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## MONROE FREEDMAN: FRIEND, ROLE MODEL, AND COLLEAGUE

*Roy Simon\**

I had the privilege of being Monroe Freedman's colleague at Hofstra for nearly twenty years and remained his friend after I left. He was an extraordinary colleague, a loyal friend, and a professional role model. Indeed, Monroe's presence at Hofstra was an important reason that I moved from Washington University in St. Louis to Hofstra in 1992. He was already a role model for me then, even though I had met him only briefly in person. His passion, his principles, and his prolific output in the field of legal ethics were legendary in the field long before I even became a professor. The opportunity to work with a legend does not come along often. Coming to Hofstra to work with him was a great decision, and I treasure all of the time I spent with him.

### CONCEIVING OF CONFERENCES

When I had been at Hofstra less than a week—I was still in a temporary office using a second-hand computer—Monroe came by my office and sat down. “I have an idea,” he said. “Let’s organize a major legal ethics conference.” I didn’t know anything about conferences. What did Monroe have in mind? “We will invite ten or twenty of the leading people in the field to speak, and the conference will last three days,” he said. That sounded ambitious. He continued: “We will hold the first one in 1995, so we have three years to plan—and then we’ll hold major conferences every two or three years so we have time to organize and raise the funds to pay every speaker handsomely.” Wow. I hadn’t even been at Hofstra a week, and we were already planning three years ahead, and more. But that was Monroe. He thought big, and he thought for the long-term. He had vision, and he was a man of ideas, but he was also a man of action.

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And so, it all came to be. We began organizing for a conference in 1995 and invited a long list of marquee names: Alan Dershowitz, Geoffrey Hazard, Charles Wolfram, Tom Morgan, Bruce Green, and many others, including Justice Ruth Bader Ginsburg. Monroe knew everybody in the field, and everybody knew him. His name opened doors. If Monroe called to invite someone, or if I called and mentioned Monroe's name, the answer was always "yes." He had built up an inexhaustible supply of goodwill over the years. And that pattern persisted through all seven of the conferences that Monroe and I ran while I was at Hofstra. The Hofstra legal ethics conferences remain one of Monroe's lasting legacies.

#### THE MAKING OF A LEGEND

Monroe soon drew me into the field of legal ethics in other ways, as well. Two weeks after I joined the Hofstra faculty, he invited me out to lunch—something that happened many times over the ensuing years. He willingly answered all of my questions about his career, which led to one fascinating story after another, each usually with some lesson about legal ethics and the need for the courage to stand up for your principles.

One of the most memorable stories related to the disbarment proceedings brought against him by Judge Warren Burger (soon to become Chief Justice Burger) and two other federal judges. Judge Burger and his colleagues on the bench were deeply offended by a presentation Monroe had given to lawyers in a Criminal Trial Institute. Monroe had expressed the conventional view that a lawyer who knows that the client intends to lie on the witness stand should make good faith efforts to dissuade the client from committing the perjury, but Monroe had also argued that if the lawyer could not dissuade the client from committing perjury, the lawyer should maintain confidentiality and present the client's testimony at trial in the ordinary fashion, without alerting the court or waving red flags at the jury. That lecture became the basis for his article, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*.<sup>1</sup> Today that article is an icon; it is widely regarded as the most influential law review article on legal ethics in the last fifty years and has spawned many other articles (and even entire conferences) dedicated to those hard questions. But back then, Monroe's views were new and radical, and they upset some people, especially those who saw the world in black and white. Warren Burger was one of those people.

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1. Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469 (1966).

I had heard bits and pieces of the grievance story before via the grapevine, but coming from Monroe's lips, the story took on tremendous poignancy and immediacy for me. I was forty-three years old when Monroe told me this story. Monroe had only been thirty-eight when he was prosecuted (persecuted?) by Judge Burger. Yet Monroe had not cowered or waived. He unabashedly stood up for his ideas and vigorously defended his First Amendment right to express them. And in the end, he prevailed in the disciplinary matter. If you want to know more about Judge Burger's attack against Monroe, you can read Monroe's own account in *Getting Honest About Client Perjury*.<sup>2</sup>

Monroe was a legend because he had actually lived the stuff of which legends are made. These traumatic experiences strengthened Monroe and increased my respect for him immeasurably. I recount the disciplinary story here, even though it is familiar to many, to illustrate how readily Monroe took me into his world, sharing with me the profound lessons of his storied life.

#### CONFIDENCE IN HIS COLLEAGUES

Monroe was not just inspiring. He was also encouraging and empowering. From the beginning, he displayed great confidence in me. During our first lunch, on that hot July day in 1992, he mentioned to me that he was working pro bono in defense of Plan B, the morning-after pill that was then under attack from several quarters. "Audrey and I are going to Italy for a couple of weeks," Monroe said. "I told my client that if they need help while I'm gone, they should call you. I'll check with you when I get back from Europe." It turned out that I did not get any calls from Plan B while Monroe was abroad, but it made an impression on me that he was performing pro bono work, that he assumed I would do so as well, that he would not leave a client in the lurch even for a short time, and that he believed I could fill his shoes if a situation arose while he was away. I doubt that I could have filled his shoes, but it made me feel special that he thought I could.

Monroe was in demand in the private sector, too. In October of my first semester at Hofstra, he came by to discuss a matter that a private law firm had called him about. It was a vital matter for the law firm because the conduct of the law firm itself (as opposed to the conduct of the firm's client) was being attacked. Monroe did not have time to continue handling the matter, so he referred the law firm to me. I'm sure Monroe could have kept the matter for himself and cut corners

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2. Monroe H. Freedman, *Getting Honest About Client Perjury*, 21 GEO. J. LEGAL ETHICS 133 (2008).

somewhere else in his life, but Monroe was never selfish or greedy—and he never cut corners as a lawyer or as a teacher. I was the lucky beneficiary of his generosity and his professionalism. (I ultimately wrote a thirty-seven-page opinion letter to the firm on that matter, and I still have that law firm as a client today—nearly twenty-three years later.)

#### A CONVERSATIONAL STYLE IN THE CLASSROOM

When I asked Monroe if I could attend his class, he said I was welcome any time, and I attended a number of his classes. His teaching technique was effortless and effective. He would often start with a simple anecdote—something out of his own experience—and then ask the students what the anecdote taught them. The hands soon flew up around the room and the students became fully engaged. They understood that the professor standing before them had not merely studied legal ethics—he had lived it. Although he was a great theoretician, his focus in the classroom was not on theory but on practice. How did lawyers apply the *Model Rules of Professional Conduct* and the principles of the adversary system in the messy, blurry world of everyday law practice? As with the title of his (and Abbe Smith's) book, his emphasis was on *understanding* lawyers' ethics, not just reading and talking about them. I tried to imitate Monroe's style in my own classroom, but he was inimitable—or at least I never felt that I could imitate him.

He was beloved by his students, and he loved them. When a student gave a superior answer in class, Monroe would give the student a pen that said, "Excellent work" (or similar words). I saw this happen myself on one of my visits. Monroe showed a documentary about the famous case in which a plaintiff who had been burned by a cup of scalding hot coffee sued McDonald's. The case was ridiculed in the press, but the documentary went behind the headlines. During the discussion after the film, a couple of the students raised new insights and were rewarded with a pen. The message from Monroe was this: after decades studying the legal profession, I still learn new things from my students at every class. He was always learning—and so, his students were always learning, as well.

#### CONTRACTS AND COUNSELORS

In 2006, I began teaching Contracts. That's when I found out that Monroe had written a Contracts textbook. Monroe had been teaching Contracts for decades—he once told me that he loved teaching Contracts even more than teaching Lawyers' Ethics—and he had spent years

collecting contracts cases about lawyers and the legal profession. Monroe's materials were fascinating for me and for my students. He deftly combined contract doctrines with lawyers' ethics. The first case in the book, for example, was a famous legal fee case addressing whether a legal malpractice plaintiff's damages should be reduced by a third if the negligent lawyer was on a one-third contingent fee. (The New York Court of Appeals said no.) Amazingly, despite Monroe's prolific output as a legal ethics scholar, he kept up with contract law and revised his Contracts book annually as a paperback set bound together by the law school's copy room. His expertise in contract law was yet another example of Monroe's many professional strengths.

#### PROFESSIONAL GENEROSITY

In 2003, when Monroe was still as vigorous and energetic as ever, he did something he didn't have to do and that no one asked him to do. He was Hofstra's inaugural Howard Lichtenstein Distinguished Professor of Legal Ethics, which entitled him to a little extra money and the funding to invite a distinguished lecturer each year. He had hosted a parade of the greatest names in the field of legal ethics for the annual Lichtenstein Lecture: Abbe Smith, Chief Judge Judith Kaye, Tom Schaeffer, William Simon, Burnele Powell, Larry Fox, Richard Zitrin, and others. (Monroe had even given the lecture himself the year that his wife, Audrey, died, as he had not had time to invite anyone. Introducing him at that lecture was one of the great pleasures of my years at Hofstra.)

Suddenly, as we were about to begin a faculty meeting, Monroe pulled me out into the hall. "I'm going to resign my Lichtenstein Professorship and recommend that the law school give it to you," he said. He had held it a long time—fifteen years—and he could have held on to that professorship as long as he lived. But he didn't. He just thought it was fair to step aside and let the next generation have a chance at it. I was stunned. I was going to follow in the footsteps of Monroe Freedman? I felt like the guy who replaced Lou Gehrig (a guy nobody remembers except trivia buffs and Google). But Monroe was always concerned about the younger crop of professors and the future of the legal ethics field, and I was the beneficiary—one of many, many younger professors who received a boost from Monroe over the decades. He didn't have to give up his professorship to me, but I'm grateful that he did. Holding that professorship was the pinnacle of my career, in no small part because the great Monroe Freedman had held it before me.

THANK YOU, MONROE

Monroe, I am deeply grateful for the time you spent with me at Hofstra—and now that you are gone, I keep learning new things about you. I wish I had spent more time with you, attended more of your classes, and collaborated with you on more projects. You were not just a consummate teacher and scholar, you were also a consummate colleague, a faithful friend, and a robust role model. You touched everyone in the field of legal ethics. We will try to grow and deepen the field you pioneered and will do our best to keep the study and practice of legal ethics alive and fresh, just as you did for half a century.

Thank you, Monroe.