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Monroe Freedman's Contributions to Lawyers: Engagement, Energy, and Ethics

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I. INTRODUCTION

What an honor to be included in a collective tribute to the life of our mutual hero, Professor Monroe Freedman: a brilliant man, his love of the law and his celebration of lawyering were the stuff of legends. From our perspective, as professional responsibility students sitting at his knee, no one brought more imaginative and, simultaneously, practical thinking to this topic.

Monroe Freedman never stopped his one-man campaign to improve the human condition, urging lawyers, judges, and law professors to exalt the dignity of clients, expanding the notion of zealous advocacy, while still recognizing that there must be limits, but that they must be crafted narrowly to reflect society's most fundamental interests.

Fearless in his efforts to establish a client-centered approach to lawyering, he did not hesitate, even when he was threatened, to join issue with the forces of darkness. But he did so with consummate good will, good humor, and an unruffled sense of confidence in the power of his advocacy that pervaded his work. He has left all of us who labor in the professional vineyards a legacy of engagement, energy, and ethics, exactly what he set out to accomplish. His voice is silent now, but read any of Monroe's written legacies and you can hear his voice, his very distinctive voice, uttering those wise words we were lucky enough to hear in person.

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II. ENGAGEMENT

Early in his professional career, Monroe displayed his lifelong courage to confront some of the most difficult issues that lawyers face in representing clients. He did this by engaging the practicing bar, judges, and academics, relentlessly searching for the truth wherever it led him.

It all began when he gave a lecture to lawyers in which he examined the then-*Canons of Legal Ethics* and concluded that they created conflicting obligations for criminal defense lawyers in dealing with client perjury.[1] He argued that the duty of competence (to learn everything possible about a client's case) and the duty of confidentiality (to refuse to disclose or use all information learned) conflicted with the obligation established by the ethics rules to reveal a client's perjury to a court when a lawyer possesses actual knowledge of the perjury.

Monroe's observations so outraged then-Judge Warren Burger and two other federal judges that they filed a professional disciplinary complaint against Monroe for expressing this opinion. But Monroe, convinced he had something to say, had the courage and conviction to continue his advocacy despite this attempt to silence him. He successfully defended the disciplinary proceeding,[2] and while his license to practice stood challenged, he turned the speech into a now-famous, widely read, and much celebrated law review article.[3]

Forty years and two sets of disciplinary rules later, he continued to challenge us to confront the same conundrum, documenting the trilemma he initially exposed and addressing not just the text of the relevant rule and the cases that construed it, but also applauding the changes in viewpoint of those who initially advocated against his view.[4] Monroe concluded that, despite an apparent change in the relevant rule of professional conduct, courts continued to wrestle with the disquiet caused by the "critical policy issue" he raised so long ago, producing an approach very close to his original proposal.[5]

Monroe's willingness to reexamine the issue of client perjury characterizes his engagement with his critics. He welcomed the

1. *See* Monroe H. Freedman, *Getting Honest About Client Perjury*, 21 GEO. J. LEGAL ETHICS 133, 133-34 (2008).

2. *Id.* at 138.

3. Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469, 1469-84 (1966).

4. MONROE H. FREEDMAN & ABBE SMITH, UNDERSTANDING LAWYERS' ETHICS 151-86 (4th ed. 2010).

5. Freedman, *supra* note 1, at 148. They do so by disingenuously construing the knowledge requirement of the rule, which makes it "reasonably certain that a lawyer who chooses to honor her client's confidences will not be found to have violated Model Rule 3.3." *Id.* at 147.

opportunity to rethink and expand on his earlier conclusions. He did this by returning to the core principles that he believed should govern the client-lawyer relationship.[6] For example, on the issue of discrediting truthful witnesses, he relied on "fiduciary obligations to our client, our promise to maintain confidentiality, our client's reliance on that promise, and our client's constitutional right to confront the witnesses against him."[7] In discussing the view of other commentators who reached a similar result, Monroe unearthed what he called their "cynical justification": that is, "winning the case at hand."[8]

Susan also had the pleasure of admiring Monroe Freedman's engagement with her local practicing bar in Toledo. In offering an afternoon of ethics hypotheticals, Susan vividly remembers the moment he presented a case he had discussed at length in his treatise.[9] In response, the vast majority of the local bar disagreed with Monroe's view that the client should come first. The Toledo lawyers explained to Monroe: "That's not how we practice law here," and "We believe in professionalism." Monroe's response was classic, measured, and true: First, he told the large audience to be sure that they remembered their client, who will have to live with the decision. Then, he reminded them that an uninformed client could have remedies against a lawyer who fails to communicate.

III. ENERGY

Monroe's engagement with the legal profession flowed from his energy, which seemed to compel him to engage with both practicing lawyers and those in the academy when we considered his work. Susan personally experienced this energy when she wrote one footnote (out of 167) in a book review of *Modern Legal Ethics* by Charles Wolfram.[10] She commented that Freedman's criticism of Wolfram on the client perjury issue was "unfair" because Wolfram had in fact documented the profession's lack of agreement about, and factual limitations of, the relevant rule.[11]

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6. MONROE H. FREEDMAN, LAWYERS' ETHICS IN AN ADVERSARY SYSTEM, 71-74 (1975) (discussing the lawyer's role in advising clients and when it might cross the line from giving legal information to "active instrument" of client fraud).

7. FREEDMAN & SMITH, *supra* note 4, at 213.

8. *Id.*

9. *See id.* at 379-400 (discussing scenarios where opposing counsel takes advantage of an adversary's mistake).

10. Susan R. Martyn, *The Ethic of* Modern Legal Ethics, 1 GEO. J. LEGAL ETHICS 267, 282 n.144 (1987).

11. *Id.*

Susan had not yet met Monroe Freedman, but she was about to; he wrote her a lovely letter that informed her why she was mistaken. She wrote back, telling him why she did not agree. He then asked his legal ethics class to vote on who was correct, and called her to let her know that his class voted him the winner! Not quite a fair fight, but compelling evidence of his boundless energy to take on all comers.

Wolfram's treatise and the book review were written shortly before the Supreme Court decided *Nix v. Whiteside*.[12] Chief Justice Burger penned the majority opinion in that case, which affirmed a criminal conviction, despite the fact that the defense lawyer successfully dissuaded his client from lying by threatening to disclose any perjured testimony. While some might have expected this U.S. Supreme Court pronouncement would define the lawyer's role confronting client perjury, it in fact did not. The message of Monroe's earlier-cited article continued to enjoy broad professional support;[13] indeed, the current *Model Rules of Professional Conduct* recognize that the requirements of rule 3.3 are subordinated to the defendant's constitutional rights.[14]

Another example of the same energy and follow-through occurred when Monroe signed on to an amicus brief we penned on behalf of the Ethics Bureau at Yale and ninety-two legal ethics professionals and professors.[15] Six members of the court majority cited this brief in support of their conclusion that all three of his pro bono lawyers had abandoned the petitioner, Mr. Maples.[16] A year later, Monroe and the other signatories to the brief received an email from counsel for one of these lawyers, informing us that New York had dismissed a disciplinary action against one of the three because "there was no basis for taking disciplinary action" against him.[17]

At about the same time, Monroe was working on an article about the use and effect of professional discipline on death penalty lawyers and judges. He saw this correspondence, intended to chastise the amici, as no more than a prime example of the failure of disciplinary counsel to take action in cases of what he described

12. 475 U.S. 157 (1986).

13. Freedman, *supra* note 1, at 142-45.

14. MODEL RULES OF PROF'L CONDUCT r. 3.3 cmts. 7–9 (AM. BAR ASS'N 2014).

15. Brief of Legal Ethics Professors and Practitioners and the Ethics Bureau at Yale as *Amici Curiae* in Support of Petitioner, Maples v. Thomas, 132 S. Ct. 912 (2012) (No. 10-63).

16. *Maples*, 132 S. Ct. at 925 n.8; Brief of Legal Ethics Professors and Practitioners and the Ethics Bureau at Yale as *Amici Curiae* in Support of Petitioner, *supra* note 15, at 23-27.

17. Monroe H. Freedman, *Professional Discipline of Death Penalty Lawyers and Judges*, 41 HOFSTRA L. REV. 603, 613 (2013).

as "clear on [the facts of the Supreme Court record]."[18] This experience and others led him to conclude that it was a "pointless exercise" to draft guidelines for death penalty counsel, as they already existed and were for the most part not enforced.[19]

Monroe directed his energy at judges and academics, as well as at practicing lawyers. He argued that electing state judges was unconstitutional[20] and excoriated prosecutors and judges for encouraging and using cooperating witnesses who lie.[21] He also was one of the first to raise the profound, but largely ignored, ethical issues that law professors face.[22]

Beginning with the proposition that we all bring to the task of ethics a "significant perspective,"[23] he identified law professors as those who, by and large, have chosen to leave clients behind and, as a result, tend to exalt societal interests over those of clients. He then asked: "But what of our students . . . [whom] we *have* chosen to be involved with[,] . . . do we champion their interests?"[24] He examined that question by applying his own laser focus to create a public discussion of neglected issues. Sparing no sacred cows, he identified and addressed sex with students, plagiarism of student work, and due process in grading, concluding that the first is unprofessional and often an abuse of power, the second required publication credit, and the third dictated grade review.

IV. ETHICS

Monroe Freedman recognized that his concerns about the professional responsibility of lawyers, judges, and law professors were generated by his overall view of the role of each. This sent him on an exploration of the lawyer's purpose in society, a topic on which he spent the rest of his career elaborating in his characteristically vivid prose.[25]

18. *Id.* at 612-14.

19. *Id.* at 603, 621.

20. *See generally* Monroe H. Freedman, *The Unconstitutionality of Electing State Judges*, 26 GEO. J. LEGAL ETHICS 217 (2013) (discussing how electing and re-electing judges violates due process).

21. Monroe H. Freedman, *The Cooperating Witness Who Lies—A Challenge to Defense Lawyers, Prosecutors and Judges*, 7 OHIO ST. J. CRIM. L. 739, 740-43 (2010).

22. Monroe H. Freedman, *The Professional Responsibility of the Law Professor: Three Neglected Questions*, 39 VAND. L. REV. 275, 276-77, 280, 282 (1986).

23. *Id.* at 275.

24. *Id.* at 276.

25. Although almost all of his work is suffused with this foundation, we can perhaps see the best examples in Freedman's *Lawyers' Ethics in an Adversary System*, *supra* note 6, and Freedman and Smith's *Understanding Lawyers' Ethics*, *supra* note 4.

He saw the legal system's purpose as preserving rights and the lawyer's role as giving power and autonomy to clients.[26] This led him to articulate the central problem in legal representation: the lawyer's superior legal knowledge giving the lawyer outsized power in client-lawyer relationships, an imbalance that encourages the paternalism of lawyers. He saw the lawyer's work as representing the client zealously within the bounds of the law.[27]

Monroe's celebration of the client-lawyer relationship remains one of the brightest, most positive, and definitive explications of the lawyer's ethical obligations. In fact, Monroe's explorations of these matters inspired us to identify, articulate, and emphasize these obligations in agency terms as the lawyer's *5Cs*. The lawyer must abide by the client's right to *control* the goals of the representation, must be *competent*, must *communicate*, must keep *confidences*, and must resolve *conflicts of interest*. Although thousands of pages have been written about these obligations, no one came close to Monroe Freedman in articulating and emphasizing their importance and interrelationship.

Monroe begins with the agency and fiduciary proposition that the client-principal empowers the lawyer, not vice versa. This means that the lawyer's exercise of autonomy reaches its pinnacle not in the representation itself, but in deciding whether and when to represent a particular client. Because the lawyer's role creates primary obligations to clients, Monroe emphasized the need to choose clients with care.[28] He wanted lawyers to be clear about the client they were representing, the tasks that representation required, and the influence that the client would have on the lawyer and the lawyer's life.

In each situation, Monroe began by confronting moral dilemmas, because he believed that immorality rested in "failing to address and resolve the moral conflict in a conscientious and responsible manner."[29] He identified the first moral issue each lawyer faces as her own accountability for the client she chooses to represent. Monroe agreed with Tom Shaffer that most client-lawyer counseling required consultation about moral issues.[30] But Monroe disagreed with him about the lawyer's role. The lawyer was not there to make the client "good" as

26. FREEDMAN & SMITH, *supra* note 4, at 15-43.

27. *Id.* at 68-126.

28. *Id.* at 52-53, 69-74.

29. Monroe H. Freedman, *A Lawyer Doesn't Always Know Best*, HUM. RTS., May 1978, at 28, 28.

30. Thomas Shaffer, *Legal Ethics and the Good Client*, 36 CATH. U. L. REV. 319, 329-30 (1987).

Monroe read Shaffer to suggest, but rather to be in a relationship in which the lawyer has the power to help.[31]

Most remember Monroe's work in clarifying the conflicting loyalties of criminal defense lawyers, including his recent publication with his colleague, Abbe Smith, which documents just how renowned defense lawyers actually do their jobs in an imperfect system.[32] But he wrote with equal clarity about prosecutors.[33] And he had this to say to students about another kind of client representation: "As you contemplate the practice of law you should understand that you may be called upon to represent people who, out of sheer greed, will hurt and even kill other innocent people. And if you can't handle that then you should not go into the practice of corporate law."[34]

Following Susan's talk at Hofstra, Monroe's emphasis on knowing your client inspired her to write about what she labeled "accidental clients." Although in most situations lawyers know who their clients are because they have expressly agreed to represent them, Susan noted that the law governing lawyers also recognizes what lawyers may think of as "accidental clients," those a lawyer did not expect, but who are owed the same fiduciary duties lawyers owe clients they intend to represent.[35]

Of course, general rules of contract and tort govern the creation of client-lawyer relationships. However, a lawyer asked to provide legal advice who fails to say "no" (or offers the advice without charge) can create an implied client-lawyer relationship if the recipient reasonably relies on the lawyer's assistance. Courts approach inconsistencies in descriptions of what occurred from the viewpoint of the reasonable prospective client.[36]

Monroe helped us understand that identifying accidental, as well as intended clients, puts lawyers in the best position to avoid client-lawyer relationships they do not wish to create and to embrace those they do. When clear about who are clients, lawyers also know whom to bill and to whom they owe fiduciary duties.

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31. FREEDMAN & SMITH, *supra* note 4, at 8; Monroe H. Freedman, *Legal Ethics and the Suffering Client*, 36 CATH. U. L. REV. 331, 331 (1987).

32. Monroe H. Freedman, *Why It's Essential to Represent "Those People," in* HOW CAN YOU REPRESENT THOSE PEOPLE? 73, 73-76 (Abbe Smith & Monroe H. Freedman eds., 2013); *see also* Freedman, *supra* note 17, at 605-07.

33. Monroe H. Freedman, *The Professional Responsibility of the Prosecuting Attorney*, 55 GEO. L.J. 1030, 1034-41 (1967); Monroe H. Freedman, *The Use of Unethical and Unconstitutional Practices by Prosecutors' Offices*, 52 WASHBURN L.J. 1, 16-21 (2010).

34. Abbe Smith, *Monroe Freedman—Heart and Mind*, 23 PROF. LAW., no. 2, 2015, at 14, 18.

35. Susan R. Martyn, *Accidental Clients*, 33 HOFSTRA L. REV. 913, 914-16 (2005).

36. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 14 (AM. LAW INST. 2000).

Monroe's understanding of lawyers as fiduciaries also helps us understand why courts hold that lawyers owe clients certain pre-contractual duties of fairness in bargaining for fees, including the obligation to explain them.[37] Once a lawyer takes on a representation and agrees to a fee, full fiduciary duties attach, making any attempt to modify a fee upward, after the initial agreement, subject to a presumption that the lawyer-agent has used his power to unduly influence the client-principal.[38]

The fiduciary duties lawyers assume with each client representation, what we call the *5Cs*, rest on a key agency law insight that Monroe recognized: lawyers derive power from clients, but our superior knowledge and skill also allow us to overpower our clients' interests. Agency law assigns fiduciary duty to lawyers to ensure that client-defined best interests are promoted in the representation. It achieves this by recognizing several facets of the obligation essential to representing the interests of another.

The first facet or *C*—control—assumes that, like other agents, lawyers have a duty to act on the client's behalf, subject to the client's right to define the objectives of the representation. Monroe was unrelenting in emphasizing that clients have sole authority to determine the objectives or goals of the representation, while he recognized that lawyers have sole authority to take actions required by law before tribunals and to refuse to engage in unlawful conduct. And when clients and lawyers share authority, Monroe was also clear that lawyers should defer to clients after the lawyer provides a full explication of the implications of a client decision.[39]

Monroe also helped us understand the way in which the second *C*—communication—is essential to every aspect of the client-lawyer relationship.[40] When a client decision arises, the lawyer must take the initiative to inform, consult with, and clarify the client's decision. When a client insists on illegal conduct, the lawyer must inform the client that the conduct is not permitted and explain why. When a client has decided upon an objective, the lawyer must consult with the client about the

37. MODEL RULES OF PROF'L CONDUCT r. 1.5 (AM. BAR ASS'N 2014); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 34 cmt. b.

38. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 18, 38.

39. FREEDMAN & SMITH, *supra* note 4, at 63-66.

40. MODEL RULES OF PROF'L CONDUCT r. 1.4; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 20.

means to accomplish it. In agency terms, the outcome of these consultations creates a lawyer's actual authority to act on behalf of the client.

In fact, communication enables all of the *5Cs*. Just as clients cannot choose the objectives of a representation without understanding feasible legal options, lawyers cannot act competently without understanding what the client hopes to accomplish and knowing how to get there. Similarly, lawyers need facts sufficient to permit them to apply the law to a client's situation, and the duty of confidentiality encourages clients to supply the facts for that process to be successful.[41] Monroe's advocacy of zealous representation and loyalty certainly means that lawyers must search for and resolve conflicts of interest to avoid favoring the lawyer's own or some other person's interest over those of her clients.[42]

The third *C*—competence—focuses on why lawyers are hired in the first place: to provide competent service in a complex legal system that clients are not able to navigate themselves.[43] Monroe understood that legal remedies were essential, but were no panacea for lawyer incompetence, including malpractice, ineffective assistance of counsel, and professional discipline; and, he continued to document deficiencies and controversies in everything he wrote.[44]

The fourth *C*—confidentiality—assures that clients are encouraged to share all relevant information with their lawyers. Without gathering facts, lawyers can mistake what their clients wish to accomplish, what law is relevant to their clients' circumstances, and other legal options that might be available to fulfill their client's needs. However, breaching confidentiality can result in serious harm to client interests.[45]

Monroe pointed out that modern confidentiality obligations originated in both agency law (which now resides in the lawyer disciplinary codes)[46] and the attorney-client privilege, an evidentiary doctrine.[47] The agency fiduciary duty protects all information relating to the representation of a client from the initial prospective client

41. FREEDMAN & SMITH, *supra* note 4, at 128, 133.

42. *Id.* at 259-60.

43. *Id.* at 128.

44. *Id.* at 123-26, 141-44, 285-321, 359-68 (discussing deficiencies and controversies in the context of prosecutors, government lawyers and torture memos, criminal defense lawyers, and corporate representation).

45. *Id.* at 128-29.

46. MODEL RULES OF PROF'L CONDUCT r. 1.6 (AM. BAR ASS'N 2014); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 59 (AM. LAW INST. 2000).

47. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 68–86.

communication throughout the representation and beyond, even after the client's death or reorganization. The evidentiary privilege is narrower, limited to prevent litigation disclosures of communications in confidence between a client and her lawyer (and no one else) for the purpose of seeking legal advice.[48]

He also examined and had a significant impact on the development of confidentiality exceptions. For Monroe, the bedrock principle was client autonomy. It follows that the express or implied client consent exception was the core principle and the key to a client-centered representation based on trust.[49] He was eloquent in describing just how important it was to conduct an extensive dialogue with the client to ensure that any consent to disclosure was truly informed.[50]

Monroe also insisted that at least two other exceptions, even when it did not serve client-perceived interests, must be recognized. Most jurisdictions recognized a confidentiality exception to prevent future client crime. Monroe argued that the basis for this exception should not be triggered by the legal characterization of "crime" or "fraud," but rather by whether the threat of bodily harm (or substantial financial loss) was serious enough to disclose without securing client consent.[51]

By virtue of the sheer force and logic of his convictions, Monroe won the day, successfully urging the Ethics 2000 commission (on which we sat) and now nearly all jurisdictions, to shift from a future client crime exception to a future prevention of "reasonably certain death or substantial bodily harm" requirement before permissive disclosure is permitted.[52]

Consistent with his focus on clients, Monroe was far more critical of other confidentiality exceptions, especially those that granted lawyers some measure of self-protection.[53] Although not entirely critical of exceptions that permit disclosure of client fraud, he characterized them as "[s]till [p]rotecting [c]orporate [f]raud."[54]

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48. FREEDMAN & SMITH, *supra* note 4, at 129-34.

49. *Id.* at 128-29.

50. *Id.* at 52-55.

51. *Id.* at 139-41; Monroe H. Freedman, *The Life-Saving Exception to Confidentiality: Restating the Law Without the Was, the Will Be, or the Ought to Be*, 29 LOY. L.A. L. REV. 1631, 1636-39 (1996).

52. MODEL RULES OF PROF'L CONDUCT r. 1.6(b)(1) (AM. BAR ASS'N 2014); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 66.

53. *See* FREEDMAN & SMITH, *supra* note 4, at 146-47 (discussing collecting fees); *see also id.* at 147, 164 (establishing defenses).

54. *Id.* at 142-46.

The fifth *C*—conflicts of interest—because it is the most difficult, was for Monroe really the first. Client loyalty and zealous advocacy require lawyers to identify and avoid or resolve conflicts of interest. He argued that this loyalty obligation was the core of a client-centered system of lawyers' ethics. The agency duty of loyalty creates the lawyer's obligation to seek client consent whenever a lawyer's judgment, from the client's point of view, might reasonably be called into question. It also prevents client harm by imposing on lawyers the obligation to recognize and respond to any influences that may interfere with the lawyer's ability to act in the client's best interests as defined by the client.[55]

Monroe clarified the way that both agency law and the lawyer disciplinary rules must recognize that conflicts of interest can arise from several sources, including the lawyer's own personal interests and the interests of other clients, third persons, and former clients.[56] Pursuing the client's best interests requires lawyers to remain vigilant in the identification of conflicts of interest throughout the representation. Once identified, a conflict must be disclosed to the client(s), unless doing so would violate another client's confidentiality. And if confidentiality obligations should intrude into this process, lawyers should resolve the conflict by not proceeding in the matter.[57]

A lawyer's conflicts are imputed to the lawyer's firm. This imputation is premised upon the fiduciary principle that all firm lawyers owe loyalty to all firm clients and the fact that lawyers readily interact with and depend on each other in firms, if not physically, then electronically. Monroe understood that large law firms sought what he called the "ethical illusion of screening"[58] to limit this imputation, and he scrutinized their own conflict of interest, agreeing with Larry, that "there are no clients here to protect their interests."[59] Characteristically, Monroe found examples in cases where lawyers became subject to significant losses due to ethical blindness.[60]

55. *Id.* at 255-70.
56. *Id.* at 257-60.
57. *Id.* at 267-76.
58. *Id.* at 278.
59. *Id.* at 279.
60. *Id.* at 281-83 (discussing Maritrans v. Pepper, Hamilton & Scheetz, 602 A.2d 1277, 1279 (Pa. 1992)).

V. SO WHAT?

Monroe recognized the need for a variety of legal and equitable remedies to make real the lawyer's obligations. When harm is caused, the client may seek tort relief.[61] If harm is threatened, the client may seek disqualification or injunctive relief ordering the lawyer to end the representation of the conflicting interest.[62] Lawyers who proceed in a representation without disclosing a conflict can provide the client with grounds for seeking fee forfeiture[63] or a constructive trust of other property that is implicated.[64]

As Monroe identified these outcomes, he also was relentless in pointing out when they were not properly implemented. His criticism of prosecutors' unrestrained discretion and the lack of any real remedy for criminal defense lawyer incompetence stand as lasting indictments of our legal system,[65] blemishes he tried so hard to erase.

Ultimately, he characterized both legal and equitable remedies as necessary to support the implementation of lawyer fiduciary duties or the limits on advocacy imposed by other law. He knew that lawyers who observed client-centered advocacy by understanding and adhering to their 5C fiduciary duties would not create grounds for client relief. And, he also understood the need to identify and stay within the limits of the law.

VI. ARE THERE LIMITS?

Monroe knew that every agency and client-lawyer relationship is subject to one significant limitation: neither a client's power of control nor a lawyer's obligation of loyalty allows either to violate the limits of the law. Both principal and agent remain responsible for the consequences of their conduct as autonomous legal persons.[66] In other words, he recognized that zealous advocacy must occur within the bounds of the law.[67]

Monroe emphasized that these limits on advocacy should be clear, recognizing and helping define their margins. The most obvious legal

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61. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 48–56 (AM. LAW INST. 2000).

62. *Id.* §§ 6(2), 8; FREEDMAN & SMITH, *supra* note 4, at 270-74, 281-83.

63. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 6(9), 37.

64. *Id.* § 6(3).

65. FREEDMAN & SMITH, *supra* note 4, at 123-26; *see* Freedman, *supra* note 17, at 611-12; Freedman, *supra* note 21, at 739-47.

66. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 23(1), 30.

67. FREEDMAN & SMITH, *supra* note 4, at 114-22.

limits are created by the criminal law.[68] Tort law and, in particular, the law of fraud create similar limitations.[69] Lawyer disciplinary codes impose additional limits on client advocacy, such as rules governing ex parte contact with opponents,[70] defining improper inducements to settle a matter,[71] and regulating lawyers who serve as witnesses in client matters.[72]

All these bodies of law impose limits or bounds that restrain unfettered client allegiance. Monroe understood them, but he also knew that recognizing these limits does impose a heavy burden on lawyers. Because lawyers have long advised clients about how to avoid illegality, they certainly must recognize legal limitations on their own conduct. But the limitations must be clear, unmistakable, and necessary. He reminded us that professionalism codes are not entirely harmless when they are "given force of law by judges who value courtesy to 'brother lawyers' above 'entire devotion to the interests of the client [and] warm zeal in the maintenance and defense of his rights.'"[73]

VII. ENGAGEMENT, ENERGY, AND ETHICS

Monroe Freedman leaves lawyers with the gift of understanding client representation in practice and in theory. He calls our attention to the autonomy of our clients and ourselves, which requires identifying our clients, understanding our fiduciary duty, and identifying the limits of the law. His legacy of thought and action concerning each of these obligations leaves us a rich treasure trove that encourages ongoing engagement and renewed energy to continue his quest for ethical deliberation. Monroe fostered our understanding of the law governing lawyers, convincing us that the essence of great legal representation is to serve our clients well by representing them zealously within the bounds of the law.

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68. MODEL RULES OF PROF'L CONDUCT r. 1.2(d), 8.4(b) (AM. BAR ASS'N 2014); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 6, 30.

69. MODEL RULES OF PROF'L CONDUCT r. 1.2(d), 4.1; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 51, 95, 98.

70. MODEL RULES OF PROF'L CONDUCT r. 4.2, 4.3; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 98–99; FREEDMAN & SMITH, *supra* note 4, at 106-14.

71. MODEL RULES OF PROF'L CONDUCT r. 5.6; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 13(2).

72. MODEL RULES OF PROF'L CONDUCT r. 3.7; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 108.

73. FREEDMAN & SMITH, *supra* note 4, at 122.

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