian professors. While HLS is well-represented in virtually all branches of left-of-center scholarship, a student to the right of center is quite blatantly left staring at a large void in his or her part of the world. To illustrate a related point, I would be most curious to examine the results of a political survey: I wager that under 10 percent of Harvard's faculty has voted for a Republican for national office in the past 15 years. Quite simply, Harvard Law School's faculty is well to the

left of the mainstream, even within normally liberal academia.

It cannot be argued that prominent conservative or libertarian faculty members are scarce and therefore unobtainable. Dozens of them come to Federalist Society symposia annually, and predictably, none represent Harvard Law School. If such extraordinary effort could be made to attract Lani Guinier to the Law School (as well it should have been), why not Epstein, or McDonald, or

BeVier, or Lawson, or Graglia, or Ellickson or any of the other avowedly conservative and libertarian faculty so plentiful at schools like Chicago, Yale, Virginia, and Northwestern? The faculty and the administration have shirked their responsibility to ensure an intellectually diverse and therefore vibrant community at Harvard Law School. In order that Harvard Law students may be exposed to viewpoints ranging from the left to the right, we strongly urge Dean

Clark and the faculty to give special consideration to those legal scholars who would help to broaden the range of debate in and out of the classroom. Conservatives and libertarians have been underrepresented on the Harvard Law School faculty for too long.

Jennifer Bonar '96,
President, HLS Republicans
Judd Serotta '97,
Vice-President,
Federalist Society
Charles Hokanson '98
October 10, 1995

Bored in class? Want to share
your views with the Law School
and the rest of the world?
Write to the RECORD!



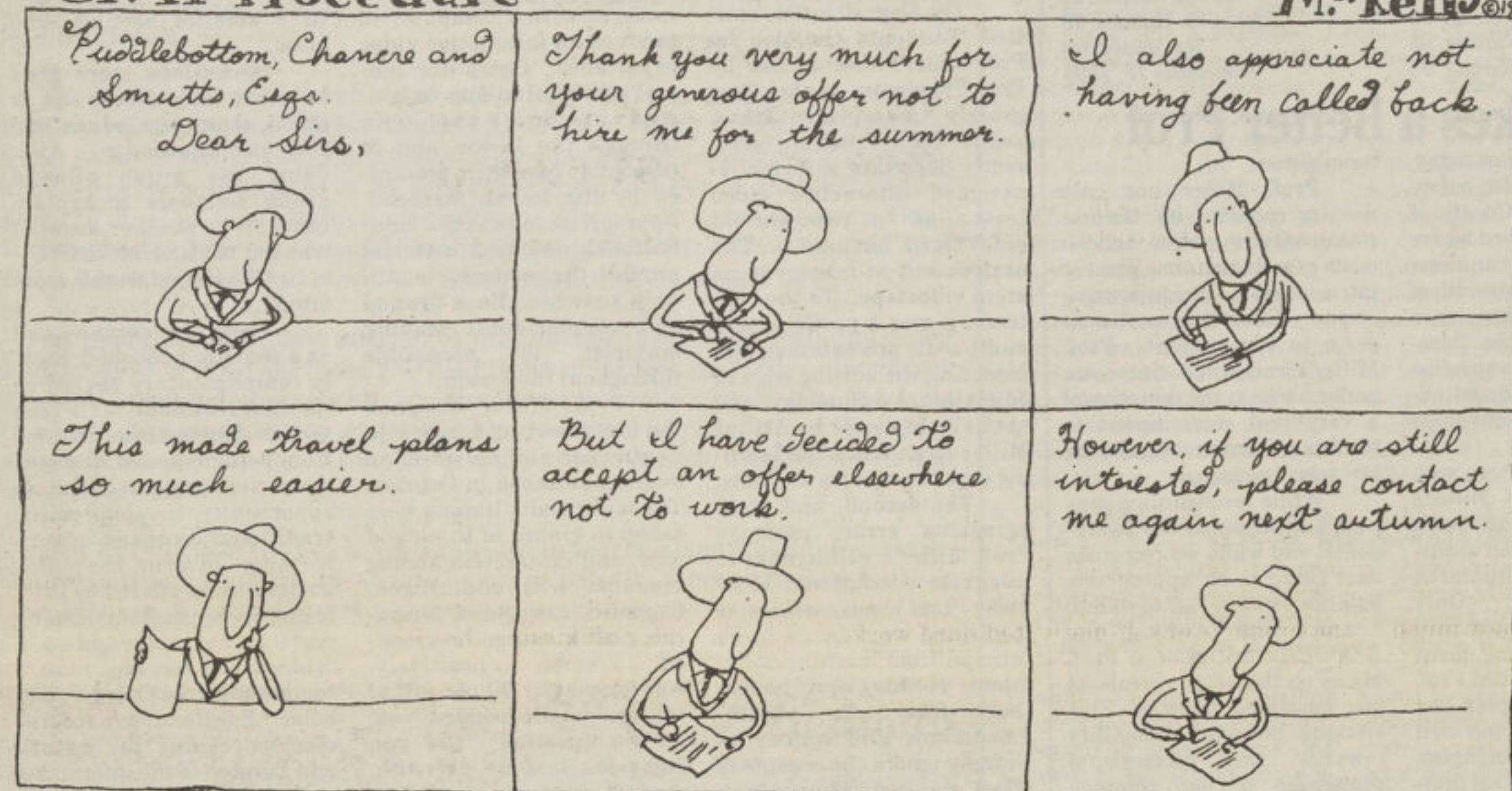
Temporary Insanity

By Sheila Tuller



Civil Procedure

M. Kelly



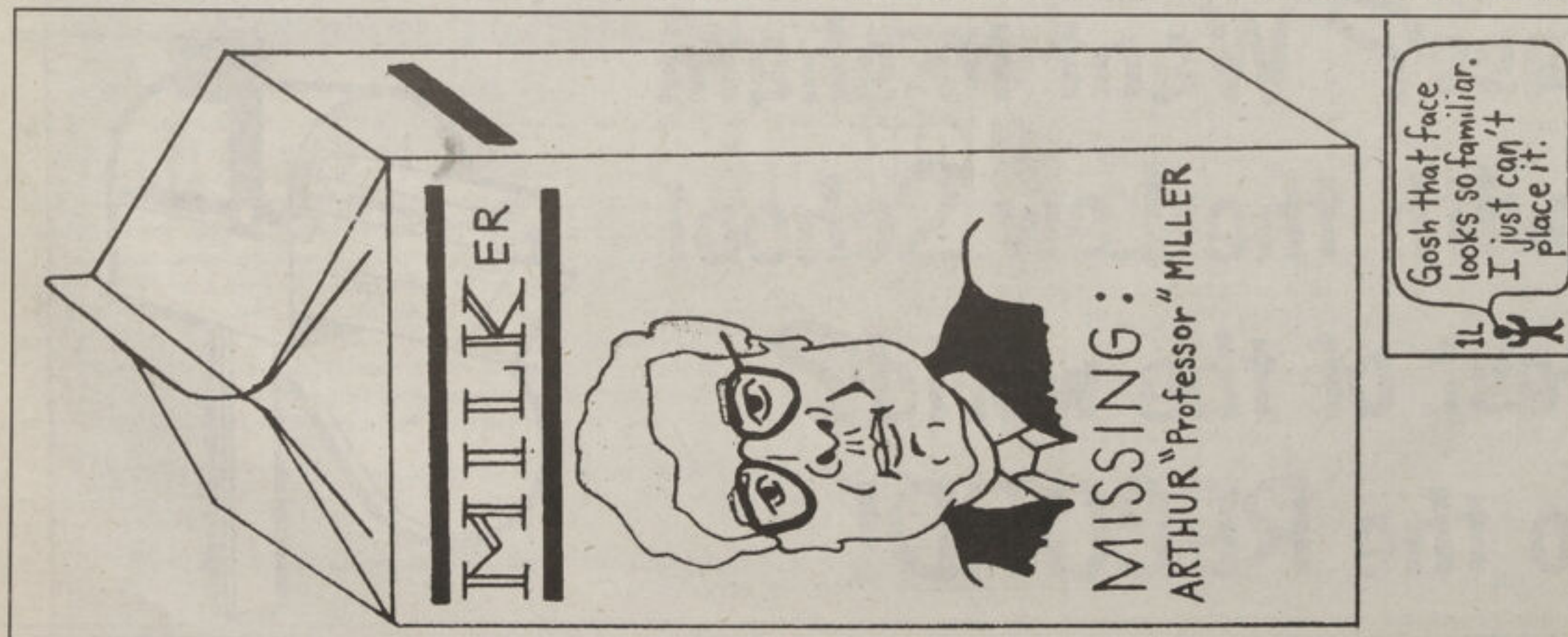
Backbench

By Brian Cheng



Ad Hominem

By Blythe Holden, Stuart Rees, and Bill Zimmerman



CALENDAR

By Colin Meeder

First, an apology: I have been informed by two of my more faithful readers that **Traci Lords** was a no-show at Axis on Monday. I don't know for sure why she wasn't there, but I've heard rumors of flashing lights and techno beats emanating from Gannett House that same evening. I've also heard of scores of confused older men in raincoats covering their ears from the Industrial sound barrage at Axis while asking innocent blonde concertgoers "Are you her? Wow!"

Better, then, that you should stick to veteran musicians that have never (to my knowledge, anyway) appeared in any pornographic films. Two fine examples, both pianists, are in town tonight (11/16): **Dr. John** at the House of Blues (491-BLUE) and **McCoy Tyner** at Regattabar (937-4020). Dr. John's career has included psychedelic funk hits, inspiring barrelhouse piano, and Fritos commercials; Tyner's fanciful and romantic jazz is anchored by a band that includes bassist Avery Sharpe, who used to be an insurance attorney. (There's hope for me yet, by god.)

Another example of a good mid-life career switch comes to the Middle East (497-0576) tonight for a two-night stand. **Yo La Tengo**, my nominee for best rock 'n roll band working today, was formed when music critic Ira Kaplan decided it was time to stop complaining about bad bands and start a good one. (There's hope for me yet, by god.) **Pastels** open both nights, with **Pie** on Thursday and **Syrup U.S.A.** (who, when I saw them about a month ago, were almost too high to stand, let alone play) on Friday.

His recent experiences in the seamy underbelly of the American legal system can only have lent **Christopher Darden**'s music new force. He'll bring his challenging, controversial sounds, equal parts Stravinsky, Captain Beefheart, and Pharcyde, to the Sanders Theatre on Friday (11/17). Let's hope he brings his 17-piece band and that they perform his — what? He's just talking about the O.J. trial? Hell, that ain't worth 25 bucks. Forget it.

Signs that a band's career as creative artists are over, No. 27: their fall tour is advertised with the words "Greatest Hits!" Such is the sad state of **Squeeze**, who appear at the Avalon (262-2424) with **Francis Dunnery** on Saturday (11/18). The same night, there's **Combustible Edison**, who appear to have blown all their creative energy on designing their neo-retro look and signature cocktail. They're at the Middle East with **Glyn Styler**.

Early fame, quick obscurity, heroin addiction, redemption, comeback: it's a career path taken by numberless pop stars. But how many of them are this adept with an eyebrow pencil? **Boy George** will share all he knows about the crying game on Sunday (11/19) at the Avalon. **Eve Gallagher** opens.

Ever feel like screaming and hollering like a redneck with a candy-apple primer Monte Carlo and a belly full of Red, White, and Blue? Sure, we all do! Few of us, however, are capable of channeling these feelings in positive ways, let alone making such a cool lo-fi psychobilly noise as that of Athens, Georgia's **Flat Duo Jets**. Let them, and the **Red Aunts**, make your life worthwhile at T. T. the Bear's (492-BEAR) on Wednesday (11/22).

Upcoming: **Bob Dylan & Patti Smith**, the **Pointer Sisters**, **AC/DC** (that's not 'til March, but you better get tickets NOW). In the immortal words of H.R. Pufnstuf, "keep those cards and letters coming!"

Don Corle-Outline

By Markus Hartmann '96

Record Columnist

LAST year, during Prof. Kraakman's Corporations class, I was given access to the underworld that exists here at HLS. Around mid-September, I noticed that Professor Kraakman had two minor flaws. First, because he is obviously brilliant, he assumes that his audience is also. Second, in his class, you get the feeling that you should have dabbled in investment banking before you started law school.

His minor flaws were my major concern. This concern must have manifested itself to a classmate who was sitting next to me in Corporations. As I furiously flipped through the text of Clark's hornbook to find the ultra vires problem, she patted my arm and soothed my anxiety with the following words, "Don't worry Markus, I'll get you a copy of the Law Review outline."

I was in. It was going to be a little degrading to have to kiss my classmate's HLS ring, but it was well worth it. She told me never to divulge the secret and then kissed me on the lips. Now that I have gone public, if I suddenly have an "accident," please don't let the National Park Service do the investigation.

The outline was a masterpiece. It followed the lecture with an eerie accuracy. This particular outline was two years old but it was still more than helpful. Rumor had it that the upgraded Law Review outline not only followed the lecture, but also had footnotes that summarized Kraakman's thoughts about student comments.

Last week, I read the HLS Advisor blurb asking for outline donations from second- and third-year students. It was an amusing request. Didn't they know about the outline syndicate? I doubt that the copy center will be flooded with current "hot" outlines. It goes against every competitive fiber of the average HLS student to "donate" such a valuable commodity to the masses. Here in this Hobbesian world, the curriculum does not encourage such philanthropy. What it does encourage is a balkanization that rarely allows for cooperative efforts. Perhaps the current 1Ls can change the system. Perhaps not.

One of the main reasons that there is not much



cause for optimism is our lovely grading curve. The basic calculation for those folks who are on the cutting edge of competitive is still "your loss is my gain." This may not be the Harvard Law School of old, but it is not exactly a warm and fuzzy place yet either. There are only so many A's and A-'s out there. Most of the people who arrive at these doors did not get here by acting like academic Mother Teresas.

The individuals who walk these hollowed halls are aware that this is not Romper Room. We do not all share. For example, "The National Jurist" just published an article entitled, "Best Law School for Women." How did old HLS fare? Out of 168 law schools surveyed, Harvard Law School was ranked 167th. (Does this mean that HLS is the second best law school for men?) HLS women could go anywhere.

Moreover, as Justice Ginsburg teaches us, they could also transfer anywhere. But they don't. They stick it out here and go on to be attorney general, partners at firms, and leaders in a variety of endeavors. To expect these women to just donate their outlines to some namby-pamby collective is sheer folly. The men are no different.

A second cause for pessimism is the structure of the curriculum. There is no premium placed on class participation. For the most part, we are all left to our individual endeavors. One of the HLS high achievers in my 1L section is currently on Law Review. He has mastered the art of the HLS final and has been courted by the best firms. I found out that he was in my section while talking to him at a party in April of my 1L year. Obviously the brilliant musings of his professors and classmates were of little significance to him. He realized early on that class participation doesn't amount to a hill-o'-beans in this cruel world. Don't expect him, or others like him, to just hand over the products of self-motivated hard work.

Additionally, we are a balkanized little group of approximately 1,550. There are Law Review outlines, BLSA outlines and WLJ outlines, just to name a few. It seems that the art of getting a good outline is the art of being in a discreet and insular HLS minority. If you are not in one of the groups, it certainly helps to know someone who is. Last week's Advisor had messages from approximately 20 student organizations; if an outline drive were to succeed, it would have to target the student organizations and convince them that the donations would be in their best interest. Don't hold your breath.

There is still adequate time for the 1Ls to engage in cooperative outlining for their upcoming finals. The unfortunate drawback to such an effort is the tendency of some folks to have little faith in their classmates. Is this pessimism justified?

Last year, in a second semester Employment Law class, I was approached by a 3L who coordinated a class outline. Of the 25 participants, 23 sections were of "this-is-all-I-need-to-study" quality. Of course this was a class that was disproportionately made up of 3Ls with a smattering of 2Ls. The clerkships and job offers were all settled and the competitive edge was dulled. It may be too much to ask of the 1L class, but there is some hope for cooperative efforts in the later years.

When it comes right down to it, the outline donation drive is a bad idea. The search for a good outline encourages people to learn networking skills and a type of outline capitalism. In the later years it can even encourage a sense of community and cooperative efforts.

Since there has been no mention of quality control, the Copy Center might just be copying bad outlines and wasting precious HLS discretionary dollars. Attempting to get into the outlining racket would be moving in on the local dons. If you had to choose between the local outline authorities and the outline godfathers to protect your academic life, you are better off kissing the ring.

Now that I have gone public, if I suddenly have an "accident," please don't let the National Park Service do the investigation.



[The Search for Arthur Miller Concludes. When we last left Fenno, P.I., he was pondering the identities of the "Research Assistants" who answered "Fast Arty" Miller's phone, but sounded more like thugs than 2L's.]

The phone rang.

"Fenno, P.I. here."

"Have you found Arthur Miller yet?" It was the mysterious ball o' fluff who had hired Fenno.

"Not yet, but I'm getting close. Who are you, anyway?"

"Who I am is not important. I represent a consortium of people, all of whom are very interested in locating Mr. Miller."

"You're a 1L, trying to get Prof. Miller back before tests begin, aren't you?" Fenno guessed.

"Damn. You are good. When will you know where he is? We're running out of two-year old videos to watch."

"Don't you mean 'participatory multimedia presentations'?"

"Whatever."

"I'll get back to you tonight. I've got a few leads to work on." Fenno hung up the phone.

Fenno, on a hunch, dialed Prof. Miller's phone number once again.

"You have reached the offices of Professor Arthur Miller. Rumors of my death are slightly exaggerated. Press One to hear last week's excuse for missing class. Press Two to hear this week's excuse for missing class. Press Three to have your name added to a list for extra cred—um... I mean to an angry letter to the RECORD in my defense. Press Four to hear a list of two-year-old videos you should watch to learn Civil Procedure for my exam."

Fenno hung up frustrated, and decided to go to Miller's office in search of clues. When he got there, no one answered his knock, so he jimmied the door (another great skill he'd picked up at HLS) and went inside.

The office was cluttered, but neat. The desk was bare except for some makeup evidently left over from "Fast Arty's" last television interview. Fenno sat down behind the desk and was about to rifle through the drawers when his knee jammed into something plump and squishy.

"Ow!" a voice from under the desk screeched.

Fenno pulled back and peered between his knees. It was Arthur Miller.

"Professor Miller! What are you doing here?"

"Shhhh. I'm hiding from the West Bar Review goons. They've threatened to 'exercise personal jurisdiction' on me if they find me."

Fenno was amazed. "What happened?"

The greying professor drew a breath. "When I signed on with West, I didn't know what I was getting into. They're actually running a numbers racket on the West 800 telephone number. When I tried to renegotiate with Bar/Bri and go back, the West mob found out and put a price on my head."

"What are you going to do now?" Fenno asked.

"The FBI is going to put me in their Witness Protection Program. I'm going to teach torts at some unknown school out west."

"Wow. Leaving HLS?" Fenno gasped. "Where will you go?"

"I understand Brigham Young is the worst law school in the nation for women. Maybe that means it's the best school in the nation for men. I'll try there."

Fenno left the professor cowering under his desk, waiting for the F.B.I. Another case closed by Fenno, P.I.

**Does your creative
side yearn to breathe
free? Express your
creativity by doing
layout at the RECORD!
Call David at 5-4418 for details.**

The Deferral of Life

By Calvin Gladney '97

Guest Columnist



It all started with your mother.

"Honey, why don't you save your allowance until next week so you can combine your money and buy that shirt that you want?"

Her words froze you like a deer staring into the headlights of an oncoming car. She caught you just as you walked out the door; a movie schedule was in your pocket and Ms. Pac Man was on your mind.

"Here she goes again," you thought, "telling me to give up something now so I can get something better in the future. But doesn't she understand?" She refused to let your mind succumb to its natural inclination: In any endeavor, you wanted to do it, enjoy it, use it, take it, milk it or have it NOW. "Later" usually wasn't a part of your modus operandi.

But this time she had you thinking. And the next thing you knew, you were sitting on the couch watching HBO and plugging in your Nintendo. You were going to defer doing what you wanted to do in order to get a certain long-term result. It would be the beginning of your deferral of life.

You were at the top of your class in high school. Going to college would be a challenge to your supremacy. You knew that you wanted to go to a top law school and decided that you would need to be supreme again to achieve that goal. So you decided to channel all your energies toward academic success. Although you went

Are you living life upon the back of that legal bandwagon hurtling towards a fate worse than death; that is, a life without a life?

to parties, you stopped going to the gym like you used to in the past. You only read for classes and not for pleasure. Your extracurricular activities were limited to organizations and positions which would look good on your resume. Your time for fun was limited. Ultimately, your undergraduate life was dictated by your graduate goals. "It will all pay off in the end," you surmised, "and then I will get to enjoy myself."

Right after your senior year, you began your first year at Harvard Law School. Celebration was in order, but it was also short-lived. You believed you would have to kill yourself in order to do well in your first year. And you were willing to give up everything for a year because first-year grades were all-important. As a result, academics overshadowed everything in your life. For kicks you subcited, and for health you popped a Theragram every once-in-a-while. "Second year I can relax," you concluded. "In my second year I will finally have a life."

First year came and first year went. You did well and landed a cushy summer associate position at one of the finer sweatshops in New York City. Oh and sado-masochistically you decided to compete in the Law Review competition. Two more weeks of grinding stress with low odds of success. But you didn't worry — it was summertime and you heard your firm's summer program was all bells and whistles anyway. Too bad the bells and whistles were intermingled with the hum of Westlaw on your office computer at 1 a.m. Sometimes this symphony was supplemented by one of your bitter yawns during another summer all-nighter at the printer. But again, you were comforted by the fact that your second year would be better and then you would have a life.

Second year turned out to be just as stressful. Same level of stress as the first year but different pressures. Your focus in the second year was on getting a j-o-b. You were more likely to be spotted reading a law firm resume in the waiting room in the Charles than reading an assigned case in the reading room in Langdell. You were also one of the article editors on a journal and that job began to be your idea of fun. When you got back from callback week you kicked it into overdrive in order to catch up. A couple of clinicals and hard upper-level classes combined to keep you working hard until you graduated. "A little hard work never hurt anyone," you chanted, "as you packed your bags and headed off to the firm."

You convinced yourself that you were willing to give up the next three to five years of your life in order to rise and succeed in the firm. Hopefully, the 80-hour weeks would be balanced by the \$80,000 paychecks. Years and friends passed you by. As a mid-level associate you gained more responsibility and suddenly you realized that the long hours weren't lessening and your stress wasn't subsiding. But keeping to form you put your life on hold a little longer; when you made partner then you will have a life.

But as a junior partner you realized that you had to work even harder because you were still doing substantive legal work yet at the same time trying to prove your worth to the partnership. Drumming up business took you away from the firm but also away from your family and friends.

"Don't worry," you told your significant other, "the tide will turn and soon I will have a life!" Maybe it took a heart attack or mid-life crisis to bring you to your senses. Somehow you realized that you had been so busy looking ahead at the entire forest that you never got a chance to enjoy the trees. But it's too late now; your deferrals had cost you your life.

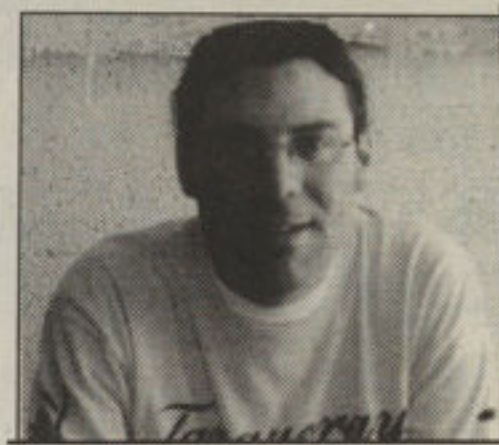
Will this be your story? Will you spend your life so focused on future rewards that you never get to enjoy present gains? Are you living life on the back of that legal bandwagon hurtling towards a fate worse than death; that is, a life without a life?

If you are don't defer any longer. Drop that Theragram and head over to the gym. Sit down and read the newspaper, not so you can seem well-read, but because you like to read. Better yet, read a book about origami or one filled with poetry. Where will you get the time? You will make the time. Come on now, you know you never really liked to subcite anyway. And editing isn't all fun and games either. The point is for you to do things now that have nothing to do with the law, nothing to do with your resume and have everything to do with you. Fit a little bit of fun for yourself into everyday. For if everything you do in life is only a means to an end your time here will one day end without meaning. And by then it will be too late to go back and tell your mother "No, on second thought, I am going to the movies."

Eagles' Rights

By Matthew Huggins '96

Guest Columnist



WHEN I was a kid, I remember watching a skit on Saturday Night Live in which the late great Gilda Radner was playing her famous character of Emily Lutella. She often appeared as the guest rebutter on the Weekend Update, complaining about something she had misheard the previous week. "I don't understand all this fuss about eagles' rights, I mean, they're..."

"Uh, Emily, I believe we were talking about equal rights."

"Oh. Never mind."

I wanted to name this column "Animal Rights — Give Me a Break," but I wanted to invoke the image of Emily Lutella trying to articulate what was so absurd about animal rights before I got started.

So. Animal Rights. Maybe I just hadn't been paying attention before, or maybe there has been a slew of animal rights issues in the news lately. A Rutgers University law professor runs an animal rights legal clinic which, among other things, saved a dog that had viciously attacked a 10-year old child, and which is trying to prevent hunters from thinning out overpopulated herds of deer. There was a forum this week at HLS about how animal factories are cruel. A group is opposed to farmers using horse-drawn carts to bring their produce to a local market, because this use of horses is supposedly cruel. There are signs up in the tunnels about why we shouldn't buy pure-bred cats and dogs, because breeding animals is cruel. We shouldn't use animals to test pharmaceuticals. And of course, I'd rather go naked than wear fur. Give me a break. I don't even know where to start.

How about I start oh, say, about 10,000 years ago, when we humans (well, I should be specific. It was dead, white European males) first domesticated animals. Or maybe I should start further back, say 200,000 years ago when we were hunting mammoths for food and clothing. We're humans! We kill animals! Get used to it! Now, I guess humans kill each other, too, and we probably shouldn't tolerate that. But animals are not humans, and that's the whole point.

A lot of animal rights advocates seem to skip over this point rather blithely. Animals are not humans, humans are humans. We get to use animals because we're smarter than they are. Does this mean that we should kill and torture animals at our whim? Certainly not, no more than we should pave over fields or light black sooty fires just for kicks. But the reasons for taking care of our environment, including the animals that live there, is not based on the fact that there are rights involved.

Consider the claim of cruelty to animals. Hunting deer is cruel. Letting them starve to death from overpopulation is, I suppose, not cruel, because it is a natural process. Letting them get chewed to death by wolves is not cruel. But one clean shot to the head is cruel. Environmentally speaking, it probably would be better to re-stock wolf and fox populations, and let them keep the deer populations in check. Of course, there would be that issue of wolves occasionally attacking our children, but I'm sure we could find a way to deal with that. My point is that every option is cruel.

We use animals to make our lives better. Consider the use of animals in pharmaceutical testing. Although this is an empirical issue, animal testing of drugs is cheaper than other ways. If it weren't cheaper, drug companies would use other methods. Without cheap animal testing, the price of drugs would go up, and there would be even more poor people at the margin who could not afford essential medicines. At the margin, poor people in this country, not to mention in the third world, will die from lack of access to medication. That sounds cruel. Attaching electrodes to a cat's brain may be cruel, too. So whose suffering is more important, the laboratory cat's, or the poor child's? I would say that you should decide, but we as a society already decided, millennia ago.

I want to distinguish animal rights from the environmental issue. I have no problem at all with mink coats made from mink raised on farms. I am, on the other hand, opposed to fur coats made from animals trapped in the wild, especially rare species for reasons that to me are obvious. There is no poor person shivering in the cold because

We're humans! We kill animals! Get used to it! Now, I guess humans kill each other, too, and we probably shouldn't tolerate that. But animals are not humans, and that's the whole point.

rare baby Arctic seals can't be killed for their fur. There would also be no poor person shivering if there were no mink coats. The difference comes in the cost to the environment. If you do the cost-benefit analysis for the seal coat (keeping in mind that markets, in my opinion, tend to undervalue natural resources), it doesn't make sense to expend precious natural resources like wild, perhaps endangered species, to make luxury goods. The environmental cost for the mink coat is much lower, so the benefits balance out the costs. I also want to distinguish objections to what one might call wanton cruelty to animals: the case of the man who buried his dog alive up to its neck, for example. We're all sickened by such acts, and rightly so, because there is no reason for them. You do the cost-benefit analysis, and there's no benefit which we as a society recognize.

I suppose what animal rights supporters are advocating is a change in what society will recognize as an acceptable benefit in making the cost-benefit analysis. Bear-baiting and cockfighting were perhaps at one time socially acceptable, and now are generally not. The argument about what society considers acceptable with regard to animals comes down to one of how to use scarce resources to create the most good. If one thinks people shouldn't eat meat because the resources which go into producing beef for one person could go to produce enough grains and vegetables to feed 10, that's an argument I would like to hear. If horse-drawn cabs in cities should be banned because the horse manure left behind is an unsanitary health risk, we can talk. But if the only reason animal rights activists give to ban mink coats or mass chicken farms or animal testing for pharmaceuticals or having pure-bred pets is that these practices are "cruel" without reference to societal benefits, then these activists really do begin to sound like poor old Gilda: "What's all this fuss I hear about eagles' rights?" Oh, never mind.

P.S.: I would write more, but I have to go feed the cat.

Fried, Sullivan Discuss 1994-95 Supreme Court

continued from COURT, page 1

Justices Antonin Scalia and Clarence Thomas exemplify the willing justices, he said.

"There's something about the tone of voice of Scalia and Thomas that seeks to have the last word, that says, 'Now that that's decided, we really don't need any more cases.'"

As for the other justices, said Fried, "Most of them understand that theirs is a part of a continuing enterprise and they are constrained by what happened before."

But, said Sullivan, "If we got both sets of justices in the room, they'd both say they are say they are adhering to precedent, but they have differing views on what is relevant from that past."

Justices have a "sense of continuity," said Fried. "But continuity means with the institution of which [they] are a part."

"Thomas has emerged as the 'super-originalist,' who sees a colorblindness principle but 'doesn't look at the Freedman's Bureau,'" Sullivan said.

One student asked the panelists about the impact they thought Justice Stephen Breyer would have on the court and the law.

Calling Breyer a pragmatist, Fried said, "He will move the law to those places where he thinks it will be useful."

"His biggest contribution is likely to be not in constitutional law but in administrative law, where he is a master," said Sullivan of Breyer.

Fried said the more senior justices enjoy having new colleagues. Before the appointments of justices Thomas, David Souter, Ruth Bader Ginsburg and Breyer, the others had to endure a long period of stagnation with few appointments.

"I think they were getting tired of one another. They could finish each other's sentences," said Fried.

Fried is writing the foreword for the upcoming Supreme Court issue of the Harvard Law Review. Sullivan is writing a case comment on *U.S. Term Limits v. Thornton*, in which the court ruled that states may not set term limits for their representatives in Congress.

Alumnus Fights for Death Row Clients

continued from STEVENSON, page 3

he said.

According to Stevenson, capital punishment does not deter murder. Death penalty states have had record levels of violent crime in last decade. "The taking of a human life becomes morally justifiable," he added.

He said that when 13- and 14-year-olds do not expect to live past 18, they aren't deterred from committing murder. They already expect to be killed. "The absence of hope causes them to not value life, liberty, and property," he continued.

"I believe in being tough on crime," he said. "We have done very little to respond to those most at risk of violent crime." He added that crime policies should be aimed at increasing the safety

for people living in high crime neighborhoods, not at quelling the fears of suburbanites.

He laments the reinstatement of capital punishment in New York. "New Yorkers will come to regret it very soon," he said.

"They will spend a lot of time and money on capital cases and they will recognize that it will have no appreciable impact on the justice system."

"Ultimately, things will get better," Stevenson said. "At some point we will look back and wonder why we spent so much time and money trying to kill people

for the crimes they committed. America must renew its commitment to equal justice and invest resources in making that idea a reality. Until we do that, we cannot claim to be a world leader in human rights."



Bryan Stevenson '85

Please Do Not Feed the Trees



RECORD Photo/ Karin Kyslika

Don't feed the trees? Well, actually, just don't bulldoze them. Before digging began near Langdell in preparation for creating a new vault for generators and other electrical equipment, construction workers erected fences around trees and benches in order to protect them from backhoes and other vehicles used in the project.

Assassination and Discourse in Israel

By Rob Jancu '98

Guest Columnist



At the funeral of slain Israeli Prime Minister Yitzhak Rabin, the widow Leah Rabin rebuffed attempts by Parliamentary Opposition Leader Benjamin Netanyahu to offer his condolences. She later explained that the recourse by some elements of the Israeli political Right to extremist rhetoric and imagery—particularly that which likened Rabin to Arafat or to Hitler—created atmospheres conducive to violence and political assassination. Ergo, Israel's Right, led by Netanyahu, is collectively guilty.

In the Nov. 10 issue of the RECORD, Middle East Law Students Association President Bruce Goldberger '96 agrees, arguing that "words as well as swords can kill. When people in positions of responsibility preach hate, sooner or later someone will step forward and act in hate." The lead article, "Harvard Mourns Rabin," quotes Prof. Reuven Avi-Yonah '89, firing a similar broadside at the Right's leadership for "encouraging" this sort of attitude; "one wishes [right-wing groups] had thought about their words before." In the same article, Michael Leib '96 assigns responsibility to the Right's "rhetoric" of "shock." Aeyal Gross, S.J.D. '96, corroborates this more subtly in his eulogy of Rabin in the same RECORD issue: in his recent tenure as Prime Minister, Rabin "led Israel through the best times in its history.... Suddenly he was speaking 'our' language.... He adopted all the left discourse." The upshot: Leftist discourse in Israel redounds to the good of the country; Rightist discourse is hate-mongering and literally lethal.

The enlistment, by Leah Rabin, Messrs. Goldberger, Avi-Yonah, Leib, and Gross, and other Israelis on the Left, of Rabin's assassination to demonize the Right for a supposed monopoly on vitriol and hence discursive culpability in the assassination, is itself part of the long and execrable tradition of delegitimizing rhetoric wielded by both Left and Right in Israel. The Left's campaign to delegitimize (and even wholly eliminate) the Israeli Right stems at least from the underground movement against the British in the Land of Israel in World War II, when the mainstream Left's military wing, the Haganah, provided the British the names and secret locations of certain leaders of the Right, despite their common goal of liberating the land from the British. Those Rightist leaders were consequently captured or executed on sight by the British. For nearly two decades after the establishment of the State of Israel, Prime Minister Ben-Gurion could not bring himself even to pronounce the name of Parliamentary Opposition Leader Menachem Begin, so profound was Ben-Gurion's contempt for the non-socialist vision of Israel represented by the Right. His references to Begin as "that fascist," however, were unsparing.

Charges of the Israeli Right's putative Nazi character are leveled by the Israeli Left at every level of political discourse in Israel. Yeshayahu Leibowicz, an eminent professor of philosophy at the Hebrew University of Jerusalem, enjoyed guru status in Leftist circles from the late 1960s until his recent passing, for asserting that Israel's Right was populated by "Judeo-Nazis." On Israel's most popular political talk show, "Poplitika," Leftist regular Amnon Dankner consistently derides Rightist regular Tommy Lapid as a fascist for expressing the moderately right-of-center views to which half the Israeli electorate subscribes. Members of Rabin's government routinely indulge in such modifiers to tar the opposition, ignoring the irony that it was Yitzhak Rabin, in the 1948 war, who at gunpoint ethnically cleansed two of Israel's largest Arab cities, Lod and Ramle, at the behest of Ben-Gurion. Government coalition member Shulamit Aloni persists in terming the Right "Khomeinist" despite the criticism that such inflammatory calumny "matir dam," that is, authorizes the spilling of blood. Leftist acquaintances of mine in Israel, including professors, labeled me an "animal," a "butcher," and a "fascist" on occasions when I disclosed that I voted for a mainstream Right party.

Aeyal Gross recalls demonstrating at Tel Aviv University in the late 1980s against Rabin, the architect, qua Minister of Defense, of the unconscionable "break their bones" policy implemented against Palestinians in the early months of the intifadah, before the Right's Moshe Arens replaced him and scrapped the policy. I recall another demonstration at Tel Aviv University at which I was a security guard, upon the visit of P.L.O. associate Faisal al-Husseini before the days of Oslo. Rightist students chanted condemnations of Mr. Hussein's membership in an organization then still bent on liquidating Israel; Leftist students responded to them with chants of "fascists go home!"

Certainly, the Israeli Right is similarly guilty of such hyperbolic slanders. And neither is Israel's Left unique in politically-motivated killing; Rabin's assassination is only the latest in the dismal annals. However, insofar as "words ... can kill," as Mr. Goldberger asserts, both sides have cause to repent. As the Israeli Left relapses into its wonted righteous posturing, pinning Rabin's assassination on a monolithically imagined Right, it might pause to consider the legacy of Rabin's own delegitimizing of his political opposition.

In recent months, Rabin unleashed water cannons and mounted riot police against Rightist demonstrators who bemoan not the prospect of peace, but rather the haste and extent of Israeli concessions. On Israeli TV, Rabin justified his George Wallace-like tactics by denouncing demonstrators as enemies of democracy for having the gall to take exception to the policies of a duly elected government! Rabin's comprehension of democracy appeared equally flawed as he recently addressed a politically disaffected audience of American immigrants to Israel in Netanya; he informed them that they have no right to political opinions since they do not serve in the army. Never mind that American immigrants to Israel do, indeed, serve in the army; Rabin's attempts to silence an alternative political vision, so reminiscent of his mentors on the Left, had begun to drive the opposition to despair.

Yisrael Harel, the head of the Yesha Council (the "settlers" movement) tried in vain for years to meet with Rabin to discuss matters of obvious urgency to the Council. Rabin categorically spurned Harel's pleas for dialogue, thereby thrusting the "settlers" outside the pale of legitimate discourse on their own fate. For several years now, the Israeli Right—and not just the "settlers"—has warned that Rabin's exclusionary mode of politics is healthy neither for peace nor for Israeli democracy. Observers, both on the Right and Left, have long feared the explosive potential of Rabin's closure of channels of democratic exchange. That Rabin's assassin does not hail from the lunatic fringe, but rather from one of Tel Aviv's more comfortable suburbs, and was a student of law, reveals how deeply Rabin alienated a full half of the Israeli electorate, first demonizing, then gagging it.

I agree with Messrs. Avi-Yonah, Goldberger, Leib, and Gross that the poisoned Israeli political discourse helped precipitate the assassination. I regret, however, their participation in that discourse. Each side must reform its rhetoric. Finger-pointing in only one direction does nothing to promote the healing process. On the contrary,

barbri

**“Why should I sign up for
Bar/Bri now if my firm
is just going to pay
for the course anyway?”**

Think again.

Many firms expect you to pay for your
bar review course out of a
summer stipend.

If you sign up for Bar/Bri now,
you'll have to take less
out of that stipend
to pay for the course.

That's more money in your pocket.

BAR/BRI

**To lock in the fall discount, just put \$75
down by November 22.**

Stop by our table in the Hark this week!

THE POWER OF EXPERIENCE™