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The Role of Law in Educational Decision Making

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PANEL DISCUSSION

PROFESSOR DOWD: As I suggested before, we thought we would begin this session with some sort of reaction from the panel to the presentations, followed by questions from the audience.

Dean Vanderzell, do you have any further words of wisdom or criticism?

DEAN VANDERZELL: There were a number of things that were exciting to me. In one sense, I have been able to avoid some of the problems that we have talked about, because I have been able, so far, to assume that they were someone else's problems. Mr. Finkin raised some points which were of particular interest to me. One was his indication of the ambivalent roles of the faculty, *i.e.*, the employee-employer relation as opposed to the managerial function that faculty members perform. It might be important to add that, at least in my college, the faculty members are thought of as general officers of the college. I suppose that is a managerial function except that, by general officer of the college, I mean he is responsible for the continuing and ongoing existence of the college and for characterizing its aspirations. I find it very difficult to conceive of the operation of my college in the absence of its being defined by the aspirations of the faculty, since a college is only what the aspirations of its faculty make it.

There was another point Mr. Finkin raised and one which I would have raised had I delivered my paper. It concerns the grounds upon which one might consider the suitability of a faculty member remaining on the campus. There is no question that academic freedom and the first amendment have been joined, and good institutions, I think, not only applaud that development but have no difficulty in operating within that context. The problem occurs when, or if, those faculty members who are the poorest performers as scholars and as teachers, are, at the same time, the most robust in their exercise of academic freedom and first amendment rights. I think that is a very real problem, and one to which I alluded when I suggested that there were some who insist that the reasons given for nonrenewal of contracts were not the real reasons at all.

MR. FINKIN: I profited enormously from listening to this discussion. For one thing, I have found that I am really out of touch with a lot of the constitutional developments. I think there are some

problems which confront both secondary and higher education in a similar fashion. I also think there are some that are vastly dissimilar. Before I get into that, let me say that I appreciate the problems of faculty members on campus. On a national level, the American Association of University Professors (AAUP) has handled about 880 complaints of violations of its standards this year. I recall one complainant whose contract was not being renewed and who was contesting the nonrenewal on a variety of grounds. I asked him what he understood to be the reasons for the nonrenewal. He wrote me: "I am being nonrenewed at this college for only two reasons — one is the *full* use of my academic freedom and the other is my abrasive personality." Let me say, that with respect to some of the problems facing the public schools, I think that higher education has already faced them. We have relatively well-developed codes of procedure on a variety of issues, including treatment of student discipline cases. There are certain customs, norms, and usages traditionally set by the better institutions and, in fact, by the AAUP, which other institutions then examine and try to emulate. I do not know how much longer that "old school" attitude is going to endure in higher education.

The incoming professoriate — junior faculty — enter with very different attitudes than the senior faculty they replace. I think, for example, the draft situation has contributed significantly to make higher education an attractive career. Some people may, therefore, not go into college teaching for the love of teaching or of scholarship, but rather to avoid the draft. However, as long as they are present at the institution they make demands on that institution.

I think one of the trends which the public schools are confronting, is the advent of a kind of legalization. Things will no longer be done by custom or norm. Instead, there will have to be formal procedures set down, followed, and sanctioned through some process, whether sanctioned by the courts, an arbitration board, or some agency of formal character. It seems to me that some of this legalization is not bad. For example, if a professor wears an armband about the Vietnam war and is fired because of it, he ought to have the right to have that decision reviewed, especially if the reasons given to him are spurious. There ought to be a way, procedurally, to protect his academic freedom. On the other hand, the procedure should not be so elaborate that the sense of discretion that professional people must have in making certain kinds of judgments is lost. I guess essentially what I am concerned about, is the advent of a kind of creeping legalism, whereby the decisions by administrators, faculty members, faculty

committees, and departments will be made not according to the merits of the situation, but rather, with a view toward how they would stand muster by a court or arbitrator. In some institutions with which I deal, I see a growing concern, not with the merits of the decision, but with adherence to form, that is, second-guessing what a court or arbitrator might require. I think that if that state of mind does take root in our institutions, it would change the way the institutions have traditionally been operated, and such a change would, in my view, be very much for the worse.

DR. SHEDD: I was particularly pleased to hear Professor Valente refer to the need, on the part of the people who work in the public and non-public elementary and secondary schools, to have access to legal advice and counsel which will be required to develop new responses to new problems. Hopefully, they will try to anticipate the crest of the wave that very often rises to engulf them when certain problems develop which involve relationships among students, teachers, administrators, and in some instances, parents. It does seem to me that, while there are legal aspects to many of the problems that we experience in the day-to-day operation of the schools, many of these concern relationships among the parties of interest, and conflict could be avoided with foreknowledge on the part of responsible school officials. Some kind of mechanism could be developed — hopefully with the cooperation of people with legal backgrounds, faculty and students of law schools and committee members of the various bar associations — whereby those people who have to live and work together in a school situation may do so in an amicable way. That does not involve a comment, but is an enlargement upon an idea that I was happy to hear Professor Valente make.

MR. JOHNSTON: I, too, want to respond to some of the remarks by Professor Valente. While I agree with most of what he said and while I found his summary helpful, I thought that, from my point of view, he left a false impression that the problem for educators is really more difficult than it seems to be. He did not point out that it is a problem that policemen have solved and one with which other public administrators have had to solve. All that the problem requires, it seems to me, and I do insist that it requires this, is that public officials have some reason for their actions and that they understand that the more they interfere with the prerogatives and rights of individuals, the better the reason must be. It seems to me that no one is better qualified to make a decision about whether or not the reason is good enough, at least in the first instance, in the educational con-

text, than the professional educator. So long as they have this understanding, I do not think anybody is going to get into very much trouble.

I think the problem arises from something else that Professor Valente suggested. It is true that the United States Supreme Court or the President or Congress can make a law, but to have people follow it is something else. It is frequently true, that district court judges, do not always follow what reasonable men would perceive to be the clear mandate of the Supreme Court. Of course, they can do that, as can school administrators, with the assurance that very, very few cases ever reach the United States Supreme Court, and therefore, the chances of successfully ignoring such a mandate are very good. If that is the way in which one wants to approach the problem, then I think he first has to ask the question: "What kind of example of citizenship is this for the students that are in my school system?" And second, he has to consider the effects on his professional career, especially if he either appears before a judge who follows the decision of the United States Supreme Court or if he is involved in that one case in a thousand that comes before the United States Supreme Court. Our federal district court, from the beginning, has felt that it is a violation of the right of privacy for a school to force students to cut their hair. We have attempted to secure compliance with this view, not by suing every school principal in the state, which is practically what we would have had to do, but rather simply by calling them on the telephone and talking to them about it. If school administrators understand that there must be a reason for what they do, and the more someone is affected the more justifiable the reason should be, it will be the best educational example one can offer students whose education is entrusted to him. I do not think any educator will encounter any serious trouble by following this approach. I believe that the instances where public school administrators have to consult attorneys before they make decisions will become fewer and fewer as people use this new approach.

PROFESSOR VALENTE: I would like to make clear, if I have not already, that my reason for suggesting that public school administrators, in fact any school administrator, structure their regulations or their ad hoc directives with a view to rationality and fairness, is basically to serve the same interests that Mr. Johnston mentioned. I do not mean to imply that, if they have their wits about them, they will be able to skirt the law. But, I do feel that they have very serious judgmental problems, and if they do not solve them at the administrative level, we are going to have this creeping legalism

to which Mr. Finkin referred. It is a very real danger for two reasons. First, educators will try to think like lawyers, or think legalistically, and thereby lose their perspective and their primary goal as educators. Second, and what is worse, while the courts are protectors, they can also become tyrannical. By this I mean, if decisions are constantly exported to the courts, it may well be that in different circuits you will have different ground rules, which in fact is what we have today. We have it in hair, we have it in armbands and various forms of expression, we have it in housekeeping controls, and we have it in controls of associational activities, higher and lower. I think this situation is most unfortunate.

I would hope that there will be compliance with the law but that the regulations will be primarily good sound educational decisions, rather than simply good legal decisions. The AAUP has adopted codes on student rights, which have been specifically acknowledged and confirmed as fair and reasonable in some of our courts. The code of student rights and responsibilities in the AAUP statement, as I recall, spells out a fair and reasonable way of handling these problems, as well as what rights ought to be expected. To me this is much more desirable at the lower educational level than what has happened in one of the midwestern federal courts. There the court had a very complicated problem of disruption at the higher educational level and issued what, in effect, was a code. They called it guidelines and regulations, but, in reality, it was a very extensive code. In effect, this was the utilization of an administrative scheme by a court rather than by an administration, which is unfortunate. Given a very conservative Supreme Court considering these problems, the result may be an imposition on a scale not imagined. I believe that some judicial intrusion is necessary but there are dangers. For this reason, I believe that consensus-approved codes or procedures, involving the participation of the faculty and students, may keep the community happy and stable by protecting the rights of individuals and keeping education out of the courts.

It seems to me that the legalization of education is every bit as dangerous as the politicalization of education that we have today. Students who are seniors in high school today have more than just a strong voice based upon their constitutional rights; they may be a political force one year later in an election. It is apparent to me that there is a danger here if the community is not governed by an appropriate hierarchy of authority, because then we unfortunately get involved in this legalism. I think some legalism is necessary, but I think, if carried too far, it could be very unfortunate.

PROFESSOR DOWD: Thank you very much Professor Valente. Any other comments from the panel?

DR. SHEDD: I would like to raise one question which relates to two aspects of the law and national education policy. One has to do with the implications of *Serrano*[1] and the other has to do with what I, as a layman, view as a constitutional crisis concerning the whole issue of busing. Is there anyone here who would care to comment on the status of those two issues today and how they might develop in the years ahead?

PROFESSOR VALENTE: The *Villanova Law Review* is publishing a Comment on *Serrano* which I have not reviewed as yet, but I have been told generally of its scope. The problems raised there match my own impression, although I think the student writer is a lot closer to the mark than I am. The primary problem focuses on school finance. Courts could achieve equalization of educational opportunity by forcing redistricting which would, in time, force a better allocation of present tax revenue, including the property tax. That is one approach. However, it seems to me that the approach taken in *Serrano,* that you must change the tax base, is quite radical. It is a potential approach, but the major problem is in implementation and enforcement. In attempting to mandate a change of the tax base, the Court must take on, not an individual official through the coercive power of contempt, but an entire state legislature — and that is quite an undertaking. There is a serious question whether they could force compliance because it is my understanding that despite the several rulings along the *Serrano* line, the legislatures are not rushing to change the tax base and the revenue base for public education. This lack of action indicates a practical problem that does not seem to be resolving itself very satisfactorily. I hope that answers your question.

MR. JOHNSTON: I would just like to point out, as a former state legislator, that the inaction is because the legislatures have not heard of *Serrano* yet.

PROFESSOR DOWD: I think that the busing issue points out a very serious problem that the educator is concerned with, as are the courts. That is, when you read an opinion of the Court, how much good faith is necessary in interpreting that opinion? What is the opinion sensitizing us to? It seems to me that the courts, in some instances, are sensitizing the educators to the fact that there are problems

1. Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) (en banc).

that they had not considered, *i.e.,* the problem of the student as a citizen and the problem of the teacher as an operating force within the university. Rather than taking from these decisions a code or set of procedures, educators, should read these cases to discover the particular "interest" the court is protecting and how that interest is to be effectuated. Therefore, if this were the thrust of the reading of court decisions, then a good deal less legalization could take place.

In the case of busing, I have rather strong opinions, but I think the main problem is that most people do not understand, or have not had explained to them, the meaning of the Supreme Court decisions relating to segregation. What is the policy? Is the policy better schools or the elimination of segregation? I think people very often have been misled as to the policy of those decisions. However, I hope administrators will read the decisions we have been discussing with more good faith and with more intent to give effect to the policies underlying these decisions.

COMMENT: In terms of what Mr. Finkin described as the problem of creeping legalism, I think one of the problems that comes up, in conjunction with the advance of collective bargaining agreements among university professors, is that the handbooks issued by a particular university and treated almost as a contract or a means of understanding the relationship between the faculty and administration, frequently are not consistent with the norms of custom and usage. Therefore, there are an increasing number of polls to determine the actual practice, compared to the handbook statement, in an attempt to determine what is a managerial person or supervisory person and who, in fact, is exercising what kind of authority. I think the response for some universities will be to rewrite the handbooks with far greater specificity as to what, in fact, will be the operative procedure, instead of what has traditionally occurred within departments or within various divisions of the university. I think that is a problem which legalism, if you will, has already created as a result of some of the early litigation in this area.

The other comment that I would make concerns a need for standards. Professor Valente talked about it in his earlier remarks — the failure of *Tinker*[2] to set forth guidelines to which school administrators might conform their regulatory notions. On the other hand, he is critical of the fact that a court, in fact, created a code of guidelines and operative procedures. The problem, it seems to me, is that the lawyers framing the petitions and requesting the relief are the ones

2. Tinker v. School Dist., 393 U.S. 503 (1969).

best in control of the parameters of the decision. If the issue is what is the wrong in a particular case and why it is wrong, then it does not become a whole codification but rather some guidelines of the conduct that will or will not be tolerated. I think if you look at the prisoners' rights cases, the busing decisions on desegregation, and the tax decisions on school finance, you will find that the courts have been very reluctant to interpose their judgment for what is, in fact, administrative or legislative discretion. Rather, the courts have set some guidelines and have only thrown out or rewritten others, as in the case of reapportionment plans, where there has been a complete failure of good faith or of adherence to the guidelines. I do not think there is any decision that I have seen on the subject of re-integration of education where they have gone so far, except perhaps in the case which Professor Valente alluded to, to literally create a code or rewrite the tax base. They have suggested alternatives that will be acceptable, among one of which is busing, but they have not talked in terms of how and where and under what specifics it will be done. I think that, if you use the courts as a means of solving some of these problems, you have to accept the guidelines presented. Otherwise, we are going to become even more litigious and the lack of uniformity which Professor Valente decries will continue. On the other hand, how you frame the prayer for relief, so to speak, becomes even more critical than ever in terms of getting to the proper solution.

MR. JOHNSTON: We have been talking about judicial restraint without really talking about it. Perhaps what the Court is really saying is that it is getting tired of having to deal with things like the proper and fairest method of financing education and reapportionment and all these other things that really ought to be dealt with by the more political and more democratic branches. Perhaps, the court is looking to the school system to develop citizens who will have a higher concept of fairness and justice when they elect legislators and serve as state legislators. The real hope may be to be able, at sometime in the future, to draw back into the more proper role for the least democratic branch of our government.

QUESTION: I would like to ask Dean Vanderzell and Mr. Finkin what they think the role of the law should be in protecting or dealing with a faculty member who is being dismissed when he comes up for tenure?

DEAN VANDERZELL: I think my lay position will color the response that I make. I do not have any hesitancy at all in endorsing

the decision of a court, as long as the court insists that the procedures employed by the institution are fair ones. My hope would be that the courts would be hospitable to administrative due process, and that the courts would differentiate between the burden cast on the institution and on a professor in a tenured situation as opposed to a nontenured situation. Just off the top of my head those appear to be the major concerns.

MR. FINKIN: Certainly the organization I am affiliated with has developed well defined procedural standards with respect to dismissal of faculty, tenured and nontenured, and has most recently, almost a year ago today, adopted a statement of policy dealing with procedural standards for the nonrenewal of nontenured faculty — which is not a dismissal but rather the non-reappointment of a nontenured faculty member. Now with *Roth*,[3] *Sindermann*,[4] and a host of other cases before the Supreme Court, we will know what the courts are doing in this area very shortly. I would hope, however, that the Court would accept the traditions and customs of the profession itself, the kind of self-policing mechanism which most professions, including the Bar, have adopted, and would give due weight and deference to their judgments as long as their judgments are made pursuant to the institution's own regulations, the norms of the profession, or both. I guess the leading case right now, certainly the one that is in most of the papers involves Bruce Franklin at Stanford University. Let me footnote this by saying that I do not appear on this panel as a spokesman for the AAUP, my remarks are purely personal, and the AAUP has no position with respect to the Franklin case. In fact, it should be pointed out that Professor Franklin is not a complainant before the AAUP. According to the press accounts, the hearings of the Franklin case were public with a vengeance. As you may know, the hearings were on closed circuit television. Any member of the Stanford University community — students, faculty, janitors, and the public — could probably have viewed the case. The hearing report is a very lengthy document and, on a basis simply of general procedural knowledge, it seems to me that Professor Franklin was accorded full procedural due process. I would hope that a court, in reviewing that judgment, would give due weight to a judgment of an elected faculty committee of Professor Franklin's peers and not substitute its decision on the merits.

3. Roth v. Board of Regents, 446 F.2d 806 (7th Cir. 1971), *rev'd*, 92 S. Ct. 2701 (1972).

4. Sindermann v. Perry, 430 F.2d 939 (5th Cir. 1970), *aff'd*, 92 S. Ct. 2694 (1972).

If a profession with its own conditions and attitudes says to itself that conduct unbecoming a faculty member shall be grounds for dismissal of faculty members then a faculty member should get specific charges listing the events and instances, which in the administration's opinion, constitute adequate cause to dismiss. There should be a full adversarial hearing, with the burden of proof resting on the administration, before an elected faculty committee. The faculty member could then wage his defense or place any other matters before that committee. The committee might find that the professor's conduct fell afoul of the standard, weigh it in the balance, and recommend the termination of his appointment.

Is it well advised for a court to say that a reasonable man could not have known that such conduct would fall afoul of the standards, or that he did not know the standards because they were vague and overbroad. If a court does so, however, then I think we are going to get into the situation where courts are going to be drafting rules of conduct, in effect, faculty criminal codes, in the same sense that the faculty tends to issue such codes to students, and that would accelerate sharply the growth of creeping legalism and approach, as one commentator has called it, "galloping legalism."

PROFESSOR VALENTE: The administrator has a dilemma. If he tries to make his regulation broad enough to cover a whole class of activity, as a practical matter, he runs the risk of being vague and overbroad. By the same token he does not have the prescience, prophecy, and precision to describe every possible variation of student conduct.

Administrators cannot be expected to be as resourceful as students, at least in advance. If I may, I would like to cite a line of cases on vagueness to demonstrate the problem. Is "misconduct" too vague a word? *Soglin*[5] held that it was. *Banks*,[6] *Norton*,[7] and *Esteban*[8] held that it was not — these are all from federal courts of appeals. Is "incorrigible" too vague a word? One court held that it was not. It seems to me incorrigible is a very difficult concept. Is "immoral" too vague? One case held that as to a teacher it was, and that word appears in many education codes. Is a ban on provocative symbols too vague? One court held that it was. Is "responsible social conduct" too

5. Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969).

6. Banks v. Board of Pub. Instruction, 314 F. Supp. 285 (S.D. Fla. 1970), *vacated*, 401 U.S. 988 (to allow timely appeal), *aff'd*, 450 F.2d 1103 (5th Cir. 1971).

7. Norton v. Discipline Comm., 419 F.2d 195 (6th Cir. 1969), *cert. denied*, 399 U.S. 906 (1970).

8. Esteban v. Central Mo. State College, 415 F.2d 1077 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970).

vague? One court held that it was not. So you see there is a very difficult problem in avoiding the business of overbreadth and vagueness. Now, it seems to me, that as difficult as Mr. Finkin's problem is at the higher level, at least you have a national association which is struggling with the problem on a nation-wide basis. However, I wonder, and I would like Dr. Shedd to respond to this, if the National Association of School Administrators or the National Association of School Superintendents, has ever tried to sit down and work out some minimal criteria of reasonable and fair standards in regulations and also on this problem of vagueness and overbreadth. I am not aware that this has been attempted at the lower level.

DR. SHEDD: While I cannot cite anything specifically, I know that there are publications coming out of the American Association of School Administrators and National Association of Secondary School Principals that give some guidance, and they do run national and regional workshops for principals, covering these areas of student rights, faculty rights, and the other areas that you mentioned. But this is always with the understanding that practice, and sometimes the law, varies from state to state.

PROFESSOR DOWD: Well, we have time for a few more questions before we have terminal legalism.

QUESTION: Do students in non-public schools leave their constitutional rights behind them when they enter a private school? If Mary Beth Tinker were a student at Cardinal Dougherty High School in Philadelphia, would she still have her first amendment guarantees?

MR. JOHNSTON: I believe it would be different; as to the degree of difference, that is a question on which I am not really an expert. I believe the concern of the courts is for an educational system that makes a substantial contribution to the development of free men and democratic citizens, which is as important for private education as it is for public education. If private education wants support from the public sector, which I am aware it does, then it is going to have to convince me, as a citizen, that it is making that kind of contribution, but if it is simply educating people in a totalitarian environment to become subjects of a totalitarian state, then it is not deserving of any public support. In fact, if it creates that kind of threat to our free society, perhaps it should be prohibited.

PROFESSOR VALENTE: I think that, purely as a matter of good education, that question should be avoided. In other words,

the students' interest in expression and privacy should be respected in *all* schools, whether or not there is a state action to bring the limitations of the fourteenth amendment into that school.

There are, however, certain rights which clearly have legal force behind them in private institutions, as well as in public institutions. Certainly in the area of privacy, where a fee is paid for a locker, it seems to me a court can, as a matter of contract law, say that the school administration does not have a right to invade the locker. Similarly, there are two or three private college cases where there have been unlawful searches of dormitories, and the courts have held that such were invasions of the student's privacy.

QUESTION: Have there been any legal decisions regarding the question of the confidentiality of students in the secondary schools? That's for anybody who can answer it.

MR. JOHNSTON: In Ohio we have a statute that establishes confidentiality, and the courts uniformly consider that outside that statute there is no confidentiality.

QUESTION: I'm not certain that I understand. I am a counsellor. How much must a counsellor reveal to an administrator and how much must a counsellor reveal to a parent?

MR. FINKIN: I am familiar with only a few incidents. It is an unsettled area. In a raid on the State University of New York at Stoneybrook, there were about 80 or 90 policemen and five photographers who raided the campus at five in the morning without the knowledge of the administration. This was followed by both a legislative and grand jury investigation. The issue posed in that incident was with respect to the knowledge of faculty members that particular students may have been using marijuana or dangerous drugs. The faculty argued that they came into that knowledge on a confidential basis because of the trust placed in them by the students. The faculty members were given immunity by the grand jury, but when they refused to name names, they went to jail. The issue is posed once again, although in a somewhat different light, with respect to the confidentiality of research information, in the case of Professor Popkins at Harvard. Popkins was a professor of government working in the Vietnam area and knew people who were familiar with the Pentagon Papers. He was called by the grand jury to testify when and with whom he spoke about the Pentagon Papers. An unofficial transcript of the grand jury minutes were published in *The Harvard Crimson.* According to that paper, Popkins consistently took the position that he

would not name names because he interviewed these people in his professional capacity as a research scholar, and there would be a chilling effect on the freedom of such people, namely government officials, to discuss momentous events with interested scholars, for fear that their names might be given to the grand jury and they themselves might be investigated. Popkins was found in contempt and the case is now being litigated. My guess is that the case will be treated in virtually the same manner as the news reporter cases, but with one difference; that is, there is no first amendment right to research. Since, I believe, it is the law of New York that there is no confidentiality privilege unless the privilege is specifically awarded by statute and since there is no such statutory privilege for college professors or counsellors, the Stoneybrook people will have to suffer the consequences.

DR. SHEDD: I am not aware that these questions for counsellors have been answered sufficiently in the courts. My guess is that before long we will get some cases. I am aware, for example, of one case where a student is saying "I'm entitled to know everything that you've got on me" — you being the counsellor. The student claimed that he and his parents had a right to know what information the school has, including the student's I.Q., his school performance, or any other records about the student, and further claimed that the school does not have a right to keep such records unless the student knows about it. I am not aware that there has been any decision on that case, but it is one that bears watching. As far as the other position — what is the counsellor's responsibility to the school community concerning information passed by the student to the counsellor in confidence? — I am not sure that there are any cases on this point either. These people must exercise some discretion in judgment, not only in regard to what is in the best interest of the individual student so as to maintain the confidentiality of that relationship, but also in regard to being a school person, sharing responsibility for the health, well-being, and safety of the entire school community. All of these concerns must be balanced and this necessarily includes exercising some discretion. In my opinion, if I thought the rest of the school was in danger, I would run the risk of being taken to court for abusing the confidentiality of the information a student had given me. I think that in our society today there is ample evidence of the tragic consequences of not doing just that.

PROFESSOR DOWD: There is another facet of this problem which ought to be considered. Perhaps one should reconsider the kind of records he really wants to keep in a counselling situation. For instance, in the pre-probation area, one of the ways in which they can

offer some assurance of confidentiality is by having *no* records. Not that they are lying about it, but in a number of cases certain kinds of notations are just not made. It seems to me, therefore, that if you are not sure about your confidentiality, you really ought to review what kind of records you want to be keeping about people. This is a very important aspect from your own point of view.

PROFESSOR VALENTE: The counsellor-confidentiality situation is the perfect illustration of the need for careful study because the problem has many levels. How did the information come to you? Is it a counsellor-student confidentiality, rather than a student informer? For what purpose are you disclosing and how far? If it is purely internal and administrative, that is one problem. If you export it to the police, that is another. A different approach may have to be taken depending upon the differing uses to which you put this information. The answer has to be designed to fit different discrete situations. There is no simple answer to your question.

PROFESSOR DOWD: I think we have had a very interesting afternoon, but I am afraid that terminal legalism is setting in and we have to conclude. I want to thank, first of all, the hard working members of the *Villanova Law Review* who organized the Symposium and who will be in charge of seeing that it comes out in the June issue, so that you can have a chance to read what you have heard — amplified and, undoubtedly, corrected. I also want to thank, of course the panel for a stimulating, interesting discussion. Lastly, but by no means least, I want to thank all of you for being with us.