Monroe Freedman, the Consummate Colleague

By Roy Simon

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I first met Monroe Freedman in a hotel hallway at the ABA National Conference on Professional Responsibility in Denver in 1986, when I was an assistant professor at Washington University in St. Louis. “Are you Monroe Freedman?” He was. I told him I had interviewed at Hofstra three times, without ever seeing him. “Oh,” he said, “I don’t go to interviews because I like everybody. I would want to hire everybody.”

Six years later, in 1992, Hofstra hired me — and I worked closely with Monroe for the next nineteen years, until I resigned my position at Hofstra in 2011. Monroe’s presence at Hofstra was a main attraction spurring my move. His fame — and his commitment to making Hofstra a legal ethics powerhouse — persuaded me to uproot my wife and four young children, forsaking St. Louis for Long Island. I soon experienced firsthand the many ways Monroe Freedman displayed his affection for his students and colleagues.

Conceiving of Conferences

When I had been at Hofstra only five days — I was still in a temporary office using someone else’s 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.

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 good will 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, 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 lecture 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 *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 Mich. L. Rev. 1469 (1966). Today that article is an icon, widely regarded as the most influential law review article on legal ethics in the last fifty years, and it 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.

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 43 years old when Monroe told me this story. Monroe had only been 38 when he was prosecuted (persecuted?) by Judge Burger. Yet Monroe had not cowered or waivered. He had 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*, 21 Georgetown J. Legal Ethics 133 (2008).

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 wasn’t 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 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 firm’s own conduct (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 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 bene-
ficiary of his generosity and his professionalism. (I ultimately wrote a 37-page opinion letter to the firm
on that matter, and I still have that law firm as a client today, nearly 23 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 num-
ber 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 under-
stood 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 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 it. 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.

Contracts and Counsellors
In 2006, I began teaching Contracts. That’s when I found out that Monroe had written a Contracts text-
book. Monroe had been teaching Contracts for decades – he once told me that he loved teaching Con-
tracts even more than teaching Lawyers’ Ethics – and he had spent years collecting contract 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 Pro-
fessor of Legal Ethics, which entitled him to a little extra money and the funding to invite a distin-
guished 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, etc. (Monroe had even given the lecture himself the year that his wife Audrey died and 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. Those of us you touched 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.