

Maurice A. Deane School of Law at Hofstra University

## Scholarship @ Hofstra Law

---

Hofstra Law Faculty Scholarship

---

5-1-1988

### Two Fables

Monroe H. Freedman

*Maurice A. Deane School of Law at Hofstra University*

Follow this and additional works at: [https://scholarlycommons.law.hofstra.edu/faculty\\_scholarship](https://scholarlycommons.law.hofstra.edu/faculty_scholarship)

---

#### Recommended Citation

Monroe H. Freedman, *Two Fables*, 74 57 (1988)

Available at: [https://scholarlycommons.law.hofstra.edu/faculty\\_scholarship/728](https://scholarlycommons.law.hofstra.edu/faculty_scholarship/728)

This Article is brought to you for free and open access by Scholarship @ Hofstra Law. It has been accepted for inclusion in Hofstra Law Faculty Scholarship by an authorized administrator of Scholarship @ Hofstra Law. For more information, please contact [lawscholarlycommons@hofstra.edu](mailto:lawscholarlycommons@hofstra.edu).

BY MONROE H. FREEDMAN

**L**aura Eagle is a sole practitioner in a large city. One evening an acquaintance who is a social worker mentioned to Laura the horrible conditions he had seen that day on a visit to a private nursing home in the city—filth, poor food and neglect. Because the patients are poor, elderly and bedridden, and are rarely visited by anyone, they have no way to help themselves or to get help.

Laura offered the social worker \$100 if he would return to the nursing home, explain to some of the patients about the possibility of a class action on their behalf, and sign up one or more of them on a contingent fee. Laura made it clear that the social worker was not to mislead or pressure the patients in any way, and he followed her instructions.

*Monroe H. Freedman is a professor of law at Hofstra University.*

## Two Fables



Thus, Laura became attorney for the patients and obtained a substantial recovery and a court order protecting their rights to adequate care. She also received a substantial one-third contingency fee.

Laura was charged with violating Model Rule 7.3 and 7.2(c). Rule 7.3 reads: "A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in-person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. ..." Rule 7.2(c) says: "A lawyer shall not give anything of value to a person for recommending the lawyer's services. ..."

At Laura's disciplinary hearing she admitted that a significant motive for her taking the case was to earn the fee. She pointed out that she could not have afforded to handle such a difficult and time-consuming case on a pro bono basis. She pre-

## Editorial Reprint Service

The *Journal* offers reprints in quantities of 100 or more, in black and white, 2 color and 4 color. For information and pricing, contact:

**ABA JOURNAL**

ABA Journal  
Reprint Service  
750 N. Lake Shore Dr.  
Chicago, IL 60611

Or call:  
312/988-5997

**THIS SPACE IS  
TOO BRIEF TO TELL  
YOU WHAT WE  
CAN DO FOR  
LAWYERS, SO CALL  
1-800-FINANCE.**



**CHRYSLER  
FIRST**

Business Credit Corporation

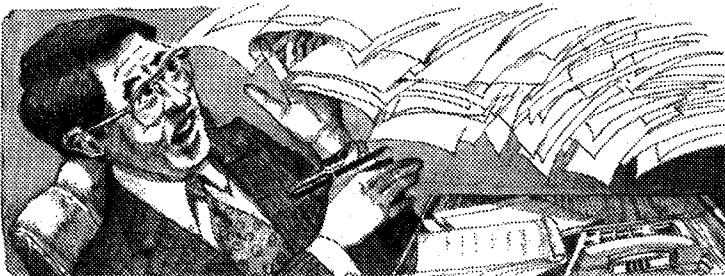
**Real estate secured financing. Brokers are protected.**

Circle 83 on Reader Service Card

ferred representing the patients, but she also admitted that, if someone else had been representing the patients, she would have been willing to represent the nursing home operators. "You can call me a hired gun if you like," she said. "I believe in the Eng-

lish barrister practice of taking the next client in line."

Laura was suspended from practice for one year. The lawyer who represented the nursing home spent the same year serving as president of the state bar association.



## Overcoming Mergerphobia!

**For the lawyer handling a merger, hard work! Statutes and costs to be researched; tax clearances to be obtained; papers to be compiled and perhaps pre-cleared with state officials; papers to be filed, recorded, published; more filings for foreign states. All, most times, requiring hair-trigger timing.**

### **It doesn't have to be difficult.**

You can call C T in connection with a merger to be effected in any state, Canada, or any Canadian province. We'll give you up-to-the minute information on statutory requirements, limitations, costs, report-tax savings you can effect by carefully timing the filings and the best procedure for prolonging protection of valuable corporate names on state records.

You can call on C T for assistance in compiling papers, obtaining tax clearances, pre-clearing documents with state officials, filing papers (in precise accord-

ance with your instructions) in domestic state(s) and all foreign states, handling required recording and publication.

C T information and services will reduce your task substantially, on small as well as large, simple as well as complex mergers. Call us early, at the first hint of a merger—we'll keep it strictly confidential of course—and get our help on your pre-merger planning work.

C T can be equally helpful when you have a consolidation, acquisition or reorganization to handle. If you'd like more information and a no-obligation quotation on our Merger Services, just contact your local C T representative. Or write to us at:



### **C T CORPORATION SYSTEM**

*Serving lawyers since 1892*

1633 Broadway, New York, N.Y. 10019

Atlanta • Boston • Chicago • Cincinnati • Cleveland • Dallas • Denver • Detroit • Houston  
Irvine, Ca. • Los Angeles • Minneapolis • New York • Philadelphia • Phoenix • Pittsburgh  
Plantation, Fla. • San Francisco • Seattle • St. Louis • Washington • Wilmington

Circle 95 on Reader Service Card

Moral: "The practice of law 'in the spirit of a public service' can and ought to be the hallmark of the legal profession." *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (ABA, 1986).

**R**aul Mottel has been a faculty member at the Ivy Law School for six years. He teaches Property and Civil Procedure. Raul is a competent classroom teacher, but he has never published a law review article. The principal reason is that he spends all of his non-teaching time litigating landlord-tenant cases for poor people in the community near the school.

Raul has involved the students in his litigation, and they have been enthusiastic about helping him to interview clients and witnesses, research cases and write legal memoranda and drafts of briefs. In one of his cases, the highest state court overruled a longstanding rule that there is no implied warranty of habitability in the lease of an apartment.

David Sklar has been a member of the same faculty for six years. He teaches Contracts and Commercial Transactions and is a competent classroom teacher. David spends relatively little time with students out of class, because he is a highly productive scholar.

In the past six years David has published three long and heavily footnoted articles in well-regarded law reviews. One article is on promissory estoppel, another on bad faith discharge of employees who are terminable at will, and the third on unconscionability. None of the articles breaks new ground, but each one is well-written and analyzes and synthesizes the relevant cases in a thorough, scholarly way. David is planning to produce a one-volume treatise on contracts.

Raul and David come up for tenure together. Neither is considered a hard case. David is granted tenure. Raul is turned down due to his lack of publications and leaves teaching.

Moral: "Unquestionably, an important mission of law schools must be ... the setting of proper role models for law students." *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (ABA, 1986).