Law School Blogs   School of Law Publications

2-23-2011

Dean Logan's Blog: RWU Hosts Hi-Level Debate about Ethics in the Criminal Justice Context

Roger Williams University School of Law

Follow this and additional works at: https://docs.rwu.edu/law_pubs_blogs

Dean Logan's Blog

RWU Hosts Hi-Level Debate about Ethics in the Criminal Justice Context

Posted by David Logan on 02/23/2011 at 01:11 PM

The public is always primed for debate about the ethics of lawyers in the criminal justice system. Champions of efficient law enforcement sometimes feel that criminal defense attorneys attuned to zealous advocacy push the envelope into outright deception. Criminal defense attorneys vigorously dispute this claim, and observe that law enforcement officials often engage in deception, from undercover operations to interrogators assuring an unwitting suspect of the benefits of a confession. The SOL hosted an American Bar Association program exploring these issues featuring many of Rhode Island's top lawyers and jurists, as well as distinguished guests.

Participants included federal District Court Judge Will Smith; former Rhode Island Supreme Court Chief Justice Joseph Weisberger; Superior Court Judges Edward Clifton and Daniel Procaccini; prominent defense attorneys Lise Gescheidt, Bob Mann, and John Grasso (an alum); former Rhode Island Bar Association President John Roney; Assistant United States Attorney Terrence Donnelly; and Rhode Island Assistant Attorney General Stacey Veroni. The School of Law's professor Peter Margulies, who has written widely about legal ethics, organized the program, which focused on reform proposals presented by leading legal academics Ben Kempinen (Wisconsin), Melanie Wilson (Kansas), and Kevin McMunigal (Case Western). Roger Williams Associate Dean Andy Horwitz and Professors Emily Sack and John Shelburne joined in the lively debates.

The topics included the challenges created by the rise of specialty tribunals (such as "drug courts," which blend criminal law and social work) and communicating with witnesses. The topic that I found most interesting was the ethics of using deception in criminal practice, and participants disagreed on whether a defense lawyer could construct an identity to "friend" a potential witness on Facebook, in order to gather relevant information. Some participants argued that information posted by an individual for perusal by hundreds of Facebook friends could not be considered "private," and that revealing the lawyer's identity would preclude access to information that could clear a client charged with a serious crime. Others argued that the strategy entailed knowing deception and was therefore barred by ethics rules. The program did not settle the controversial issues discussed, but it did refine the debate on this subject, and will help the ABA draft rules to regulate such practices.

Prof. Ben Kempinen, University of Wisconsin School of Law with
Prof. Emily Sack, RWU Law

Prof. Peter Margulies, RWU Law with
Prof. Melanie Wilson, University of Kansas School of Law

Prof. Kevin McMunigal, Case Western Reserve University School of Law

Rhode Island Public Defender John Hardiman

Defense attorney Lise Gescheidt and Stacey Veroni,
Assistant Attorney General, Criminal Division Chief

Attorney Robert Mann with the Honorable William Smith, US District Judge

Brian Kinsella, law clerk for Judge Smith, criminal defense attorney
Richard Humphrey, and Prof. Ben Kempinen

The Honorable Daniel Procaccini, RI Superior Court Judge

Attorney Robert Mann