

SENTENCING AND PLEA BARGAINING

PROFESSOR STEVEN GROSSMAN

Fall 2019 M&W 10:30-11:45 LC 602

Sentencing and Plea Bargaining is a discussion course in which you will be expected to participate. The focus of our discussions will be surprisingly enough, on sentencing and plea bargaining. Your grade will be based primarily on a research paper, but your performance in class and in your paper presentation will be factors as well.

The research paper should roughly resemble a law review comment in substance and form. I ask that you take a position on some issue related to criminal justice, defend the position and respond to arguments you would anticipate from the other side. While you are welcome to choose a topic related to our class discussions, I am more concerned that you choose a topic about which you feel strongly. Therefore, I will approve most topics related at all to criminal justice. The paper will be graded on organization, thoroughness of research, quality of writing and level of analysis.

The papers are due in final draft on the last day of classes. I ask that you submit in writing your choice of topic by the end of the second week of class. If I do not ask to see you shortly thereafter, you can assume your topic has been approved. By October 2, I would like an outline in which you describe how your paper will be organized and some of the source material you will be using. During the next week, I will meet with you so that we can go over your outline together. Please submit a first draft of the paper by October 30, so that I can get it back to you in time for you to make any desired changes. **CLASS WILL BE CANCELLED ON Monday, September 30 and Wednesday, October 9.**

During the last four weeks of the semester, each student will give a 15 minute presentation on his or her paper. There will be five to ten minutes after the presentation for questions and comments. You will be required to distribute to the class a 1-2 page outline of your paper before your presentation.

The learning outcomes in this course come in a variety of ways. The course is mostly a discussion course, so I can assess what the student is learning through his or her comments and questions. Class participation is a significant part of the grading in this course. The majority of the student's grade relates to the research paper required in lieu of a final examination. As indicated above, students submit and receive feedback on both the outlines and the first drafts of their papers. The first drafts of their papers are returned containing my written comments. While the outline and first draft are ungraded, the oral presentations of their papers during the last weeks of class are graded. The final draft of the paper will be graded on organization, thoroughness of research, quality of writing and level of analysis.

If you are a student with a documented disability who requires an academic accommodation, please contact, Karyn Schultz at 410-837-4141 or via email at kschultz@ubalt.edu.

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor [see Attendance Policy <http://law.ubalt.edu/template.cfm?page=267>]. A student who exceeds the maximum allowable absences may be compelled to withdraw from the course, or may be barred from sitting for the final exam. A student who is compelled to withdraw may receive an "F" in the course. Attendance will be taken at the beginning of each class. A student who is present, but unprepared for class, may be treated as absent.

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work each week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but

are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. [Reference to School of Law Honor Code, https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm]

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

While I require you to meet with me only one time, I encourage you to come up to the office, Room 1119, call at 837-4603 or e mail to sgrossman@ubalt.edu if you have any questions about the paper or the course.

The asterisk next to a case on the syllabus means the case appears in edited form on the TWEN website for the course. No book is required for the course.

Class Assignments

I. **Kittrie & Zenoff, Sentencing, Sanctions and Corrections** (1st edition), pp. 1-46 (on reserve in Law Library)

II. **Theories of Sentencing**

*U.S. v. Bergman, 416 F. Supp. 496 (S.D.N.Y. 1976)
Tapia v. U.S. 131 S. Ct. 2382 (2011),
Woosley v. U.S., 478 F.2d 139 (8th Cir. 1973)
U.S. v. Gementera, 379 F.3d 596 (9th Cir. 2004)

II. A. Arguments for and against Sentencing Guidelines

Hofer & Allenbaugh, The Reason Behind the Rules: Finding and Using the Philosophy of the Federal Sentencing Guidelines, 40 AM. CRIM. L. REV. 19 (2003) - Read pp. 19-35 and 51-63
Uelmen, Federal Sentencing Guidelines Symposium, 29 Am. Crim. L. Rev. 899 (Spring, 1992)

III. **"Death is Different"**

*Furman v. Ga., 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)
*Gregg v. Ga., 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976)
Roberts v. La., 428 U.S. 325, 49 L.Ed.2d 974, 6 S.Ct. 3001 (1976)
*Lockett v. Ohio, 438 U.S. 586 (1978) (part iii only)
*McCleskey v. Kemp, 107 S.Ct. 1756 (Parts iii, iv, v and dissents (1987))
*Roper v. Simmons, 161 L.Ed.2d 1, 125 S.Ct. 1183 (2005)
Kennedy v. La., 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008)

IV. **Appeal from Sentence: How Cruel and Unusual?**

U.S. v. Wiley, 278 F.2d 500 (read this Wiley first)
U.S. v. Wiley, 184 F. Supp. 679
*Rummel v. Estelle, 445 U.S. 263, 100 S. Ct. 1133
Davis v. Zahradnick, 432 F. Supp. 444 (W.D. Va. 1977)
Davis v. Davis, 585 F.2d 1226 (4th Cir. 1978)
*Hutto v. Davis, 454 U.S. 370 (1982)
*Solem v. Helm, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983)
*Harmelin v. Mich., 115 L.Ed.2d 836, 111 S.Ct. 2680 (1991)
Ewing v. Cal., 538 U.S. 11, 123 S.Ct. 1179 (2003)
Miller v. Alabama, 132 S. Ct. 2455 (2012)
* Montgomery v. La., 136 S. Ct. 718 (2016)

V. **Due Process**

*Williams v. N.Y., 337 U.S. 241, 59 S. Ct. 1079, 93 L.Ed.2d 1337 (1949)
Specht v. Patterson, 386 U.S. 605, 87 S. Ct. 209, 18 L.Ed.2d 326 (1967)
Federal Rules of Criminal Procedure - Rule 32(c)

VI. **Proper Material for Consideration in Sentencing**

*U.S. v. Grayson, 438 U.S. 41, 98 S. Ct. 2610, 57 L.Ed.2d 582 (1978)

State v. Tiernan, 645 A.2d 482 (R.I. 1994)
Henry v. State, 328 A.2d 293, 273 Md.131 (1974)
Jennings v. State, 664 A.2d 903, 339 Md. 675 (1995)
Roberts v. U.S., 445 U.S. 552, 100 S. Ct. 1358, 63 L.Ed.2d 622 (1980)
Mitchell v. U.S., 119 S.Ct. 1307, 143 L.Ed.2d 424 (1999)
State v. Burgess, 943 A. 2d. 727 (N.H. 2008)
U.S. v. Weston, 448 F.2d 626 (9th Cir. 1971)
Booth v. Md., 107 S. Ct. 2529 (1987)
*Payne v. Tennessee, 115 L.Ed.2d 720, 111 S. Ct. 2597 (1991)
Kelly v. Cal. , 129 S. Ct. 564 (Justice Stevens' statement in response to denial of cert) (2008)

VI.(A) **The New World since *Apprendi***

*Apprendi v. N.J., 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)
*U.S. v. Booker, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005)
Cunningham v. Cal., 127 S.Ct. 856 (2007)
Kimbrough v. U.S., 128 S.Ct. 558 (2007)
*Gall v. U.S., 128 S.Ct. 586 (2007)

VII. **Disclosure**

Review FRCP Rule 32
State v. Kunz, 259 A.2d 895, 55 N.J. 128 (1969)
Gardner v. Fla., 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977)

VIII. **Equal Protection**

Williams v. Ill., 399 U.S. 235, 90 S. Ct. 2018, 26 L.Ed.2d 586 (1970)
Bearden v. Ga., 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983)

IX. **Introduction to Plea Bargaining**

*The Unconstitutionality of Plea Bargaining, 83 HARV. L. REV. 1387-1411
*Scott v. U.S., 419 F.2d 264 (D.C. Cir. 1969)

X. **Voluntariness of the Plea**

McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 14 L.Ed.2d 763 (1970)
People v. Blakely, 34 N.Y.2d 311, 313 N.E.2d 763 (1974); Md. Rule 731(c)
Newton v. Rumery, 480 U.S. 386, 94 L.Ed.2d 405 (1987)

XI. **Role of the Prosecutor**

Md. Rule 4-242
Newman v. U.S., 382 F.2d 479 (D.C. Cir. 1967)
*Bordenkircher v. Hayes, 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978)
Alabama v. Smith, 490 U.S. 794, 104 L.Ed.2d 865, 109 S.Ct. 2201 (1989)

XII. **Punishment for Exercising the Right to Trial**

*Jung v. State, 145 N.W.2d 684 (Wis. 1966)
*U.S. v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968)
Hampton v. Wyrick, 588 F.2d 632 (8th Cir. 1978)
Davis v. State, 860 So.2d 1058 (Fla. Dist. Ct. App. 2003)
State v. Baldwin, 629 P.2d 222 (Mont. 1981)
Comm. v. Carter, 733 N.E. 2d. 582 (Mass. 2000)
*Barnes v Warden (SEE TWEN) (2014) D sentenced to 99 years after trial

XIII. **Role of the Defense Attorney**

Anderson v. N.C., 221 F. Supp. 930 (W.C.N.C. 1963)
Walker v. Caldwell, 476 F.2d 213 (5th Cir. 1973)
People v. Heirens, 122 N.E.2d 231 (Ill. 1954)
U.S. v. Rogers, 289 F. Supp. 726 (D. Conn. 1968)
Uresti v. Lynaugh, 821 F. 2d 1099 (5th Cir. 1987)
*Fields v. Gibson, 277 F.3d 1203 (10th Cir. 2002)
*Premo v. Moore, 131 S. Ct. 733 (2011)
*Padilla v. Ky., 130 S. Ct. 1473 (2010)
Missouri v. Frye, 132 S.Ct.1399 (2012)
Lafler v. Cooper, 132 S.Ct. 1376 (2012)
*Mc Coy v. La. 584 U.S. _ , 138 S. Ct. 1500 (2018)

XIV. **The Meaning of the Promise and Withdrawal of the Plea**

U.S. v. Miller, 565 F.2d 1273 (3d Cir. 1977)
Burroughs v. State, 30 Md. App. 669, 354 A.2d 205 (1976)
Santobello v. N.Y., 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971)
Mabry v. Johnson, 467 U.S. 504, 104 S.Ct. 2543, 81 L.Ed.2d 437 (1984)
*Banks v. State, 56 Md. App., 38, 466 A.2d 69 (Md. App. 1983)
U.S. v. Hyde, 520 U.S. 670, 117 S.Ct. 1630, 137 L.Ed 2d 935 (1997)

XVI. **Role of the Judge**

Federal Rules of Criminal Procedure 11 e & f; Md. Rule 4-243
*Brown v. Peyton, 435 F.2d 1352 (4th Cir. 1970)
U.S. v. Ammidown, 497 F.2d 615 (D.C. Cir. 1973)

XVII. **Significance of the Plea Allocution**

Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)
*Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976)

XVIII. **Types of Pleas**

*N.C. v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); Md. Rule 4-242(e)
State v. Knight, 701 N.W. 2d. 83 (Iowa 2005)
People v. Foster, 19 N.Y.2d 150, 225 N.E.2d 200 (1967); Md. Rule 731(d); F.R.C.P. 11 a & b
Stites v. Ind., 829 N.E. 2d 527 (2005)
In re Flats v. Moore, 959, N.E. 2d. 241 (Ind. 2012)