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## I. Introduction

Several years ago, I published an article about a cohort of federal district court judges who were engaged in an unmistakably public campaign for criminal justice reform.[1] I called these judges the "'new' judicial activists" to signal that they were testing the limits of the judicial role in a way associated with the literature on judicial activism but differently from its traditional focus. That is, in addition to occasionally using their Article III power to hold statutes or government action invalid (the usual focus of critiques of "judicial activism"), these judges also were urging legislative and policy changes to important aspects of criminal law in the dicta of their opinions and in extrajudicial speech. Some also were using their supervisory authority to promote reform, for example by creating diversionary programs that offered alternatives to incarceration. All of these efforts reflected judges' unwillingness to remain passive in the face of what they perceived as injustice.

The quotes around "new" in the description signified that it was not clear that this activity was entirely novel—especially given that many federal judges, including district court judges, had strenuously opposed the Federal Sentencing Guidelines ("guidelines") for years after they went into effect, through a variety of means. But it nevertheless seemed to have increased in the decade after the Supreme Court finally rendered the guidelines advisory in *United States v. Booker*[2] and to have expanded its scope, even if the precise reasons why were elusive. However, one thing was certain: Judge Jack Weinstein had long ago perfected the form and seemed to have inspired the other judges, even if indirectly, to adopt it. This essay highlights Judge Weinstein's contributions to this style of judging, as well as his critical engagement, in his scholarly work, with the important questions it raises, including whether such activity is consistent with judges' ethical obligations. Not surprisingly, Judge Weinstein has concluded that it is, but he provides important guidance for other judges interested in following his example.

## II. Judicial Opinions

Judge Weinstein has in many ways reinvented the district court judicial opinion. Judges have a great deal of discretion in how they write their opinions, and Judge Weinstein has taken full advantage of that space. As his biographer, Jeffrey Morris, described the characteristics of a "Weinstein opinion," it often exceeds one hundred pages,[3] is "graced with scintillating prose," and sometimes include[s] a table of contents, photographs, and charts."[4] And that is not only when the holding of the opinion expressly challenges precedent and courts reversal,[5] as Judge Weinstein believes district court judges have a duty to do on occasion.[6] It is also true of opinions in which he applies prevailing law but argues in dicta that the law should be changed.

According to Judge Weinstein, when the law is clear, a district court judge has a duty to apply it, but not to do so silently.[7] And silent he has not been, particularly about criminal sentencing. Statutes that require the imposition of a mandatory minimum sentence have been among the most consistent targets of his ire, but so, for many years, were the guidelines.[8] For example, within a lengthy opinion in which he imposed the statutorily required sentence for drug offenses, Judge Weinstein reviewed the purposes of punishment, noted the history of the community from which the defendants came, and warned that mandatory minimum sentencing "impose[s] grave costs not only on the punished but on the moral credibility upon which our system of criminal justice depends."[9] In another case, in which he imposed the statutorily required sentence for possession of a gun in connection with a violent crime, he decried the unavailability of alternatives to incarceration for those "trapped in a gang culture, and condemned to a life of poverty and probable crime."[10] In yet another case, in which he was required to impose a steep sentencing enhancement under the then mandatory guidelines, he asked whether "under the blindfold, does justice weep" for the result?[11]

Such hortatory language in the context of a district court opinion is not typical. Although appellate judges have long written concurrences or dissents urging changes in the law,[12] it is far less common for district court judges to do so. But other district court judges have followed Judge Weinstein's lead in recent years, joining him in calling upon Congress, prosecutors, and judges to reevaluate charging and sentencing policies. For example, Judge John Gleeson of the U.S. District Court for the Eastern District of New York issued numerous "Weinstein-style" opinions before his retirement, exhorting the country to "deal with—and not just talk about—our over-incarceration problem," and urging "smart, bold choices" about "the lengths of prison terms we impose" and "the categories of defendants we routinely"[13] put in prison who do not need to be there.[14]

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Another frequent critic of contemporary sentencing practices, now former Judge Mark Bennett of Iowa, turned one opinion into a treatise on the Department of Justice's use of prior felony informations, which increase the mandatory minimum penalty in some drug cases, collating his own research on the Department's practices and urging judges to play a role in addressing it.[15] In another opinion, he observed that "in most of the over 1,000 congressionally-mandated mandatory minimum sentences that I have imposed over the past twenty-two years, I have stated on the record that they were unjust and too harsh."[16] Judge Nancy Gertner of Massachusetts, before her retirement, wrote numerous opinions criticizing sentencing policy and what she described as the "significant downside to what has been called the American experiment in mass incarceration."[17] She suggested that courts could not be complacent, but would soon have to consider the possibility that mandatory minimum sentencing may have disrupted lives and communities without necessarily achieving any significant deterrence benefit.[18] These three judges have been among the most vocal and consistent advocates for sentencing reform, but a significant number of other district court judges have also expressed dissatisfaction with the sentencing status quo, including in the pages of their judicial opinions and decisions delivered from the bench.[19]

**III. Extrajudicial Speech**

Judge Weinstein also has spoken and written frequently in extrajudicial fora about the need for reforms to the criminal justice system. Former law professor that he is, he has written extensive law review articles sharing his candid assessments of sentencing policy. But he has also written for popular and professional audiences.[20] For example, in an op-ed in the *New York Times* published in 1993, he called for a national commission to reexamine drug policy, characterizing the extant regime as "self-defeating."[21] Although he acknowledged the complexity of the issue, Judge Weinstein wrote that "unthinking acceptance of the current policy is unreasonable."[22] In another article, he called mandatory minimum sentencing a kind of "cannibalism," consuming the lives of many "young people, particularly in minority communities."[23]

This kind of open engagement with public policy issues outside of the courtroom also is not typical for district court judges. But here, too, Judge Weinstein's influence may be seen in the willingness of other judges to express their policy views outside of Judicial Conference reports or testimony before Congress, the more traditional fora for raising concerns about the wisdom or administration of the criminal laws. For example, in the past decade, Judge Jed Rakoff of the Southern District of New York has repeatedly spoken out about "mass incarceration," including in a speech at Harvard Law School [24] and in an essay in the *New York Review of Books*,[25] observing that judges have a "special duty to be heard on this issue." Judge Bennett of Iowa has written extensively about the need to reform sentencing laws, including in an essay published in *The Nation*,[26] and granted numerous interviews to journalists,[27] noting that he was departing from federal judges' "longstanding culture of not speaking out on issues of public concern" because of the "daily grist" of what he saw as unjust mandatory minimum sentences.[28] Judge Stefan Underhill of Connecticut, in a *New York Times* op-ed,[29] called for a mechanism for judges to reevaluate the sentences they imposed years earlier. These are but a few examples of district court judges leveraging their official position to reach various audiences to advocate changes in sentencing and related areas.[30]

**IV. Supervisory Authority**

Finally, Judge Weinstein has been a leader in using the district court's supervisory authority to innovate in the realm of criminal sentencing. Before the guidelines governed, he and his fellow judges in the Eastern District of New York regularly conferred with one another on sentencing in an effort to achieve consistency.[31] During the mandatory guidelines era, he not only regularly found bases for a downward departure based on extraordinary circumstances,[32] but also employed the so-called *Fatico*[33] hearing to decide disputed facts key to sentencing.[34] After *Booker* rendered the guidelines advisory only, Judge Weinstein resurrected his pre-guidelines practice of convening panels of judges to consider the appropriate sentence in individual cases.[35] As described in an article by the editors of this symposium, he later imposed upon himself a requirement that he issue a detailed statement of reasons for every sentence so that he could track his own consistency and render his decision making transparent to others.[36]

Judge Weinstein also spearheaded the development of a special sentencing program for youthful offenders in his district that enabled them to reduce or avoid custodial sentences.[37] Similar programs, including diversionary programs for drug-addicted defendants, have since been adopted in many districts around the country.[38] These programs often were instigated by district court judges[39] who, like Judge Weinstein, were not content to wait for Congress or the Sentencing Commission to create more alternatives to incarceration. As Judge Underhill of Connecticut remarked of his efforts to set up such a program in his court, "I had been a judge long enough that I had become frustrated with the revolving door."[40] Judge Weinstein has in turn championed these programs in the pages of his judicial opinions [41] and urged their expansion to make them available even to violent offenders.[42]

**V. Consistency with the Judicial Role**

Judge Weinstein has established through his actions a forceful example for how judges can use their position to advocate and effect criminal sentencing reform. And although no one will ever match him in this role, he is not alone. As others consider following in his footsteps, they might do well to consult another aspect of Judge Weinstein's scholarship, in which he has turned his critical lens inward and examined whether this work is consistent with

the judicial role. He has asked not only whether such activity is permissible, but also whether it is ethically required. His answer to both questions is "yes."

Judge Weinstein acknowledges that some may perceive a tension between the image of "blindfolded" justice that decorates many courthouses and judges' speaking out on matters of public policy.[43] To that end, he offers some concrete guidance for other judges to minimize concerns about partiality. For example, he suggests that writing is generally preferable to speaking and that judges exercise caution before granting interviews to broadcast media—lest the judge's remarks be taken out of context. When speaking, he suggests that neutral settings such as law schools or bar associations are best. And whether writing or speaking, he opines that "[s]ome degree of sophistication of knowledge and objective scholarship should be shown, so it is clear that uninformed prejudice is not at work."[44] The rest, he suggests, can be addressed through tone—which cannot be reduced to a particular formula but is entrusted to the judge's wisdom and discretion.

Even within these constraints, Judge Weinstein argues, judges are uniquely positioned to bring perceived injustices to others' attention and must. That is particularly so for district court judges who deal with "real people and [see] the impacts of law on those people."[45] He writes: "Where the law is inadequate or perverse, we report our observations to those with power to lead: the public, the legislature, and the appellate courts."[46] According to Judge Weinstein, this reporting can be done in the pages of judicial opinions, where "it is appropriate for the trial judge to outline opposing views and state preferences he or she does not feel free to follow."[47] It also can be done in the context of a lecture, article, or book "that could advance the ongoing national debate on current issues."[48] Judge Weinstein acknowledges that this affirmative duty is not well defined and emanates foremost from a judge's sense of self-accountability. "While I follow federal rules on judicial ethics scrupulously," he has written, "I am less concerned with discipline imposed by others than I am with our individual self-government."[49] He adds that the question is not "What will others make me do?" but rather "What shall I do?"[50]

And that is an appropriate question to end on, for it is the challenge Judge Weinstein poses to his fellow judges as he leaves the bench after fifty-three years of service. What will they do when they perceive injustice in the system they are called upon to administer? Will they report it to others and, if so, how? Have they fully explored the limits of their supervisory authority to take corrective action, on their own or with their fellow judges? Few will be as creative, prolific, or persuasive as Judge Weinstein has been. But he leaves behind a fully articulated vision of a district court judge who refuses to accept that the role necessarily entails passively applying rules set by others. Judge Weinstein's legacy thus includes not only his many groundbreaking judicial opinions, procedures, and scholarly writings, but also the example he has set for other district court judges in thinking carefully about the kind of judge they want to be given the limits and possibilities that accompany their position.

**Notes**

1 *See* Jessica A. Roth, *The "New" District Court Activism in Criminal Justice Reform*, 72 N.Y.U. Ann. Surv. Am. L. 187 (2018).

2 United States v. Booker, 543 U.S. 220 (2005).

3 *See* Jeffrey B. Morris, *Jack B. Weinstein, Judicial Entrepreneur*, 69 U. Miami L. Rev. 393, 404 (2015).

4 Jeffrey B. Morris, Leadership on the Federal Bench: The Craft and Activism of Jack Weinstein 91 (2011).

5 *See, e.g.*, United States v. C.R., 792 F. Supp. 2d 343 (E.D.N.Y. 2011) (holding, in a 250-page opinion, a five-year mandatory minimum sentence for distribution of child pornography unconstitutionally "cruel and unusual" as applied to youthful defendant), *rev'd* United States v. Reingold, 731 F.3d 204 (2d Cir. 2013); United States v. Polizzi, 549 F. Supp. 2d 308 (E.D.N.Y. 2008) (holding, in a 189-page opinion, that jury must be instructed as to mandatory minimum sentence for receipt of child pornography), *vacated*, United States v. Polouizzi, 564 F. 3d 142 (2d Cir. 2009).

6 *See* Jack B. Weinstein, *Limits on Judges' Learning, Speaking, and Acting: Part II Speaking and Part III Acting*, 20 U. Dayton L. Rev. 1, 30–31 (1994) ("Even where it is clear that the appellate courts seem to be going in a different direction, the trial judge must, I believe, be true to an inner core of responsibility . . . [and must sometimes] risk[], even court[], reversal in some instances in order to make certain that the appellate courts, the bar, academia, and the public are fully aware that there is a strong opposing view.").

7 *See* Jack B. Weinstein, *Every Day Is a Good Day for a Judge to Lay Down His Professional Life for Justice*, 32 Fordham Urb. L. J. 131, 155 (2004) ("If a trial court can find no reasoned way to distinguish precedents, acquiescence in the courtroom—but not silence—is required.").

8 *See, e.g.*, United States v. Shonubi, 962 F. Supp. 370 (E.D.N.Y. 1997); United States v. Cordoba-Hincapie, 825 F. Supp. 485 (E.D.N.Y. 1993); United States v. Concepcion, 795 F. Supp. 1262, 1273 (1992).

9 United States v. Bannister, 786 F. Supp. 2d 617, 689 (E.D.N.Y. 2011).

10 United States v. Rivera, 281 F. Supp. 3d 269, 271 (E.D.N.Y. 2017).

11 United States v. Molina, 963 F. Supp. 213, 216 (E.D.N.Y. 1997).

12 *See, e.g.*, Ruth Bader Ginsburg, *Remarks on Writing Separately*, 65 Wash. L. Rev. 133, 143–45 (1990) (discussing benefits of occasional dissents by appellate judges as including serving as an "alert function" for higher courts and legislative bodies).

13 United States v. Dokmeci, 2016 WL 915185, at *1 (E.D.N.Y. 2016) (noting also court's "policy disagreement" with the Sentencing Guidelines' failure to encourage diversion programs and alternatives to incarceration). *See also* United States v. Vasquez, 2010 WL 1257359, at *15 (E.D.N.Y. 2010) (identifying "but one" reason for the sentence imposed: "I was forced by a law that should not have been invoked to impose a five-year prison term"); United States v. Holloway, 68 F. Supp. 3d 310 (E.D.N.Y. 2014) (vacating "stacked" gun charges after government ceded to court's request that it do so); United States v. Kupa, 976 F. Supp. 2d 417, 419 (E.D.N.Y. 2013) (discussing the government's "abuse" of its authority to file prior felony informations in drug cases).

14 Former Judge Gleeson has acknowledged the enormous influence that Judge Weinstein had on him as a judge. *See, e.g.*, John Gleeson, *Tribute to Judge Jack B. Weinstein*, 72 N.Y.U. Ann. Surv. Am. L. 9, 14 (2017) (noting that Judge Weinstein

"has taught his colleagues, and the profession as a whole, that federal judges, and particularly federal district judges, are uniquely positioned to make real and positive differences" and "that it's our responsibility to do everything in our power to make that difference.").

[15] United States v. Young, 960 F. Supp. 2d 881 (N.D. Iowa 2013).

[16] United States v. Feauto, 146 F. Supp. 3d 1022, 1024–25 (N. D. Iowa 2015). Former Judge Bennett also has expressed his long-time admiration for Judge Weinstein. *See, e.g.,* Mark W. Bennett, *A Judge's Attempt at Sentencing Inconsistency After Booker: Judge (Ret.) Mark W. Bennett's Guidelines for Sentencing*, 41 Cardozo L. Rev. 243, 248 (2019) (speaking about Judge Weinstein and stating: "But I came to realize that as a federal judge with experience in sentencing more than 4000 offenders in five different federal districts, I had both a duty and an obligation to share my views with the public.")

[17] United States v. Haynes, 557 F. Supp. 2d 200, 207 (D. Mass. 2008). Former Judge Gertner also has acknowledged Judge Weinstein's influence. *See, e.g.,* Nancy Gertner, *Opinions I Should Have Written*, 110 Nw. U. L. Rev. 423, 437–38 (2016) ("I wish I had written more sentencing opinions, even more than I did. . . . Some district court judges are writing about what they are doing [about sentencing]—Judges Mark Bennett, Lyn Adelman, John Gleason [*sic*], Jack Weinstein, to name a few—but their decisions are not widely known.").

[18] *See Haynes*, 557 F. Supp.2d at 207.

[19] *See, e.g.,* United States v. Saena Tech Corp., 140 F. Supp. 3d 11, 42–47 (D.D.C. 2015) (Sullivan. J.) (urging, in dicta, the Department of Justice to make greater use of deferred prosecution agreements in cases involving individual rather than corporate defendants); United States v. McDade, 121 F. Supp. 3d 26, 29–31 (D.D.C. 2014) (Friedman, J.) (stating that required sentence was "unjust"); United States v. Marshall, 870 F. Supp. 2d 489, 499–500 (N.D. Ohio 2012) (Zouhary, J.) (expressing court's "strong disagreement" with required sentence); John Marzulli, *Brooklyn Perv who Sexually Exploited Underage Boys, Including One with Brain Cancer, Sentenced to 15 Years*, N.Y. Daily News (May 18, 2016) (reporting statements by Judge Nicholas Garaufis of the Eastern District of New York at sentencing calling the Sentencing Guidelines "incredibly excessive and irrational," and stating that "if the Sentencing Commission doesn't want to do justice, they should all just resign."). *See also* United States v. Nesbeth, 188 F. Supp. 3d 179 (E.D.N.Y. 2016) (Block, J.) (reviewing history and effects of common collateral consequences of criminal convictions and calling upon Congress and state legislatures to revisit them).

[20] Many of Judge Weinstein's critiques of sentencing policy have appeared in prior volumes of this publication. *See, e.g.,* Jack B. Weinstein & Nicholas R. Turner, *The Cost of Avoiding Injustice by Guideline Circumventions*, 9 Fed. Sent'g Rep. 298, 300 (1997) ("The problem remains at the root—the guidelines as designed and interpreted create too much injustice"); Jack B. Weinstein, *Some Reflections on Several Lean Years of Guidelines Sentencing*, 8 Fed. Sent'g Rep. 12 (1995) ("Those of us who face real people caught up in the justice system dream of the day when the Sentencing Commission abandons the overly harsh and mechanistic" system in place); Jack B. Weinstein & Fred A. Bernstein, *The Denigration of Mens Rea in Drug Sentencing*, 7 Fed. Sent'g Rep. 121 (1994) (criticizing the guidelines' elimination of a mens rea requirement as to drug type or quantity). *See also* Jack B. Weinstein, *A Trial Judge's Second Impression of the Federal Sentencing Guidelines*, 66 S. Cal. L. Rev. 357, 365 (1992) ("One would think that most Americans, judges and legislators as well as members of the Sentencing Commission, would be embarrassed by this implacable urge to incarcerate" represented by the guidelines); Jack B. Weinstein, *The Effect of Sentencing on Women, Men, the Family, and the Community*, 5 Colum. J. Gender & L. 169 (1996) (criticizing the guidelines provisions dictating that characteristics like sex, race, national origin, and family ties and responsibilities are irrelevant to sentencing); Jack B. Weinstein, *Prison Need Not Be Mandatory*, 28 Judges' J. 16, 18 (1989) (urging Sentencing Commission to make greater use of alternatives to incarceration).

[21] Jack B. Weinstein, *Drugs, Crime and Punishment: The War on Drugs Is Self-Defeating*, N.Y. Times, July 8, 1993, at A19.

[22] *Id.*

[23] Jack B. Weinstein, *Standing Down from the War on Drugs*, 75 N.Y. St. B. J. 55 (2003).

[24] Jed S. Rakoff, U.S. Dist. Judge, S. Dist. N.Y., Mass Incarceration and the "Fourth Principle," Speech at Harvard Law Sch. Conference (Apr. 10, 2015) (transcript available at https://news.bloomberglaw.com/business-and-practice/judge-rakoff-speaks-out-at-harvard-conference-full-speech/).

[25] Jed S. Rakoff, *Mass Incarceration: The Silence of the Judges*, N.Y. Rev. Books (May 21, 2015).

[26] Mark W. Bennett, *How Mandatory Minimums Forced Me to Send More Than 1,000 Nonviolent Drug Offenders to Federal Prison*, The Nation (Oct. 24, 2012). *See also* Mark W. Bennett, *A Slow Motion Lynching? The War on Drugs, Mass Incarceration, Doing Kimbrough Justice, and a Response to Two Third Circuit Judges*, 66 Rutgers L. Rev. 873 (2014); Mark Osler & Judge Mark W. Bennett, *A "Holocaust in Slow Motion?," America's Mass Incarceration and the Role of Discretion*, 7 DePaul J. For Soc. Just. 117 (2014).

[27] *See, e.g.,* Eli Saslow, *Against His Better Judgment*, Wash. Post (June 6, 2015) (interview with Judge Bennett); *Why Mandatory Minimum Sentences on Drug Arrests Are "Unfair and Racist,"* HuffPost Live (May 6, 2014) (same); Mallory Simon & Sara Sidner, *The Judge Who Says He's Part of the Gravest Injustice in America*, CNN Politics (June 3, 2017) (video interview with Judge Bennett in his courtroom in which he stated that "80% of the mandatory sentences he hands down are unjust").

[28] Bennett, *How Mandatory Minimums Forced Me to Send More Than 1,000 Nonviolent Drug Offenders to Federal Prison*, *supra* note 27.

[29] Stefan R. Underhill, *Did the Man I Sentenced to 18 Years Deserve It?*, N.Y. Times (Jan. 23, 2016).

[30] *See, e.g.*, Carimah Townes, *Federal Judge Calls Attorney General's Mandatory Sentencing Decision 'Bad Policy,'* The Appeal (Aug. 23, 2017) (noting that Chief Judge William Smith of the U.S. District Court for the District of Rhode Island had "joined the growing number of judges speaking out against mandatory minimum sentencing," castigating mandatory minimum sentencing during interview with local news station); Lynn Adelman, *Criminal Justice Reform: The Present Moment*, 2015 Wis. L. Rev. 181 (2015) (endorsing measures to alleviate the collateral consequences of convictions); Frederic Block, *A Slow Death*, N.Y. Times, Mar. 15, 2007 (calling upon the federal prosecutors to be more selective in seeking the death penalty).

[31] *See* Jack B. Weinstein, *A Trial Judge's Second Impression of the Federal Sentencing Guidelines*, 66 S. Cal. L. Rev. 357, 363 (1992); Weinstein, *supra* note 6, at 15.

[32] *See* Kate Stith, *Weinstein on Sentencing*, 24 Fed. Sent'g Rep. 214, 215 (2012); Jack B. Weinstein, *A Trial Judge's Second Impression of the Federal Sentencing Guidelines*, 66 S. Cal. L. Rev. 357, 363 (1992).

[33] United States v. Fatico, 458 F. Supp. 388 (E.D.N.Y. 1978).

[34] *See* Stith, *supra* note 33, at 214.

[35] *See* Mark Fass, *In Securities Dealer's Sentencing, Judge Blasts 'Corrupt' Wall Street Culture*, New York Law Journal (Jan. 26, 2010) (describing Judge Weinstein's reliance on an "advisory

panel of fellow Eastern District judges, an increasingly common practice" in the Brooklyn federal court since *Booker*).

[36] *See* Carolin E. Guentert & Ryan H. Gerber, *A Judge's Attempt at Sentencing Consistency After Booker: Judge Jack B. Weinstein's Guidelines for Sentencing*, 41 Cardozo L. Rev. 1, 5 (2019).

[37] *See* CJA Committee of the Eastern District of New York & Federal Defenders of New York, Inc., *Alternatives to Incarceration: POP, SOS, and STAR Courts*, Federal Defenders of New York 13 (July 26, 2017) (discussing U.S. District Court for the Eastern District of New York's Special Options Services ("SOS") program, spearheaded by Judge Weinstein, which attempts to cultivate rehabilitation in youthful offenders).

[38] *See* Roth, *supra* note 1, at 202–03.

[39] *See id.* at 204.

[40] Lucy Nalpathanchil, *Instead of Jail, Judges Take More Hands-on Role with Addicts in Connecticut*, WNPR (Aug. 5, 2014).

[41] *See, e.g.*, United States v. Kennedy, 286 F. Supp. 3d 531, 535 (E.D.N.Y. 2018) ("There are programs available in the Eastern District of New York to assist individuals, like Mr. Kennedy, with documented histories of substance abuse, and help them reenter their communities at the end of a prison term."); United States v. K, 160 Supp. 2d 421, 438 (E.D.N.Y. 2001) ("The current federal sentencing regime supports the utilization of alternatives to incarceration; specifically, pretrial diversion by federal prosecutors and sentencing alternatives to incarceration by judges, which include probation, home confinement, electric monitoring and the S.O.R.S. program").

[42] United States v. Rivera, 281 F. Supp. 3d 269, 273 (E.D.N.Y. 2017) ("More court sentencing alternatives and community programming . . . are necessary to discourage gang violence, as well as to assist defendants attempting to escape their environs after a conviction or sentence.").

[43] *See, e.g.*, Weinstein, *supra* note 6, at 11–12, n.55 (discussing remarks by Chief Justice William H. Rehnquist to federal judges in 1993 expressing concern about judges' extrajudicial opposition to the Sentencing Guidelines, given "the absolute necessity that the public correctly believe that judges deciding cases enforce laws with which they may disagree as well as those with which they may agree"); *id.* at 40 (noting that "[j]udges can never escape the burdens arising from their office under Article III" and therefore a judge's "freedom to speak and act independently is balanced by fundamental constraints of public perception requiring a judge's constant attention.")

[44] Weinstein, *supra* note 6, at 23.

[45] Jack B. Weinstein, *Federal Trial Judges: Dealing with the Real World*, 69 U. Miami L. Rev. 355 (2015). *See also* Jack B. Weinstein, *The Roles of a Federal District Court Judge*, 76 Brooklyn L. Rev. 439, 451–52 (2011) (noting that the district court judge "physically observes the people who are affected by the law and may sense their problems through direct interactions").

[46] Weinstein, *Federal Trial Judges*, *supra* note 45, at 355.

[47] Weinstein, *supra* note 6, at 30.

[48] Weinstein, *supra* note 6, at 11. *See also* Weinstein, *Federal Trial Judges*, *supra* note 45, at 366 ("It is appropriate to publicize legal deficiencies in extra-judicial writings and teachings, and to act to dispense justice where possible.").

[49] Jack B. Weinstein, *Hamlet in the District Court: Facing Personal Ethical Dilemmas*, 32 Hofstra L. Rev. 1173, 1173 (2004).

[50] *Id.*