

# Lawyers' Ethics

in an  
Adversary  
System

**Stuart Rabinowitz**

*President and Andrew M. Boas and Mark L. Claster Distinguished Professor of Law Hofstra University*

**Herman A. Berliner**

*Provost and Senior Vice President for Academic Affairs Hofstra University*

**Aaron D. Twerski**

*Dean and Professor of Law Hofstra University School of Law*

**Roy D. Simon**

*Howard Lichtenstein Distinguished Professor of Legal Ethics Director of the Institute for the Study of Legal Ethics Hofstra University School of Law, Conference Director*

**KEYNOTE ADDRESS****Alan M. Dershowitz**

*Felix Frankfurter Professor of Law Harvard Law School*

**BANQUET ADDRESS****Monroe H. Freedman**

*Professor of Law Hofstra University School of Law*

**CONFERENCE FACULTY**

**Laura Appleman**, *Visiting Assistant Professor, Hofstra University School of Law*

**Anita Bernstein**, *Sam Nunn Professor of Law, Emory University School of Law and Wallace Stevens Professor of Law, New York Law School*

**Lonnie T. Brown, Jr.**, *Associate Professor, University of Georgia School of Law*

**Roger C. Cramton**, *Robert S. Stevens Professor of Law Emeritus, Cornell Law School*

**Alan M. Dershowitz**, *Felix Frankfurter Professor of Law, Harvard Law School*

**Monroe H. Freedman**, *Professor, Hofstra University School of Law*

**Linda Galler**, *Professor, Hofstra University School of Law*

**Barbara S. Gillers, Esq.**, *Fried, Frank, Harris, Shriver & Jacobson LLP*

**Stephen Gillers**, *Emily Kempin Professor of Law, New York University School of Law*

**Lisa Lerman**, *Professor, Columbus School of Law, The Catholic University of America*

**Steven Lubet**, *Professor of Law, Northwestern University School of Law*

**Thomas D. Morgan**, *Oppenheim Professor of Antitrust and Trade Regulation Law, The George Washington University Law School*

**Carol A. Needham**, *Professor, St. Louis University School of Law*

**Charles J. Ogletree**, *Jesse Climenko Professor of Law, Harvard Law School*

**Burnele V. Powell**, *Dean and Miles and Ann Loadholt Professor of Law, School of Law, University of South Carolina*

**Deborah L. Rhode**, *Ernest W. McFarland Professor of Law, Stanford Law School*

**Stephen A. Saltzburg**, *Wallace and Beverley Woodbury University Professor, George Washington University Law School*

**Roy D. Simon**, *Howard Lichtenstein Distinguished Professor of Legal Ethics, Hofstra University School of Law*

**Charlotte (Becky) Stretch, Esq.**, *Special Counsel and Associate Director for Administration American Bar Association Center for Professional Responsibility*

**Honorable David G. Trager**, *Judge, U.S. District Court, Eastern District of New York*

**Steven Wechsler**, *Professor, College of Law, Syracuse University*

**W. Bradley Wendel**, *Associate Professor of Law, Cornell Law School*

**Charles W. Wolfram**, *Charles Frank Reavis Sr. Professor of Law, Emeritus, Cornell Law School*

**Ellen Yaroshesky**, *Clinical Professor of Law and Executive Director, Jacob Burns Ethics Center, Benjamin N. Cardozo School of Law*

**Carol Ziegler**, *Adjunct Professor of Law, Brooklyn Law School*

## Sunday, October 30, 2005

8 a.m.-4 p.m.

### **CONFERENCE REGISTRATION**

Hofstra Cultural Center Foyer  
Sondra and David S. Mack Student Center  
North Campus

9-11 a.m.

### **BRUNCH**

11-11:15 a.m.

### **WELCOMING REMARKS**

#### **Herman A. Berliner**

Provost and Senior Vice President for  
Academic Affairs  
Hofstra University

#### **Aaron D. Twerski**

Dean and Professor of Law  
Hofstra University School of Law

#### **Roy D. Simon**

Howard Lichtenstein  
Distinguished Professor of Legal Ethics  
Hofstra University School of Law

11:15 a.m.-12:15 p.m.

### **OPENING ADDRESS**

#### **Deborah L. Rhode**

Ernest W. McFarland Professor of Law  
Stanford Law School

*"Legal Ethics in an Adversary System:  
The Persistent Questions"*

12:15-2:15 p.m.

### **AFTERNOON SESSION I**

#### **Steven Lubet**

Professor of Law  
Northwestern University School of Law

*"The Loyalty Trilemma"*

2:15-2:30 p.m.

**Barbara S. Gillers, Esq.**

Fried, Frank, Harris, Shriver & Jacobson LLP

*"The Duty of Zealous Representation and the Corporate Lawyer: Some Hard Issues"*

2:30-4:45 p.m.

**COFFEE BREAK**

**AFTERNOON SESSION II**

**Charles W. Wolfram**

Charles Frank Reavis Sr. Professor of Law, Emeritus  
Cornell Law School

*"Cautionary Thoughts About Lawyer Liability As Fiduciaries"*

**KEYNOTE ADDRESS**

**Alan M. Dershowitz**

Felix Frankfurter Professor of Law  
Harvard Law School

*"Lawyers' Ethics in a Constitutionalized Adversary System"*

6 p.m.

**BANQUET IN HONOR OF  
MONROE H. FREEDMAN**

The Garden City Hotel

**BANQUET ADDRESS**

**Monroe H. Freedman**

Professor of Law  
Hofstra University School of Law

*"In Praise of Overzealous Representation: Lying to Judges, Deceiving Third Parties, and Other Ethical Conduct"*

## Monday, October 31, 2005

8 a.m.-3 p.m.

### CONFERENCE REGISTRATION

Hofstra Cultural Center Foyer  
Sondra and David S. Mack Student Center  
North Campus

8-8:55 a.m.

### BREAKFAST

9 a.m.-Noon

### MORNING SESSION

#### Stephen A. Saltzburg

Wallace and Beverley Woodbury  
University Professor  
George Washington University Law School

*"A Grand Slam of Professional Irresponsibility  
and Judicial Disregard"*

#### Stephen Gillers

Emily Kempin Professor of Law  
New York University School of Law

*"The Perjurious Criminal Defendant: A Critique  
of Freedman's Critique and All Other Solutions  
(or Why Do We Keep Talking About This?)"*

#### Lisa Lerman

Professor  
Columbus School of Law  
The Catholic University of America

*"Dishonesty"*

Noon-1:30 p.m.

### LUNCHEON

Joan and Donald E. Axinn Library, 10th floor  
South Campus

### LUNCHEON ADDRESS

#### Charles J. Ogletree

Jesse Climenko Professor of Law  
Harvard Law School

*"Charles Hamilton Houston and the Ethics of  
Civil Rights Advocacy"*

1:30-4:30 p.m.

**AFTERNOON SESSION**

**Lonnie T. Brown, Jr.**

Associate Professor  
University of Georgia School of Law

*"Reconsidering the Corporate Attorney-Client Privilege - A Response to the Compelled-Voluntary Waiver Paradox?"*

**Thomas D. Morgan**

Oppenheim Professor of Antitrust and Trade Regulation Law  
The George Washington University Law School

*"The Corporate Lawyer and the 'Three Hardest Questions'"*

**Anita Bernstein**

Sam Nunn Professor of Law  
Emory University School of Law and  
Wallace Stevens Professor of Law  
New York Law School

*"Zeal"*

4:30-5:30 p.m.

**INFORMAL GET-TOGETHER  
AND REFRESHMENTS**

## Tuesday, November 1, 2005

8 a.m.-3 p.m.

### **CONFERENCE REGISTRATION**

Barbara and Maurice A. Deane Law Library Foyer  
Hofstra University School of Law

8-9 a.m.

### **BREAKFAST**

Leeds Morelli & Brown Atrium  
Hofstra University School of Law

9 a.m.-Noon

### **MORNING SESSION**

#### **Roger C. Cramton**

Robert S. Stevens Professor of Law Emeritus  
Cornell Law School

*"Counseling Non-Litigation Clients in an Adversary System"*

#### **Ellen Yaroshefsky**

Clinical Professor of Law and  
Executive Director  
Jacob Burns Ethics Center  
Benjamin N. Cardozo School of Law

*"How Secret Evidence Is Eroding the Adversary System"*

#### **Burnele V. Powell**

Dean and Miles and Ann Loadholt  
Professor of Law  
School of Law, University of South Carolina

*"Creating Space to Be Ethical and Professional"*

Noon-1:30 p.m.

### **LUNCHEON**

#### **LUNCHEON ADDRESS**

#### **Honorable David G. Trager**

Judge, U.S. District Court for the  
Eastern District of New York

*"Do Ethics Rules Protect Lawyers or Clients?  
Secret Taping and Some Other Illustrations"*

1:30-3:30 p.m.

## AFTERNOON SESSION

### **W. Bradley Wendel**

Associate Professor of Law  
Cornell Law School

*"Institutional and Individual Justification in  
Legal Ethics: The Problem of Client Selection"*

### **Roy D. Simon**

Howard Lichtenstein  
Distinguished Professor of Legal Ethics  
Hofstra University School of Law

*"The Nuclear Option: Threatening a Grievance  
Against Opposing Counsel"*

3:30-5 p.m.

## ROUNDTABLE DISCUSSION

### **Commentators:**

### **Laura Appleman**

Visiting Assistant Professor  
Hofstra University School of Law

### **Linda Galler**

Professor  
Hofstra University School of Law

### **Carol A. Needham**

Professor  
St. Louis University School of Law

### **Charlotte (Becky) Stretch, Esq.**

Special Counsel and Associate Director  
for Administration  
American Bar Association Center for  
Professional Responsibility

### **Steven Wechsler**

Professor  
College of Law, Syracuse University

### **Carol Ziegler**

Adjunct Professor of Law  
Brooklyn Law School

*Hofstra University School of Law has been certified by  
the New York State Board of Continuing Legal Education  
as an accredited provider.*

## REGISTRATION INFORMATION

### CONFERENCE REGISTRANTS

Complete and return the registration form with a check made payable to Hofstra University School of Law. Please indicate the session(s) you plan to attend. Your official name tag and registration packet may be picked up at the Conference Registration Desk, which will be open during these hours at the following locations.

**Sunday, October 30, 2005**  
Hofstra Cultural Center Foyer  
Sondra and David S. Mack Student Center  
North Campus  
8 a.m.-4 p.m.

**Monday, October 31, 2005**  
Hofstra Cultural Center Foyer  
Sondra and David S. Mack Student Center  
North Campus  
8 a.m.-3 p.m.

**Tuesday, November 1, 2005**  
Barbara and Maurice A. Deane Law Library  
Foyer  
Hofstra University School of Law  
8 a.m.-3 p.m.

On-site registration will be available as space permits. Hofstra University facilities are 100-percent accessible to persons with disabilities.

### HOFSTRA STUDENTS, FACULTY, ADMINISTRATORS AND STAFF

All events, with the exception of the brunch, banquet and luncheons, are free to Hofstra students, faculty, administrators and staff upon presentation of a current HofstraCard. However, admission to all conference events is limited to those who register in advance. Unfortunately, free admission to conference events cannot be extended to family and friends of members of the Hofstra University community.

Please complete and return the registration form to Joanne Ramirez, administrative assistant to the dean, Hofstra University School of Law, 121 Hofstra University, Hempstead, NY 11549-1210.

### MEMBERS OF THE PRESS

Complimentary press passes to all conference events will be provided to members of the press. Please

notify Joanne Ramirez by phone at (516) 463-5854, or by fax at (516) 463-6091. Parking arrangements will be made if notification is received on or before October 14, 2005. Thereafter, every effort will be made to accommodate those with press credentials.

### CONTINUING LEGAL EDUCATION CREDITS

Hofstra University School of Law is an accredited New York State CLE provider. New York CLE credits are available to satisfy the Ethics requirement for attorneys attending the conference. Please advise the CLE service secretary at the registration desk if you wish CLE credit. Lawyers admitted in jurisdictions other than New York should check with those jurisdictions to determine CLE requirements in their states. Scholarships are available. To apply call Dawn Marzella at (516) 463-6889.

### OFFICIAL CONFERENCE HOTELS

The Garden City Hotel in Garden City and the L.I. Marriott Hotel and Conference Center in Uniondale have been designated as the official conference hotels. Following are the room rates and cutoff dates for room reservations. All hotel reservations will be handled directly through the hotels.

#### THE GARDEN CITY HOTEL

An Inter-Continental Global Partner Hotel  
45 Seventh Street  
Garden City, New York 11530  
Attention: Reservations Manager  
Telephone: (516) 747-3000 or (800) 547-0400  
Fax: (516) 747-1414  
Room rate: \$185 per night, single or double occupancy. (Rate guaranteed until October 10, 2005).

#### LONG ISLAND MARRIOTT HOTEL AND CONFERENCE CENTER

101 James Doolittle Boulevard  
Uniondale, New York 11553  
Attention: Reservations Manager  
Telephone: (516) 794-3800 or (800) 832-6255  
Fax: (516) 794-5936  
Room rate: \$169 per night, single or double occupancy. (Depending upon availability).

You may also call the Wingate Inn. There is no corporate rate available for this conference.



WINGATE INN  
821 Stewart Avenue  
Garden City, New York 11530  
Attention: Hotel Reservations  
Telephone: (516) 705-9000

Please make your reservations as early as possible as the number of rooms is limited. When making your reservations, please identify yourself as a participant in the Hofstra Law School Ethics Conference.

All reservations will be held until 6 p.m. on the day of arrival unless the reservation is accompanied by payment with a major credit card.

#### LOCATION OF HOFSTRA UNIVERSITY

Hofstra University is located in Hempstead, New York, about 25 miles east of New York City, less than an hour away by train or automobile. The campus is located approximately 30 minutes by car from either John F. Kennedy International Airport or LaGuardia Airport.

#### BY CAR

From Eastern Long Island: Take Northern State Parkway to Meadowbrook Parkway South (exit 31A), or Southern State Parkway to Meadowbrook Parkway North (exit 22N). Take Meadowbrook Parkway to exit M4 (Hempstead Turnpike). Follow Hempstead Turnpike (Route 24) west to Hofstra, approximately 1 1/2 miles.

From New York City: Take the Long Island Expressway to exit 38, Northern State Parkway, to Meadowbrook Parkway South (exit 31A), or Southern State Parkway to Meadowbrook Parkway North (exit 22N). Take Meadowbrook Parkway to exit M4 (Hempstead

Turnpike). Follow Hempstead Turnpike (Route 24) west to Hofstra, approximately 1 1/2 miles.

#### TRANSPORTATION FROM AIRPORTS

Please call for reservations in advance:

Horizon Transportation Service  
Personalized Transportation Service  
(516) 438-4891

U.S. Limousine and Car Service  
Personalized Transportation Service  
(516) 352-2225 or (800) 962-2827

**NOTE: There are no official fares charged by New York City yellow cabs between the airports and the Hofstra campus. Please confirm charges with driver before starting your trip.**

#### TRANSPORTATION VIA THE LIRR

The Long Island Rail Road (LIRR) has frequent commuter service to the Hempstead Station from Pennsylvania Station, located at 34th Street and 7th Avenue, New York City, and Flatbush Avenue Station in Brooklyn, New York. From the Hempstead Station use either the Hofstra University courtesy bus that meets every train at the Hempstead Station or a local taxi service to the Hofstra campus.

All Island Transportation  
(516) 481-1111

Ollie's Airport Service  
(516) 437-0505, (516) 352-6633,  
or (718) 229-5454

Pub Taxi Service  
(516) 481-0675

**Please return completed registration form on or before October 14, 2005, to:**

**Joanne Ramirez**  
Administrative Assistant to the Dean  
Hofstra University School of Law  
121 Hofstra University  
Hempstead, NY 11549-1210  
lawethics@hofstra.edu

**Please make check(s) payable to Hofstra University School of Law.**

Registration fees are refundable until October 14, 2005. Thereafter, registration fees are nonrefundable.

Limited space is available. However, if conditions permit, there will be on-site registration on a first-come, first-served basis.

**For more information, please contact:**

Hofstra Law School: phone (516) 463-5854; fax (516) 463-6091

For 24-hour information call the HOFSTRA EVENTS LINE at (516) 463-5533.

**Visit the Hofstra Web site at [www.hofstra.edu/academics/law/law\\_ethics\\_2005\\_schedule.cfm](http://www.hofstra.edu/academics/law/law_ethics_2005_schedule.cfm).**

## CONFERENCE REGISTRATION FEES

Full conference fee includes all conference events and meals (excluding the banquet, with the exception of Category 1 attendees).

*On Tuesday, November 1, Hofstra Law School graduates will be admitted to the conference events at no charge.*

	Full Conference	Individual Day
<b>CATEGORY I</b>	\$475*	\$125
Law Professors		
Attorneys in private practice		
Members of the general public		
<b>CATEGORY II</b>	\$195	\$75
Disciplinary counsel		
Government lawyers		
Bar Association staff/employees		
Public interest/non-profit/Legal Aid lawyers		
<b>CATEGORY III</b>	\$100	\$50
Hofstra Law graduates		
Senior citizens (over 65)		
Must include copy of Medicare card		
Non-Hofstra students		
Must include copy of valid school ID		
<b>Note:</b> Per person cost includes all conference events and meals, excluding banquet		
Current Hofstra students, faculty and staff **		NO FEE
Must include copy of current HofstraCard (does not include meals or banquet)		

\* Full conference fee includes banquet for category I attendees.

\*\* If you are a current Hofstra student or staff member and would like to attend the brunch on Sunday, or the luncheon on Monday or Tuesday, there will be additional fees as indicated below:

<b>Brunch</b>	
Sunday, October 30, 2005	\$15
<b>Luncheon and Address</b>	
Monday, October 31, 2005	\$15
<b>Luncheon and Address</b>	
Tuesday, November 1, 2005	\$15



# REGISTRATION FORM

FOR SEATING PURPOSES PLEASE CHECK THE EVENTS THAT YOU WISH TO ATTEND.

## SUNDAY, OCTOBER 30, 2005

- ( ) 9-11 a.m. **BRUNCH**  
 \_\_\_\_\_ I prefer a kosher meal.
- ( ) 11-11:15 a.m. **WELCOMING REMARKS**
- ( ) 11:15 a.m.-12:15 p.m. **OPENING ADDRESS**  
 Deborah L. Rhode
- ( ) 12:15-2:15 p.m. **AFTERNOON SESSION I**  
 Steven Lubet  
 Barbara S. Gillers
- ( ) 2:30-4:45 p.m. **AFTERNOON SESSION II**  
 Charles W. Wolfram
- KEYNOTE ADDRESS**  
 Alan M. Dershowitz
- ( ) 6 p.m. **BANQUET IN HONOR OF  
 MONROE H. FREEDMAN**  
 The Garden City Hotel  
 Garden City, New York

## MONDAY, OCTOBER 31, 2005

- ( ) 9 a.m.-Noon **MORNING SESSION**  
 Stephen A. Saltzburg  
 Stephen Gillers  
 Lisa Lerman
- ( ) Noon-1:30 p.m. **LUNCHEON**  
 I prefer a \_\_\_\_\_ kosher meal.  
 \_\_\_\_\_ vegetarian meal.
- LUNCHEON ADDRESS**  
 Charles J. Ogletree
- ( ) 1:30-4:30 p.m. **AFTERNOON SESSION**  
 Thomas D. Morgan  
 Anita Bernstein  
 Lonnie T. Brown, Jr.
- ( ) 4:30-5:30 p.m. **INFORMAL GET-TOGETHER**

## TUESDAY, NOVEMBER 1, 2005

- ( ) 9 a.m.-Noon **MORNING SESSION**  
 Roger C. Cramton  
 Ellen Yaroshefsky  
 Burnele V. Powell
- ( ) Noon-1:30 p.m. **LUNCHEON**  
 I prefer a \_\_\_\_\_ kosher meal.  
 \_\_\_\_\_ vegetarian meal.
- LUNCHEON ADDRESS**  
 Judge David G. Trager
- ( ) 1:30-3:30 p.m. **AFTERNOON SESSION**  
 W. Bradley Wendel  
 Roy D. Simon
- ( ) 3:30-5 p.m. **ROUNDTABLE DISCUSSION**

Please indicate if you require a sign language interpreter.