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## Symposium on Sentencing Rhetoric: Competing Narratives in the Post-Booker Era

Roger Williams University School of Law

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David M. Zlotnick  
*Associate Professor of Law*  
Roger Williams University School of Law  
B.A., State University of New York at Binghamton, 1982,  
*Phi Beta Kappa*  
J.D., *cum laude*, Harvard Law School, 1986

At Roger Williams University School of Law, Professor Zlotnick teaches criminal law, criminal procedure, and trial advocacy. He has also taught at the Washington College of Law at American University and Stetson College of Law and he was a Visiting Scholar at the George Washington University Law School for the 2002-2003 academic year.

As a lawyer, Professor Zlotnick clerked for a federal appellate judge, worked as a white collar criminal defense attorney, and served as a federal prosecutor in Washington, D.C. In 1995, he helped found a litigation project for Families Against Mandatory Minimums, serving as its first Litigation Director. In 2002-2003, he took a leave of absence from teaching after being chosen as a Soros Senior Justice Fellow. During that year, he pursued his research on sentencing and was able to interview scores of federal judges and inmates about specific cases.

Professor Zlotnick's work on sentencing laws has received coverage in a variety of media including the *Washington Post*, *New York Times*, *Chicago Tribune*, *USA Today* and several public radio stations and he has testified before the U.S. Senate and House of Representative Judiciary Committees and the ABA's Kennedy Commission. His most recent articles in the area include; *The War Within the War on Crime: The Congressional Assault on Judicial Sentencing Discretion*, 57 SMU L.REV. 211 (2004), and *Shouting into the Wind: District Court Judges and Federal Sentencing Policy*, 9 ROGER WILLIAMS U. L. REV. 645. (2004).

## GENERAL INFORMATION

### Continuing Legal Education (CLE) credit:

The Rhode Island MCLE Commission has granted six credits for this program.

### No Smoking:

Roger Williams University has a no smoking policy in effect within all buildings.

### Telephones:

There are three public telephones located in the School of Law; two located on the first floor next to the elevators and one on the ground level far side of the cafeteria near the mailboxes.

# Symposium on Sentencing Rhetoric: Competing Narratives in the Post-Booker Era

SATURDAY, OCTOBER 22, 2005

ROGER WILLIAMS UNIVERSITY

RALPH R. PAPITTO SCHOOL OF LAW

BRISTOL, RHODE ISLAND



## AGENDA

9:30 - 10:40 a.m. Plenary Panel One  
10:50 - 11:50 a.m. Breakout Sessions A & B & C  
12:00 - 1:20 p.m. Lunch & Plenary Panel Two  
1:40 - 2:50 p.m. Plenary Panel Three  
3:00 - 4:00 p.m. Plenary Panel Four  
4:00 - 4:30 p.m. Breakout Sessions D & E  
4:30 - 5:00 p.m. Report on Breakout Sessions & Wrap Up

### Plenary Panel One: The Rhetoric of the Post-Booker Sentencing World

9:30 - 10:40 a.m.

Appellate Courtroom 283

The first panel is intended to frame the macro-level rhetorical discourse about the *Booker* decision and the post-*Booker* debate in the courts and in the policy arena. Professor Wright will give an overview of how each of the players in the criminal justice system has tried to portray *Booker's* impact. Ronald Weich will talk about post-*Booker* rhetoric in Congress and Judge Adelman will discuss about how district judges have reacted to *Booker* in their written opinions.

#### Panelists

Moderator - Professor Ronald Wright, Wake Forest University School of Law

*Topic* - The Rhetoric of "Incrementalism" vs. "Emergency" by Actors at the State and Federal Level in the Aftermath of *Booker*.

Ronald Weich, Esq.

*Topic* - *Booker* in Congress: How *Booker* Changed the Congressional Debate and the Rhetorical Battle over *Booker* "fix" Proposals.

Judge Lynn Adelman, Eastern District of Wisconsin

*Topic* - New Options for Judicial Rhetoric under *Booker*.

### Breakout Session A: Rhode Island Participants Panel

10:50 - 11:50 a.m.

Appellate Courtroom 283

This breakout session is for the Rhode Island participants to discuss issues relevant to this jurisdiction. The participants have indicated a desire to talk about the following topics but the panel should feel free to develop other issues based comments or questions from others on the panel or in the room as time allows:

- Areas in which judges have found that the post-*Booker* Guidelines' sentence to be unreasonable (i.e., the crack/powder disparity). Judge Smith's recent opinion on this issue, *United States v. Perry*, will be distributed to the panelists in advance and available to attendees of this breakout session.
- Sentencing disparity, including the disparities created by "fast-track" programs in states, such as Rhode Island, which do not have one.

#### Panelists

Moderator - Chief Judge Ernest Torres

Judge Mary Lisi

Judge William Smith

Robert C. Corrente, United States Attorney

Edward Roy, Federal Public Defender

### Breakout Session B: Changing the Debate

10:50 - 11:50 a.m.

Room 286 – Second Floor

This breakout session will be used to discuss how the players in the policy system are trying to change the debate. Suggested topics include:

- How to move public opinion: telling stories, using statistics, and funding activists.
- Talking to Congress (and getting them to listen).

#### Panelists

Moderator - Professor Dennis Curtis

Raquiha LaBrie, Program Director, Open Society Institute

Julie Stewart, President, Families Against Mandatory Minimums

Ronald Weich, Esq.

### Breakout Session C: Wedge Issues in Sentencing Policy

10:50 - 11:50 a.m.

Room 14 – Lower Level

The goal of this breakout session is to spark discussion about wedge issues in sentencing policy. Topics could include the role of race, disparity, and cooperation agreements with a focus on the rhetoric various players use to describe their positions. For example, in the critical area of disparity, where in the process one focuses has a lot to do with how much disparity one finds and who bears responsibility for it. The issue of cooperation also sparks widely disparate rhetoric. Prosecutors see it as a critical tool in taking down criminal organizations, judges talk about sentencing paradoxes with big fish getting lesser sentences than kingpins, and defendants tell stories about loyalty versus betrayal and being victimized by self-serving perjury by their co-defendants.

#### Panelists

Moderator - Professor Ian Weinstein

Judge Lynn Adelman

Roscoe Howard, Esq.

Deborah Small, Esq.

### Lunch - Plenary Panel Two: The Individual Narratives of Sentencing

12:00 - 1:20 p.m.

Appellate Courtroom 283

This panel is intended to explore sentencing rhetoric at a more micro-level. As many commentators have noted, there is often a disjunction between the paradigmatic offenders considered by policymakers and the actual offenders arrested and prosecuted. This panel will look at stories of individuals (or classes of offenders) and explore how these stories inform or distort the sentencing debate.

#### Panelists

Moderator - Professor Eva Nilsen

*Topic* - The Case of Weldon Angelos: Sentencing Rhetoric and Evolving Standards of Decency.

Judge Mary Lisi, Rhode Island District Court

*Topic* - Sentencing under Advisory Guidelines: Selected Cases (transcripts to be provided in advance).

Roscoe Howard, Esq.

*Topic* - The U.S. Attorney's Perspective: Defending 5K1, Mandatory Minimums, and Other Prosecutorial Tools.



### Plenary Panel Three: Judicial Voice in Sentencing

1:40 - 2:50 p.m.

Appellate Courtroom 283

This panel will highlight the role of judicial voice in sentencing policy, both at the institutional level and in the courtroom. Judge Smith and Professor Freed will talk about judicial opinion writing and judicial voice in the policy process, and particularly about lost opportunities. Professor David Zlotnick will talk about his current work in helping judges articulate a meaningful approach to sentencing philosophy in the post-*Booker* world.

#### **Panelists**

Judge William Smith, Rhode Island District Court

*Topic* - Sentencing Opinions: How and When District Court Judges Choose to Write in the Post-*Booker* Era.

Professor Dan Freed, Yale Law School

*Topic* - Bypassed and Suppressed Judicial Voice in the Pre- and Post-*Booker* Worlds.

Moderator - Professor David Zlotnick, Roger Williams University School of Law

*Topic* - Judicial Voice and Judicial Sentencing Philosophy.

### Plenary Panel Four: The Meta-Narratives of the Post *Booker* Sentencing World

3:00 - 4:00 p.m.

Appellate Courtroom 283

This panel is intended to provide the widest angle lens on sentencing rhetoric by exploring the broadest stories about sentencing. Three panelists will talk about stories with broad explanatory power. Professor Ian Weinstein will add a historical account of the cultural and philosophical influences that have led to regional sentencing disparities.

#### **Panelists**

Stephanie Weinstein, Esq. & Arthur Wolfson, Esq.

*Topic* - Narrative Theory and Sentencing: Competing Stories in the Courtroom.

Professor Naomi Murakawa, University of Washington

*Topic* - The Political Science Perspective on Sentencing Rhetoric.

Moderator - Professor Ian Weinstein, Fordham University Law School

*Topic* - The Historical Roots of Regional Sentencing Disparity.

### Breakout Session D: More Wedge Issues in Sentencing Policy

4:00 - 4:30 p.m.

Appellate Courtroom 283

The goal of this breakout session is to allow participants of other breakout sessions to contribute to the discussion of wedge issues and to follow up on issues from the plenary sessions.

#### **Panelists**

Moderator - Professor David Zlotnick

others TBA

### Breakout Session E: What Comes Next?

4:00 - 4:30 p.m.

Room 286

This breakout session is designed to talk about what sentencing the sentencing debate will look like in the future. Possible discussion topics include the merits and likelihood of the various proposed "*Booker*" fixes, additional Supreme Court action, and whether the federal system will see a resurgence of judicial sentencing disparity.

Moderator - Professor Ron Wright

others TBA

### Report of the Breakout Session Moderators & Wrap Up

4:30 - 5:00 p.m.

Appellate Courtroom 283

Each moderator should be prepared to give a brief summary of the topics discussed at their breakout session and a few highlights as time allows.

## THE PARTICIPANTS



**The Honorable Lynn Adelman**  
United States District Court  
Eastern District of Wisconsin  
A.B., with honors, Princeton University, 1961  
LL.B., with honors, Columbia University Law School, 1965  
Appointed in 1997 by President William Jefferson Clinton.

Prior to his appointment to the court, Judge Adelman practiced law in New York City as a staff attorney for the Criminal Courts Division of the Legal Aid Society and as a sole practitioner. After returning to Wisconsin, he practiced law and served as a state senator for twenty-one years during most of which time he chaired the Judiciary committee. He is the author of *Rewriting the Crime Laws is a Precondition of "Truth in Sentencing,"* 70 Wis. Law. (June 1997), *Observations on the New Standard of Review of Departures from the Sentencing Guidelines*, 16 FED. SEN'G REP. 269 (April 2004) (with Jon Deitrich), and Op-Ed., *Sentencing Guidelines: AG's Misguided Proposals*, NAT'L L.J., Sept. 19, 2005, at 30 (with Jon Deitrich).

Judge Adelman is also the recipient of numerous awards including the Eunice Edgar Award from the Wisconsin Chapter of the American Civil Liberties Union and the Lifetime Achievement Award from Mothers Against Drunk Driving.



**Robert Clark Corrente**  
United States Attorney  
District of Rhode Island  
B.A., with highest distinction, Dartmouth College, 1978  
J.D., New York University School of Law, 1981

Robert Clark Corrente was appointed in August of 2004 by President George W. Bush as the United States Attorney for the District of Rhode

Island after being in private practice since 1981.

In 1997, the Rhode Island Supreme Court appointed Mr. Corrente to its Ethics Advisory Panel, and he was named its Chair in 2002. He chaired the Rhode Island Judicial Nominating Commission from 1998 to 2000, and he served on the Editorial Board of Rhode Island Lawyers' Weekly.



**Dennis E. Curtis**  
Clinical Professor Emeritus  
Yale Law School  
B.S., U.S. Naval Academy, 1955  
LL.B., Yale Law School, 1966

Professor Curtis has taught in the areas of: professional responsibility; the legal profession; campaign financing; sentencing and parole; post-conviction remedies; and, clinical education. He is one of the authors of *TOWARDS A JUST AND EFFECTIVE SENTENCING SYSTEM* (with P. O'Donnell and M. Churgin) (1973). In addition to Yale, he has taught at USC, New York University, Chicago, and Harvard.



**Daniel J. Freed**  
Clinical Professor Emeritus of Law and Its Administration and  
Professorial Lecturer in Law  
Yale Law School  
B.S., Yale University, 1948  
LL.B., Yale Law School, 1951

After serving in the Department of Justice during the Kennedy administration—first in the Antitrust Division, later as Director of the Office of Criminal Justice, Dan Freed began teaching at Yale in 1969. For the past 25 years the sentencing process has been his area of specialization. In 1984, he and several colleagues initiated year-long sentencing workshops in which, each Spring semester, small groups of students are introduced to the intricacies of judicial discretion, the nature of disparity, and the emergence of common law principles by examining actual cases alongside sentencing judges from state and federal courts.

Freed's analysis of federal sentencing guidelines in their early years is published in *Federal Sentencing in the Wake of Guidelines: Unacceptable Limits on the Discretion of Sentencers*, 101 YALE L.J. 1681 (1992). Professor Freed is a founding editor, along with Professor Marc Miller of Emory Law School, of the *FEDERAL SENTENCING REPORTER*, now entering its 18th year of publication.



**Roscoe C. Howard, Jr., Esq.**  
Troutman Sanders LLP  
A.B., Brown University, 1974  
J.D., University of Virginia School of Law, 1977

Mr. Howard is a Partner in the Complex Litigation and Special Investigations Practice Groups of Troutman Sanders LLP. He specializes in white collar criminal matter, corporate compliance and ethics issues, and complex litigation. Prior to entering private practice, Mr. Howard served as the United States Attorney for the District of Columbia. He has also served as a professor at the University of Kansas School of Law, twice as an Associate Independent Counsel, and as an Assistant United States Attorney in two federal districts. Mr. Howard has participated in federal sentencing panels sponsored by the Congressional Black Caucus and has served as a commentator for CNN on federal sentencing guidelines issues.



**Raquiba LaBrie**  
Program Director  
Community Advocacy Project  
B.A., Yale University, 1990  
J.D., Harvard University Law School, 1994

Ms. LaBrie is the Director of the Open Society Institute's United States Justice Fund program focused on prison expansion and sentencing reform. The program supports advocates opposing prison expansion and advocating for sentencing reform and broader alternatives to incarceration. Raquiba began her tenure at OSI in 2000 as the Program Officer for OSI's Access to Justice program. The Access to Justice program made grants to promote equal access to quality civil legal aid for low-income communities and communities of color. Before joining OSI, she was an associate in the exempt organizations practice group of Patterson, Belknap, Webb & Tyler where she represented a range of private foundations and non-governmental organizations.



**The Honorable Mary Lisi**  
 United States District Court  
 District of Rhode Island  
 B.A., University of Rhode Island, 1972  
 J.D., Temple University School of Law, 1977  
 Appointed in 1994 by William J. Clinton.

Prior to her appointment to the court, Judge Lisi served in the Rhode Island Public Defender's Office, in the Rhode Island Office of the Child Advocate, and in private practice. She was also Director of the Court Appointed Special Advocate Program for the Rhode Island Family Court, Deputy disciplinary counsel and later Chief disciplinary counsel for the Rhode Island Supreme Court, and a member of the Select Commission to Investigate the Failure of Rhode Island Share and Deposit Indemnity Corporation.



**Naomi Murakawa**  
*Assistant Professor of Political Science*  
 University of Washington  
 B.A., summa cum laude, Columbia University, 1996  
 M.Sc., London School of Economics, 1997  
 Ph.D., Yale University, 2005

Professor Murakawa specializes in American political development with emphasis on federal crime policy and the politics of race, gender, and inequality. Before joining the University of Washington, Professor Murakawa was a fellow at the Center for the Study of Law and Culture at Columbia Law School. Currently, she is completing a book manuscript entitled "Electing to Punish: Race and the American Punishment Regime."



**Eva S. Nilsen**  
*Clinical Associate Professor*  
*Supervisor, Student Defenders Program*  
 Boston University School of Law  
 B.A., *magna cum laude*, Yale University, 1974  
 J.D., University of Virginia Law School, 1977  
 LL.M., Georgetown University Law Center, 1980

Professor Eva Nilsen has been a key member of the Criminal Justice Clinic's faculty since 1979. Over the years, she has trained and supervised hundreds of third-year law students as they defend indigent clients in felony and misdemeanor cases. She also has taught criminal justice courses and seminars, including advanced criminal procedure, sentencing theory and a seminar based on U.S. drug policy.

Her current research and writing focuses on a critique of state and national drug policies. She has written a number of articles that have appeared in leading law journals including "Policing for Profit: The Drug War's Hidden Economic Agenda," "One Strike and You're Out? Constitutional Constraints on Zero Tolerance in Public Education" and "How to Construct an Underclass, or How the War on Drugs Became a War on Education."



**Edward C. Roy, Jr.**  
*Assistant Federal Public Defender*  
 Office of the Federal Public Defender  
 District of Rhode Island  
 B.A., *cum laude*, St. Michael's College, 1979  
 J.D., Western New England College School of Law, 1983

Mr. Roy is the first occupant of the Rhode Island Federal Defender's Office which was established in 2003. The Rhode Island Office operates under the supervision of the Office of the Massachusetts Federal Public Defender. Mr. Roy was a longtime member of the United District Court's Criminal Justice Access panel and a former president of the Rhode Island Association of Criminal Defense Lawyers.



**Deborah Peterson Small, Esq.**  
*Executive Director*  
 Break the Chains  
 B.A., *magna cum laude*, City College of New York, 1983  
 J.D./M.A., Harvard Law School and Kennedy School of Public Policy, 1987

Ms. Small is the founder of Break the Chains, an organization which seeks to build a movement in support of drug policy reform among communities of color in the United States. She has worked in private practice, as Chief of Staff to New York State Assemblyman Vito Lopez, as Legislative Director for the New York Civil Liberties Union, and as Director of Public Policy & Community Outreach for the Drug Policy Alliance. Ms. Small has spoken at a multitude of conferences, public hearing, legislative meetings, and media events in her efforts to increase awareness of drug policy reform.



**The Honorable William E. Smith**  
 United States District Court  
 District of Rhode Island  
 B.A., Georgetown University, 1982, George F. Baker Scholar  
 J.D., *cum laude*, Georgetown University Law Center, 1987  
 Appointed in 2002 by President George W. Bush.

Prior to his appointment to the court, Judge Smith was in private practice, served as Staff Director of the Rhode Island office of Senator Lincoln Chafee, and taught as a member of the adjunct faculty at Providence College and Bryant College.

He also served on the Chief Justice's Task Force on Alternative Dispute Resolution, the Commission on Judicial Tenure and Discipline for the State of Rhode Island, as the City Solicitor for Warwick, Rhode Island, as Counsel for the Rhode Island Secretary of State, as Municipal Court Judge for West Warwick, Rhode Island, and as Assistant Town Solicitor for West Warwick, Rhode Island.



**Julie Stewart**

*President and Founder*

Families Against Mandatory Minimums (FAMM)

B.A., *summa cum laude*, Mills College, 1988

Ms. Stewart worked at the Cato Institute as the director of public affairs. She left to found FAMM after her brother was sentenced to five years for growing marijuana. Ms. Stewart has discussed mandatory minimum sentences on many national and local television shows and on numerous radio programs throughout the country. She has also testified before Congress and the U.S. Sentencing Commission about mandatory sentences and prison overcrowding.

Ms. Stewart is the recipient of the Thomas Szasz Award for Outstanding Contributions to the Cause of the Civil Liberties, and the Champion of Justice Award from the National Association of Criminal Defense Attorneys. She was also one of 20 people to receive a Ford Foundation Leadership for a Changing World award in 2002.

Among FAMM's successful legislative reforms were changes to the federal LSD and marijuana sentencing policies, restoration of judicial discretion in certain federal drug cases, and repeal of all drug mandatory minimum sentences in Michigan, which was made retroactive to apply to those prisoners formerly serving life sentences.

**The Honorable Ernest C. Torres**

United States District Court

District of Rhode Island

A.B., Dartmouth College, 1963

J.D., Duke University School of Law, 1968

Appointed in 1987 by Ronald Reagan. Served as chief judge, 1999-present.

Prior to his appointment to the court, Chief Judge Torres was in private practice in Providence, served as a Member of the Rhode Island House of Representatives, served as an Associate Justice of the Rhode Island Superior Court, and was assistant vice president in charge of national staff counsel for Aetna Life Insurance Company.



**Ronald Weich**

*Senior Counsel, Office of United States Senate Minority Leader*

B.A., Columbia University, 1980

J.D., Yale Law School, 1983

Ron Weich became Senior Counsel to U.S. Senate Minority Leader Harry Reid (D-NV) in January, 2005. In that role, Ron advises Senator Reid on all Judiciary Committee matters, including criminal justice policy. Prior to his current job, Ron spent eight years as a partner in the law firm of Zuckerman Spaeder LLP. Earlier, he served as Chief Counsel to Senator Edward Kennedy (D-MA), as Special Counsel to the United States Sentencing Commission, and as an Assistant District Attorney in New York City. Ron is a member of the Advisory Board of the Federal Sentencing Reporter.



**Ian Weinstein**

*Professor of Law*

Fordham University School of Law

B.A., Reed College, 1981

J.D., *cum laude*, Order of the Coif, New York University School of Law, 1986

LL.M., Georgetown University Law Center, 1990

Professor Weinstein is the Founding Director of the Brendan G. Moore Advocacy Center. His principal subjects include: Criminal Defense Clinic; Evidence; Criminal Law; Lawyering Skills; and, Trial Advocacy. He has taught in the past at New York University Law School and Georgetown University Law Center. He also was a Staff Attorney for Federal Defender Services Unit of the Legal Aid Society for the Southern District of New York.



**Stephanie Weinstein**

Jackson Lewis LLP

B.A., University of Michigan, Economics, *with distinction*, 2001

J.D., University of Pittsburgh School of Law, 2005

Ms. Weinstein's article entitled *A Needed Image Makeover: Interest Convergence and the United States' War on Terror* is being published by the *Roger Williams University Law Review* this year. Ms. Weinstein is a recent graduate of the University of Pittsburgh School of Law, where she served as the Managing Editor of the *Journal of Law and Commerce*. She also worked as a research assistant to the distinguished professors of law Richard Delgado and Jean Stefancic from 2003-2005. Prior to her employment at Jackson Lewis LLP, Ms. Weinstein served as a legal intern to the Honorable Maureen E. Lally-Green, Judge of the Superior Court of Pennsylvania and was a research assistant at The Urban Institute, Washington, DC, in the Labor and Social Policy Center.

**Arthur M. Wolfson**

B.A. College of William & Mary, 1999

J.D. University of Pittsburgh, 2005

Mr. Wolfson is a recent graduate of the University of Pittsburgh School of Law. While in law school, he authored two articles for publication under the direction of acclaimed legal scholars, Richard Delgado and Jean Stefancic. Mr. Wolfson's scholarship focuses on the role of race in the legal system's evaluation of social concepts and institutions. Mr. Wolfson recently began a clerkship with the Honorable Richard A. Morgan, Administrative Law Judge, United States Department of Labor in Pittsburgh, PA.



**Ronald F. Wright, Jr.**

*Professor of Law*

Wake Forest University School of Law

A.B., William & Mary, 1981

J.D., Yale Law School, 1984

Professor Wright teaches and writes about Criminal Justice and Administrative Law. His areas of expertise include prosecutorial charging decisions, plea bargaining, criminal sentencing, and the use of "sentencing commissions" in state and federal government to develop sentencing rules. Prior to joining the faculty at Wake Forest, Professor Wright worked as a Trial Attorney with the U.S. Department of Justice, prosecuting antitrust and other white-collar criminal cases.

Professor Wright is the co-author of two casebooks, *Sentencing Law and Policy* (2004) and *Criminal Procedures - Prosecution and Adjudication: Cases, Statutes, and executive materials* (2d edition, 2005).