

10-1-1996

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### Recommended Citation

Thomas Schofield, *Power-Walking to Slay Behemoth with Law and Passion*, 44 Buff. L. Rev. 632 (1996).  
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol44/iss3/10>

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## Power-Walking to Slay *Behemoth* With Law and Passion

THOMAS SCHOFIELD†

Alan Freeman was my friend . . . with the essence of our friendship captured by two partnerships. The first partnership, of long duration, was the hiking partnership. Alan took me to the woods. An avid enthusiast for zestful living, Alan loved the long walk. For over a decade, Alan and I trekked through the forests of Western New York. Saturdays and Sundays took us to Hunter's Creek Park, Chautauqua Gorge, Tonawanda Creek, Walton Woods, the Erie Canal towpaths. Alan and I did them together, as friends, pushing one another to take the time to do that which we both loved.

Out of that friendship and our long walks came the second partnership, which was much shorter and really quite different. In the summer and fall of 1993, Alan and I joined together to practice law at the Chautauqua Institution.

For those who may not know, Chautauqua is a very special community founded in nineteenth century religious values. It is now a home for religion and the arts, within a gated lakeside setting of authentic, splendid Victorian architecture. Summer life unfolds on the front porch and at the community bookstore that shares space with the post office, across the plaza from a lovely and richly endowed library.

Alan and Betty had gone to Chautauqua to their new summer home in June. Three days after they arrived, I got a call from Alan. There was trouble brewing at Chautauqua and Alan sensed the need for lawyers. The trouble was a plan to replace the William Baker Hotel with a high-rise condominium. Alan asked me to come to a tea party at Dr. Sorensen's the following Thursday afternoon.

I slipped out of my law firm in Buffalo and arrived at Chautauqua for tea. In less than forty-five minutes, the hat was passed, some thousands of dollars were raised, and we were at work. Together, we took on the establishment at the Chautauqua Institution to compel adherence to traditional land use regulations for the preservation of historic Chautauqua.

It didn't take long for my telephone to start ringing. The callers were our Chautauqua clients and they had questions: "Who is this Alan Freeman?" "Does he understand the historic

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tradition of Chautauqua?" Alan's zeal had encountered a certain degree of mistrust; I used my client skills from private practice to assuage our clients. With Alan's complete concurrence, my first assigned task was to provide assurance that we would engage in legal battle within the bounds of decorum that defined Chautauqua. We were not to destroy the social fabric of Chautauqua in the name of preserving its deteriorating Victorian architecture.

When it came time to appear before the Architectural Control and Land Use Planning Board, Chautauqua was aroused. The normally sleepy meeting was moved to Christ the King Hall and it was attended by over two hundred disturbed citizens. What they encountered was a land use planning body that believed in its own absolute authority without regard for the written text of its obsolete regulations.

Alan and I again divided our work and I very carefully argued case law and ordinance. These are the rules of the Institution; these are the cases from the Court of Appeals. You cannot build this high-rise at the site of the William Baker Hotel.

Then it was Alan's turn. Alan argued Covenants. There are covenants between God and "man" and everyone here at Chautauqua recognizes them. There are covenants between the landowners and the Institution and this covenant relationship is equal to the sacred covenant. The unusual language of stewardship, contained in deeds conveying each parcel of property within the Chautauqua Institution, is premised upon the covenant relationship with God. It is our bounden duty to respect this carefully crafted and judicially enforceable scheme of protection.

Alan loved this sort of argument and joyfully sprinkled our briefs with Biblical language, describing the proposed condominium as a "behemoth". He won the hearts and minds of Chautauqua. Exhilarated, we lost at the Land Use Planning Board by a vote of three to two.

Fortunately, this story has a happy ending. Because of the arguments that we made, and particularly the arguments Alan made, the Board of Trustees of Chautauqua Institution undertook a sua sponte review and reversed the decision of the Land Use Planning Board. They put a moratorium on further development in the historic district and they undertook a review of their land use regulation to strengthen and preserve Chautauqua. There will be no high-rise at the William Baker Hotel.

As a colleague at the University at Buffalo Law School, Alan was a walking compendium of what I should read and know. When I tackled new subjects as diverse as comparative

constitutional rights and cross-border business, Alan was a trusted and encouraging resource. "Read this; You should know . . ." Alan was a natural teacher and law his natural subject. His boundless enthusiasm was a reminder that every class was "show time" and that substance is the essence of the show. Many others at the law school drew deeply from this resource and we were all enriched.

Alan's own interests, developed in tandem with Betty Mensch, were rapacious. Grounded in an expansive constitutionalism and an unwavering belief in a positive role for lawyers, Alan was equally at home teaching Real Property, Animals and The Law, or International Trade. In Civil Rights law and critical legal studies, Alan enjoyed a national reputation earned in large measure by his questioning of accepted canons.

Over time, Alan moved from a political framework to a place of intersection between law and religion as a foundation for civic discourse. I believe this entailed no departure from his earlier work. Contentious issues and community simply attracted Alan; his keen intellect and common sense always assured that he was a major contributor in the ensuing debate.

Friendship with Alan was complex. We often negotiated my desire for early Sunday walks against his preference to gather groceries for the coming week during that time. Even in such small matters, compromise did not come easily for Alan. At times, as when my family was in Europe for most of a year, the Mensch-Freeman household was a welcome lifeline. I think of that period as one in which I was one of the lost boys and they were my Peter Pan and Wendy. At other times, the demands of a prodigious scholarship and daily life impeded the possibilities of just being friends. But no matter the gaps, the enthusiasm and shared appreciation would re-emerge and take hold to defeat the complexities. For many friends who gathered for a pot luck dinner or a dinner prepared by Alan, the Mensch-Freeman household was a hub with real rewards.

On occasion, I represented Alan as a client. With the exception of the last battle for greater medical treatment, Alan's personal legal needs in Buffalo were never complex. Whether buying a house or transferring a title or solving some other small problem, Alan was a joy to work for. He understood the process, he knew why he chose to have others do what he could do for himself, and he praised a professional result. These little virtues are all too rarely encountered in the practice of law and they add a special dimension to my relationship with Alan. Most extraordinary was our ability to cross the boundaries from col-

leagues to litigation partners to friends and lawyer/client, without missing a cue.

Shortly after the events at Chautauqua, Alan fell ill and devoted his energies to a new battle for his own survival. He endured more than anyone should be compelled to endure. In the last weeks, shortly before his death in May of 1995, Alan rallied as the lawyer in defense of his own cause. He left this world fighting as a lawyer and not submitting meekly as a patient.

Alan found a new treatment and he believed there were opportunities for hope if only he could take on the combined roadblock of a multinational pharmaceutical manufacturer, federal regulations restricting drugs not yet released, hospitals, physicians and health insurers. Alan gathered his friends and took on this one last fight; he did not accept his fate.

It was easy and natural for Alan to be a lawyer. He fundamentally believed in the role of the lawyer as a powerful force to create change and do good. It was perhaps comforting to be a lawyer again in his last days among us.

I shall often think of Alan when I encounter the mud before spring flowers and the fallen leaves under the first snow. And I shall sometimes think of Alan when, on all too rare occasions, the practice of law has rewarded me with a particularly sweet and just result. The brisk walk, the long talk, the glass of sherry at the end of the day. I miss him.