

Journal of the Institute for the Study of Legal Ethics

Volume 1

Article 1

10-1-1996

Front Matter

Follow this and additional works at: <https://scholarlycommons.law.hofstra.edu/jisle>



Part of the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

(1996) "Front Matter," *Journal of the Institute for the Study of Legal Ethics*: Vol. 1, Article 1.

Available at: <https://scholarlycommons.law.hofstra.edu/jisle/vol1/iss1/1>

This Front Matter is brought to you for free and open access by Scholarship @ Hofstra Law. It has been accepted for inclusion in *Journal of the Institute for the Study of Legal Ethics* by an authorized editor of Scholarship @ Hofstra Law. For more information, please contact lawscholarlycommons@hofstra.edu.

JOURNAL OF
THE INSTITUTE
FOR THE STUDY OF
LEGAL ETHICS

Volume 1
1996
Hempstead, New York 11550

Legal Ethics: THE CORE ISSUES

James M. Shuart, *President, Hofstra University*
Stuart Rabinowitz, *Dean, Hofstra University School of Law*
Monroe H. Freedman, *Conference Codirector; Howard Lichtenstein Distinguished Professor of Legal Ethics, Hofstra University School of Law*
Roy D. Simon, *Conference Codirector; Professor, Hofstra University School of Law*
The Honorable Ruth Bader Ginsburg, *Keynote Speaker; Associate Justice, United States Supreme Court*

CONFERENCE FACULTY

Robert H. Aronson, *Professor of Law, University of Washington School of Law*
Sheila L. Birnbaum, Esq., *Partner, Skadden, Arps, Slate, Meagher & Flom, New York, NY*
Steven Brill, Esq., *CEO and Chairman, American Lawyer Media, L.P. and President, CEO, and Editor in Chief Courtroom Television Network ("Court TV")*
Karen S. Burstein, Esq., *Former New York Family Court Judge*
Teresa Stanton Collett, *Professor of Law, South Texas College of Law*
Louis A. Craco, Esq., *Partner, Willkie Farr & Gallagher, New York, NY*
Robert P. Cummins, Esq., *Partner, Bickel & Brewer, Chicago, IL*
Mary C. Daly, *Professor of Law, Fordham University School of Law*
Samuel Dash, *Professor of Law, Georgetown University Law Center*
Alan Dershowitz, *Felix Frankfurter Professor of Law, Harvard Law School*
Lawrence J. Fox, Esq., *Partner, Drinker Biddle & Reath, Philadelphia, PA*
Marvin E. Frankel, Esq., *Partner, Kramer Levin Nafalis Nessen Kamin & Frankel, New York, NY*
Honorable Phyllis Gangel-Jacot, *Justice of the New York State Supreme Court*
Stephen Gillers, *Professor of Law, New York University School of Law*
Jeanne P. Gray, *Director, ABA Center for Professional Responsibility, Chicago, IL*
Geoffrey C. Hazard, Jr., *Trustee Professor of Law, University of Pennsylvania Law School*
W. William Hodes, *Professor of Law, Indiana University School of Law*
Robert N. Hornick, Esq., *Partner, Coudert Brothers, New York, NY*
Susan P. Koniak, *Professor of Law, Boston University School of Law*
Anthony Kronman, *Dean and Edward J. Phelps Professor of Law, Yale Law School*
Lisa Lerman, *Professor of Law, American University Washington College of Law*
Carrie Menkel-Meadow, *Professor of Law, University of California at Los Angeles School of Law*
Thomas D. Morgan, *Oppenheim Professor of Law, George Washington University National Law Center*
Stephen L. Pepper, *Professor of Law, University of Denver College of Law*
Bumele Venable Powell, *Dean and Professor of Law, University of Missouri-Kansas City School of Law*
Deborah L. Rhode, *Professor of Law, Stanford Law School*
Ronald D. Rotunda, *Albert E. Jenner, Jr. Professor of Law, University of Illinois College of Law*
Theodore J. Schneyer, *Professor of Law, University of Arizona School of Law*
Thomas L. Shaffer, *Robert and Marion Short Professor of Law, University of Notre Dame Law School*
Charles W. Wolfram, *Charles Frank Reavis, Sr., Professor of Law, Cornell Law School*
Richard A. Zitrin, Esq., *Adjunct Professor of Law, University of San Francisco School of Law and University of California Hastings College of Law*

CONFERENCE COORDINATORS

Ivy Leibowitz, *Senior Assistant Dean for External Relations, Hofstra University School of Law*
Natalie Datlof, *Director, Liaison and Cultural Development, Hofstra Cultural Center*

ASSISTANTS TO THE CONFERENCE COORDINATORS

Laurie Gordon

Athelene A. Collins

CONFERENCE EXECUTIVE SECRETARIES

Elena Milack
Mary Lou O'Connor

Jo Ellen Ryan
Roslyn Weiss

HOFSTRA UNIVERSITY SCHOOL OF LAW

ADMINISTRATION

Stuart Rabinowitz, B.A., J.D., *Dean and Alexander M. Bickel Distinguished Professor of Communications Law*
M. Patricia Adamski, B.A., J.D., *Vice Dean and Adolph J. and Dorothy R. Eckhardt Distinguished Professor of Corporate Law*
Nancy Albin, B.A., J.D., *Director of Alumni Affairs*
Yvonne Atkinson, A.A., *Office Manager-Paralegal, Law School Clinical Program*
Marjorie Daniels, B.A., *Registrar*
Amy L. Engle, B.A., M.B.A., *Assistant Dean for Admissions*
John Francis, B.A., J.D., *Staff Attorney, Law Clinic*
Laurie Gordon, B.S.M., *Administrative Assistant for Law School Special Events*
Ivy Leibowitz, B.A., M.A., P.D., J.D., *Senior Assistant Dean for Law External Relations and Special Professor of Law*
Marie Leuci, *Administrative Assistant to the Dean*
Nancy E. Modell, B.S., M.S., *Assistant Dean for Financial Aid*
Gary Moore, B.S., *Director of Law School Information Systems and Physical Plant*
Barbara T. Pace, B.A., J.D., *Senior Assistant Dean for Student Affairs*
Michael J. K. Schiumo, B.A., J.D., *Senior Assistant Dean for Career Services*
Diane Schwartzberg, *Director of Career Services*
Jo Anne Simon, B.A., M.A., J.D., *Disability Clinic Staff Attorney*
Eugene M. Wypyski, LL.B., M.L.S., *Director of the Law Library and Andrew M. Boas and Mark L. Claster Distinguished Professor of Law Library Administration*
C. Peter Chao, B.A., M.A., M.L.S., *Catalog Librarian*
Linda Helenek, B.A., M.L.S., *Head of Technical Services*
Patricia Ann Kasting, B.A., M.L.S., J.D., *Reference Librarian*
Connie S. Lenz, B.F.A., M.L.S., J.D., *Reference Librarian*
Rou-Chia Lin, B.A., M.L.S., *Acquisitions/Serials Librarian*
Daniel L. May, B.A., J.D., M.L.S., *Assistant Director for Reader Services*
Mena B. Sieber, B.S., M.A., M.L.S., *Documents/Microform Librarian*

FACULTY

Burton C. Agata, A.B., J.D., LL.M., *Max Schmertz Distinguished Professor of Law*
R. Glenn Bauer, B.S., J.D., *Special Professor of Law*
Robert A. Baruch Bush, B.A., J.D., *Harry H. Rains Distinguished Professor of Arbitration and Alternative Dispute Settlement Law*
Joel L. Carr, B.A., LL.B., *Special Professor of Law*
Linda K. Champlin, B.A., LL.B., *Maurice A. Deane Distinguished Professor of Constitutional Law*
Robin Charlow, A.B., J.D., *Associate Professor of Law*
Carl H. Coleman, B.S.F.S., A.M., J.D., *Special Professor of Law*
Mitchell J. Cooper, B.S., J.D., LL.M., *Special Professor of Law*
Doreen L. Costa, B.A., J.D., *Special Professor of Law*
Charles M. Davidson, M.I.A., LL.M., *Special Professor of Law*
David A. Diamond, A.B., LL.B., LL.M., *Professor of Law*
J. Herbie DiFonzo, B.S., M.A., Ph.D., J.D., *Associate Professor of Law*
Janet L. Dolgin, B.A., M.A., Ph.D., J.D., *Professor of Law*
Robert D. Ellis, B.A., J.D., *Associate Professor of Law*
Eric M. Freedman, B.A., J.D., M.A., *Associate Professor of Law*
Monroe H. Freedman, A.B., LL.B., LL.M., *Howard Lichtenstein Distinguished Professor of Legal Ethics*

Leon Friedman, A.B., LL.B., *Joseph Kushner Distinguished Professor of Civil Liberties Law*
 Victor Futter, B.A., J.D., *Special Professor of Law*
 Linda Galler, B.A., J.D., LL.M., *Associate Professor of Law*
 Mitchell Gans, B.B.A., J.D., *Professor of Law*
 Cecilia L. Gardner, B.A., J.D., *Special Professor of Law*
 William R. Ginsberg, B.A., J.D., *Rivkin & Kremer Distinguished Professor of Environmental Law*
 John DeWitt Gregory, B.A., J.D., *Sidney and Walter Siben Distinguished Professor of Family Law*
 Grant Hanessian, B.A., J.D., LL.M., *Special Professor of Law*
 Richard Herzbach, B.A., J.D., *Special Professor of Law*
 James E. Hickey, Jr., B.S., J.D., Ph.D., *Professor of Law*
 Bernard E. Jacob, B.A., J.D., M.A., Ph.D., *Professor of Law*
 Samuel M. Kaynard, B.A., J.D., LL.M., *Professor of Law Emeritus*
 Lawrence W. Kessler, B.A., J.D., *Richard J. Cardali Distinguished Professor of Trial Advocacy*
 Stefan Krieger, B.A., J.D., *Associate Professor of Law*
 Lawrence G. Kurland, B.E.E., J.D., *Special Professor of Law*
 Alan Lambert, M.D., J.D., *Special Professor of Law*
 Eric Lane, B.A., M.A., J.D., LL.M., *Eric J. Schmertz Distinguished Professor of Public Law and Public Service*
 Richard Leland, B.S., J.D., *Special Professor of Law*
 Malachy T. Mahon, B.A., J.D., *Siggi B. Wilzig Distinguished Professor of Banking Law*
 Lewis R. Mandel, A.B., J.D., LL.M., *Special Professor of Law*
 Linda C. McClain, A.B., A.M., J.D., LL.M., *Associate Professor of Law*
 Patrick L. McCloskey, B.A., J.D., *Special Professor of Law*
 Katherine McManus, B.A., J.D., *Special Professor of Law*
 Richard S. Missan, B.A., LL.B., *Special Professor of Law*
 Mark L. Movsesian, A.B., J.D., *Associate Professor of Law*
 Matthew Muraskin, B.A., M.A., J.D., *Special Professor of Law*
 Richard K. Neumann, Jr., B.A., Dipl., J.D., LL.M., *Professor of Law and Coordinator of Legal Writing*
 Beatty B. Page, B.A., J.D., *Special Professor of Law*
 Neal R. Platt, B.S., J.D., LL.M., *Special Professor of Law*
 Honorable C. Raymond Radigan, B.A., J.D., *Special Professor of Law*
 Alan N. Resnick, B.S., J.D., LL.M., *Benjamin Weinraub Distinguished Professor of Bankruptcy Law*
 Wendy M. Rogovin, B.A., J.D., *Assistant Professor of Law*
 Ben B. Rubinowitz, B.A., J.D., *Special Professor of Law*
 Andrew Schepard, B.A., M.A., J.D., *Professor of Law*
 Stephen W. Schlissel, B.A., J.D., *Special Professor of Law*
 Eric J. Schmertz, B.A., J.D., LL.D., *Edward F. Carlough Distinguished Professor of Labor Law*
 Joel Segal, B.A., J.D., *Special Professor of Law*
 Norman I. Silber, B.A., M.A., Ph.D., J.D., *Associate Professor of Law*
 Ronald H. Silverman, B.A., J.D., *Peter S. Kalikow Distinguished Professor of Real Estate Law*
 Roy D. Simon, Jr., B.A., J.D., *Professor of Law*
 Terence E. Smolov, B.B.A., J.D., LL.M., *Special Professor of Law*
 Peter J. Spiro, B.A., J.D., *Associate Professor of Law*
 Susan W. Tiefenbrun, B.A., M.S., Ph.D., J.D., *Special Professor of Law*
 Marshall E. Tracht, B.A., M.B.A., J.D., *Associate Professor of Law*
 Cheryl L. Wade, B.A., M.A., J.D., *Associate Professor of Law*
 Vern R. Walker, B.A., M.A., Ph.D., J.D., *Professor of Law*
 Bennett J. Wasserman, B.A., M.A., J.D., *Special Professor of Law*
 David N. Yellen, B.A., J.D., *Associate Professor of Law*
 Peter Zablotsky, B.A., J.D., *Special Professor of Law*

Kathleen M. Beckett, B.A., J.D., *Legal Writing Instructor*
Pamela Edwards, B.S., M.B.A., J.D., *Legal Writing Instructor*
Peter M. Falkenstein, B.A., J.D., *Legal Writing Instructor*
Donna L. Hill, B.A., J.D., LL.M., *Legal Writing Instructor*
Florence Kerner, B.A., J.D., *Legal Writing Instructor*
Lisa Eggert Litvin, B.A., J.D., *Legal Writing Instructor*

TABLE OF CONTENTS

Supreme Court Pronouncements on the Conduct of Lawyers <i>The Honorable Ruth Bader Ginsburg</i>	1
Is Legal Ethics Asking the Right Questions? <i>Alan Dershowitz</i>	15
Clients' Perjury and Lawyers' Options <i>Marvin E. Frankel</i>	25
The Client Fraud Problem: A Justinian Quartet <i>Geoffrey C. Hazard, Jr.</i>	43
The Trouble with the Adversary System in a Post-Modern, Multi-Cultural World <i>Carrie Menkel-Meadow</i>	49
Searching for New "Particles" in the Law of Lawyering: Recent Developments in the Attribution of "Clienthood" <i>Theodore J. Schneyer</i>	79
Suing a Current Client <i>Thomas D. Morgan</i>	87
The Vaporous and the Real in Former-Client Conflicts <i>Charles W. Wolfram</i>	133
What About the Children? Are Family Lawyers the Same (Ethically) As Criminal Lawyers? A Morality Play <i>Robert H. Aronson</i>	141
On Lying for Clients <i>Thomas L. Shaffer</i>	155
Life and Death Lawyering: Dignity in the Absence of Autonomy <i>Teresa Stanton Collett</i>	177
Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice <i>Deborah L. Rhode</i>	197
Sister Act: Conflicts of Interest with Sister Corporations <i>Ronald D. Rotunda</i>	215

Class Action Against Class Counsel <i>Susan P. Koniak</i>	249
Diagnosis and Prescription: Illusory Lawyer Disciplinary Reform and the Need for a Moratorium <i>Burnele Venable Powell</i>	263
The Year: 2075, the Product: Law <i>Stephen Gillers</i>	285
Thinking Globally: Will National Borders Matter to Lawyers a Century From Now? <i>Mary C. Daly</i>	297

Preface

In July of 1992, during my first week as a professor at Hofstra University School of Law, Monroe Freedman stopped by my office to talk about an idea. Professor Freedman's idea was that Hofstra Law School should organize and host a major conference to explore and debate the core issues in legal ethics. Professor Freedman said we should invite leading lawyers and scholars in the field of legal ethics to speak about the problems that concerned them most. He also said that we should invite a sitting Justice of the United States Supreme Court to deliver a keynote address, and that we should invite Professor Alan Dershowitz of Harvard Law School to give an opening address.

On March 10th through 12, 1996, after nearly four years of planning, Monroe Freedman's vision became a reality. Hofstra University School of Law held a major conference titled "Legal Ethics: The Core Issues," featuring many of the most prominent names in the field of legal ethics. The conference marked both the end of Hofstra's first twenty-five years as a law school and the beginning of the law school's new Institute for the Study of Legal Ethics ("ISLE"). Hundreds of people — professors, judges, practicing lawyers, bar counsel, and members of the general public — gave up three beautiful Spring days to listen to speeches and to discuss the most pressing issues in the field of legal ethics. We are all indebted to Monroe for his vision, and for his guidance and persistence in seeing his dream come true.

This volume contains the professional papers submitted by the featured speakers at the Hofstra conference. The papers, of course, speak for themselves. They cover a wide range of subjects — prosecutorial misconduct, the adversary system, conflicts of interest, alternative systems of dispute resolution, class actions, legal education, the role of non-lawyers, international law practice, the Supreme Court's views on lawyers, and the future of the legal profession. We hope that you learn as much by reading these papers as the people at the conference learned by listening to the speeches based on these papers.

If you wish to listen to the speeches themselves, you may order audiotapes of the conference by calling Corporate Audio Visual Services at 800/488-8408. The audiotapes include not only the major speeches but also commentaries by distinguished scholars, judges, and practicing lawyers, as well as questions and comments from the audience.

In addition, many of the speakers gathered at Hofstra University's television studios in September of 1995 to videotape three programs on legal ethics for the American Bar Association's PBS television series titled "Inside the Law." Those shows have since been broadcast on more than 100 PBS stations across the country.

Looking to the future, Hofstra is planning another major legal ethics conference for the 1997-1998 academic year. We hope you will be able to join us in person at that conference.

—*Professor Roy Simon*

Acknowledgments

A major three-day conference attended by a thousand people requires the hard work of many people. The Preface to this volume has already acknowledged the vision of Professor MONROE FREEDMAN, the Howard Lichtenstein Distinguished Professor of Legal Ethics at Hofstra University School of Law. These Acknowledgments recognize some of the many other people who made the conference possible.

First and foremost, Monroe Freedman's vision could not have become reality without the unstinting support of STUART RABINOWITZ, the Dean of Hofstra Law School. When Monroe proposed this major conference, the Dean said yes without hesitation. The Dean continued to support the conference, in every way possible, through every stage of its planning and development.

Nor could this conference have happened without the incredible hard work of Senior Assistant Dean IVY LEIBOWITZ and her capable assistant LAURIE CHLEBEK GORDON. Ivy and Laurie, in turn, depended on many dedicated secretaries and administrative assistants, including ROSLYN WEISS, ELLIE MILACK, MARY LOU O'CONNOR, MARIE BURNS, MARIE LEUCI, and JO ELLEN RYAN, who did endless day-to-day work to prepare the conference and see it through to its conclusion.

In addition, PROFESSOR ROY SIMON, who teaches legal ethics at Hofstra, made scores of phone calls and wrote dozens of letters to assemble the speakers and guide them in developing their papers and speeches, and he moderated the programs and introduced the speakers at the conference itself.

Others helped as well. GARY MOORE, the law school's Director of Physical Plant and Information Systems put the conference on the World Wide Web with a home page, which included audio clips thanks to the help of LEN THON of Hofstra University's School of Communications. NATALIE DATLOF, Director of Liaison and Cultural Development at the Hofstra Cultural Center, provided the benefit of her experience in all phases of planning. DANIEL MAY, TRICIA KASTING, and CONNIE LENZ of the Library at Hofstra Law School gathered and displayed books and assembled a comprehensive bibliography of works by the conference

faculty. DAN SORRENTI and GLENN VALLACH of Ghiorso & Sorrenti alerted the press and the public about the conference. MELISSA HEILIG provided exceptional editorial assistance in the production of this Journal. Many others helped with the hundreds of details that made the conference a success, and we thank them all.

Acknowledgments

I want to acknowledge the crucial role played by my colleague, Roy Simon, in creating this conference.

Roy is the first and only Professor that Hofstra has brought in on a lateral transfer with full tenure, and I think it's the smartest personnel move we have ever made. He is intelligent, creative, tireless and painstaking.

I am delighted and honored to have my name all over the conference program, but it's misleading. This is, of course, a team effort. The Dean was key to making the success here. Ivy Leibowitz and the people in her office were essential. Hofstra's Cultural Center was important. But I don't think anyone would contradict me in saying that this is Roy Simon's Conference. He is the Director of the Conference. He is the one who put it together and he is truly the one who deserves the credit for it.

—Professor Monroe Freedman

Cite as 1 J. INST. STUD. LEG. ETH.

Issues are available from the Institute For The Study Of Legal Ethics,
121 Hofstra University, Hempstead, New York 11550-1090.

© 1996 by the Hofstra University School of Law