In Memoriam: J. Morris Clark

From Friends in Minnesota

It is still difficult to accept the fact that Morris Clark no longer lives. It is impossible to comprehend why a young life which held so much promise was brought to an abrupt and capricious end. In paying tribute to his memory, we mourn our loss and share our grief.

Morris Clark was born in West Chester, in rural Pennsylvania, in 1944. His early academic achievements were brilliant. Though his father died of a farming accident when he was very young and his mother and stepfather were of modest circumstances, scholarships enabled Morris to attend the Stony Brook School in Long Island, New York, Winchester College in England, and Yale University. At Yale he was elected to Phi Beta Kappa and wrote film and drama criticism for the Yale Daily News. He was graduated magna cum laude in 1966.

Morris then attended the Harvard Law School where he was Article Editor of the Harvard Law Review. Morris was graduated from Harvard Law School magna cum laude in 1969.

Upon graduation, Morris served as law clerk to Judge Sterry R. Waterman of the United States Court of Appeals for the Second Circuit, in St. Johnsbury, Vermont. After his year of clerkship, he worked as staff attorney for Vermont Legal Aid, Inc., and became Assistant Director in Charge of Law Reform for the society. This was the alternative service Morris performed because he objected to military service on grounds of conscience.

Morris joined our faculty in the fall of 1974. His love of the law and teaching, his modesty and gentleness, quickly earned him the affection of his students and the admiration and respect of his colleagues.

Morris cared for his students and was solicitous about his teaching. On the occasions when I visited his classes, I was always impressed by what I saw and heard. Yet he was never satisfied with how the class had gone. He was among the best of our teachers but he was always eager for suggestions which would help him to improve. Students had easy access to Morris. He volunteered to help our minority students and was always available to students working on the Law Review. His devotion to them will be missed.

Morris was keenly interested in the school and its future. He took a leading role in the consideration of the proposals I made to the faculty to reform our curriculum by establishing areas of concentration in the second and third years. For this reason, he chaired our Education Policy Committee with enthusiasm, and formulated the first experimental concentration program in the field of public law.
We shall do our utmost to launch the program next year. But it will not be the same without his participation and leadership.

Morris was also an able and productive scholar. I learned a great deal from reading and discussing with him drafts of his last two major articles. While he was always open to criticism, he was firm in holding views he thought were correct. Morris wrote as a rationalist who thought it important to elucidate concepts and theories that might provide a more coherent framework for Supreme Court decisionmaking in certain areas.

Yet, Morris was a rationalist who made the leap into faith with joy. He was active in his local church as well as in the Center for Law and Religious Freedom and the Christian Legal Society.

Morris also participated in bar affairs and valued his membership on the Hennepin County Ethics Committee. He contributed often to the bar's continuing education program and published a two-volume work on professional responsibility for Minnesota lawyers.

It will not be easy to fill the void Morris' death has left in the law school, the University, and the community at large. He was a kind and loyal friend whom we loved very much.

By Morris' death, we have been reminded once again of the finiteness of life. Morris would want us to derive only one lesson from this painful awareness—to draw closer together in love of the law and learning, and in friendship and mutual support.

Carl A. Auerbach
Professor and Dean,
University of Minnesota Law School

Morris Clark's talents were manifest from his first days as a law student. He had a brilliant academic career: Article Editor of the Harvard Law Review; magna cum laude; author of three student notes and a seminar paper that (on the recommendation of Archibald Cox) was published by the Law Review as a signed article. In retrospect, however, the most remarkable thing about Morris' law school career was that no one seemed jealous of his success. He did not flaunt his talents and achievements. It was impossible to resent someone who was so patently deserving and at the same time so humble about himself.

Morris' work was important to him, and he earned the respect of the entire faculty for his penetrating scholarship. His first article, published before he joined our faculty, offered novel insights into
interpretation of the free exercise clause of the first amendment.\textsuperscript{1} It proposed an alternative to the "balancing test" based upon a nonutilitarian approach to conflicts between religious practice and governmental goals. His subsequent article analyzing constitutional issues raised by civil and criminal penalties\textsuperscript{2} dealt with a doctrinal area that had mystified lawyers and scholars for years. In this piece, he displayed a remarkable ability to synthesize and explain a diverse body of caselaw. In his most recent article,\textsuperscript{3} he dealt with the difficult concepts of "purpose" and "motive" in constitutional law and offered a new approach to analysis. By the time of his death, his work had earned him a national reputation as a constitutional law scholar.

Morris also taught and wrote about professional responsibility. Upon joining our faculty, he agreed to take over a section of the course on Legal Professions. Legal Professions is a required course filled with unwilling third-year students, and those of us who had taught it before had often complained about the difficulty of holding the students' attention and interest. Morris, however, was delighted with the course because it gave him a chance to think and write about ethics and the practice of law. Morris' enthusiasm was communicated to the students, and his course was one of the most highly rated upper-level courses. His involvement also bore scholarly fruit. In corroboration with Charles Wolfram, Morris published a two-volume work on Professional Responsibility in Minnesota, and was working on a textbook on Professional Responsibility for West Publishing Company at the time of his death.

Morris Clark was a fine scholar, but his contribution to the law school did not end there. When asked to do committee work or other thankless tasks, Morris responded with the same dedication that he devoted to his scholarship. Moreover, he was recognized both by students and his colleagues as one of the law school's outstanding teachers.

Morris Clark's work took time, but it never kept him from being a warm human being. He was always ready to lend an ear to a friend, and whoever talked to him came away feeling better for it. His gentleness, kindness, and concern will always be remembered by the many.

\textsuperscript{2} For examples of opinions that have been influenced by points made in this article, see Johnson v. Robison, 415 U.S. 361 (1974), and Gillette v. United States, 401 U.S. 437 (1970).

people who loved him. His sudden death at the age of thirty-four deprived us of a talented colleague and a dear friend.

Roger C. Park
Professor of Law,
University of Minnesota Law School

It is hard to believe that Morris Clark was a faculty colleague at the law school for only a little more time than his legal education consumed. Morris made a profound and lasting impression upon his colleagues in the tragically-ended four and one-half years of that relationship. I have been asked by the Law Review to focus upon the academic aspect of his life and to record some recollections of our work together. I am pleased to do so, but I feel I must preface my recollections of that one aspect of his life with an important qualification. Morris' professional activities stemmed from his deep inner feelings, resources, and qualities. These vital aspects of Morris, the complete person, produced a rich and varied life that transcended and informed his specifically professional accomplishments.

Morris had been on the faculty a little more than a year when he was approached in the fall of 1975 by the late John Wirt, director of the Minnesota Continuing Legal Education program, and asked to give a series of lectures on professional responsibility. These professional responsibility lectures for practicing attorneys were to be part of almost two dozen seminars that concentrated on as many different substantive areas of the law. Morris and I had just recently started teaching the professional responsibility course at the law school and so he invited me to share some of the speaking opportunities.

As Morris and I did our initial research together, we shared our mutual dissatisfaction with the low state of scholarship in the field of professional responsibility. With a few notable exceptions, the existing scholarly literature consisted of what appeared to be not terribly well thought out after-dinner speeches. The dearth of good scholarly writing in such an important field struck us both as remarkably negligent. What evolved, primarily through Morris' inspiration and architectural skills, was a two-volume effort to begin to remedy this lack of scholarship for Minnesota.\(^1\) The work was completed in a rather frenetic five-month span ending just in time to have the work printed for a two-day professional responsibility symposium held at Carleton College in June 1976. We had badly underestimated the

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number of hours that the ultimate effort would require, but by dint of many nights and weekends, we made our deadline.

This hell-bent-for-leather approach to scholarship reflected a human side of Morris' character that also found expression in his relentless skiing and automobile driving, his interest in outdoors and in athletics, and in the general pace of his life. If an area of endeavor was worth doing—and he judged few to be beyond his wide-ranging interests—then it was pursued with intense and creative imagination and force: qualities in Morris that find permanent embodiment perhaps only in his published works.

Enriched by the intellectual investment that had been put into the Minnesota professional responsibility materials, Morris and I soon signed a contract to co-author a treatise of national scope for West Publishing Company. We spent little time on other scholarly interests from the summer of 1976 until Morris' death. Again, we had badly underestimated the time and effort that the task would exact. With West's forbearance, the work will be completed under a new schedule. I hope it will say some of the vital things that were in Morris' mind about the profession he had so joyfully practiced. Such a work, any work, done without Morris' constant help and guidance will be at best a gem of lesser brilliance, lesser weight.

Many faculty members had the natural instinct to bring early drafts of their work to Morris for critical review. This was done in fields in which Morris was known as an expert and in many in which what was sought was the special insight of a brilliant generalist. It was a part of his scholarly role that Morris performed unstintingly and with relish. What one invariably received was searching and correct. When Morris disagreed with you, he phrased his criticism so delicately that you were easily led to believe that the important new insight was your own idea expressed in a slightly different way. Morris was ultimately a rationalist and a firm believer in intellectual salvation through gentle discussion. In his personal values the gentleness was as important as the rationality. On one memorable occasion, Morris retained the only cool head as a faculty colloquium that he chaired critiqued a colleague's provocative paper on racial equality and constitutional law.

Constitutional law was the central point of Morris' own intellectual interests. From the special perspective of his own lifelong involvement in religious affairs, he had already written an important signed article on the separation of church and state while still a student.² Perhaps surprisingly to some, the piece stakes out essentially secular bounds on religious intrusions into state matters:

bounds that Morris thought were required in American legal institutions. The article is all the more remarkable in its conclusion that a religious belief in non-violence—one that Morris himself specifically shared as a conscientious objector—should not lead to a constitutionally compelled prohibition against military conscription. The conclusion—against-interest was typical of Morris. The integrity it reflected was a hallmark of his approach to intellectual matters. His “tenure piece” was a thoroughgoing attempt to impose rationality upon the chaotic swirls of law surrounding the question of the proper procedural protections that should attend proceedings depending on their characterization as “criminal” or “civil.” And in the last of his writings, Morris offered a perspective on legislative motivation in constitutional adjudication, a clear and thoughtful analysis which the Supreme Court would have done better to adopt than the aimless current dogma as expressed in the opinions in the Bakke case.  

Morris also brought the rationalizing and organizing powers of his mind to concerns of the law school curriculum. His personal belief, sharpened in his own practice, was that greater attorney specialization was a desired broad development in law practice. To that end, he developed almost single-handedly a plan for the new second- and third-year “concentration” program that has taken its first tentative steps at the law school. The plan was developed through an extended period during which noted legal educators from other institutions were invited to the law school by the committee that Morris chaired to discuss the ultimate goals and possibilities of legal education. What emerged was ambitious. Although the plan will likely be severely constrained by budgetary constrictions, Morris would not have been dismayed. A way would have been sought to deal in an intellectually and educationally integral way with the shifting problems of time and resource-limited mankind.

Morris Clark’s death before the end of his thirty-fourth year has deprived his colleagues of a true guiding presence. The spirit and idealism with which he faced intellectual and educational tasks will remain, together with the warm and compassionate friendship that he has left us.

Charles W. Wolfram
Professor of Law,
University of Minnesota Law School


Morris Clark worked very hard at his scholarship and teaching. He excelled in both and was beginning to rise to national prominence by the time of his death. But, despite all his hard work, he found time for a rich, fulfilling life. He kept up a regular round of athletic activities—he skied in Vermont; he climbed mountains in Colorado; he jogged, swam, water skied, skated, played tennis and racquetball; and he enjoyed sharing these activities with his two children and others. His furniture was made with his own hands. He delighted in giving a loaf of his own fresh-baked bread to a neighbor or colleague.

Morris also knew personal pain. Rather than bury his pain in his academic and athletic triumphs, he reached out to others. He shared his deepest feelings. And as he shared his feelings, those of us who were his friends learned to share ours. He gave us an example of warmth and caring which made us realize the way people can know one another.

He talked of his religious beliefs—how they helped him to face pain and to love. He also talked of psychology as a means of exploring inner life. He had a very sensitive antenna for others. He helped us to know ourselves, to know each other, and to know how to share. His friendship is a joy we shall always carry next to the pain of his death.

Laura J. Cooper
Professor of Law,
University of Minnesota Law School

Marcia R. Gelpe
Associate Professor of Law,
University of Minnesota Law School

George S. Grossman
Professor of Law,
University of Minnesota Law School

Mo Clark was a good friend of the Minnesota Law Review and a very special friend of mine when I was its President. We called upon him often to help us with the work of the Review and he gave generously of his time and his talent for incisive, analytical criticism. His assistance was important and valuable to all of us; but I personally treasure most deeply the friendship he extended to me. In moments of frustration, rage, or discouragement—and there are such moments in running the Law Review—I frequently found my way to his office and bent his sympathetic ear with my tales. Mo listened, he understood; but more than that, he responded. And with a frankness and gentleness uniquely his, he helped put things in perspective, helped solve the problem, or just plain empathized and soothed. Mo had the
rare gift of being able to give of himself; those of us to whom he gave had a rare privilege in knowing him.

Madge S. Thorsen
President, Minnesota Law Review,
Volume 61
Member, Minnesota Bar

From a Law School Friend

I worked closely with Morris Clark from 1967 until 1969, during his last two years at Harvard Law School. During this period he was an editor, and later an Articles and Book Review Editor, of the Law Review. It was a troubled time, dominated by the Vietnam War. A group of editors proposed that the Review take a stand against the war. Others objected that membership on the Review should not oblige them to take public political positions. Morris, a strong pacifist with a keen sensitivity to the feelings of others, took a leading part in the debate. In large measure thanks to his efforts, a statement condemning the war was published in the Review on behalf of forty-four individual editors, and internal good will was preserved.

That accomplishment typified Morris. He was highly respected, valued for his maturity, judgment, and commitment to moral values. He was a good-sized man, strong, serious; he talked slowly and with conviction and cared about important things. In our discussions on the war and many other issues, he embodied Milton's picture—"seem'd / A Pillar of State; deep on his Front engraven / Deliberation sat and public care . . . ."

Morris' role in our Vietnam debate reflected another facet of his character as well. He was not content to lead an unexamined life. He saw personal issues in a broad social perspective. At a time when many of his fellow students, on being presented with general theories, were demanding practical relevance, Morris demanded that practical activities be understood in the light of general principles. His position on the war was part of a larger and well thought-out position on violence, on the authority of the state to compel its citizens to engage in violence, and on its authority to control actions or refusals to act that flow from religious belief. Morris approached these issues systematically, and the year after he graduated from law school he published some of his views in an article in the Harvard Law Review.

In his editorial work, Morris was an indefatigable reader, a skilled analyst and wordsmith, and a consummate diplomat. He was one of our ambassadors to the world of outside authors. His was the task of reasoning with well-known professors, eminent practitioners,
and others, to improve what they thought was already beyond improvement. We student editors, of course, knew better; and Morris, with great tact and delicacy, presided over that mystical process by which the suggestions of editors are transmuted into the prose of authors.

He was a good friend and colleague, a person with whom I and others always found it helpful to discuss things. I had the privilege and pleasure of serving with him for two years, of getting to know him, of learning from him, and of keeping in touch with him from time to time in later years. That should be enough; but he died before he had a full chance to flourish, and I miss him.

Richard M. Cooper
President, Harvard Law Review,
Volume 82
Chief Counsel, United States
Food and Drug Administration

From a Fellow Law Clerk

My friendship with J. Morris Clark began in 1969. My wife and I met Morris and his wife, Nancy, in Cambridge while he was a third-year law student at Harvard. Through no collusion on our parts, he and I had been chosen by Judge Sterry R. Waterman of the United States Court of Appeals for the Second Circuit to clerk the following year. Although I attended a different law school "across the river" in Boston, the Clarks and Morses got together before graduation at the urging of our then only mutual acquaintance, Judge Waterman. The friendship that quickly developed between our families is precious and unusual. Morris' death, while difficult to accept, has not broken my sense of his presence in my life. Following the year of clerkship, our families settled in Vermont in the Burlington area where Morris worked with Vermont Legal Aid, while I went into private practice and a few years later became an assistant attorney general. Our families remained close during the Clarks' Vermont years. We shared a house in the country one summer, a time of contentment—save for an uncooperative vegetable garden.

While our law practices differed, we often collaborated on the more significant of our cases. We co-counseled a prisoners' civil rights action, and Morris joined me later in an environmental dispute between Vermont and New York brought in the United States Supreme Court. We also taught a course on criminal law and prisoners' rights to inmates in Vermont's correctional system.

Working with Morris was a sheer delight. His grasp of legal issues
was both awesome and inspirational. He brought out the best in his colleagues without intimidating those lawyers who readily acknowledged his superior talents. It was not long before nearly every lawyer in the state was aware of his reputation, and many called upon him for advice. He combined so many talents in one person (athlete, scholar, teacher, craftsman, brewer, and humanitarian), I conclude that few people have led, or shall lead, such a full life.

It is no surprise that Morris invested himself so thoroughly in the law. I believe he saw his role as a facilitator in the process of shaping and guiding the law to comfort and dignify the individual. Perhaps he undertook teaching because he thought his influence on people and institutions would be better achieved through the work of his students.

There is irony associated with the passing of so superior a lawyer from this scene in these times. You will find the definition of “lawyer” in the dictionary between “lawsuit” and “lax.” One may think a dialectal English meaning of lawyer—“a bramble or the thorny stem of a brier,”—has encroached on people’s popular image of the term. Morris was a person “learned in the law,” a more apt definition of lawyer. But more than that, he was a person learned in what the law should be and what lawyers should do. In a landscape of “thorny stems,” Morris Clark showed me the roses.

James L. Morse
Defender General, Vermont

From a Friend at Vermont Legal Aid

Morris Clark loved and cared for others all of his life, consistent in the virtues of respect, of work, and of humor. He carried to the grave the consuming perception, shared by others who have struggled, that love is a life sentence. He did his time with joy, with sweetness, and with an endearing modesty that graced a profound legal ability.

Morris Clark arrived, a godsend to Vermont Legal Aid, Inc., in early 1970, at a time when this state-wide legal services program was virtually helpless against an onslaught by state government upon the poor. To this defense, Morris brought dazzling credentials: Yale undergraduate, Harvard Law School, Harvard Law Review, law clerk to Judge Sterry R. Waterman of the United States Court of Appeals for the Second Circuit, and an energetic commitment to the rights of the poor.

As a staff lawyer, and later as Assistant Director heading the law reform effort, he applied his energy and creative talent. His meticu-
lous preparation, his inspired marshalling of legal argument, and his steady, unemotional persuasiveness, time after time and at every trial and appellate level, established the rights of the clients and quickened the program.

To those of us who worked with Morris during his five years with Vermont Legal Aid, there was another very special dimension. We all lived in that unique camaraderie that comes to those who together participate in a great adventure or endure and conquer a disaster. It was that way at Vermont Legal Aid. The pressures, the frustrations, and more importantly the faint and ineffectual support of well-meaning friends, all drew us together. In his quiet rightness, in his easy genius, and in his constant humorful equilibrium, Morris Clark pooled the good and the energy in each of us, every day we were with him.

That a physical malfunction in his thirty-fourth year could deprive us all of Morris Clark, deprive us of his love, his counsel, and of his steady testament to virtue, is an incredible irony, but one over which Morris would be likely to chuckle.

Richard C. Blum
Member, Vermont Bar