

1-1-1999

## An Informal Discussion on Legal Ethics

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### Recommended Citation

Wolfram, Charles W.; Rotunda, Ronald D.; Powell, Burnele V.; Langford, Carol M.; and Simon, Roy (1999) "An Informal Discussion on Legal Ethics," *Journal of the Institute for the Study of Legal Ethics*: Vol. 2 , Article 33.

Available at: <https://scholarlycommons.law.hofstra.edu/jisle/vol2/iss1/33>

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# AN INFORMAL DISCUSSION ON LEGAL ETHICS

*Charles W. Wolfram*  
*Ronald D. Rotunda*  
*Burnele V. Powell*  
*Carol Langford*  
*Roy D. Simon*

## ROY SIMON:

This part of the program is relatively unstructured and unrehearsed. In fact, none of our panelists knows what we are going to do, but the history of this conference over the past two and one-half days has been that we have had no lack of conversation. Every question, even a mundane question, seems to produce controversy, and that is what we will do even without trying now.

Let me introduce our panelists, but first: How many students do we have in the audience? How many of you are Professor Monroe Freedman's students? Well, it's nice to see you here. The panel is one person short. Unfortunately Professor Freedman, due to the illness of his wife, is not able to be here. That is a lack that, no amount of zeal or intelligence from the four very fine panelists that we do have, can make up for. Monroe Freedman is a unique and irreplaceable individual, but we will do our best without him.

The panelists starting on the left are Charles Wolfram of the Cornell Law School. He is the author of a major treatise on lawyers' ethics called *MODERN LEGAL ETHICS*, and he is also the Chief Reporter for the American Law Institute's Restatement of the Law Governing Lawyers, now finally, in its third version. It's called the Restatement of the Lawyers Third.

Next is Ronald Rotunda. Ron is a Professor of Law at the University of Illinois. He was a counsel to the Senate-Watergate Committee. That was the Sam Irvin committee which held hearings, almost exactly 25 years ago starting in May of 1973, into the activities of Richard Nixon and many, many lawyers.

Burnele Powell is the Dean of the University of Missouri, Kansas City School of Law. He has worked in every segment, well many, many segments of the American Bar Association. He was at the University of

North Carolina for 19 years and is very knowledgeable in all different facets of the profession.

Finally, Carol Langford is our private practitioner on the panel, whom I think will inject an additional perspective. So we have three professors—one of whom is a dean. All of us have had various types of practical experience.

My first question is, why don't lawyers do more *pro bono* work, more than they do now?

CAROL LANGFORD:

I have something to say about that, being a practicing lawyer and having worked in one of the top ten largest firms in the country. I think that the billable hourly requirement for you folks out there, all you law students, makes it very difficult to do it. I think *pro bono* work is not encouraged. I think as big firms become big businesses the professional aspects of doing *pro bono* slip away.

Question: Do we have empirical evidence on how much *pro bono* lawyers did 20 years ago versus today?

Answer: It's about the same, very little difference.

Question: Difference?

Answer: Very little time spent, even 20 years ago or now.

Question: So that's it. . .not more than we used to do, so it's not really because of the billable hours. We may never have done as much as we talked about doing. I think that it's a problem but not a new problem.

Question: Are there things that you think that we could do to encourage lawyers to do substantially more *pro bono* work? I mean there is talk. Professor Silverman made mention of mandatory *pro bono* and a number of law schools including Columbia Law School, for example, have mandated *pro bono* work for law students. There are law schools like Columbia that have a mandatory *pro bono* requirement if you want to graduate. If you don't do it, you don't graduate! There are no options; you can't pay more money, or get a note from your mother, you have to do this *pro bono* work or you don't graduate. There is talk of bringing that into the profession. If you don't do a certain amount of *pro bono* work, then, I guess, you would lose your license, just as lawyers are losing their licenses for not paying their bar dues or are not participating in the mandatory continuing legal education requirement, which, by the way, will now apply to all of you students who are going to graduate. As of last October 1, New York has mandatory legal education, not for those of us who know everything, but for you new lawyers. So what can we

do to stave off mandatory *pro bono* without assuming it's coming? What can we do to get lawyers to do substantially more *pro bono* work?

Roy, let me just add something. I think it's comparing apples to oranges to say that in the past lawyers never did it and they still don't do it. I don't think that's true. I believe we weren't as litigious a society; I think that's changed. I know that in the very firm I worked in, I saw it go from winning awards in *pro bono* to doing absolutely none because there was no encouragement. I think that we would have to look at it again, at that type of evidence, and see how we encourage it. Well, I think in a law firm structure it's very difficult. I think it has to start in the law schools, as a way of encouraging students to have those kinds of values. They have to get something for doing it. I think it has to be encouraged by the law firms and the law professors. Otherwise, there is not a lot of incentive to do it.

ROY SIMON:

Yes, Burnele wants the mike.

BURNELE POWELL:

I couldn't disagree more. First of all, I want to be very clear that I don't think there is any such thing as mandatory *pro bono*. If its mandatory, it's not *pro bono*. I think we all ought to understand that. As to the question of what we can do to encourage it? Of course, the law schools have a role in encouraging these aspirations and notions. But if the choice is between a young associate, adorned with the current commands of following his or her aspirations, or trying to achieve this aspiration, I don't think it's a difficult choice for most individuals. They are going to do what the firm demands of them. So if firms want lawyers to do more *pro bono* work, if judges want their clerks to do more *pro bono* work, if Legal Services directs their people to do more *pro bono* work, if inside counsels want their staff to do more *pro bono* work, all they have to do is tell them.

Ron, I think it's awfully silly, to be very frank, to blame law schools for not teaching the students to do *pro bono*. The students do not learn from the law professors billing 2,000 hours a year. I wish we could teach them that.

UNIDENTIFIED SPEAKER:

We have difficulty sometimes with attendance. They learn that when they go into practice.

UNIDENTIFIED SPEAKER:

If it's mandatory *pro bono*, it's not *pro bono*, it's a tax. I think people ought to do charitable work; they ought to give money to chari-

ties, and I think they ought to do it themselves—get their fingers dirty in doing a certain amount of *pro bono* work.

UNIDENTIFIED SPEAKER:

Once it's mandated, it's no longer *pro bono*, it's just a form of tax.

UNIDENTIFIED SPEAKER:

How do we encourage students to do more? I don't know. Frankly I've been very impressed with the lawyers I've got in the ABA because these committees are generally overrun by practitioners. A few academics like me and other practitioners are giving up the time. It is billable time in order to work on these committees. They very often give a lot of time, and bring a lot of thought. It is certainly true that the firms are picking up the expenses of being there. But spending all day in a hotel room with me is not most people's idea of a good time, you know.

ROY SIMON:

Give me an idea of what constitutes committee work. I mean, you are raising a question that is very important, one that sometimes makes me guilt-ridden, since virtually all of my *pro bono* work is done personally. But it's all Bar Association work. I'm getting an average of a call a day from practicing lawyers. Can I do this with my trust account? Can I take this kind of a case? Do I have a conflict? Can I have this type of a fee agreement? What about writing ethics opinions and putting together committee agendas, and so forth? I do not personally serve the poor. Is Bar Association work a substitute for serving the poor in the way that I assume John Rawls did? John Rawls had to go back to serve the poor. But is Bar Association work a substitute for the kind of work that people can do representing individuals who are too poor to afford a lawyer?

CHARLES WOLFRAM:

I think it's very good to be representing individuals as well, and I wouldn't want lawyers to think that that's all they should do. But if you look at the different things they are doing, take a firm of 50/60 people, you should look at its *pro bono* work in the context of the firm as a whole. Now some people may be more active in bar review, in bar aid. I'm not talking about advice to paying lawyers about whether they have trust fund accounts for working on drafts of new model rules for ethics, or for lawyer disciplinary procedure.

ROY SIMON:

Drafting new model rules? Now Chuck, I mean I am wondering how you resolved this if you were an associate in a law firm and they said, "Bill 2,000 hours a year minimum, but we don't care what you bill

it on.” But you have billed 2,000 hours a year more, and much more doing the Restatement.

CHARLES WOLFRAM:

I’d do the Restatement to get rich obviously. That is a joke. I appreciate the laughter. I don’t regard that in any sense *pro bono* work. I don’t regard Bar Association work as *pro bono*. I don’t regard Roy’s very valuable service as a local public utility, which I use as a very high word of praise. I consider myself rather upstate public utility. I don’t think that’s *pro bono* because we enjoy it too much. It’s too much fun, and it has indirect profit motivation. I think what *pro bono* really is, as one of the panelists has already said, is getting your hands dirty in other people’s problems. To some extent that’s true of lawyers, but I guess I want to go the whole way. I think of *pro bono* as doing work for people who wouldn’t otherwise get what I’ve got to give—legal services.

CAROL LANGFORD:

Chuck, I couldn’t agree with you more. I felt I had to start my own firm to do *pro bono* work. I started what I call the Langford Legal Clinic where I do family law, and anything that basically walks, crawls or gets chased in the door. It is services to the poor. In addition, I write ethics opinions. However, I don’t consider that *pro bono* work.

What I found to be a problem, since you asked about Bar Associations was, when I called my bar association, in Costa County, California, they said, “Ah, we don’t have any cases, we are not organized.” I called a battered woman’s shelter, “We will give you a call if something comes up,” they said. So I called the San Francisco Bar Association. They said, “Come on down. We’ll train you, and I’ll get a funnel of cases. But I see that as a problem because I think in big cities Bar Associations are organized and you could do those cases. But in small little towns, they are not, and a lot of poor people go unrepresented.

BURNELE POWELL:

I think that I need to inject a clarification here. The obligation is *pro bono*. That means for the public’s good. The obligation is not to provide services to the poor or to provide services to those who would not otherwise be able to get legal representation. I certainly understand and applaud those who want to act for the public good by directing their efforts to the poor and to those who otherwise would not be able to receive legal services. But that is not the requirement and under the rewrites of six-point-one of the American Bar Association Model Rules, they did, in fact, take a position of encouraging lawyers to direct their *pro bono* activities towards those who are indigent. I think that we

need, however, to understand that engaging in *pro bono* activities means that you are acting on behalf of the public good, and that it was always expected that lawyers would have great latitude in defining that. That's the difference between a voluntary action and the current excise tax that is being used under the guise of "mandatory *pro bono*."

CHARLES WOLFRAM:

Aren't the poor just as well off whether you must perform something or whether you do it out of the goodness of your heart? Does the poor person really care whether you are doing it because a rule of professional conduct says you've got to do this or whether you are doing it because you think that this is good?

BURNELE POWELL:

The person who receives the benefit from that effort may not feel any different and particularly if you do it well, since you have an ethical obligation to do. But that's not what the notion of public spirit of the profession stands for. The public spirit of the profession says we do it because we see it as part and partial of a duty.

But, Carol, you are skeptical, and I know Ron nodded earlier when Burnele said, "If it's not voluntary it's not *pro bono*." So what are Carol and Ron thinking?

CAROL LANGFORD:

I'm just thinking to myself that what comes is sort of a chicken and egg theory. Do you make it mandatory? A chair of the California State Bar Ethics Committee, and I wanted to make it mandatory. I knew I would have no support from a lot of lawyers. Many lawyers said "yes," but a lot of lawyers said "no." So that was unwinnable. But I wonder if sometimes you get the spirit from making it mandatory, and then you do it. I think the answer to that question could be yes and no. Or do you try to build up the spirit and then go do it. We try to build up the spirit in California. It does not work, and so I am uncertain about making it mandatory, having people try it. Making firms say to their associates that they will get the billable hour requirement for this will make a difference.

BURNELE POWELL:

What I am wondering is whether in your firm, unless you are billed so many hours *pro bono*, then you are not going to be "working." And if you do it in your firm, how many other firms do you know that do that? And when was the last time you had another lawyer who said to your firm, "You know your firm ought to be making the requirements for *pro bono* representation take place?"

All right, but let me give you a perspective on that. Baker & McKenzie, the world's largest law firm, over 1,000 lawyers committed an act of discrimination against a gay lawyer. So NYU said Baker & McKenzie cannot come to our campus to interview unless they repented. Certainly it had to do with whether they could appeal. If Baker & McKenzie appealed the adverse ruling, NYU said "You can't come." Baker & McKenzie appealed; NYU said, "You cannot come to our campus." I remember one day asking the students about this. I read the NATIONAL LAW JOURNAL. Is this a problem at Hofstra? Are there firms that we want to prevent from coming to campus because of their discrimination policies of any kind? And I was greeted with laughter.

BURNELE POWELL:

What was the nature of the laughter?

UNIDENTIFIED SPEAKER:

The laughter was that Hofstra students said that we are not trying to keep firms out; we're trying to get firms in. And I'm not saying that every student agreed with that, but that was the general consensus. The reason I raised this is I think that students from Harvard and students from Yale may be in a position to say, "Look, you want to hire somebody from the HARVARD LAW REVIEW, how much *pro bono* does your firm do? Do you have a mandatory *pro bono* requirement here, if you don't forget about it."

Not all law schools are able to come in with this demand. I don't see, I don't know, if the students would feel comfortable saying to an employer, "I want to make sure that I am going to have the opportunity to do some *pro bono* work here."

That's the wrong question. You don't turn the power onto the students and ask them whether to take on Baker & McKenzie. It makes no sense. What we should be doing is—those of us who are in a positions of power—deans, other powers in the bar, judges—ought to be saying to Baker & McKenzie, "What are you doing to make sure that the *pro bono* obligation is carried out?" That's the thing that we ought to be fighting for, not putting the burden on the students. And what happens when you say that? Do you say that out in Kansas City?

I wouldn't come to New York and say that and not be willing to say the same thing in Kansas City.

CAROL LANGFORD:

I don't agree with Burnele or anyone here. But I will say something. I used to recruit the students at Pillsburg, Madison and Sutro, a very large firm. One of the things that they taught me was these students are



going to ask about the *pro bono* that we do. You have to have an answer for it because if they get an interview in our firm, we want them, unless they are a total turkey. They have good grades, are good people, and we want to entice them before they go to some other big New York firm. And so it was powerful to be doing *pro bono* in that sense, and a lot of the reason why Pillsbury took on so much *pro bono*. Part of it was to recruit good people.

But what about Smith & Jones, a two-lawyer firm in Mineola. They should have hired a new associate a year and a half ago, but they weren't sure they had enough sustainable client work to do so. So they've waited. Now they are going to hire. They don't tell you to bill 2,000 a year, but they do say "Here's a stack of cases. We need you to cover them. Call me if you have any questions, any time." Of course, they are never there. They are out at work, meeting clients, or interviewing people. Are you asking any of them about *pro bono*? Are any of them asking you about *pro bono*? I just wondered if something like that comes up in client interviews.

ROY SIMON:

Chuck, is it not showing up in the statistics? You're upstate; you're the public utility up there; you must have some tab on these things.

CHARLES WOLFRAM:

I can't pretend to have anything by way of statistics, but my original impression is very much the same as Mary's. In a small legal community, there is a bit of community pressure to be a nice person and to charge \$75.00 an hour, (whatever the outrageous sum that lawyers charge in upstate New York is)—the same to everybody, regardless of need. This is pretty poor conduct. It reflects badly on lawyers as a person. I think that kind of pressure you can find in a small community; it's utterly absent in a metropolitan area except in colleges possibly, but certainly there is no community pressure.

An interesting example about Genner & Block and Albert Genner. Albert Genner was representing a tenant in an eviction dispute, and Albert Genner and his entourage (he never walked alone) go into their limo; they drive down to the landlord/tenant court, and go in there. The curtains open; he walks in; he's got people carrying his briefcase, and all that. Then he represents the defendant, probably wins, and he leaves. Four other judges come out to look at him (since he had been the special minority counsel in the House Impeachment inquiry against Nixon and so on). Then he leaves. And a friend of mine who did *pro bono* landlord/tenant work for Legal Aid Service noticed that for a period of two or

three weeks afterwards, all the judges were more courteous to the defendants, who were the tenants, because Albert Genner walked through there. I think you do it by example. Words are not nearly as loud as actions, and Genner & Block still have the reputation of not only working long hours, but working long hours including *pro bono* work.

In my law school, one of the students recently wanted to know what faculty had been doing for *pro bono*. I didn't realize that she was going to publish the survey. She did. When I found out, if you took away me and one of their faculty members, 80% of the *pro bono* went out of the window. I thought that was very interesting because I've got other things to do to keep my time occupied. Other people talked about it, but didn't really do anything. They talked about *pro bono*. Typically it's a whistle blowing lawyer. In one case it was a death row inmate with a conflict with his lawyer who pled guilty, and so on. So there are things we can do, and maybe we ought to start at home. I do think, in general, lawyers had more fun when they made less money. I think that even today the lawyers in the city of the upstate New York firm, in the smaller towns, find out that without too much difficulty, they can make an upper middle class existence, not the upper class, but the upper middle, as well as be influential in their community. As such, when they die, a lot of people will go to their funeral. That will not be true of many other people.

CAROL LANGFORD:

I think Burnele makes a very good point when he says that you have to be an example. I remember being so frustrated in California while trying to get some *pro bono* involvement. I started a *pro bono* committee. In addition, I went to a friend of mine, Mark Toft, who had been a past chair of the California Ethics Committee, and asked him "What am I going to do, Mark? This is really hard, and I am weary." He said, "Carol, you just have to be an example yourself. You do your *pro bono* and just be an example yourself." And it was very good advice. It was enough for me. It gave me my energy back.

BURNELE POWELL:

I could not disagree more. What will happen when what we have done is to indelibly stamp the principle that the extension of legal services to the people of this country is the responsibility of the legal profession. Not that it is the responsibility of society. In the debate that you heard previously, it was discussed whether we as a society, we as a people, a culture, a civilization, owe a responsibility to citizens or whether that responsibility is the responsibility of the legal profession. We must

decide whether that responsibility is the responsibility that each of us individually must recognize and go forward in carrying out, or whether it is a responsibility that can be extracted from a small group of individuals so that the rest of the society can be freed. We can extract it, under any label that you like. I won't quibble about the words either. But that is a different concept from the professional obligation to give because you define yourself as a giving person, in a giving profession.

UNIDENTIFIED SPEAKER:

Let me switch gears now because I have the feeling that some of the students are sitting here thinking, my God, I'm going to graduate from law school with \$70,000/\$80,000 in debt, why is the professor sitting here talking to me about *pro bono*? I mean, I'm going to need *pro bono*. So what I wonder from our panel is what is this enormous debt load? What is it doing to the legal profession to have students graduating with these tremendous debt loads? They feel, I guess, that they've got to get paying jobs, and that government or low paying jobs, certainly public interest jobs that don't pay very much, are really not options. How many of you feel that way? If Bill Gates sent you a check for a billion dollars and said, "You can do whatever you want with your career," how many of you would do a public interest kind of job? How many feel that you can afford to do that in your current situation? Zero, I please let the record reflect that about 8 people raised their hands as wanting to do public interest work, and zero raised their hands as feeling they can afford to do public interest.

CHARLES WOLFRAM:

I think the burden of student debt is one of the most serious social problems in the legal profession. If I were a Marxist, and some days I am, my suspicion would be that large law firms have set up this whole economic system of requiring students to pay enormous tuitions to get through law school. They would be so hopelessly indebted that the best and the brightest could be bought off by large law firms with a promise that we will chew you up in three or four years. But not to worry. You'll pay off your \$80,000 on average student debt. I think it's a very serious problem, and I don't think we can look out the window about this one. I think this is a law school problem. We are the ones that charge tuition. We are also the ones that facilitate the loans. By and large, I'm deeply troubled. What to do about it. I'm not so sure, but I think law schools have to step up to the table.

I have a solution. I think you ought to go to state law schools where tuition and fees are about \$4,000 a year for in-state students, and every-

body is in-state after a year. That is, it is hard. You feel sorry for students who have \$80,000 worth of debt. But on the other hand, their starting salaries in New York are something like \$80,000. The starting salaries at the large firms have just been raised to \$91,000 a year.

The people argue that we have too many lawyers. When you get paid \$91,000 a year, that's not a sign of a glut in the profession. Now the hourly pay is probably a lot less. The reason that law schools charge such high tuition is because the degree is worth it. It is a great entree to the upper middle class, and such evidence indicates that those people who are 25 years old start with a salary that puts them in about the 93rd percentile in the country, 93rd percentile of everybody. You start with a salary that most people think of at the pinnacle of their career, not the low point. I had a summer job once, the end of my first summer in the Law Department of the First National Bank of Chicago. My father, an immigrant sign painter said, "It's good you are working in a bank, a good place to work, indoor work, no heavy lifting, what are you making?" I told him, and his mouth dropped. It was more than he was making. His son, out of college a year, was making more than he was making, and he was a skilled laborer; he was a sign painter.

You know I have to tell a quick story that really fits with that. While we are trying to give you, as students, the best legal education that we can. I know my colleagues and I sincerely try to give a good legal education, but I think sometimes the students have a great deal of arrogance about becoming a lawyer. Some of you are the first ones in your family to become lawyers. Lawyers (let me not speak about students) very often feel above other people in society. So after the garbage strike in Chicago had been settled, when I was a first year associate making, I think, \$26,000 a year (which in 1978 wasn't too bad), the garbage men had just gotten a raise to the outrageous amount, at the inconvenience of many citizens in Chicago, of \$19.00 an hour. I looked down at the garbage men one morning, as I was walking to work, and I said to myself, "Doggonit, all those guys know how to do is lift those stupid barrels and dump them into the back of the truck and say, "yo" and they get \$19.00 an hour. And we had to put up with the smell and the stench and the garbage for all that time, so they could get it, and they don't know how to do anything." And then some voice inside me said, "You know what, they were just looking at you, thinking, 'Look at that kid walking over there. You know, that kid just graduated from law school a year ago. He doesn't have to lift anything; he doesn't have to put up with any dirt or garbage or cut glass or sharp metal; he just sits at a desk all day, and he doesn't know how to do anything; he can't do anything without some-

body, you know, some father figure in the firm saying, 'Now here do this, do this, do this,' and he gets paid more than we do." I just tell that story because I think that while you all ought to be proud of being lawyers, I don't think you ought to be arrogant about being lawyers. Now maybe I am really talking to myself, you know.

RON ROTUNDA:

If the Green Grocer gives food to poor people but he gets food stamps in exchange, that pays him. We don't say that more people have to eat, and the Green Grocer ought to be paying for it. Sometimes it is said of lawyers that we have a monopoly license. Only lawyers can practice law. But that's kind of a circular argument. Do we give people a monopoly license so we can then put a tax on them? The people who want to justify mandatory *pro bono* really have to explain why somehow we are different. I think that lawyers discuss *pro bono* because on the whole we are good people, through all our faults. We spend a lot of time analyzing ourselves or the profession, and we think that we can contribute something to society. We can give some justice. I think that's why we do it. I do not mean to denigrate doctors, but if you pick up a typical medical magazine, you will find lots of articles about tax shelters and lots of articles about government regulation. But you pick up the typical law magazine, the ILLINOIS BAR JOURNAL, the New York Bar, and you'll always find articles on ethics and concerns about meeting the needs of the poor and the middle class. So I think we talk about it because we are better people.

BURNELE POWELL:

I simply want to urge that when the papers from this conference are published, that you read Dean Kronman's piece. He speaks specifically to the historical responsibility related to the *pro bono* obligation and how it relates to the fact that to be a professional is to profess a calling. It is not to have expertise and skills that others do not have the ability to engage in, but to have self-regulation—to set standards for oneself. And with those rights, come obligations, but they are self-imposed obligations.

If I could just drop a footnote here. We use the word, monopoly, I think that was Ron's word, and there are laws. I don't know if the students know about these laws. Have you studied the unauthorized practice of law at all in your course? It is a crime for a nonlawyer to practice law. It is a crime, and the practice of law is a very fuzzy thing. Are accountants practicing law when they go over the Internal Revenue Code? Of course, but we don't call that the unauthorized practice of law

because they have more partners in their firms than we do, and we don't have the political clout to shut them down yet.

**BURNELE POWELL:**

Might I interject a quick note here? All I want to say is that we ought to be careful when we talk about this profession as a monopoly. It is not. If there is a monopoly, it is the monopoly that the judicial system, in each of our jurisdictions, has over the extension of legal services. We are representatives of that juridical system. The monopoly is not that of lawyers and the organized bar; it is the monopoly of the tripartite equal branch of government, in each of the jurisdictions.

**CHARLES WOLFRAM:**

This is circling in response to the basic question of *pro bono*. I think there are two ways in which you can look at *pro bono*. One is you can look at it as a problem that lawyers aren't doing more *pro bono*, and I think the mind slips rather easily into mandatory or less coercive ways of stimulating lawyers or getting lawyers to do more. For example, either publicly requiring that you've got to do 40 hours a year or getting the firms to require that much work. I think the history of conscripted labor generally says that this is not a terribly good idea, thinking just about the quality of the labor. Moreover, I think it might be the death of real *pro bono*. In fact, I think it might be the death of volunteerism. Too many people are going to feel, well, everybody is out there doing *pro bono*, that must be the end of it. However, there is a totally different way to feel about *pro bono*. That is, it's an opportunity. It's something you can do now. You are a lawyer. You can represent people without worrying about the fee as part of things or as Holmes called it, the shopkeeper's minutia of practice. That little bit of minutia you can avoid entirely. I think the way to stimulate *pro bono* is to talk about professional values and professional opportunities. It may work, as Carol indicated, through persuasion and through example. It's just a heck of a lot of fun to do. I think most people who do it find it, personally, very rewarding. It's almost spiritual, in a way, to help people. I think that's the real appeal of *pro bono*. I think we should enter into *pro bono* with that kind of spirit, the spirit of volunteerism.

You are paid by people who thank you. When you work typically for corporate clients and institutions that are anonymous, nobody really thanks you. There's an old Chinese proverb that says, "If you want to be happy for an hour, take a nap; if you want to be happy for a day, go fishing; if you want to be happy for a month, get married; if you want to

be happy for a year, inherit a fortune; but if you want to be happy forever, help someone.”

CAROL LANGFORD:

I agree, but I also think it helps to have some encouragement to do *pro bono* from the firm itself. I know that we had to do *pro bono* in my firm, and there was a caseload of *pro bono*. These were interesting cases too, big cases, and the firm said, “Okay, fine, don’t worry about your billable hours this year, just work on the cases of the protestors.” It was an interesting case. But they said, “Carol, don’t worry about it, just work on it.” Well, I didn’t ask to work on that case and certainly it wasn’t good for rain making, but they said I had to do it, and I did it. I think that was important, because it allowed me to do it. Had I said I wanted to work on *pro bono*, I don’t think it would have gotten the same reception. So I don’t think a little bit of coercion is a bad thing.

RON ROTUNDA:

I’m a little puzzled about why a group with such obvious sophistication and experience would think that exhorting young professionals to virtue is the key to this solution. To argue that is to rely on the charitable impulse. Now I think that the charitable impulse exists, and I think it has been responsible for some remarkable things that human beings do, including some professional things. But if there is, in fact, a crisis in legal services for the poor, I see absolutely no evidence that exhortation to moral virtue is a solution. It is hypocritical on the part of the people urging youngsters to do the work and costly for the youngsters doing the work. I see no reason to be confident. That’s an important part of the key. I really think that this entire debate is infected by excessive moralism.

There are a number of different models for so called mandatory *pro bono*. It is an inadequate analysis to assume that you are not imposing an excise tax. I think you are quite correct in characterizing mandatory *pro bono* that way; that’s exactly what it is. But clearly if we believe in principles like progressive taxation, and we wind up taxing large New York firms at a higher level, clearly those firms will make an effort to shift those tax costs. One prediction, which is a very plausible prediction because it is confirmed in part by real world evidence, is that the large New York firms, if faced with the burden of providing *pro bono* services, may well wind up opening legal service departments, staffed by people they hire as specialists, to work in those legal service departments. That leads to the decentralization of legal aid, and it reduces the monopoly effect at the legal aid establishment level. In short, I am very

surprised at the continuing reference to virtue and the need for exhortation. I would like some explanation as to why you folks think that's so promising an avenue.

**BURNELE POWELL:**

I am not sure what the question is. Are you asking why it is that we are insisting that virtue is a form of reward?

**ROY SIMON:**

Thank you all for a most enlightening discussion.



