



# Harvard Law Record

Volume, 88, No. 2

America's Oldest Law School Newspaper

February 24, 1989

## Bok Taps Clark As New Dean

### Students Wary Of Choice

By Dan Kroll  
Managing Editor

Following the announcement of the appointment of Robert Clark '72 to the deanship, the general reaction from students appears to be a mixture of surprise and concern with the choice. At an impromptu meeting in Pound Hall on Feb. 17, "concerned students" — both supporters and critics of the decision — gathered to discuss their reaction to the news.

Many of those who attended the meeting, as well as some other outspoken students, were interviewed afterwards. While some expressed support, the most common sentiments were a disappointment with the secrecy of the decision process and a sense that the choice was made apparently without the consideration of student input.

"I'm shocked," said Sung-Hee Suh, 2L, president of the Asian American Law Students Association (AALSA) and a member of the Student Coalition for a Diverse Faculty, who described the decision as coming from "out of the blue." Suh said that in spite of the efforts of students to provide input into the decision and to make their concerns known to Harvard University President Derek Bok '54, Bok and the Faculty Dean Search Committee (FDSC) continually "downplayed the value of student input." According to Suh, many students are frustrated that "working within the system seems to mean keeping us in the dark."

Suh said the decision, which she described as "autocratic," also worries her because it seems to reflect a "pattern" that Bok exercises "unilateral control" over faculty decisions. "I'm more disturbed by Bok's apparent disregard for faculty input than his disregard of student input," she said.

Lisa Ferrell, 2L, a member of the Student Dean Search Committee (SDSC), echoed these concerns, saying she thought the secrecy of the decision process "would make any candidate who emerged look suspicious." While Ferrell praised Clark for being "open" and "honest" in his relations with SDSC during the search, she said that the secrecy of the process worries her. "If Clark does want to 'squash the Crits' or whatever else, the only way we'll find out is to wait for it to happen," she said.

Ferrell and the other members of the SDSC issued a statement on Friday in which they said they "hope that students and faculty will view [Clark's] selection with qualified optimism." The statement said that while the SDSC and Clark "have had differences of opinion [during the selection process], Professor Clark listened carefully to our concerns and tried

to incorporate students' views into the dean search process."

Ferrell said she thought that at the dean search panel discussion held on Nov. 16, Clark "seemed genuinely concerned and interested in students' concerns about diversity. I'm optimistic about his future attempts to bring women and minorities to the faculty," she said.

Other students are not quite as optimistic about Clark's concern for an increased number of women and minority scholars on the faculty. Rob Wilkins, 3L, president of the Black Law Students Association (BLSA), said that while Clark has "pretended to listen to student concerns [about minorities and women], the rhetoric doesn't

(continued on page 6)

*"I think that both Critical Legal Studies dogmas are deeply pernicious, and have to be combatted in legal education. It is very bad to indoctrinate students with these attitudes. I think the best [weapon] against them is some sort of return to careful, methodologically rigorous thinking."*

*Prof. Robert Clark, in a 1985 speech reprinted in the Harvard Journal of Law and Public Policy.*

### Faculty Split Along Ideological Lines

By Chris Crain  
and Greg Herbert  
Staff Writers

President Derek Bok's '54 decision to appoint Prof. Robert Clark '72 as the new dean of Harvard Law School has alarmed a number of professors and students, who claim his outspoken conservatism will exacerbate factionalism within the faculty. A number of moderate and conservative faculty members praised the appointment, and expressed optimism that Clark's visionary approach will heal the faculty's deep-seated differences.

Bok announced the appointment Feb. 17 after his decision

to name Clark to replace resigning Dean James Vorenberg '51 was leaked to several media organizations. Clark accepted the position in a Tues. Feb. 14 meeting with Bok, four to five days after being offered the position.

"It was a bad and divisive appointment," said Prof. Lewis Sargentich '70, a member of the controversial Critical Legal Studies movement. "I'm terribly worried that candidates for teaching positions associated with any left-of-center view will find it impossible to be hired here."

Echoing that concern, Prof. Richard Parker '60 said, "I was shocked by [the Clark appointment]. I was shocked that Bok would have picked a leader of an extreme faction within the faculty."

In an extended interview with the RECORD (see transcript, p. 8), Clark said "the job of the dean is not to heal the divisions or make them go away ... but simply to manage the tensions in a way that helps everyone to be creative and to contribute to scholarship within the school."

"So we'll still have intellectual disagreements and some political ones, but as long as they don't get out of control, and as long as they reflect energy and diversity, and lead to something useful, I'll be very happy," Clark said.

A number of professors praised what they saw as Clark's leadership ability and broad-based aims for the law school.

"I think it was an excellent choice," said Prof. Bernard Wolfman, a member of the Faculty Dean Search Committee (FDSC) which assisted Bok in making the appointment. "In the end, it came down to a difficult choice, but [Bok] picked somebody with real vision for the school."

"He is a person with empathy. He is very fair and very

(continued on back page)

### Committee Post Possible Conflict

Due to the fact that Prof. Robert Clark '72 served as a member of the Faculty Dean Search Committee (FDSC) even while he was being considered as a possible candidate to be the new dean, his selection has raised concerns among some professors and students about a possible conflict of interest in his dual roles.

Prof. Laurence Tribe '66, chair of the Committee, said the FDSC "worked to minimize the conflict of interest as a result of his role as a member of the committee and as a candidate."

Clark said he had one private conversation with Bok about potential candidates last spring, when the FDSC was formed. In that meeting he "said nothing negative about any of the others. I only pointed to two others whom I liked," he said.

Clark claimed he had no other communications outside the presence of other committee members.

He excused himself from early Committee discussions of his possible candidacy and secretly resigned from the committee in mid-December.

Tribe said Clark "certainly had a great many positive things to say about a number of candidates other than himself, but as a member of the Committee, at some time he had to express negative opinions."

"But he certainly did not play the role of downplaying the strengths of everyone but himself — that would have been a problematic role."

Clark said the suggestion that he could have used the position to deliberately hurt the

(continued on back page)



Harvard President Derek Bok congratulates Prof. Robert Clark, his choice to replace James Vorenberg as dean of the law school.

### Inside

Dersh and Downey  
..... p. 2

Clark Speaks  
..... p. 8

"True Believer"  
Delivers Legal Action  
..... p. 14

## Profs In The Public Eye

# Dersh And Downey: Civil Liberties On Parade

By Rudy Rodriguez  
Features Editor

Perceiving his role as that of a "missionary for civil liberties," HLS Professor Alan Dershowitz sees his regular appearances on television talk shows, ranging from *The Morton Downey, Jr. Show* to *Nightline*, as intrinsic components of a scheme "to articulate the case for civil liberties for whomever will listen."

One might ask how much rapt attention to his views Dershowitz expects from the typically biased Downey audience, to which he responds that his message is not necessarily directed to the studio audience, but instead is aimed at those sitting at home. Dershowitz's frequent television appearances are an expression of his general opinion that "in the '60s and '70s, civil libertarians spent too much time talking to judges, and not enough time trying to persuade the public."

According to Dershowitz, "the only way civil liberties will work is if the people realize that civil liberties are good for everybody."

To this end, Dershowitz made appearances regularly on Morton Downey's radio show before his current television show was syndicated. When Downey asked Dershowitz to appear on his first television show, Dershowitz accepted. Dershowitz had come to respect Downey as an "intelligent, articulate conservative," but he was not prepared for the "beast of an audience," largely hostile to

his point of view, which he encountered. "Then I thought, hey, I'm a street kid from Brooklyn, I can handle this."

Dershowitz has since appeared three times on the Downey show. He describes Downey as "fair," and fully expects to return.

Other news/talk shows on which Dershowitz has appeared are *The Macneil Lehrer News Hour*, *The Phil Donahue Show*, and *Geraldo*. "I turn down ten shows for every one I accept," primarily because "I don't travel to do a show. If they can come here, fine, and if I happen to be in New York, I'll do it."

Dershowitz believes that his efforts are succeeding. "You should see the mail I get after I do *Geraldo*." His prominent status as outspoken civil libertarian makes him "one of the first people called to comment on civil liberties issues now."

Neither does Dershowitz foresee an end to his television appearances anytime soon. He predicts that "as the courts grow less responsive, I'll be on TV even more. It's so important to explain and advocate the civil liberties perspective."

Commenting on a current "hot" issue of civil liberties, the case of Salman Rushdie's *Satanic Verses*, Dershowitz predicts that an antitrust suit will be filed against the three major booksellers, who last week decided to ban the book from their shelves. "I don't think anyone realized how closely their first amendment rights were tied up in this bookseller monopoly. It's a real shocker."



Prof. Alan Dershowitz

## HLS Campus Safest, But Room For Improvement Remains

By Troy Morgan  
Staff Writer

The Law School is the safest part of the Harvard campus, according to Frank Lamentea, Director of Building Operations, and Paul Johnson, Chief of the Harvard University Police Department. So when only two people showed up to the Women's Law Association (WLA)-sponsored brown bag lunch to discuss campus safety on Feb. 14, Johnson remarked, "We take credit for that."

The rape in the Science Center last semester prompted the effort to have students voice their concerns and make

suggestions for improving campus safety. One woman at the discussion said that the offices in the basement of Story Hall, used for federal litigation TA office hours, "look like a perfect rape city to me." Lamentea responded by ordering a Centrex phone be installed in the area, but he also commented that the problem of basement office safety exists throughout the university. The phone line for a blue emergency phone has already been installed in the tunnels below Austin Hall, but it is not operational yet, he said.

While Lamentea noted that the Law School was the lighted area of the uni-

versity, Johnson, who has "been working in the Yard area for 5 years," stated that brighter lights were once removed, because "people complained that they made the shadows deeper."

Safety will be further enhanced by the implementation of a shuttle service for Cambridge and Somerville, residents within the next several weeks, according to Paul Baisier, 2L, head of the Law School Council's Facilities and Services Committee. The shuttle will operate on weekdays between 5 p.m. and 12:30 a.m., and will cost 50 cents, Baisier said.

Other security risks complained of were the storage cages and laundry rooms in dormitory basements, the underground tunnel system, and the perennial problem of students propping open dormitory doors open at night. Some students appear to use the tunnels because they believe they are safer than walking outside, and the tunnels are frequented by security guards during their rounds.

Although custodians do not have keys to individual rooms in many of the buildings and must obtain them from the office in Child Hall to gain access to rooms for repairs, Johnson said that "the administration should do something to reassure" those who complain of problems with custodial access to rooms.

Johnson said that there are "many problems with the Athletic Department" such as I.D.s being lost or stolen when left at the desk, and that "Malkin [gym] is one of the worst." He said that he had dispatched plain clothes undercover officers to investigate and to monitor these areas.

In response to a remark by Bonnie Savage, 3L, WLA President, that the use of non-photo I.D.s "creates a market" for them, Johnson said that university officials have resisted the introduction of photo I.D.s at the undergraduate and graduate levels because the endeavor would be "logistically difficult." He noted that most other universities do have photo I.D.s.

Johnson stated that the University Police Department has a "\$6 million budget — larger than the city of Arlington or Belmont." The force contains 65 uniformed and armed police officers, 55 uniformed guards who do not make arrests and 110 student security per-

## Safety Stats

|                       | 1987 | 1988 |
|-----------------------|------|------|
| Assaults              | 1    | 0    |
| Robberies             | 0    | 1    |
| Bomb Threats          | 2    | 1    |
| Burglaries            | 2    | 4    |
| Malicious Destruction | 1    | 1    |
| Larcenies (>\$250)    | 8    | 4    |
| Larcenies (<\$250)    | 6    | 16   |
| Bike Thefts           | 4    | 2    |

The above chart compares the incidence of various crimes on the HLS campus in 1987 and 1988.

sonnel, he said. These student security personnel earn extra cash while "sitting at a desk or watching a door — they are our eyes and ears and are ready to phone or radio the police," Johnson said.

The unfamiliarity of faces and the turmoil at the beginning of the school year makes that time the worst for crime, according to Johnson. He said that thefts and larcenies around the dorms are the work of "a small group of real professionals who prey on universities." The thieves make seemingly regular rounds of BU, MIT and Harvard. He said that they often operate by taking a single credit card from each locker and putting things back the way they found them, so as not to make a disturbance.

Johnson said the police department recently recovered an undergraduate's backpack full of Iowa auto licenses. The culprit, who has been apprehended, had engaged in the same operation at Phillip's-Andover, selling licenses as I.D.s.

To increase safety awareness, the WLA is passing out red whistles with the Harvard Police phone number on them at "safety tables" in the Hark on Feb. 22 and 23. The tables will be staffed and information on the police escort service and the location of emergency phones will be available. Johnson said that "young people scream for many reasons; some just scream out of exuberance." A whistle, on the other hand, "you don't hear so often and it may get a little more attention. It also gives the holder a perception of security, which is the main thing," he said.

## Dean Approves New Course Selection Process

By Sally Johnson  
Staff Writer

Dean James Vorenberg '51 has decided to implement the pre-registration system developed and proposed by HLS students in response to student dissatisfaction with the current system. There remains a possibility, however, that the new system will not be ready for use in time for this year's pre-registration process.

Registrar Sue Robinson stated that Vorenberg made a unilateral decision to replace the current course lottery with the proposed system at a meeting of the Curriculum Committee on Feb. 15. (See the Feb. 17 issue of the RECORD for a full explanation.) According to Robinson, although the deans had expressed interest in getting student feedback before authorizing the change, she pressed Vorenberg for an immediate answer in lieu of student input. She did so, she said, because of time pressures and a belief that student response might be fragmentary and occur too slowly.

Despite Vorenberg's timely decision, there are "no guarantees" that the new pre-registration system will run this spring, Robinson said. She explained that the computer service employed by HLS will require several weeks in which

to plan, program and test the new system. The computer service was notified of Vorenberg's decision on Feb. 17, and will meet with Robinson this week to begin serious work on the project, she added.

If it is not possible to implement the new system in time for spring '89 pre-registration, Robinson stated that the new system will definitely be employed for next spring's pre-registration process.

Bonnie Savage, 3L, one of the creators of the new system, said that she was happy about Vorenberg's decision despite the fact that it was made without benefit of student feedback. Savage stated that in her view, it is not realistic to expect much student response to issues concerning a system students use only once a year.

The new pre-registration system will allow students to sign up for multiple sections of courses as well as for courses with time conflicts. The system will prioritize students' subsequent choices when their higher choices are denied. If a student's first choice is unavailable, for example, the system will attempt to give the student his or her second choice, or if that course is filled, the student will receive his or her third choice. Students will be able to list as many as 23 different courses on their pre-registration forms.

# Holmes Lecturer Scalia Suggests Narrow Role For Courts

By Sally Johnson  
Staff Writer

Exploring the "dichotomy between the general rule of law and personal discretion to do justice" within the narrow context of "law that is made by the courts," Supreme Court Justice Antonin G. Scalia '60 delivered the 1989 Oliver Wendell Holmes Bicentennial Lecture on Feb. 14, to a capacity audience in Ames Courtroom.

As a student at HLS, Scalia said that he was a "great enthusiast" for what he termed the discretion-conferring approach to judicial law-making. "I was an advocate of both writing and reading the holding of a decision narrowly, thereby leaving greater discretion to future courts. Over the years, however, and not merely the years since I have been a judge, I have found myself gravitating more and more to the opposite camp."

Scalia stated that he has come to prefer judicial use of general rules of law over "totality of the circumstances" or balancing tests to decide cases, whenever it is possible to do so. "We should recognize that at the point where an appellate judge says the remaining issues must be decided on the basis of the totality of the circumstances or by a balancing of all the factors, he begins to

resemble a finder of fact more than a determiner of law. To reach such a stage is, in a way, a sad concession of defeat, an acknowledgement that we have passed the point where law, properly speaking, has any further application."

Juries and lower courts should be the primary finders of fact, Scalia said. For example, in the context of 4th Amendment cases, "once [appellate judges] have taken a rule of law as far as it can go, once there is no general principle that will make a particular search and seizure valid or invalid, once there is nothing left to be done but determine from the totality of the circumstances whether the search and seizure was reasonable, it is my inclination to leave that fact-finding determination to the lower courts. I think we can tolerate a fair degree of diversity in what courts determine to be reasonable seizures."

Consistent with his stated position that the establishment of broadly applicable general principles is an essential component of the judicial process, Scalia declared that he is "inclined to disfavor, without clear congressional command, the acknowledgement of causes of action that do not lend themselves to such an approach." He expressed hope, for example, that the Supreme Court will choose to decline "to find an invitation

for judicial enforcement" of negative Commerce Clause cases which demand the application of "a standardless balancing" test.

The "unfortunate practical consequences" of the common law or discretion-conferring approach to judicial law-making, according to Scalia, are that "equality of treatment is difficult to demonstrate, and, in a multi-tiered judicial system, impossible to achieve. Predictability is destroyed, judicial arbitrariness is facilitated, judicial courage is impaired."

While Scalia expressed the view that "absolutely perfect justice can only be achieved on a basis unconstrained by imperfect generalizations," he stated that "the value of perfection in judicial decisions is vastly overrated. To achieve what is, from the standpoint of the substantive policies involved, the perfect answer, is nice, but it is just one of a number of competing values." One such value is the appearance of equal treatment, he said. "As a motivating force for the human spirit, that value cannot be overestimated."

Scalia also criticized the "finding" by non-originalist justices of categorical rules in the Constitution that have no textual basis or are not strictly limited by the "actual practices of the society as reflected in the laws enacted by its leg-

islature. When one does not have a solid textual anchor or an established societal norm from which to derive the general rule, [judicial] pronouncement appears uncomfortably like legislation."

Dean James Vorenberg '51, who introduced Scalia, described Scalia's address as "a major part of the Holmes Lecture Series." Vorenberg noted that the series began in 1936 and in the past has featured such leading scholars as Owen Roberts, Learned Hand and William Brennan '31. This year the Holmes Lecture was also part of "a number of activities" in which HLS has engaged since the spring of 1987 "commemorating the bicentennial of the U.S. Constitution," he said.

Justice Scalia graduated magna cum laude from HLS in 1960. He served as Note Editor for the Harvard Law Review and then was a Sheldon Fellow at the University from 1960 to 1961. After practicing private law at a Cleveland firm for six years, the justice taught law at the University of Virginia, Georgetown University, the University of Chicago and Stanford University. In 1982 he became a judge in the U.S. Court of Appeals for the District of Columbia Circuit. He held this position until President Ronald Reagan appointed him as an associate justice to the U.S. Supreme Court in 1986.

## Conference Confronts Child Care And Family Leave Issues

By Liz Askey  
News Editor

In what one speaker called a "historic moment," nearly 200 legislators, advocates, policy-makers, professors, and students gathered at HLS on Sat., Feb. 18, to discuss the roles of the government and the private sector in the implementation of child care and parental leave policies at a conference entitled "Legislative Approaches to Work and the Family."

The conference, sponsored by the Harvard Journal on Legislation (JOL), took over a year of planning and was a "significant departure from what we've [JOL] normally done," said Conference Director Natalie Hanlon, 3L. All of JOL's spring issue will be devoted to issues of work and the family. Several of the speakers at the conference will be contributing articles for that issue, Hanlon said.

Although a variety of statistics were quoted over the course of the day, it was unanimously agreed that the face of the American workforce is changing and that legislation and employment policies must meet this change. Richard Podell, Chairman of the American Bar Association Section on Family Law, described the "diversity of family structure" and the "evolution of marriage" into an institution where "independence is equal, dependence is mutual, and obligation is reciprocal."

A common theme of the conference was the need to remove family issues from the private sphere. Congresswoman Patricia Schroeder '64 (D-Colo.), author of the Pregnancy Discrimination Act of 1977 who also introduced the Family and Medical Leave Act in the 100th Congress, opened the conference by remarking that "the government has been much too hesitant about recognizing" its role in issues relating to work and the family.

Schroeder stated that although families are considered "the foundation of society," the United States does very little for families and has terrible statistics relating to alcoholism, drug abuse, child abuse, and other social problems. Schroeder said many people equate government intervention in the family with "failure" or "socialism." She emphasized, however, that "the role of the federal government is not to raise people's children, it's to give parents options and choices."

Schroeder, herself a product of child care, said that part of the problem is that we are frozen in a "1950's concept of the family," noting that many politicians have "traditional families." She urged that the focus should be on the real need for policies addressing work-

ing families and on the positive aspects of those policies (such as better education for children who receive care outside the home), "instead of feeling guilty about not making cookies."

Another related theme was the need to recognize child care and parental leave as "not just women's issues." Barbara Reisman, Executive Director of the Child Care Action Campaign, noted her anger that after 17 years she was still looking over a "sea of primarily female faces." "We're still treating it as if it is a women's issue," she said.

Nancy Dowd, associate professor of law at Suffolk University Law School, added that work and family issues "are women's issues ... in the sense that women shoulder most of the burden" in the existing structure. Dowd emphasized the importance of "including men in the dialogue" so as not to "consign them to the role of economic fatherhood" and "perpetuate the structure of division of work and the family."

Although most of the speakers agreed that federal assistance was needed in the area of child care, there were vari-

ous ideas about what form that assistance should take. One obvious vehicle is the tax code, which HLS Professor William Andrews '55 noted is "inescapably intertwined with work and family." Andrews cautioned, however, that the "use of tax policy itself does not deal with social problems at the range [at which] they need to be addressed," citing as an illustration the fact that some families do not pay income taxes.

Douglas Besharov, resident scholar at the American Enterprise Institute for Public Policy Research and adjunct professor of law at Georgetown University and American University, recommended capping the dependent and child care credit in order to increase the funds available to low income families. Besharov said that the average credit now claimed is only \$400 and that less than 1% of the credits claimed go to families whose income is less than \$10,000 a year.

Reisman agreed that a "more progressive income tax" is needed, and Schroeder quipped that under the current tax code "you are better off raising

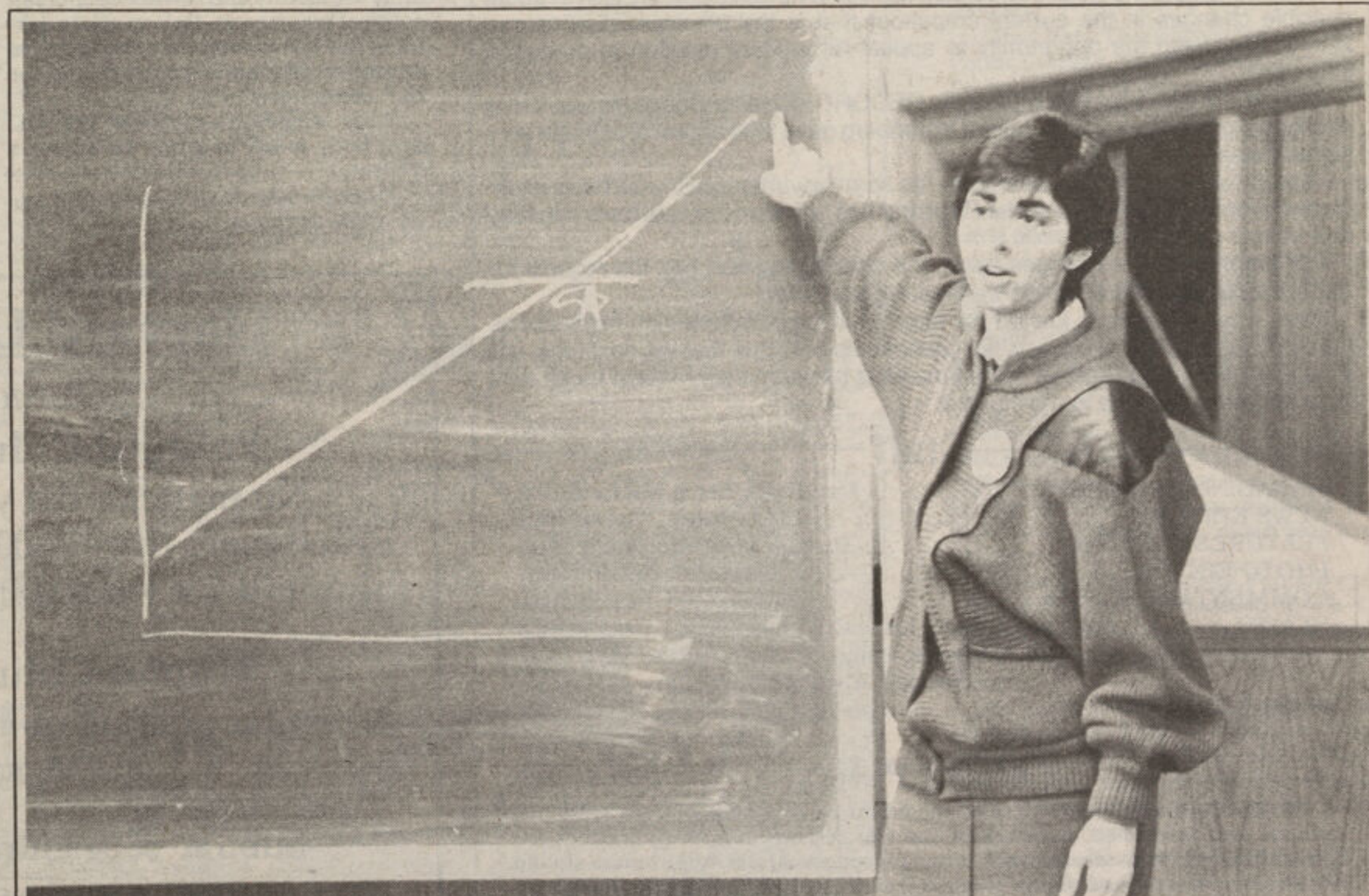
thoroughbred dogs or horses [than children]." She added that "if the tax code treated families like businesses, we would not need welfare."

Reisman advocated a mixture of tax reform with more direct support, noting that the trend over the last 10 years has been away from direct support toward more expanded tax credits.

Congresswoman Nancy Johnson (R-Conn.) advocated cutting administrative costs and posited the earned income tax credit as "a mechanism in the tax code to help low income families" which she said will "equalize access in a way subsidies to care providers never will." The credit, she said, is both "long-lasting" and "harder to cut back."

Johnson emphasized the importance of "valuing individuals and family choice." This sentiment was shared by Robert Rector, Policy Analyst for Social Welfare and the Family for the Heritage Foundation. He advocated direct aid to parents through a \$1,000 credit for each child in families earning less than \$20,000 a year. This would allow par-

(continued on page 6)



Barbara Reisman, Executive Director of the Child Care Action Campaign, illustrates the need for government assistance in the provision of child care.



# Harvard Law Record

Volume, 88, No. 2

Chris Crain  
Editor-in-Chief

Alain Kodsi  
Business Manager

## Editorials

### The Right Choice

A group of about 25 "concerned students" gathered outside the faculty meeting last week when President Derek Bok introduced the law school to its new dean, Prof. Robert Clark.

The students, clearly surprised by Clark's selection, first haggled about whether they supported or opposed the appointment of the corporate law specialist. That dirty business done, the students plotted strategy to make their "thumbs-down" verdict as visible as possible.

No one seemed quite sure just why Clark was objectionable. There was grumbling that he had vocally opposed Clare Dalton in her controversial battle for tenure in 1987. And there was the predictable paranoia that Bok and Clark have joined forces to "squash the Crits" and anyone else who might dare to defy "white male, right-wing" dogma.

Lost in the Monday-morning analysis of the power politics behind Clark's appointment was any meaningful discussion about why Bok chose the person he did.

Students seemed offended that Bok had dared to select a candidate that the Student Dean Search Committee had criticized, and rushed to conclude that he had ignored their counsel in the dean search process. To the contrary, it is generally accepted that harsh student criticism (deserved or not) of Prof. Richard Stewart crippled his candidacy.

Accepting the advice of students does not necessarily require following it, especially when there are overwhelming considerations that recommend an alternative course.

And the more the law school community learns about Prof. Clark, the more those positive considerations will become clear. An extraordinary scholar; 2 and 1 teacher, Prof. Clark is the ideal person to emphasize the dual mission of the law school: to broaden the scope of knowledge about the law and then impart that information to students in a meaningful way.

Beyond that, Prof. Clark argues the most sensible approach toward diversifying the law school faculty. Ethnic and gender diversity can be self-defeating unless it is clear that minorities and women appointed to the faculty have achieved the level of excellence in scholarship and teaching of their peers at the law school.

Despite claims to the contrary, demanding "traditional" criteria of excellence need not mean applying a mechanical formula (HLS magna cum laude +; 2Law Review; 1, etc.) to faculty appointments. And it is offensive to suggest that it is some sort of secret coding for obstruction of faculty diversification — a goal universally shared by the law school community.

Prof. Clark will have ample opportunity to demonstrate that his vision of academic excellence and diversification can succeed, and when he does, maybe then Harvard Law School will be a repository for creative, rather than destructive conflict.

### Register This Complaint

Does the law school administration take student input seriously? The actions of the Registrar's Office this past week certainly gave one pause.

When officials in the Registrar's Office were interviewed by the RECORD about possible changes in the current crapshoot that is the preregistration course lottery, they used the opportunity to appeal for student reaction to proposed changes.

And yet, the same day the issue of the RECORD including that article was being distributed on campus, Dean James Vorenberg gave final approval to those very same changes (see story, p. 2).

Though the changes have been billed as an improvement on the current system of course preregistration, even the Registrar has admitted they will have negative side effects on students.

The propriety of the changes aside, the clear signal was that the request for student input was one of all-too-transparent tokenism.

While a cynical attitude toward the motives of the administration might not be the most constructive approach, we cannot help but hope that the next time, law school officials will at least let some time pass between their request for student input and their decision to disregard it.

### Staff

MANAGING EDITORS ..... Dan Kroll, Erick Hachenburg  
NEWS EDITORS ..... Liz Askey, Tom Billello  
FEATURES EDITORS ..... Rudy Rodriguez, Dawn Ross  
PHOTO EDITOR ..... Patricia Lee  
COMMENTARY EDITOR ..... Greg Herbert  
STAFF ..... Aoki, John Ayon, Luke Cole, Fenno, Jeff Gershowitz,  
Michael Hughes, Sally Johnson, Teresa Martinez,  
Patrick Miles, Troy Morgan, Soo K. Yi  
BUSINESS STAFF ..... Shelagh M. Lafferty, Karen Lilly  
Anthony Scaramucci

### Letters Policy

The RECORD welcomes letters to the editor on any subject from students, alumni and interested members of the law school community. Letters are printed as space provides, and are edited for space and clarity. All letters should include the name(s) and phone number(s) of the author(s). All letters submitted become the property of the RECORD.

All opinions included in letters to the editor, as with editorial cartoons and editorials, belong to their authors and do not necessarily represent the opinions of the RECORD staff.

## Drug Legalization Urged

### To the Editor:

The drug trade, with its ever-increasing disastrous effects upon our society and economy, should receive a more informed reaction than increases in the penalties for violations. The parallel to the liquor trade is quite apparent. Under the aegis of the 18th Amendment, Congress enacted the Volstead Act. But as time went on and violations and disrespect for the law increased, Congress reacted by increasing the penalties, enacting the famous Jones "Five and Ten" Law, forfeiture of property, etc. Repeal effectively eliminated the bootleggers but the problems of alcoholism remain.

So now, what is happening? Congress is dutifully increasing the penalties, viz. forfeiture of real and personal property, heavier fines and prison terms and even the death penalty. But does anyone seriously think that these laws are reducing the drug trade? While there is much talk of repeal which would eliminate the profits from the drug trade,

it is unacceptable for many reasons, not the least of which being that it would not solve the basic problems. So if repeal is not the answer, what alternatives remain? Some modest suggestions:

Drug stores could be licensed to dispense drugs to addicts, under such restrictions and supervision as would eliminate or tend to eliminate abuses. Another possibility would be to license clinics to dispense drugs to addicts under the supervision of doctors or paramedics with directions to make reasonable efforts to effectuate cures to those seeking help. Perhaps the clinics could be funded by the Government and operated on a non-profit basis. Certainly the costs involved would scarcely approach the monstrous and ever-mounting costs of the present attempts at control, not to mention street crime, crowded court dockets and jails and the proselytizing of the young.

John W. Munro '29

### A Dissenting View

## Selection Process Falters

By Greg Herbert

Bok has appointed Bob Clark dean of Harvard Law School. The only response for a large portion of the HLS community can be "What the hell happened?"

After Bok appointed Vorenberg dean in the early '80s, the faculty set up a dean search committee process to prevent exactly the type of decision that occurred here. Safeguard no. 1.

Upon Vorenberg's resignation, the search committee process goes into effect in what apparently is a surprisingly smooth fashion. Miraculously, two Crits make the all-male and all-white committee. Safeguard no. 2.

Not surprisingly, students were not allowed on the committee. The resistance to student presence on the committee is a harbinger of things to come, namely the disregard for student opinion generally and the paranoid secrecy endemic to a group of self-important egotists such as the Harvard Law faculty. The students get their act together and form their own committee. Safeguard no. 3.

Bok flouts urgent appeals to appoint a moderate with a proven commitment to intellectual, racial and gender-based diversity. At a pivotal moment in the history of HLS, a moment offering the opportunity to heal past wounds, to unify the faculty and rise above childish political maneuvers, Bok appoints perhaps the one candidate most likely to anger and alienate a large sector of the HLS community.

What were Bok's motives? The student body is left to grope for answers.

Greg Herbert, 3L, is commentary editor of the RECORD.

from a perspective admittedly limited by the faculty's unyielding concerns over confidentiality. Perhaps once again Bok is afraid of losing alumni dollars contingent upon an outmoded "traditional" perception of what a law school should be; Bok caves in to those who, plain and simple, hate the Crits. Maybe Bok is just flexing his administrative muscle in an attempt to curb any future infringements on his sole authority to choose a dean or ultimately decide controversial issues arising within the law school.

Both of these possible motives reflect an autocratic, anti-pluralistic conception of decision-making that runs counter to the principles underlying an allegedly open-minded institution.

It remains possible that Bok is sincerely concerned about the damage to HLS's "reputation" caused by infighting among the faculty and, at wit's end, chose someone he perceived to be a strong leader who could at least push the faculty forward, even if it happens to be forward and to the right.

If this is his chief motive, his plan will likely backfire. Bob Clark might prove a blessing to the left by offering a vocal, identifiable source against which to rally support.

Students and faculty feeling shocked or disenfranchised by the Clark appointment have an important duty to vocalize their concerns powerfully. In light of the manner in which this crucial decision was made, special attention should be paid to faculty and administration availability and responsiveness to students, and also to Clark's commitment to all forms of diversity.

All members of the HLS community have an additional duty to subject Clark to an intense scrutiny as he attempts to lead HLS into the future.

## Harvard Law Record

### Announces

### Political Columnist Search

No matter what your perspective—  
Reach more than 10,000 students, faculty and alumni with your opinion on a regular basis.

### Humor Columnist Search

A regular offering of a humorous perspective  
on law school life.

Submit your entries of 1,000 words  
or less to the

Hark box of Chris Crain, 2L, by  
Friday, March 3

# Faculty Reactions Range From Praise To Scorn

**Gerald Frug '63:** "This was the worst possible choice Bok could have made."

**Morton Horwitz '67:** "It's a disaster for the law school at a time when we needed someone to help restore trust within the faculty. Clark is somebody who is most likely to polarize the faculty."

**Bernard Wolfman:** "It's an excellent choice. Bok has picked someone with a real vision for the law school."

**Charles Fried:** "[Clark] is a remarkable person [with] a clarity of intelligence and will that are very important for the job. [The negative reaction] is the usual crybaby response."

**Lewis Sargentich '70:** "[Clark] was a bad and divisive appointment. I'm terribly worried that candidates for teaching positions associated with any left-of-center view will find it impossible to be hired here."

**Richard Parker '70:** "I was shocked that Bok would have

picked a leader of an extreme faction within the faculty. I fear an ideological test will be imposed on future tenure candidates."

**Hal Seott:** "I think it's terrific. He was selected on the merits of his scholarship and teaching ability and among the possible candidates, he was, if not the best, one of the very best."

**James Vorenberg '51:** "It was a good appointment. Clark does see and will see the importance of working with the faculty."

**Frank Michelman '60:** "Clark has been the most intent, adversarial and unyielding in his attachment to right-wing positions. Where do we [the Critics] fit in?"

**David Kennedy:** "Bok could not have picked a dean who was more likely to exacerbate divisions in the faculty."

**Richard Stewart '66:** "I think he will be an excellent dean. He'll be a dean of all of the faculty and all of the students."

## Inc. & Dead Lines — By Luke Cole & KA

## Fenno



Fenno awoke with a start. Beads of sweat rolled off his brow.

"A dream, just a crazy dream," Fenno thought. He attempted to catch his breath, but the experience was still too fresh. "It never happened. It was just a crazy dream. But the horns, the teeth, it all seemed so real."

Fenno's eyes searched for some familiarity. They were open, yet all was a blur. Where was his dresser? Where were his books? Where was his black-light poster of Elvis?

"My eyes haven't adjusted," he surmised. Fenno filled his lungs with thick, Cambridge-style air.

But that dream! Would it never fade from his consciousness? Those feet — those ugly, traditionally plain feet — crushing each of the law school buildings. First Story, then Shaw, then the obliteration of the Hark. "Oh, the humanity!" Fenno cried. Then Pound, Griswold, Austin. Was there some method to this monster's madness? Apparently so, as the gargantuan was saving Langdell for last.

Circling, circling for what seemed like years, the monster took aim, and with one mighty leap destroyed the Temple of the Elders.

Fenno groped for the day-old Meister Brau which he kept at his bedside just for such emergencies. But he found only air.

"That hair. That's what haunts me," Fenno thought. "Mothra would certainly be no match for this living, breathing machine of destruction."

And through all the destruction, the Little Men inside the Temple of Elders fought. Not with the monster, but with each other, lashing out and striking the Little Man closest.

Could this dream mean something? "Why must I dream in parables?" Fenno sighed.

A great shiver quaked Fenno's body, as fact and reality merged, and conscious and unconscious spiraled entwined in the dance of the double-helix. Just what had happened in the venerated halls of Langdell? A sudden urge to call the school overtook him, but who would he call? And how would he be able to find the phone, much less his pants?

A shadow finally caught Fenno's eye and, instinctively, he reached out for it. A clammy hand caught his. Fenno heard the sound of his own voice pierce the silence.

As Fenno pulled his head up from his desk, a string of spittle stretched from his Commercial Law text to his bottom lip. An indignant law student sat next to him, possessively clutching his own copy of the book.

"Do you have something to share with the class, Mr. Um ...," said the professor, his eyes furiously scanning the seating chart. "Mr. ... Fenno?"

Fenno was careful not to allow the door to swing into him from behind.

# JOL Conference: Modern Family Requires Updated Policy

(continued from page 3)

according to Rector, is for "parents, not bureaucrats and political elites." He added, "The government should not ignore those making economic sacrifices" by keeping one parent at home.

Reisman urged that the lack of adequate child care in the United States requires more direct governmental as-

than to work as a child care provider who, with 14 years of education, is paid an average of \$9,000 a year. Reisman said that if we really think child care is important we need to "close the gap between \$68,000 a year and \$9,000 a year," referring to the starting salaries of first year associates.

Family leave was another major topic

*"Family and medical leave should be a federal minimum labor standard like OSHA."*

sistance. She said that the disparity in quality of child care "perpetuate[s] one of the worst forms of injustice." She said there is evidence supporting the superiority of regulated child care over informal child care.

Reisman said that the low stature, isolation and difficulty of the job of child care provider account for the failure of the private market to meet the demand for quality child care. She said that it is more profitable to work at McDonald's

of discussion at the conference. Donna Lenhoff, Director for Legal Policy and Programs for the Women's Legal Defense Fund, contrasted child care issues and leave issues. Child care issues, she said, focus more on children and families, while leave issues operate more as labor law issues and focus on the employee and the workplace. She stressed the importance of looking at the "entire working lives of employees" and what "employees need because they

are members of families."

Lenhoff urged a broad focus on medical leave (allowing time off to care for oneself or for a family member) adding that the "maternity leave only" approach is "sexist" and "politically wrong." A medical leave approach, according to Lenhoff, broadens political support, avoids resentment among workers, answers a real need, and reduces an incentive to discriminate against women. Lenhoff said there is a trend toward this broader concept at the state level and that there is strong political support for the Family and Medical Leave Act which has just been introduced in Congress.

Schroeder urged that family/medical leave should be a "federal minimum labor standard like OSHA." She said the minimum standard in the United States is currently 10 weeks without pay, while Japan, the next most stringent country, provides for a minimum of 12 weeks with pay.

Referring to unpaid leave's discrimination against poor women, Johnson remarked that we have "lacked creativity in response." She called for paid leave and more work flexibility.

Patricia Shiu, staff attorney at the Employment Law Center in San Francisco, stressed that the guaranteed reinstatement provision of the proposed Family and Medical Leave Act is critical for poor women. She added that "a federal plan is central to the continuing participation of the working poor in the labor force."

Private sector approaches to work and family issues were addressed by Karen Liebold, Director of Program Development for Stride Rite Children's Center. Stride Rite provides on-site child care for its employees. Liebold said that the program has borne out studies which have suggested that providing on-site child care improves morale, improves recruitment, reduces turnover, and reduces absenteeism.

Liebold stressed that there are several options which employers can incorporate into their own corporate structures. These include leave policies, flexible hours, information programs, community programs, voucher programs, and direct services. Stride Rite plans to extend its day care center to provide care for elderly family members as well, she said.

## Clark's Public Interest Stance Questioned

(continued from page 1)

do anything for me." Wilkins said that he is not encouraged by Clark's record on the issue, citing as an example Clark's criticism of the "sit-in" organized by Professor Derrick Bell in 1987.

"Clark said Bell should have been engaged in 'rational debate' before staging the sit-in. The whole point was that rational debate and 'special attention' often don't get us anywhere," Wilkins said.

Another student, Leigh McAfee, 2L, said she was unimpressed with Clark's responses at the panel discussion on Nov. 16. Clark "did not seem sold on the idea of wanting more women and people of color" on the faculty, she said. McAfee said she is concerned that Clark's position on women and minority faculty members will be short-sighted. While Clark's traditional notions may be attractive to many alumni, she said, "In twenty years the concerns might be different — the alumni then will be those of us who are screaming for diversity."

Supporters of the choice think concerns that Clark will not respond to the interests of minorities and women are not justified. "In the long run, everyone will benefit," said Sam Levy, 3L, president of the HLS Federalist Society.

Levy said that Clark's championship of traditional legal scholarship and his previous experience and contact with alumni will garner alumni support and increased funding for HLS.

"With more money available, lots of different constituencies can get what they want. Instead of fighting over two faculty slots, there can be five slots," he said, indicating that minorities and women would then have a better chance to earn positions on the faculty. Levy said the extra funding would also lead to a better faculty-student ratio.

Other students expressed reservations about Clark's commitment to public interest law. "The Vorenberg administration has been very sympathetic to students in public interest law," said Luke Cole, 3L. "Bob Clark has spent his entire professional life studying and praising corporate law. I'm concerned that he will set back the public interest movement," he said. Cole added that Clark "has already set his sights on the clinical programs, saying that he's going

to 'look at their funding.'"

Wilkins also expressed reservations about Clark's commitment to clinical programs. "Most students think clinical programs are very valuable," said Wilkins. "I'm worried that we won't be progressing" beyond an "older, out-of-date vision of the importance of the programs," he added.

Other students, however, have noted that Clark supports the role of clinical programs. While praising Clark for his commitment to legal scholarship and to developing the business aspect of the curriculum, Rod Rosenstein, 3L, said he thinks Clark is also committed to clinical legal education. "I've spoken with [Clark] about the clinical program and he seemed to be very positive about it. I think he's committed to it," he said.

Levy reiterated his view that Clark's effectiveness as a fundraiser will generate additional support for other programs. "With more support from the alumni, there will be more money for LIPP (Low Income Protection Program), and more money for clinical legal education. Everyone will get a larger share of an expanding pie," he said.

Bonnie Savage, 3L, president of the Women's Law Association, viewed the added "fundraising" potential of Clark's appointment with some skepticism. Seeing the appointment as a "move to appease alumni" who are worried about the Critical Legal Studies controversy, Savage said she would not doubt that Bok just decided to "appoint a critic-killer."

Other students also expressed the concern that Clark's appointment will expand the rift among the faculty. "The fighting, the push for change will not go away because Clark has been appointed dean. It's going to get worse," said Wilkins.

Students noted Clark's prominent role in the fight against the appointment of Clare Dalton LL.M. '73, and his

noted identification with the advancement of "traditional legal scholarship," as indications that Clark will discourage differing perspectives. "The potential increased divisiveness [together with Harvard's already low record on diversity] may overwhelmingly chill the attractiveness of HLS to young minorities and women," said Suh.

"From what I've seen of his past actions and statements, Clark doesn't seem to be the type of person who will be able to work well with others from a variety of viewpoints," said Wilkins.

Clark's supporters, however, noted his ability to work well with people as

one of the primary advantages of his appointment. "I think he'll make an excellent dean," said Rosenstein, adding that Clark is "very open to differing viewpoints."

Levy said the appointment actually "may have an influence making the law school environment more congenial. He works well with people."

Perhaps the most definitive statement on the issue was offered by McAfee. When asked whether she thought the appointment would further divide the faculty, she replied, "I have no idea. I think the faculty is divisive enough on its own."

## MALIN CEDERQUIST, ESQ.

### Legal Search Consultant

- PARTNERS
- ASSOCIATES
- MERGERS

For Distinguished Law Firms.

240 Central Park South  
New York, N.Y. 10019

212/586-9206

By Appointment

Downright — Upright

**The Bow & Arrow Pub**

1 Bow Street  
Cambridge, Mass.

Under New  
Management

Pitcher of Sam Adams —  
\$7.95

**Next Record:  
March 10**



# MPRE ETHICS EXAM

**Friday, March 17, 1989**  
(Happy St. Patrick's Day!)

**PIEPER NEW YORK BAR REVIEW'S one day seminar  
will be offered 9:00 a.m. to 4:30 p.m.**

**NEW YORK CITY LIVE: Sunday, February 26, 1989**  
**TAPE AVAILABLE AT THESE LOCATIONS:**  
**NEW YORK CITY, NASSAU, ALBANY, BOSTON, BUFFALO,**  
**SYRACUSE, WASHINGTON: Sunday, March 5, 1989**

Successfully passing this two hour exam is a requirement for admission to the New York State Bar. This seminar is *FREE* to students who are enrolled in the *PIEPER BAR REVIEW COURSE*, otherwise there is a \$125.00 fee which includes books. Why not come and experience the Pieper method.

Applications can be obtained from your Law School or the National Conference of Bar Examiners (319) 337-1287.

The filing deadline for this exam is *February 17, 1989*. The exam fee is \$25.00. Late registration will be accepted until *March 8, 1989*, but the exam fee is increased to \$75.00. If you miss the *March MPRE*, the next *MPRE* exam is *Friday, August 18, 1989*.

*For more information contact your Law School Pieper Rep or*  
**PIEPER NEW YORK-MULTISTATE BAR REVIEW LTD.**  
**90 Willis Avenue, Mineola, N.Y. 11501 • Telephone: (516) 747-4311**

# Clark Responds To Charges Of Faculty Divisiveness, Page

## Dean-Designate Claims No Anti-CLS Hostility

The following is an interview with Dean-Designate Robert Clark '72, conducted Feb. 20 by **RECORD** Staff Writer Greg Herbert and News Editor Tom Billello.

**RECORD:** A lot of people were quite surprised at your selection. You were a member of the [Faculty Dean Search] committee up to a certain point and then you excused yourself, is that right?

**Clark:** It was sometime before Christmas, maybe the middle of December. Before that, in the fall, when there were discussions of people and I was on the larger lists, nobody took me quite seriously as a real prospect. The committee collected opinions from the faculty about me and would sometimes discuss them, and I would leave the room. That was the strategy then, and it wasn't thought that it was so intense that I should leave [the committee]. I was elected by a certain group from the faculty.

Then at a meeting in early December, which was almost a final meeting, all I did was say a few words about what I thought about various people and then I left. I was virtually not there, so I was almost off the committee then. But formally in the middle of December, when [Harvard University Derek Bok '54] decided he wanted to have more meetings, he called me up and said he thought I should get off [the committee].

And it was only then that it occurred to me, "gee, I'm being considered seriously." I was ready to [leave the committee] at any point really.

Bok then asked Louis Kaplow to join the committee.

### Stewart Passed Over

**RECORD:** All along there were rumors and specu-

acceptable.

There was nothing Bok could do, by way of choosing someone, which could not be said by one group or another to constitute a refutation of their preferences — and that includes the outsiders. There was no way out.

The only way you can make a claim that there is something fundamentally wrong by not listening to certain people's preferences is if you weigh some people's views more heavily than others.

### The Most Controversial Choice?

**RECORD:** It would appear that you are probably the most controversial choice.

**Clark:** In terms of numerical support among the faculty, I had more than some of the others.

**RECORD:** Bok probably could have chosen someone who is more moderate or is a "consensus" candidate, couldn't he?

**Clark:** He might have, yeah. I think his feelings, he has said, are that he might have chosen someone about whom the negatives would be less vocal, and in that sense a little more of a "compromise" candidate. But he wasn't interested in following that path or in making his objective seeking the most acceptable [candidate].

His feeling was he might find someone about whom there was less anger but who didn't have any particular vision or drive. That's what he was afraid of — the milquetoast syndrome.

### Divisiveness

**RECORD:** One of the biggest problems in the law school is the division within the faculty, and a lot of

faculty.

The way I put it in the statement I made to the search committee is that the job of the dean is not to heal the divisions or make them go away — make everyone feel we're all friends and we don't differ from each other and we love each other — but simply to manage the tensions in a way that helps everyone to be creative and to contribute to scholarship within the school. That doesn't mean getting rid of differences; I wouldn't want that to happen. So we'll still have intellectual disagreements and some political ones, but as long as they don't get out of control and as long as they reflect energy and diversity and lead to something useful, I'll be very happy.

I don't want to have us all feeling like we're monolithic in the way we feel and think.

**RECORD:** What would you say to people who think this choice by Bok was intended to send a message to the Critical Legal Studies advocates that reflects a hostility toward them from the president?

**Clark:** I think that's a wrong interpretation of what Bok did. He thinks of it more in terms of a bold attempt to favor excellence over complacency.

He was thinking more of a division between process-people and people who would try to lead the school or try to really nurture the scholarly dimension and educational reform — try to create things to do and then get them implemented — to look forward, not just to respond to problems as they come up.

I think he recognized there were various faults with all the candidates and he talked to me at length about what he didn't like about me and the others. He just had to make some tradeoffs.

### Minority Faculty Hiring

**RECORD:** Some student leaders are worried about a traditional standard of excellence being applied at the law school and the effect it might have on minority hiring — discouraging or even excluding nontraditionalists, minorities and women.

**Clark:** I do wish to increase the number of women and minority faculty members. I also want to make sure all of our appointments are the very best people we can get in all subject matters and status categories.

As to what traditional means, I'm not so sure what people have in mind when they say that. I can tell you the things that I look for — I want it to be the case that we appoint and promote people who have demonstrated commitment and capacity as teachers — not many people are very good at that. That's very important to me.

If someone is not very good at it but you say, "well, they're connected with some program somebody wants," or "they're a minority or a woman even though they're not good teachers," I have trouble with that. If that's traditionalist, I am.

The same thing with scholarship. I do want people to contribute to the world of ideas, I think that's a very important part of being a great law school in a great university.

There's no way to maintain the reputation of the school if we don't make that a priority. I know students and alumni don't always see it that way, but it really does feed back into the educational process and the reputation of the school.

Sometimes when people say we should have non-traditional standards all they mean is we shouldn't demand that people have published anything or published anything that's recognized as good. I'm against that. If that makes me traditional, I accept the label.

On the other hand, I'm all in favor of having people who do different kinds of work. There are lots of subject matter areas we don't have well represented and there are lots of interdisciplinary efforts where, in my opinion, we don't have as much strength — for example, law and society work.

There are lots of people who are in the law school teaching market with an interest in Con Law or Jurisprudence, who, in my opinion, don't have the rigorous training in those fields that we ought to demand — even in law and economics. It would be great to have someone who is trained in statistics and empirical methodology, in law and literature, and so on.

There are major new areas of practice that the bar is interested in where we don't have dedicated specialists. They're hard to find....

### Faculty Hiring Criteria

**RECORD:** The criteria for acceptance to the Harvard Law faculty has traditionally been a Harvard Law degree, Harvard Law Review, etc. However, some have argued that because these have not historically been open to women and minorities, other criteria must be used to define excellence in hiring of such groups. What criteria would you use?

**Clark:** I would rather not answer that question so generally since there are different cases. As to whether we can recognize writing or scholarship once it's there, you decide then; you don't look at people's credentials or where they came from, you look at the work.

Some people weigh some things more than others,

*"This school does not exist solely to bring happiness to the faculty."*

lation and a lot of people thought [Professor Richard Stewart '66] would be the choice. A lot of people were surprised.

**Clark:** On the faculty I think everybody knew throughout January and February that I was on a short list of three or four insiders. And I think most of them thought, "Oh well, Bok wouldn't have the nerve to do that."

So the surprise on the faculty would only be shock that Bok would actually do it — not surprise that I was on a very short list.

### Bok Listened to Input

**RECORD:** Some are charging President Bok with either the appearance of not taking input or with acting autocratically and disregarding certain opinions. It has been suggested that several members of the [faculty] committee had specifically advised against your appointment.

**Clark:** It is very unfair to say that Bok did not go through a process or listen to anyone. He went through so much process it was unbelievable. If you went through that much process for a middle manager position, which is what deans are, it would be a waste of resources. Except in special situations like this, where it does make sense.

In terms of his ignoring views, you have to keep in mind there was literally no one on the list who did not have substantial opposition from one quarter or the other. This was true of all the candidates. I know because we polled the faculty informally and we know that just about everyone had a substantial block opposed to them. All the people on the short list had at least a bare majority of people who found them

people think your appointment might polarize instead of heal some of those wounds. How do you respond?

**Clark:** The faculty has already in the past been polarized. I am fairly optimistic about your question. In the last year and a half or so, faculty morale and faculty relationships have been noticeably better than they have been in the past, and I expect them to continue to be. Partly that's because we're feeling pretty good about the younger faculty members, and there are workshops where people can go and present their work.

The second point is that in the last half dozen years or so, Harvard has become clearly better in terms of the strength of its faculty — eminence and reputation and productivity of people — and I think partly that's happened because of our tension. Certainly it's happened in spite of the tension, but I think because of it.

The third thing is the future. I see a lot of things to be done that will make people happy. I can't give out all my plans, but I'm pretty optimistic about it.

In terms of what will happen in the immediate future, there will be some people who will grumble. There have only been a handful of people who have been openly and vocally upset, so the media has talked to four or five people. Then there are some others who wish it had been somebody besides me, but they're trying to cooperate. I think everybody's going to try to do so. Certainly, I'm going to try to make it work.

And there are all these other constituencies within the school. It's not just the faculty at issue here. This school does not exist solely to bring happiness to the

## Ted Throws In The Towel

By Liz Askey  
News Editor

"We're disappointed, but not surprised," remarked Susan Jones, 2L, Image Consultant for the "Ted for Dean" Campaign, in response to President Derek Bok's '54 selection of Robert Clark '72 as the next dean of HLS.

Ted, defeated in fact but not in spirit, commented, "Needless to say I was disappointed with the outcome of President Bok's search. I felt I and my staff had a lot to offer the academic community."

Tom Wilson, 2L, Ted's Faculty Liaison, mused, "Bob Clark seems like a reasonable man, and I'm certain he recognizes the tremendous power Ted enjoys at this law school. I'm sure he will be in close contact with Ted as he begins the tough process of compromise and coalition building."

Jones added, "I'm offering myself as his image consultant. I think he could use a little help." Jones also said that Ted has offered to teach Clark his magic tricks and juggling act. "Perhaps he could use them at faculty meetings," she suggested.

At least one member of Ted's staff, however, was quick to point an unspecified finger. "I just want to put the blame on those in charge of p.r.," whined Rudy Rodriguez, 2L, Minority Issues Advisor. "More effort could have been made to get Ted's name out and to promote his appointment. I think minority students will suffer as a result of the lethargy which beset those in the public relations department," he added.

Ted, however, was more philosophical about his defeat as he put the past behind him and looked to the future: "The important thing now is that we heal the wounds that this long selection process has inflicted on the law school. The scar tissue of this brutal campaign will mar the face of our beautiful campus for months to come, but Bob Clark is the man to perform the cosmetic surgery."

An even more optimistic Scott Mcgregan, 2L, Ted's Campaign Manager, commented, "In a way, it's good that we lost. Now Ted won't risk any bad press which could injure his candidacy for president of the university. In fact, we attribute much of President Bok's hostility to a latent fear of Ted's growing political prowess."

# Judges Effort To Recruit 'Qualified' Women, Minorities

but that's the nature of the faculty. Scholarship should be carefully researched and carefully argued and terms should be defined — that's what some people look for. Other people downplay that and look for what they consider to be creativity. Everyone looks for things that make a contribution and are original.

Those kinds of traditional criteria are good. It's hard to know what is meant by these arguments that we should be looking for "nontraditional" scholarship and what exactly that means.

If it means we shouldn't restrict ourselves to doctrinal analysis, the answer is obviously that we should not. I am completely in favor of that, and interdisciplinary work, too.

## Clark on CLS

**RECORD:** You have been quoted that you regarded the two main dogmas of CLS as deeply pernicious and that they need to be combatted at the Law School.

**Clark:** That's a silly thing to take out of context. I wasn't making a general condemnation of the whole CLS movement. I was talking about some particular things about the possibility of general knowledge.

The two particular attitudes that I was worked up about at that time were the attitude in some of the CLS work that it's impossible to achieve objective, value neutral knowledge and the belief concerning the debilitating effects of finding generalizations which smack of necessity. That is, there are two trends in the literature saying that you can't achieve anything remotely like scientific understanding of how the legal system works, and secondly, that it's vicious and wrong to try because if you do that you are just trying to justify the status quo.

I believe strongly that those are wrongheaded attitudes, that it is worthwhile to try to find out law-like generalizations and that in doing so you don't condemn yourself to passivity and acceptance of the status quo. I think it is very wrong to equate the search for general knowledge with a status-quo bias. I'm against those attitudes and I think they should be combatted. That doesn't mean I want to fire people who have those views or never allow anyone to be appointed who has them. It's just that I want to argue against them. Professors should do such things.

The CLS group, I might point out, has many, many articles attacking people who hold opposite views, and say things much more strongly than I ever did.

**RECORD:** But the CLS people are not the dean of Harvard Law School.

**Clark:** That's right.

**RECORD:** Do you still feel that those two doctrines are deeply pernicious?

**Clark:** Yes, I do. That doesn't mean that that would be a decisive thing in any appointments matter, if that's what people are concerned about.

A more comprehensive statement of my picture of CLS and what I thought about it was in that Harvard Club Symposium on CLS at the Harvard Law School.

You don't know this famous document that now I'm getting blasted for having written? Duncan was there too. He had equal time.

I'm not sure I would say everything I said there again, but in terms of what I described about the CLS movement, part of our reaction was that some of the themes are not all that different from what everyone believes, like, laws are not value-free, social factors play a role in determining them, and some favor some groups more than others. In some ways, it's a disagreement about those things as a matter of degree and as to emotional attitudes, rather than sharp differences in what people believe.

I've read a very large amount of CLS literature over the years and there's a great deal in it that I have found very useful for myself. Some of it even when I disagreed with its conclusions, but I thought it was very worthwhile to have read. And some of it I surprisingly found not particularly objectionable. I can even think of some examples, like Duncan Kennedy's piece on distributive and paternalist motives in the private law, or Mark Kellman — some of his stuff I don't really have a problem with, and some of the other stuff I'm glad I've read, even though I think it's wrong.

That's normal. Even in other kinds of literature I've had a range of reactions.

## Vocal Opposition to CLS

**RECORD:** Some people say the debate over the scholarship is less important than how it's going to translate into the context of a dean of Harvard Law School who has opposed that view, apparently pretty vocally.

**Clark:** So they say. I don't think it's been all that vocal. I gave, all together in my whole career, two very short speeches that got reprinted in journals four or five years ago, and have been interviewed for a few papers. That's about it. I mean, I haven't made a career of going around talking about CLS. Then, I would say on the other side that a lot of the CLS fellows have made something of a minor career attacking other forms of scholarship.

## CLS Appointments

**RECORD:** There seems to be a perception that you would be opposed to future appointment to proponents of CLS.

**Clark:** Well, yes, and it's very false. I think what happens is that if you oppose one person or two people who are in a movement, people who are in the movement are so dedicated to it that they start portraying

you as if you opposed all, and it's not true. Two of the three who have been yelling in the press about how terrible my appointment is have been people I supported for appointments to this faculty and still would support despite the fact that I'm annoyed with them at the moment.

**RECORD:** You mean supported in their tenure votes?

**Clark:** Yes, [Gerald] Frug ['63] and David Kennedy. I think my support was probably very important in both cases to their becoming members of the faculty. So, there's a record there, and some other people, too. And [I supported them] enthusiastically; not because of arm-twisting or conciliation, in those cases. I'm just a person who believes I have a right to speak my mind. If I don't like something, I'm going to say it. And we can make distinctions among people in all the movements.

Now, I think what's hard is when you get cases that are genuinely difficult in the sense that they're not clear cases where you have to appoint or promote, or clear cases where you shouldn't. In fact, most cases are fairly clear. If you look back at our promotions, the great number of them haven't been that controversial. It's the ones where there really is a reasonable basis for taking either view that tend to cause the trouble.

Actually, the greater problem is personal connections, I would say, more than ideological ones. [For example] if somebody is coming up for a promotion and they're your friend, you want them promoted and you're not going to listen to anything negative. And people who are not their friends take a more detached, and to other people apparently callous, view. In my opinion, that has played a bigger role. Just personal involvement with the candidate, or non-involvement, has played a bigger role than the ideological aspect.

## New Role As Dean

**RECORD:** You mentioned earlier that you are a person who likes to voice your opinion. How do you see your role changing in terms of dealing with the divisiveness of the faculty?

**Clark:** Well, I still feel that I have not only the right but the responsibility to give an honest and candid reaction to people and their work, and I will do that.

I think what will be different is that I will now have a much greater obligation to get people to understand each other and their points of view, and to make sure that there is some connection among the people — some interaction, some bringing together — in settings where there is not so much emotion. And I'll feel a great responsibility to listen to everyone before announcing my initial reactions.

I intend to help make people always feel free to vote their conscience in appointments matters and not to

defer to me just because I'm the dean. And I won't engage in factional lobbying, or anything like that.

## Where Do the Critics Fit In?

**RECORD:** I spoke with Professor Michelman, and he said that one of his biggest questions now is, "Where do the Critics fit in?" How would you answer that question?

**Clark:** That's a very vague question. I mean, the Critics who are here are here. Most of them are contributing and I really hope they'll continue their teaching, their writing, their participation on committees. I'm not sure what the import of the question is.

**RECORD:** Are the Critics on their way out at Harvard Law School?

**Clark:** That would be terrible if they left. Look, my view is that, for everyone on the faculty, I'd like them

(continued on page 10)



Prof. Robert Clark displays his preference for neo-classical, synthesized music.

## Family, Religion Seen As Major Influences

By Theresa Martinez  
Staff Writer

Although his corporate law class is one of the most popular at HLS, Robert C. Clark '72, the school's next dean, remains relatively unknown to the law school community.

Born in 1944 in New Orleans, Clark was the second of nine children born to a "family of very modest means."

"Being a lower-middle class person from a devoutly religious background, and a very close family, we stressed values of hard work," Clark explained.

He remained in New Orleans until he entered Maryknoll College in New York, a Catholic seminary. In 1966, he received his B.A. in philosophy, with a minor in biblical theology. However, Clark decided to leave the seminary to pursue a career in academia.

"I left the seminary because I no longer believed in the system [or] the religious world view," Clark said.

Had he remained in the seminary, Clark would have traveled overseas as a missionary.

Clark then enrolled in Columbia to pursue a Ph.D. in the philosophy of science. Upon his graduation, Clark received offers to teach, but declined to seek another degree in an effort to further his understanding of "how society works."

Clark enrolled at HLS in the fall of 1969, and received his J.D. magna cum laude in 1972. While a student, he participated in the Bull & Bear Club, a now defunct organization which held investment seminars and organized job-placement programs.

Upon his graduation, Clark began work at the law firm of Ropes and Gray in Boston, where he spent two years. "If I hadn't gotten an offer to teach at one of the best places, I wouldn't have left," he said. "But Yale was too hard to resist."

In 1974, Clark left to teach at the Yale Law School, and by 1977, he was made a full professor. Clark returned to Harvard in 1979 as a visiting professor, and was quickly asked to join the faculty.

He became a teacher of corporations almost by chance by volunteering to fill an existing need in the faculty. Yet he has come to be known as one of the foremost scholars in this area.

He is perhaps best known for his one-volume *Corporate Law* treatise, which is widely regarded as one of the most readable of the major law school texts.

Most of the articles published by Clark center on corporate law. However, he has also written on the failings of health care regulation and the use of computers in legal education.

Clark is also renowned on the law school campus for periodically serenading the students of his corporations classes. The songs, which contain Clark-penned lyrics on corporate law doctrine, are usually set to popular melodies. Clark often accompanies himself on synthesizer or pre-recorded tape.

Music has long been a serious hobby for Clark, and accordingly he has dedicated much of his free time to the composition of neoclassical music for synthesizer, and to the study of harmony and counter-point.

He has also published articles on the role of chance and total control in music.

Clark is currently working on a book and seminar on the subject of "Law, Markets and Morals." It "is very much a resurfacing of my old knowledge and study of religion," Clark said. The book will be a systematic attempt to compare the legal system of generating and enforcing norms with the way markets, religions and informal social groups do it.

"I was once somebody who was deeply religious," Clark said. "I know the power of a religious world view on a person's mind [and] how it can affect ... behavior. I'm no longer in it, but I can still remember it. I think it's a phenomenon that ought to be explored."

"I'm now looking at it from the outside, trying to make sense of it, relating it to legal systems and social controls."

"I intend to continue working on that project," he continued. However, Clark hastened to add that "maybe [those are] famous last words."

# Clark Outlines Ambitious Scholarly Vision For Law School

(continued from page 9)

to become the best they can be — the best scholars, teachers, and colleagues to one another. And I think the dean's role is to help facilitate that.

So I want to make sure that all the groups who have energy and want to do things will have the resources to do them. I would love to see the CLS group have a funded program for summer research and workshops and things like that, and I think that's one thing that as dean I can do — help see if that can be brought about. So in that sense, it's very clear; I don't want to marginalize them. I want to get them working the best they can.

**RECORD:** Do you think your appointment might scare away or discourage any potential candidates who are aligned with the CLS movement? What's the future of new Critics?

**Clark:** We'll take the future as it comes, I think. It's too general a question.

## Sensitivity To Racial Issues

**RECORD:** Rob Wilkins, the president of BLSA,

which is ambitious, because some people retire, so you have to make more than just two hirings — that's what I want to do. Over a ten-year period, just making it grow about ten or a dozen more people, net.

**RECORD:** Do you mean also to increase the percentage of women and minorities?

**Clark:** I expect that over time the percentage of women and blacks in that ten or twelve will be greater than on the faculty at present, yes. I think everyone does.

**RECORD:** As far as legal education generally, do you see the student-teacher ratio as an important concern?

**Clark:** Yes I do. You know, there are a lot of cost savings we get out of having the ratio that we do, and the tuition, believe it or not, might be higher than it is if we try to change the ratio without getting a lot of capital funding.

But it is important. I don't think we can imagine a school in which all of our classes are 25 students and one teacher. That would be incredibly expensive. But I do think we can do a lot more than we have.

*"I want the Harvard Law School to be the greatest center of knowledge about law and legal institutions that ever existed on the face of the earth."*

raised an issue about a comment you made when Derek Bell staged a sit-in in 1987. The quote was, I don't know if it's accurate or not, that "This is a university — it's not a lunch counter in the deep South." Mr. Wilkins' worry was that it tended to indicate an insensitivity to issues of racial sensitivity or minority faculty hiring.

**Clark:** I think he's read a lot into that comment, which I'm not sure was quoted just as I said it. That incident was about Professor Bell's sit-in over Clare Dalton. I thought it was a poor idea, and I still do. I think it was wrong of me to say that publicly; I should have just communicated that directly to Professor Bell. And, maybe the phrasing was not what it should have been.

The issue there was whether his protest — his staying in his office — made any sense as a response to the Dalton controversy. And I didn't think it did.

The nature of my remark was that I thought he was putting it on the same moral plane as demonstrations against racial injustice, and I thought that was an unfair invocation of the symbolic power of those demonstrations.

I didn't mean in any sense to say that demonstrations at lunch counters in the South [were not worthwhile]. Quite the opposite. My point was you shouldn't try to analogize over a tenure matter at the Law School which has gone through so much debate and process to something as important as that. You're trying to get a free ride on the good feelings we all have about the civil rights movement. That's how I would have explained what I was trying to say.

## Affirmative Action For Faculty

**RECORD:** How do you respond to someone who is looking at some of the statements you've made and is worried about some of the insensitivity? A professor told me that he thinks you're perceived as someone who is not especially committed to the concept of affirmative action, or at least in the context of faculty hiring of minorities and women.

**Clark:** I think it's very unfair to say that, given my record. I think I've had an important role in the hiring of some of the women on the faculty here. And I've been pretty supportive of the younger minority professors here. I don't know what that [statement] means. I think it's very unfair to assert a general statement like that, given my record and what I intend to do.

**RECORD:** What do you intend to do?

**Clark:** As I said, I intend to work on increasing the number of women and minorities. That does not mean I'm going to go along with any candidate that a particular group wants. And I'm willing to say, "yes" to this one and "no" to that one; if people want to interpret that as a bias, then I'll just take the heat.

**RECORD:** Do you see a special need to try to recruit women and minorities? The number of blacks and women on the faculty has not increased that much in the last ten years or so.

**Clark:** I think the number of blacks has increased substantially. We now have four; we used to have only one or two.

**RECORD:** Do you see a continuing need?

**Clark:** Yes, it's important. I'm pretty optimistic that we will increase the number.

## Increasing The Number Of Faculty

**RECORD:** I understand you're interested in increasing the number of faculty?

**Clark:** In general. Now that's not something you can do all at once, nor should you. If you make a lot of initial hires in one year, then you're setting up problems for later on when they come up for promotions. But I think that if you try to increase the net number of tenure-track people by, say, two a year —

Most of the good reform ideas people have — whether it's clinical education, or more seminars, or more small classes in which people do writing regularly and get feedback on it, which is the main idea I like — all of those ideas involve a better ratio, more teachers in relation to students, and there's no way we can do that without increasing the faculty. I mean, we can get lecturers and part-timers, but I don't like to rely too much on them.

I want to make sure we get people who are full-time, dedicated to teaching and have an investment in pedagogy and who meet our standards.

**RECORD:** Do you see that as a real high priority?

**Clark:** Yeah. It's not a thing you have to do tomorrow, but it is something that we want to do over time. Ever since I've been here, the biggest student complaint has always been — in one form or another — "not enough feedback," or "it's too boring." That's the number one thing. When we had the Michelman Committee at the end of Al Sacks' deanship, that's what the recent student survey [sponsored by the student search committee] revealed.

I think it all goes back to the structure of the place — the student-teacher ratio and the traditional format. That's the structural change in legal education. There are a lot of other things that are not as major, but are important, like trying to get the faculty more interested in improving teaching techniques. There are a lot of people who could "bone up," you know, and the real trick is how to get people into those teaching workshops. Get the people who are really good teachers to try to distill their techniques and convey them.

## Funding For Clinical Programs

**RECORD:** Some people in the clinical programs are a little worried that the funding for the clinical programs might be cut under your deanship.

**Clark:** The clinical program is something I want to study very carefully before I formulate any plan. And that's not just an avoidance answer; that's genuinely what I'm going to do. I feel it's a vast empire that I don't understand fully enough ... to know what to do. So that's something I intend to approach somewhat slowly.... I have no instinct to cut or expand or anything; I have an instinct to find out lots more about it.

**RECORD:** No general feelings on the program in general?

**Clark:** Well, sure. I mean, a lot of the things that are done seem to be very good. But then one hears reactions from various quarters that suggest that there are problems, like inadequate supervision, and that's the kind of criticism that's made by people who are in the clinical education, too. So it's hard to know without a lot of in-depth study what to do about things like that.

What would be involved in getting more careful supervision, or faculty supervision, of all the things that are done — you know, real clinical as opposed to simulation — might be super-expensive, or it might be easy. I'm not sure.

## Practical v. Theoretical Approach

**RECORD:** A lot of students feel that there should be more of a practical emphasis. Some people seem to feel that you as a dean might stress a more theoretical approach, or tend to be more on that side of legal education. What are your feelings on that?

**Clark:** Well, I don't put it in such a sharp dichotomy. I do want the Harvard Law School to be the leading center of development of legal theory. That's the major thing I want to happen here, because there are very few law schools in the world that can really be great at that. And we are within reach of being the clearly dominant center of higher formative theory. On the other hand, I want the teaching program to be

good. I want students to feel they're learning something that's useful.

The question is how do they get the right balance between those objectives. I'll be working on it. Part of it is curricular; you want to make sure that lots of courses that are practical are actually offered and taught, and taught well. We have a lot of choice here, and I want to make sure we continue to have it.

**RECORD:** If you had to list one thing as your main priority as dean, what would it be?

**Clark:** I don't want to answer that. There are too many things that are all very important.

## The Low Income Protection Plan

**RECORD:** As far as the Low Income Protection Program goes, do you see that as an important part of the Law School?

**Clark:** Yes.

**RECORD:** Do you have any plans for it?

**Clark:** I would like to see funding for it as one aspect of our major fund drive that we hope to have, to capitalize it. Not to make it come out of our yearly budget, but to have some fund income which will support it, to make it more permanent and secure and generous. But I haven't gotten into the details of the plan, and whether the particular rules are good or bad. I have to defer to others on that.

## Professor Reaction

**RECORD:** How do you feel about the reactions you've gotten from some of the other professors?

**Clark:** Well, I feel very good, because most people have been very positive. I think the majority of the faculty has rallied around. Lots of people have come by, and I've been showered with notes and calls and visits. Some people are very ecstatic, others are very happy, and others say, "Well, that's not what I preferred, but I'm feeling optimistic about it and I'll do whatever I can to make it work." Professor Tribe called me up from Mexico and said essentially that.

So I feel I have a lot of people on board who are willing to try to make it work and give it a chance. The fact that there is a handful who are vocally angry, well, that's life. That would have happened no matter what. I sort of expected that.

**RECORD:** Do you feel that the reaction is something that will blow over and that you'll be able to overcome, or will the reaction last and exacerbate some of the conditions?

**Clark:** I certainly hope it will blow over, or certainly lessen or become more constructive.

## Clark's Vision For The Law School

**RECORD:** In general terms, do you want to say what your vision for the Law School is?

**Clark:** Yes, that's very important. I don't know if I said this, but I want the Harvard Law School to be the greatest center of knowledge about law and legal institutions that ever existed on the face of the earth. I have very high aspirations, in other words. I think our central mission is to deliver top quality legal education and leading-edge scholarship. And I want to make sure we do that.

I'm not interested in "satisficing" — doing a reasonably good job or accommodating various interests or keeping people happy as a goal in itself. I want to make sure this is the best law school.

**RECORD:** Will you run the risk of seriously deepening rifts to achieve that goal?

**Clark:** I'm willing to run risks. There are costs and there are risks in any effort to be a great institution. Yes, I'll take them.

## A Lighter Note: Neo-Classical Music

**RECORD:** To end on a lighter note, how did your interest in composing neo-classical music with synthesizers come about?

**Clark:** I am a music nut. I love music and I always have. I've studied harmony, counterpoint, orchestration and things like that for years, and I have some synthesizers and a multi-track tape recorder dedicated to this. It's my hobby.

**Type For \$**  
**WANTED:**  
**Part-Time Typist**  
**Contact:**  
**Harvard Law Record**  
**495-4418**



BAR REVIEW

# Spring Semester Discount

# \$SAVES\$

When You Register for BAR/BRI's  
New York, New Jersey, Massachusetts,  
Connecticut, Maine, New Hampshire,  
Rhode Island or Vermont Bar Review

## Class of 1989

|                                                 | 1989 Regular<br>Tuition | Spring Semester<br>Discount | You Pay only |
|-------------------------------------------------|-------------------------|-----------------------------|--------------|
| New York                                        | \$1050                  |                             | \$950        |
| New Jersey                                      | \$825                   | \$100                       | \$725        |
| Massachusetts,<br>Conn., Maine,<br>NH, RI or VT | \$925                   |                             | \$825        |

## Class of 1990

|                                                 | 1989 Regular<br>Tuition | Spring Semester<br>Discount | You Pay only |
|-------------------------------------------------|-------------------------|-----------------------------|--------------|
| New York                                        | \$1050                  |                             | \$925        |
| New Jersey                                      | \$825                   | \$125                       | \$700        |
| Massachusetts,<br>Conn., Maine,<br>NH, RI or VT | \$925                   |                             | \$800        |

## Class of 1991 & 1992

| Spring Semester<br>Discount | You Pay only |
|-----------------------------|--------------|
|                             | \$900        |
| \$150                       | \$675        |
|                             | \$775        |



BAR REVIEW

415 Seventh Avenue, Suite 62  
New York, New York 10001  
212/594-3696 201/623-3363  
516/542-1030 914/684-0807

160 Commonwealth Avenue  
Boston, MA 02116  
617/437-1171

**Remember:** The last day to secure this discount is:

A \$50 registration fee reserves this price.

# HLS Students

## PREPARE FREE FOR THE MPRE

For the March MPRE Only, a \$50 deposit toward your SMH or Kaplan-SMH Bar Review course gets you:

- Free MPRE preparation with our **exclusive 2-session program** offered at Harvard Law School on March 11, 1989
- SMH's **Spring Discounts** for your complete bar review course

For more information on the MPRE Special, a schedule of MPRE classes, and our Spring Discounts, see your campus rep or call:

in MA (800) 453-2266    Boston (617) 742-3900

**SMH**  
BAR REVIEW

# Chambers Shifts Focus Of NAACP Legal Defense Fund

By Daphne R. McFerren  
Special to the RECORD

In its endeavor to address the problems of inequality of blacks, the NAACP Legal Defense and Educational Fund, Inc. (LDF) has assumed a leading role in advocating the interest of blacks. Perhaps the pinnacle of the organization's success was its effort to persuade the Supreme Court in *Brown v. Board of Education* that "separate but equal" treatment of blacks is inconsistent with constitutional notions of equality. LDF's efforts continue to focus upon achieving recognition of the rights of blacks and other minorities through the courts and through political and legislative efforts.

Julius L. Chambers, who received his J.D. degree from the University of North Carolina at Chapel Hill in 1962, and his LL.M. degree from Columbia Law School in 1963, has been Director-Counsel of LDF since 1984.

In addition to his duties as a litigator for LDF, Chambers manages the organization's staff of 25 full-time attorneys, the majority of whom are located in New York, and oversees the activities of approximately 400 cooperating attorneys throughout the United States. Cooperating attorneys serve as local counsel for the New York office and they sometimes litigate individual cases on behalf of LDF. LDF's activities are funded by individual, foundation and corporate donations, bequests and recovery of fees in some of its cases.

Chambers stated that LDF's role in helping blacks achieve racial equality requires innovative approaches using legal, political and legislative tactics. He stated that the role of the organization is much different than it was in the 1950s when LDF's efforts were devoted to persuading the court to recognize blacks' constitutional rights. Although the organization's recent tasks involve such innovative strategies as developing constitutional principles which address the rights of the poor, Chambers noted that LDF is nonetheless in "a holding stage" and is "trying to preserve what it has accomplished over the last 20 or 30 years."

Chambers conceded that the conservative position of the Supreme Court will affect the success of LDF's efforts. He notes that the Supreme Court's decision to hear reargument on whether its holding in *Runyon v. McCrary* that private acts of discrimination are prohibited under 42 U.S.C. 1981 should be overruled, and the Court's decision in *City of Richmond v. J.A. Croson Company* to strike down Richmond's plan to increase minority participation in public works projects is disheartening.

Chambers argued that the LDF's challenge will be to "educate" the Court about the oppressive, discriminatory conditions blacks have faced and are facing in this country. The Court's recent opinions, Chambers argued, "do not appreciate what blacks have encountered," and LDF's litigation must make clear to the Court that racism creates barriers which impede blacks, full participation in society.

Chambers stated that a recent national survey conducted by LDF indicates that whites feel that blacks are not being discriminated against. (*New York Times*, January 11, 1989). Chambers noted that many whites have ignored or forgotten the effect slavery has had on blacks' advancement and do not recognize the problems blacks encounter in their daily existence. "This attitude [that blacks are not being discriminated against]," Chambers argued "was reflected during the Reagan administration." Nevertheless, Chambers stated that he believes the present Court can be educated about the plight of blacks and that LDF will devote substantial efforts toward that end.

LDF's future efforts will focus upon education, employment practices, housing and health, Chambers said. These areas will be addressed through litigation and policy-making strategies. In the area of education, Chambers explained, school districts and the federal government must address special problems of the poor. Education, Chambers argued, is also an effective tool with

which to address the problems facing poor blacks and specifically poor black men.

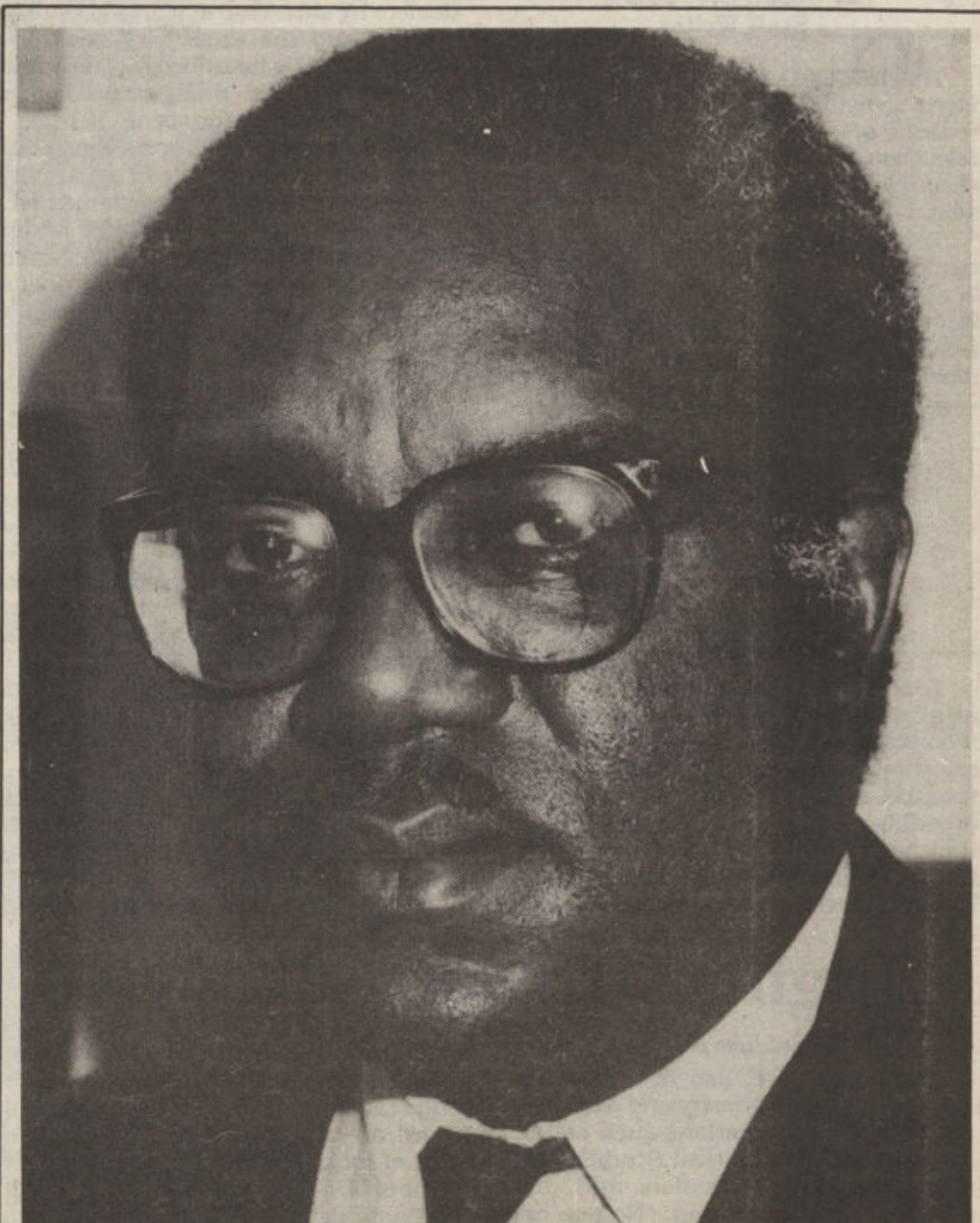
Twenty-two percent of black men are in the underclass and special projects similar to the LDF's Black Women's Employment Project may be instituted to address the conditions poor black men face. The LDF's *Black Women's Employment Project* assisted black women in helping them acquire better paying employment positions. A project addressing the conditions young black men face will "focus on the problems that remove black men from effective participation in society" and will seek to develop educational programs which translate into meaningful opportunities for employment.

LDF's *Poverty and Justice Program* is designed "to obtain some legal protection for the poor." Chambers argued that the Supreme Court's holding in *San Antonio Independent School District v. Rodriguez* that poverty is not a suspect classification will require efforts which will demonstrate to the court that classifications which are effectively based upon wealth constitute a denial of equal protection.

"Decisions like this," Chambers argued, "seriously affect educational, employment, housing and other opportunities for the poor." Chambers further stated that LDF is addressing the growing problem of the lack of affordable, decent housing for the poor. As a result, LDF's efforts will focus upon gentrification, the failure of cities to provide adequate housing, and zoning practices which have disproportionately affected poor blacks. In addition, LDF's agenda includes examining the health care system and devising strategies which will make health care services accessible to the poor.

Although the black middle class is growing, the number of poor blacks is also increasing. As a consequence, Chambers stated, "the litigation of the 1980s and '90s will address the plight

(continued on page 14)



Julius L. Chambers, head of NAACP Legal Defense Fund, fights for blacks' rights.

## Frank Urges Democrats Not To Fear Misunderstanding And To Speak Out

By Dawn Ross  
Features Editor

Representative Barney Frank '77 (D-Mass.) suggested Democrats might do well to learn from the Reagan knack for semantics in expressing their political positions to the public.

"Reagan talked a lot of fatuous nonsense, but people like his upbeat cheerfulness — there's something to be learned from that," said Frank, speaking at an HLS Democrats-sponsored event on Feb. 17. He added that "the major changes we [Democrats] have to make have more to do with rhetoric than politics." He noted that "issue by issue, the liberal ones are the most popular," citing as examples arms reduction, apartheid, and aid to the contras.

However, he suggested that many politicians, including Democrats, are reluctant to state their feelings on the issues and are subsequently hurt by not speaking. "The failure to say something will more often be more dangerous than saying it," Frank cautioned. "You can't assume that people know you are anti-communist or anti-crime." He added that "not saying things because they seem obvious or because [they may be] misunderstood is stupid."

According to Frank, it is a basic principle of freedom to be able "to support people's right to do things you disagree with."

"It collapses the notion of freedom to say that if you defend someone's right to not do something, you support them," he said. "Don't expect anyone to believe anything you don't tell them."

Concerning the Democrats' internal problems, Frank said that with so many contending forces present, there is "no national Democratic party." He added that "too many critiques from the left"

weaken the position of the party.

Frank called for the Democratic party to stop fighting among themselves. "Withholding support from a candidate because one didn't move far enough [to the left] is crazy — we can't benefit by punishing our friends." He cited as an illustration the position of some Democrats in the last election that withholding support from Dukakis would force a greater shift to the left in the next election.

*"Gorbachev is not yet a candidate for membership in the ACLU."*

Frank decried Dukakis' loss to Bush "in a time of peace and prosperity." He admitted that Dukakis "ran a terrible campaign," but felt the divisiveness of competing interest groups within the Democratic party did not help the situation.

With more tactical advice, Frank issued a warning to liberals: "We have to be careful not to nag too much." Frank stated that liberals often come across too much as telling people how to live their lives. Instead, he stressed the importance of providing information to people and then allowing them to make their own choices. "You are the primary person in charge of yourself," he added. "If you choose to do something stupid, even with full information, it's your right."

Frank cited several areas where liberals may be too involved in personal decision-making, rather than in emphasizing education and information. Among these were cigarette smoking, seatbelts and airbags, and particularly, the 55 m.p.h. speed limit. Addressing enforcement problems created by forc-

ing people to behave in certain ways, Frank stated, "it is better to have a reasonable law enforced, than an unreasonable law unenforced."

"I don't obey every law," Frank added, "but I obey every law I vote for."

Frank addressed several other areas of interest. On the issue of aid to Nicaragua, he stated that it is "dumb" to spend money helping the contras, dismissing the rationale that a communist victory in Central America would pose a

direct threat to the United States. Frank compared the situation to Cuba, stating that although the rule of communist-backed Fidel Castro has been unfortunate for the Cuban people, no threat is posed by Castro to the United States. "Being afraid of Nicaragua is like being afraid of Connecticut," he joked, comparing the two in size.

With respect to the Soviet Union, Frank said that the U.S. should welcome Gorbachev without romanticizing the changes he is bringing about. "[Gorbachev] is not yet a candidate for membership in the ACLU (American Civil Liberties Union)."

Frank stated that recognition of Gorbachev's economic interests and his interest in a more humane society "does not mean we have to defend Russian society." He added that the Democrats "can out-anti-communist the Republicans."

Frank said that if he ever leaves politics, he would like to write on semantics and the effective use of political rhetoric, but that he will "probably end up practicing law."

# True Believer: Woods' Performance Highlights Flick

By Susan C.V. Jones  
Staff Writer

The RECORD introduces with this issue a new regular feature, offering reviews of current movies, books and television programs that are in some way related to the law or legal profession.

*True Believer* is an exciting, well-made, well-acted courtroom thriller. It is also almost completely predictable, but one reason that formulas become formulas is that they work, and this movie works well.

## Law Review

*True Believer* probably wouldn't work at all without the presence of James Woods as the burnt-out radical defense attorney, Eddie Dodd. Woods tends towards a Willem Dafoe-like level of brooding intensity, but here he tempers that with a degree of self-deflating humor. Eddie is a former '60s radical legal ninja who has spent the last ten

years emancipating mid-level drug dealers by shrieking at juries about big brother and the erosion of constitutional rights. He is suddenly confronted by something he thought no longer existed, a possibly innocent client.

The case involves a Korean man convicted eight years earlier in an apparently gang-related Chinatown murder. The man's mother wants Eddie to defend her son on charges stemming from a prison knife-fight, but Eddie re-opens the original murder case, to the delight of his naive young protege and the chagrin of the slimy D.A.

Woods' portrayal of a low-rent Alan Dershowitz is complex and interesting. The prospect of defending an innocent person is both exhilarating and terrifying for Eddie. Suddenly he is fighting for someone who has been cheated out of eight years of his life, rather than thumbing his nose at the system. Woods does an admirable job of conveying just how daunting a defense counsel's responsibility can be in such a case.

Eddie is assisted and opposed in his task by a collection of well-played stock characters. Robert Downey, Jr., star of the teen-sleaze classic *Less Than Zero*, plays his dewy-eyed, hero-worshipping associate ("Remember me? Oberlin undergrad, Michigan Law? I wrote you a letter ... salary no object?")

Margaret Colin, who played a D.A. on

the short-lived TV series *Foley Square*, is a supportive and efficient private eye. Eddie's nemesis is evil incarnate in the person of (surprise, surprise) the well-dressed, politically ambitious Manhattan District Attorney. As played by Kurtwood Smith, this man makes smug more than a facial expression — it's a way of life. There is also the requisite assortment of slimy cons and burnt-out cops, as well as a very funny schizophrenic with an intriguing new theory about the assassination of JFK.

While the plot may seem fairly standard, it works well within the movie, and if there are holes in it, the film is fast-paced enough that you don't have time to poke at them until after the credits roll. The tension builds effectively to a very suspenseful final confrontation, followed by a viscerally satisfying courtroom showdown.

The trial scenes themselves are stan-

dard movie fare, but Woods executes them with flair, and, for a change, his extreme, ranting tactics backfire as often as they succeed.

*True Believer* has much to recommend it. It is taut, suspenseful, and atmospheric. The cinematography is dark, brooding, and consistently seedy, and the music thumps evocatively in the background. There is also a subversive sense of humor lurking behind the formula. The filmmakers seem to relish drawing unflattering comparisons between prosecutors and Neo-nazis, and Eddie Dodd is the first unapologetic pot-smoker I can remember on screen since those crazy kids in *The Big Chill*. If you can overcome your feelings of *deja vu* while watching *True Believer*, it offers a diverting night at the movies, even for those of us who are headed for Cravath rather than Chinatown.

## Rights Of Poor Advanced

(continued from page 5)

of the poor." LDF has combined its efforts to address poverty and discrimination with organizations such as the Joint Center for Political Studies, the National Urban Coalition and the Children's Defense Fund. "No one organization can complete the many tasks [but] a combination of organizations' efforts [will be more effective in addressing the needs of the disadvantaged]," Chambers argued.

Chambers noted that non-legal strategies also must be implemented to improve blacks' status. Chambers noted that "litigation exclusively cannot achieve all goals ... [and that one] has to approach problems with that in mind. Litigation was not intended to be the panacea to the full range of black problems." Chambers argued that there must be "various efforts to improve the status of minorities and more emphasis on economic and legislative efforts are needed."

Blacks' future, Chambers argued, will be determined by the actions of blacks as well as non-blacks. Chambers stated that he does not believe that minorities can decide their educational, occupational and economic future in isolation since many issues which affect the black community are heavily influenced by institutions where whites are involved.

Chambers stated that he would like to see more lawyers become interested in civil rights and civil liberties issues since at present only about four percent of lawyers entering the work force opt for that field. Law schools, law firms and practitioners can assist organizations like LDF in advancing civil rights, Chambers explained. "Whether one goes to Wall Street, government or the corporate world, one can devote some time to the needs of the poor and the growing race problems."

Chambers stated that law schools which have developed financial aid programs which make it possible for students to take public interest jobs increase the pool of persons who can make careers in public interest work. Further, Chambers also noted that private law firms' pro bono practices have been instrumental in assisting LDF in its efforts to address discriminatory practices; however, "there is a need for more [legal assistance]."

As a result of the recent *City of Richmond v. J.A. Croson Company* decision, Chambers explained, private law firms have contacted LDF to see what assistance the firms could provide in helping cities document the requisite criteria, as stated by the Supreme Court, needed to justify programs which give preference to minority contractors.

Chambers stated that assistance

from firms across the country is valuable to his organization. Many of LDF's suits, such as the capital punishment cases, are in state courts and participation of local counsel helps ameliorate some of LDF's expense and time considerations. Participating in cases which address civil rights is "rewarding to persons [concerned] about equal opportunity," Chambers stated. Hence it "is important that all join in and help provide legal support for [the disadvantaged] in society."

## Next Record: March 10

## C A M B R I D G E C L A S S

Cambridge's Harvard Square, the perfect setting for this fine luxury hotel.

The Charles — host to many of Boston's most illustrious visitors — is famous for genuine warmth, comfort and world-class service. All in all, a more gratifying option for discerning travelers on their visits to Boston.

*Now, That's Class!*



THE  
CHARLES  
HOTEL

AT HARVARD SQUARE

One Bennett at Eliot Street, Cambridge,  
Massachusetts 02138 617.864.1200



# FOR THE SUMMER ASSOCIATE WHO SEEKS GREATER PRODUCTIVITY, PROFITABILITY, AND PROFICIENCY.

**CALL TO RESERVE YOUR PLACE NOW.**  
**1-800-WESTLAW**  
**(1-800-937-8529)**

|              |                           |                   |
|--------------|---------------------------|-------------------|
| <b>DATE:</b> | Friday, March 3, 1989     | 10:00, 1:00, 3:00 |
|              | Wednesday, March 8, 1989  | 10:00, 1:00, 3:00 |
|              | Friday, March 10, 1989    | 10:00, 1:00, 3:00 |
|              | Wednesday, March 15, 1989 | 10:00, 1:00, 3:00 |

**PLACE:** See Law Library Staff for further information

## WEST'S SUMMER ASSOCIATE PROGRAM

## WESTLAW<sup>®</sup>

# Clark: Merit Based Approach To Minority Hiring

(continued from page 1)  
open to disparate views. Scholarship will achieve new highs with his leadership," Wolfman added.

Prof. Hal Scott said "I think it's terrific... He was selected on the merits of his scholarship and teaching ability, and among the possible candidates, he was, if not the best, one of the very best."

"I think Clark will listen to all points of view and be the dean of the entire law school. I can't think of anyone who is more widely read in and knowledgeable of diverse intellectual traditions," Scott added.

Prof. Laurence Tribe '66, who

have an insufficient commitment to attracting women and minorities to the faculty.

"Is he going to be sufficiently inclusive and pluralistic?" asked Asst. Prof. William (Terry) Fisher '82, also a CLS adherent. "Is he willing to hire women and minorities to teach, and how broad a spectrum of opportunity to teach is he going to be willing to tolerate?"

Fisher did say, however, that "beyond that [concern], I am nowhere near as pessimistic," adding that he thought the Clark appointment would "do a great deal to get us out of the doldrums," especially concerning the law school's traditional

as products of people's imaginations. I think some of the concerns are understandable in light of the school's history."

Clark claimed that he was committed to "increas[ing] the number of women and minority faculty members," but added, "I also want to make sure all of our appointments are the very best people we can get in all subject matter and status categories."

"If someone is not very good at [scholarship], but you say, 'Well, they're connected with some program somebody wants, or they're a minority or a woman, even though they're not good teachers, but [we]

ues of scholarship and legal education."

Although he acknowledged Clark's past role as an outspoken critic of the CLS movement, Stewart said, "I don't think you can assume just because he held one set of opinions as a faculty member, that he can't build a consensus in the dean's office."

"Clark has been the most intent, adversarial and unyielding [in the faculty] in his attachment to right-wing positions," said Prof. Frank Michelman '70.

Clark was outspoken in the controversy over the 1987 tenure denial of Asst. Prof. Clare Dalton LL.M. '73, according to Sargentich, who claimed Clark was the "point man and primary voice" for opposition to her tenure appointment.

Prof. Charles Fried, who returned to the law school this semester after serving as Solicitor General under former President Reagan, added that "where you stand is a function of where you sit. The office will make the man."

Fried praised Clark's appointment, saying he is "a remarkable person [who has] a clarity of intelligence and will that are very important for the job."

Clark has been highly critical of CLS attacks on traditional legal scholarship. In a freewheeling 1985 speech published by the *Harvard Journal of Law and Public Policy*, Clark said the two basic "CLS dogmas ... are deeply pernicious, and have to be combatted in legal education. It is very bad to indoctrinate students with these attitudes."

He added later, however, that "one obvious starting point is that there ought to be more serious and more sustained methodological debates between people in various camps in the law school world. That clearly should happen; the CLS people deserve credit for making it more likely to happen."

In another context that same

year, Clark said that CLS advocates "prolonged intense, bitter conflict" and engaged in a "ritual slaying of the elders."

Fisher, who does not yet have a tenured faculty position, said his primary concern about Clark's appointment was the signal sent by Bok by selecting someone "so clearly associated with a particular faction of the law school."

Sargentich expressed similar concerns about Bok's tolerance toward the CLS and other forms of radical scholarship. "Bok's decisions over the last two years reveal a pattern of not being open to an entire wing of scholarship."

Clark countered that argument, claiming, "I think that's a wrong interpretation of what Bok did. He thinks of it more in terms of a bold attempt to favor excellence over complacency."

Bok said in an interview with the *Harvard Crimson* that he chose Clark because he "felt that he had certain qualities that were very important for a dean — high intellectual standards and a strong commitment to building the ablest faculty possible."

"I think he's very interested in legal education and the reform of legal education, and I think he has a remarkably strong character."

In a Feb. 24 faculty meeting, Bok officially announced Clark's selection and, according to Michelman, asked the faculty not to jump to conclusions about the possible exclusion of left-wing scholars in the future.

Michelman said later of Bok's statement that, "Actions speak louder than words."

Tribe said Bok's choice "sends a great many signals.... Obviously, President Bok was aware that his selection would be a controversial one" and divisive "to a greater or lesser degree."

He added that the resulting divisiveness was at least partially dependent "on how divisive people make it."

*"I want to increase the number of women and minority faculty members, but I also want to make sure all of our appointments are the very best people."*

served as chair of the FDSC, said of the Clark appointment, "Obviously there would have been choices that would have represented a more conciliatory emphasis, but this choice represents the view that conciliation is less important than progress."

Tribe said that while he was unwilling to characterize his recommendation to Bok, "Bob Clark was fully aware, having served on the committee, that there were other candidates of whom I had a more favorable impression," adding he felt that fact was "irrelevant" to his future relationship with the dean-designate.

Vorenberg, who plans to step down from his position in June, said he thought it was "a good appointment. [Clark] is devoted to the school. He understands legal education and how it works at the school."

"I am very optimistic he will be a fine dean, and obviously that includes good working relations with the faculty," Vorenberg added.

Some professors also expressed concern that Clark will

curriculum.

Although no one directly challenged Clark's attitude toward women and minority faculty members, some questioned whether his adoption of "traditional" standards of legal scholarship would exclude women and minority candidates denied those opportunities to excel in the past.

"I fear there will be a ... tilt toward a narrower point of view about what law teaching is — a view that is exclusive toward women, minorities and progressives," said Sargentich. "This is the primary concern surrounding Clark's appointment," he added.

Tribe said Clark was "obviously a distinguished and creative scholar, and he is capable of being pluralistic and open-minded if he makes a genuine effort. I very much hope and expect he will."

Commenting on news reports that Clark felt concerns about his commitment to diversity were "neurotic" or "fanciful," Tribe said, "I don't think it is fair to dismiss all the concerns that have been expressed

should appoint them,' I have trouble with that. If that's traditionalist, I am."

Clark previously served as chair of the Appointments Committee's Subcommittee on Women, and Vorenberg said he did "an impressive job as chairman. He set out to identify the strongest women candidates anywhere in the country."

Responding to criticism of Clark's commitment to faculty diversity, Wolfman said Clark has "done a lot to increase the pool of women on the faculty. We should have and will have more minorities and women without deviating from high standards of scholarship."

"The notion that he's an adversary of people in the CLS group is not accurate," Wolfman added. "It's not a political thing with him [Clark]. He believes one can do distinguished work, whether as he does or as they do."

Prof. Richard Stewart '66, a conservative whom many believed to be the most likely choice for dean, said he supported Clark's appointment because "he's got the right val-

## Conflict Of Interest Debated Over Committee, Candidates' Roles

(continued from page 1)

chances of potential competitors was "completely unfounded."

He also pointed to the fact that "there are five other pretty sophisticated people on the Committee, and they all had their say."

In a wide-ranging interview with the RECORD (see p. 8), Clark said he excused himself from any early discussions last fall about his potential candidacy but felt there was no conflict of interest in general because, "I was on a larger list, and nobody took me quite seriously as a real prospect."

In an early December FDSC meeting, when it became clear that Clark was on a shrinking list of possible candidates, he said he limited his contribution to "say[ing] a few words about various people, and then [I] left and was virtually not there. I was almost off the committee then."

Clark said President Derek Bok '54 approached him after requesting further December meetings with the Committee and asked him to formally step down. He said Bok appointed Prof. Louis Kaplow '81 to serve in his place.

"It was only then that it occurred to me, 'Gee, I'm being considered seriously.' I was

ready to do it at any point really," Clark said.

There were at least two December meetings between Bok and members of the FDSC after Clark resigned from the committee, Tribe said.

Committee member Bernard Wolfman said despite Clark's membership on the committee, "there was uninhibited discussion, critical and positive" about his candidacy from the beginning of the search last fall.

Both Tribe and Committee member Bernard Wolfman said that members of the faculty urged those selected to serve on the committee not to refuse to do so because they might be possible candidates for the position of dean.

"On the floor of the faculty ... several members made a strong plea that people should not take themselves out of the running [for Committee seats] because they might be candidates," Tribe said.

"Service on the Committee was seen as a civic duty and that otherwise we might fail to get a fair cross-section of the faculty," he added.

"Others thought and continue to think it was a mistake to serve on the committee and be a candidate," said Tribe, who qualified that this argument



Dean-Designate Robert Clark (center) and the man he will be replacing, Dean James Vorenberg (right) Harvard President Derek Bok is at left.

was "assumed" rather than spoken. "In retrospect," he added, "I'm not sure how I would feel and how Bob Clark would

feel about that."

Two committee members, Tribe and Prof. David Shapiro

'57, publicly took themselves out of consideration for the position, according to Tribe.