FALL 2008 -- SYLLABUS
CRIMINAL SENTENCING LAW AND POLICY
WEDNESDAY -- 4:00-6:00 P.M.
PROFESSOR ADAM LAMPARELLO
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INTRODUCTION

This seminar deals with the practices, policies, and procedures that govern the sentencing of criminal defendants at both the federal and state level, at the trial and appellate stages, and from the perspectives of judges, prosecutors, and defendants. In other words, this seminar will examine the process of “judging” those convicted of various offenses that were committed in a number of contexts and under a variety of circumstances. Importantly, we will study criminal sentencing from both a theoretical and practical perspective; that is, we will begin with a discussion of the specific purposes of punishment that existing criminal justice paradigms strive to achieve, followed by a critical examination of systems of criminal sentencing (with particular attention to the Federal Sentencing Guidelines) that exist in our jurisprudence today. In so doing, we will not only examine the efficacy of numerous criminal sentencing models, but we will also identify and discuss the many issues that have arisen due to the application of these models, including effects on race, class, and gender, and whether such models accord sufficient discretion to judges to render individualized sentencing determinations where the facts so warrant.

To be sure, we are going to examine criminal sentencing models in a variety of ways and from various perspectives. We will not only analyze the consequences that result from a specific state or federal sentencing model, but we will also examine such models from the perspective of those responsible for their implementation, including judges, prosecutors, defendants, legislators, and probation officers. Each of these actors has both a role and responsibility in administering a particular state or federal guideline system, and that perspective both informs and illustrates the problems and/or issues that continue to arise at the sentencing hearing, and which have direct implications upon fairness considerations and, ultimately, the concept of what constitutes a “just” sentence. It is my hope, and our shared responsibility in this seminar, that we can create meaningful solutions to the current problems that plague the current state of sentencing jurisprudence.

Accordingly, this course is much more than a typical law school seminar. It is, more accurately, a forum for each of you to develop as legal scholars. To be sure, this course will present each of you with the opportunity to draft a publishable law-review Article that, by the conclusion of this course, will be of sufficient quality to submit to law schools throughout the country for publication. In other words, in this seminar, you will be required first to acquire, analyze, and discuss the critical issues affect criminal sentencing today, and then draft an Article in which you propose a creative solution to a problem that you identify in current state or federal sentencing practice. This is your opportunity to make a permanent contribution to the legal profession, and in so doing, actually make a difference in the law.

TEXTS:
Nora V. Demleitner, Douglas A. Berman, Marc L. Miller, Ronald F. Wright, “Sentencing Law and

*In addition to these books, I will assign supplementary materials, i.e., law review articles, throughout the course for particular weekly reading assignments, and make them available to you either on blackboard or by providing you with copies in advance of a particular class.

INTERNET SITES (OPTIONAL):

*The following websites will be extremely helpful research tools, as they contain up-to-date information concerning a myriad of current sentencing issues confronting both federal and state courts.

www.sentencing.typepad.com
http://www.ussc.gov/

ATTENDANCE AND PREPARATION:

As you know, this class only meets once a week, and because we have a substantial amount of material to examine, I expect your regular attendance. Should extraordinary circumstances prevent you from attending class, please notify me in advance via email or telephone. Unfortunately, should you miss more than three classes without explanation, you will be dropped from the course.*

In addition, the effectiveness of a seminar depends heavily upon your preparation and active participation in the discussions, problems and exercises that we will conduct throughout the semester. Indeed, I hope that many of the discussions we will have, and exercises that you perform, will be quite interesting and thought-provoking, and will also challenge your analytical skills and ability to effectively advocate for a particular position give a specific set of facts and equitable considerations. However, please be assured that, for those of you who are uncomfortable with speaking in front of a large group of people, you will not be forced to engage in any exercises that require public speaking. Instead, I will make alternative arrangements with those of you who inform me beforehand of your difficulties in this area.

GRADING AND PRESENTATION OF PAPERS:

As set forth above, in this class each of you will draft an Article of publishable quality that addresses and proposes an original, persuasive and pragmatic solution to a problem that you identify in the operation, administration or interpretation of a state or federal sentencing practice. The Article must conform to the following guidelines:

- Minimum 30 pages in length (there is, however, no page limit);
- Double-Spaced;
- Footnotes, not endnotes;
- Times New Roman or Book Antiqua font;
- Clearly identifies and explains a specific problem with the operation, administration, or interpretation of a state or federal sentencing practice; and
- Proposes an original solution to the problem identified in the Article.

Importantly, compliance with these guidelines will not only satisfy the requirements for this course, but will also satisfy Loyola’s Upper-Division Writing Requirement.
In addition, at the end of the semester, each of you will provide a brief, ten-minute presentation during which you will discuss your topic, the relevant research that you have gathered, and the specific solution that you are proposing for the problem that your Article addresses. *Critically, the deadline by which you must inform me of your topic is October 29, 2008 (Of course, I welcome you to see me in advance of this deadline, but this will be the formal deadline). In addition, your final paper will be due to me no later than December 17, 2008 at 6:00 p.m.

With respect to grading, the lowest grade that will be given in this course will be a B+. This approach reflects my philosophy that you should not be overly concerned/pre-occupied about your grade in this course; rather, you should view this course as an opportunity to create an original piece of scholarship that can contribute to the development of sentencing law in a meaningful and lasting manner. To this end, those of you who draft papers of publishable quality that are of particular insightfulness will work with me at the conclusion of this semester, as we will revise and submit your work for publication to law reviews throughout the country, so that your voice can become part of the ever evolving discourse on sentencing law and policy.

**WEEKLY READINGS/TOPICAL DISCUSSIONS:**

Importantly, because this course requires you to draft an Article concerning a complex area of the law, we will spend a substantial portion of this seminar examining both the theoretical underpinnings of sentencing law, as well as the many practical issues that continue to arise in the operation, interpretation, and application of various sentencing practices. We will study a myriad of sentencing issues, including, but not limited to, the specific purposes of punishment that the criminal law should strive to effectuate through specific sanctions, the effects of sentencing guidelines on race, class and gender, the appropriate level of discretion that sentencing guidelines' should vest with judges when imposing a particular sentence or departing from a specific guidelines range, whether certain sanctions, i.e., the death penalty, are appropriate in certain instances and for certain offenders, whether alternative sanctions (other than prison) are more appropriate for certain crimes, and whether certain characteristics of criminal defendants, i.e., mental illness, are sufficiently accounted in the sentencing process.

In each of these areas, I will assign cases that we will discuss, as well as hypothetical problems that will require each of you to assume the role of prosecutor or defense counsel and argue for a particular sentence based upon the facts and equities of a particular case. In other exercises, I may assign you to the role of judge and/or legislator, as these individuals and institutions are highly involved in the sentencing determination. Perhaps most importantly, it is from these discussions that each of you will choose the topic upon which your Article will be based. In other words, our weekly discussions in this seminar, coupled with your readings, will provide you with ample information upon which to select a topic for your Article and begin your research efforts. With that as our course objective, we will proceed according to the following schedule (subject to revision as notified):

- **August 20:** Discussion of Course Expectations and Requirements; General Overview of Sentencing Law and Policy; Introduction to the Salient Issues Impacting Sentencing Law at the Federal and State Level (Assigned Reading -- Randy Pausch, “The Last Lecture” (2008))

  Introductory Question – 2 minute presentation from each student – “How do I want to be remembered when I die?”

Problem 1-1 – Richard Graves
Problem 1-2 – Red Hook Community Court
Problem 1-3 – Bromley Heath
Problem 1-4 – Sentencing Without Prison or Death
Problem 1-5 – Sentencing Budgets
Problem 1-6 – Crime in America
Handout – Violence in NYC

September 3: The Institutions and Individuals Responsible for Sentencing the Criminal Defendant – Analyzing Those that Create, Implement and Administer Sentencing Policy (Assigned Reading -- Demleitner, Berman, Miller, and Wright, pp. 85-137)

Problem 2-1 – Determining the Indeterminable
Problem 2-2 – Due North
Problem 2-3 – Savings Plan
Problem 2-4 – Letter from a Congressman
Problem 2-5 – Law Hanging Fruit

September 10: *The Reformation of Federal Sentencing Law – The Attempt to Regulate, and Thereby Reduce, Judicial Discretion through the Creation, Implementation and Administration of Sentencing Guidelines that were Binding in all But the Most Extraordinary of Cases. (Assigned Reading -- Demleitner, Berman Miller, and Wright, pp. 139-217); Adam Lamparello, “Introducing the ‘Heartland Departure’”, 27 Harvard Journal of Law and Public Policy No. 2 at 643 (Spring 2004)

Problem 3-1 – The Minnesota Machine
Problem 3-2 – Asymmetrical Guidelines
Handout – The Mandatory Minimum Problem


Handout – The Sentencing Hearing of Nicholas M. Jones
Handout – The Sentencing Hearing of Nathan A. Caruso

Problem 3-3 – Choose Your Poison
Problem 3-4 – Moratorium
Handout – Life and Death in New Jersey


Problem 4-1 – Rob Anon
Problem 4-2 – Rob Anon Revisited
Problem 4-3 – Take Two
Problem 4-4 – Predisposed to Prison
Problem 4-5 – Rob Anon Revisited
Problem 4-6 – Rob Anon Revisited
Problem 4-7 – Getting Tough on Drunk Drivers
Problem 4-8 – Rob Anon Revisited

October 8: Part Two -- Critical Aspects of the Sentencing Process Assessing the Seriousness of the Offender in its Totality (Assigned Reading Demleitner, Berman, Miller, and Wright, pp. 339-431)

Problem 5-1 – Rob Anon
Problem 5-2 – Helping Others
Problem 5-3 – Earned Time
Problem 5-4 – Turning Guidance into Guidelines
Problem 5-5 – Treatment and Timing
Problem 5-6 – Restitution and Rehabilitation
Problem 5-7 – Pillar of the Community
Handout – Mental Illness and the Criminal Offender


Problem 6-1 – Moving Violations of Blakely
Problem 6-2 – The Capital Jury
Problem 6-3 – Prior Juvenile Adjudications
Problem 6-4 – Indicting Blakely

October 22: Race, Class and Gender in the Criminal Justice System (Assigned Reading -- Demleitner, Berman, Miller, and Wright, pp. 673-732)

Problem 9-1 – Offender’s Race and Record
Problem 9-2 – Town and Country
Problem 9-3 – The Crack-Powder Differential
Problem 9-4 – Hard Worker
Problem 9-5 – Alien Status

Problem 8-1 – Don’t Work in My Backyard
Problem 8-2 – What’s worse?
Problem 10-1 – In Need of Treatment?
Problem 10-2 – Restraint
Problem 10-3 – Weapons on Wheels
Problem 10-4 – High Rollers
Problem 10-5 – Joint Owners

PAPER TOPICS DUE


November 12: Presentation of Paper Topics

November 19: Presentation of Paper Topics

FINAL PAPERS DUE NO LATER THAN DECEMBER 17 AT 6P.M