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# HOFSTRA LAW REVIEW

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## LAWYERS' ETHICS IN AN ADVERSARY SYSTEM

### FOREWORD: LIKE GRAVITY

*Roy D. Simon\**

The adversary system, like gravity, affects us all. We cannot escape it. The adversary system, and the ethical standards of the lawyers who operate within the adversary system, therefore warrant continual study.

An extraordinary roster of nineteen speakers examined the ethics of lawyers in an adversary system at Hofstra's fifth major conference on legal ethics.<sup>1</sup> The Opening Address was delivered by Professor Deborah Rhode of Stanford Law School; the Keynote Address was given by Professor Alan Dershowitz of Harvard Law School; and the Banquet Address was given by Monroe Freedman himself. The other speakers included (in alphabetical order):

- Anita Bernstein
- Lonnie Brown
- Roger Cramton

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\* Howard Lichtenstein Distinguished Professor of Legal Ethics, Hofstra University School of Law and Director of Hofstra's Institute for the Study of Legal Ethics. Professor Simon thanks Dawn Marzella and Nancy Rudolph, who served as the Conference Coordinators, and all of the other members of the staff at Hofstra who worked so hard to make this conference possible.

1. The conference was held at Hofstra University for three full days, from October 30 through November 1, 2005. Hofstra previously held three-day conferences on legal ethics in 1996, 1998, 2001, and 2003. For the papers from those four conferences, see 1 J. INST. STUDY OF LEGAL ETHICS (1996); 2 J. INST. STUDY LEGAL ETHICS (1999); 30 HOFSTRA L. REV. 685-1067 (2002) and 32 HOFSTRA L. REV. 1095-1662 (2004).

- Barbara Gillers
- Stephen Gillers
- Lisa Lerman
- Steven Lubet
- Tom Morgan
- Charles Ogletree
- Burnele Powell
- Steven Saltzburg
- Roy Simon
- Hon. David Trager
- Brad Wendel
- Charles Wolfram, and
- Ellen Yaroshesky.

(For each speaker's job title and affiliation, see the first footnote in each article.)

This issue collects nearly all of the papers delivered at the conference. Of equal interest, each paper is followed by a transcript of the fascinating exchanges that occurred between the speaker and members of the audience during a lengthy question and answer session after each speech.

The conference commemorated and celebrated the thirtieth anniversary of the publication of Professor Monroe Freedman's seminal book, *Lawyers' Ethics in an Adversary System*.<sup>2</sup> That slender volume remains one of the most influential books ever written on the subject of legal ethics. We are enormously proud that Professor Freedman, the Dean of Hofstra Law School at the time that book was published, has been teaching at Hofstra continually since 1973. He remains a vital part of the law school and a major player in the field of lawyers' ethics. In honor of Professor Freedman's enormous past, present, and future contributions to the field of lawyers' ethics, we named our conference after that book.

Our approach at each Hofstra legal ethics conference is to focus intensely on each individual speaker. We did this in three ways.

First, we gave each speaker freedom to choose a topic. We did not assign topics. Within the broad theme of lawyers' ethics in an adversary system, each speaker had free rein to develop a topic of particular personal interest and scholarly significance.

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2. MONROE H. FREEDMAN, *LAWYERS' ETHICS IN AN ADVERSARY SYSTEM* (1975).

Second, each speaker came to the podium alone for a solid hour. There were no co-panelists or moderators to distract from the speaker or to deflect questions from the audience.

Third, we devoted about half of each speaker's time to questions and comments from the audience. Hofstra encourages the major speakers to attend other speeches and to ask questions, so it was not unusual to hear questions from Alan Dershowitz, Charles Wolfram, Stephen Gillers, Monroe Freedman, and other speakers.

In addition, we invited a number of distinguished commentators whose principal assignment was to ask challenging questions. These commentators included Laura Appleman, who was a Visiting Assistant Professor of Law at Hofstra (and is now teaching at Willamette University College of Law); Linda Galler, a Professor of Law at Hofstra; Carol A. Needham, a Professor of Law at St. Louis University; Charlotte (Becky) Stretch, Special Counsel and Associate Director for Administration at the American Bar Association's invaluable Center for Professional Responsibility; Steven Wechsler, a Professor of Law at Syracuse University; and Carol Ziegler, an Adjunct Professor of Law who teaches Professional Responsibility at Brooklyn Law School and Columbia Law School.

Unfortunately, the conference faculty did not include the legendary Sam Dash, who died on May 29, 2004 at age 79. He was a great lawyer and a great friend. During his remarkable career, he served as Chief Counsel for the Senate Select Committee on Watergate during its investigation of President Nixon, as ethics advisor to Independent Counsel Kenneth Starr during his investigation of President Clinton, as an elected District Attorney in Philadelphia (at age thirty), as a lawyer in private practice, and as a law professor at Georgetown University for nearly forty years. Professor Dash (accompanied by his wonderful wife of more than fifty years, Sara) participated in all four of our previous ethics conferences at Hofstra. We valued his wisdom, his experience, and his humor, and we will miss him dearly.

We hope you will value this printed version of our conference, and will find much to cite and excite. We are grateful to you for your interest, and we are grateful to our speakers for their hard work in converting their oral presentations into law review articles. Most of all, we are grateful to Monroe Freedman for laying the foundation three decades ago for serious academic debate about lawyers' ethics in our adversary system, and for continuing to prod and provoke us all to explore ever deeper into the many dimensions of that system.

## CONFERENCE FACULTY

- Appleman, Laura (*Visiting Assistant Professor*, Hofstra University School of Law)
- Bernstein, Anita (*Sam Nunn Professor of Law*, Emory Law School)
- Brown, Jr., Lonnie T. (*Associate Professor of Law*, University of Georgia School of Law)
- Cramton, Roger C. (*Professor of Law Emeritus*, Cornell Law School)
- Dershowitz, Alan (*Felix Frankfurter Professor of Law*, Harvard Law School)
- Freedman, Monroe H. (*Professor of Law*, Hofstra University School of Law)
- Galler, Linda (*Professor of Law*, Hofstra University School of Law)
- Gillers, Barbara (*Of Counsel*, Fried, Frank, Harris, Shriver & Jacobson LLP)
- Gillers, Stephen (*Emily Kempin Professor of Law*, New York University School of Law)
- Lerman, Lisa G. (*Professor of Law*, Catholic University of America Columbus School of Law)
- Lubet, Steven (*Director, Program on Advocacy and Professionalism and Professor of Law*, Northwestern University School of Law)
- Morgan, Thomas (*Oppenheim Professor of Antitrust and Trade Regulation Law*, George Washington University Law School)
- Needham, Carol (*Professor of Law*, Saint Louis University School of Law)
- Ogletree, Charles J. (*Jesse Climenko Professor of Law*, Harvard Law School)
- Powell, Burnele V. (*Miles and Ann Loadholt Professor of Law*, South Carolina School of Law)
- Rhode, Deborah L. (*Director, Stanford Center on Ethics and Ernst W. McFarland Professor of Law*)
- Saltzburg, Stephen A. (*Wallace and Beverley Woodbury University Professor of Law*, George Washington University Law School)
- Simon, Roy D. (*Howard Lichtenstein Distinguished Professor of Legal Ethics*, Hofstra University School of Law)
- Stretch, Esq., Charlotte (Becky) (*Special Counsel and Associate Director for Administration*, American Bar Association Center for Professional Responsibility)
- Temple, Esq., Ralph J. (Oregon American Civil Liberties Union)
- Trager, Hon. David G. (*U.S. District Judge*, Eastern District of New York)

Wechsler, Steven (*Professor of Law, Syracuse University College of Law*)  
Wendel, W. Bradley (*Associate Professor, Cornell Law School*)  
Wolfram, Charles W. (*Charles Frank Reavis Sr. Professor of Law Emeritus, Cornell Law School*)  
Yaroshefsky, Ellen (*Executive Director, Jacob Burns Ethics Center and Clinical Professor of Law, Benjamin N. Cardozo School of Law*)  
Ziegler, Carol L. (*Adjunct Professor, Brooklyn Law School and Columbia Law School*)

### IDENTIFIED SPEAKERS

Aronson, Leonid  
Beasley, John  
Black, Barry (Law Offices of Barry Black P.C.)  
Charnov, Bruce (*Associate Professor of Management, Entrepreneurship, and General Business, Hofstra University*)  
Eldeiry, Mark (J.D. 2005, Hofstra University School of Law)  
Fitzpatrick, Vincent (Simpson, Thacher & Bartlett LLP)  
Freedman, Kevin  
London, Joyce (Law Office of Joyce C. London)  
Miller, Esther (*Bureau Chief, General Litigation Bureau, Nassau County*)  
Miller, Mark (Rosenfeld & Maidenbaum)  
Nelson, Clifford (Nelson & Nelson)  
Peretz, Adam (Jerome A. Wisselman, P.C.)  
Ringler, Robyn  
Shirley, Evan R. (Shirley & Associates)  
Stern, Alan J. (Alan J. Stern, P.C.)