

SylCrimPro2018Jan82018

**Criminal Procedure
COURSE NO. 601, SECTION 1
ROOM 106
SPRING 2018
PROFESSOR LUPE S. SALINAS**

Table of Contents

The Professor	1
Course Books & Material	1
Course Description & Objective	2
Student Learning Outcomes	2-9
Grading	9-10
Accommodations	10
Attendance & Professionalism	10
Academic Calendar	10
Policies & Procedures	10
Reading Assignments	11-15

The Professor

Name: LUPE SALINAS

Telephone:

713-313-7353-office

832-276-6056-cell

Email: lsalinas@tmslaw.tsu.com

Office Location: Room 236J

Office Hours: Mon, 10-11am, 12-2 pm & 3-4 pm; Wed, 10-11am, 1-2 pm, & 3-4 pm; Fri, 10-11am (All other times by appointment only)

Note from the Professor: I realize the multiple study and personal responsibilities you have. At times, it is difficult for you to set up an appointment or come during office hours. I therefore encourage you to utilize the email approach as a method to clarify any confusions you might have about course issues. Within a day or less, I will respond to your questions.

Course Books & Materials

1] SCOTUS Cases, To Be Supplied by Prof. Salinas During the Semester via the Criminal Procedure LexisNexis Web Course.

2] Required Textbook: Amanda Peters, Texas Criminal Procedure and Evidence, 2017 ed., ISBN: 978-1-4548-8695-2, Publisher, Wolters Kluwer [TSU Bookstore].

3] Strongly Recommended Study Guide: Acing Criminal Procedure (Acing Series) 5th Edition, by Leslie Abramson, 239 pages; ISBN: 1634601335, Publisher: West Academic Publishing [Older edition is also helpful for your studies]

4] The Texas Code of Criminal Procedure (TCCP) is recommended: Use your Lexis Advance research tools to download TCCP statutes that we utilize if the Peters Text does not provide you enough detail.

Copies of the current syllabus, special assignments, and required new Supreme Court cases [after 2016] will also be available through the **Lexis Web Course** for your reading and class preparation.

Criminal Procedure: General Course Description and Topics

Course Objectives and Student Learning Outcomes (SLO)—By the end of the semester, students will be expected to have accomplished the following SLOs:

Constitutional Foundations

Constitutional Articles: Ex post facto and habeas corpus rights

Constitutional Amendments: The 5th and 14th Amendments as they deal with due process and equal protection

Constitutional Amendments: The Selective Incorporation approach to the application of constitutional rights to the states. The course describes how certain issues fall more into the concept of the 14th Am due process of law, the type of practice that offends our “ordered scheme of liberty” or sense of justice and fairness.

Constitutional Amendments: US history and the role of Race, Ethnicity, and Poverty our system of criminal justice, 5th and 14th Am.

Constitutional Amendments: Bill of Rights Provisions of the US Constitution, primarily Amendments 2, 4, 5, 6, and 8 as they apply to the federal government.

Constitutional Amendments: The Selective Incorporation of the Bill of Rights Provisions of the US Constitution, primarily Amendments 2, 4, 5, 6, and 8 as they apply to the state governments.

Constitutional Amendments: The Due Process Clauses of the 5th and the 14th Amendments.

Regarding the 14th Amendment, one should be aware of how a state or federal practice can be interpreted to violate “equal protection” rights.

To seek a declaratory judgment as to questionable state practices that might adversely affect Due Process and/or Equal Protection rights or concerns, litigants can utilize the 1871 Civil Rights Act, codified as Title 42, US Code, Section 1983 (42 USC § 1983), as was done in *Rothgery v. Gillespie County, Texas*.

Comity: Definition: Judicial comity is the respect shown by a court of one state to a

court of another state.

The Privileges and Immunities Clause (U.S. Constitution, Article IV, Section 2, Clause 1, also known as the Comity Clause) prevents a state from treating citizens of other states in a discriminatory manner. Additionally, a right of interstate travel may plausibly be inferred from the clause.

Art. VI, [2] This Constitution, and the Laws of the US which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the US, shall be the supreme Law. [The Supremacy Clause].

The Supreme Court's National Consensus Test, aka the Popularity Thesis, for deciding national constitutional standards in Criminal Cases, e.g., Mapp v. Ohio, 1961

The existence of other recognizable ethnic or racial groups besides Blacks and Whites in the equal protection assessment

Right to Counsel: "The Most Pervasive Right"

Right to Counsel: Poverty and Appointed Counsel and other equalizing protections in a criminal trial, Gideon v. Wainwright, 1963, Ake

Right to Counsel: Effective Assistance and the poverty "Equality" Principle as to resources to level the playing field: investigators, psychiatric aid, the right to an attorney on appeal, Ake v. Okla.

Right to Counsel: What is a Critical Stage in the determination of the Attachment of the Right, Rothgery v. Gillespie County

Right to Counsel: Self-representation or proceed *pro se* at trial, Faretta v. CA, 1975 & Indiana v. Edwards, 2008

Right to Counsel: The judicial role in a pro se request: The requisite warnings by judge, Faretta

Right to Counsel: The counsel of choice, Gonzalez-Lopez

Right to Counsel: The use of Undercover police and Secret civilian agents

Search Warrants

Search Warrants: 4th Am & the Exclusionary Rule, the Attenuation Doctrine and the Good Faith Defense, Wong Sun, US v. Leon, Brewer v. Williams

Search Warrants: 4th Am & the reasonable expectation of privacy: What are protected areas or interests? [Garbage, Open fields, exterior of Vehicles, luggage], Katz,

telephone booth; US v Jones, GPS; Greenwood, trash containers

Search Warrants: 4th Am & Enhancing the senses; the right to be free from an unreasonable search, Kyllo (imaging machine), Jardines, 2013 (canine front door sniff), Jones (GPS Tracking)

Search Warrants: Probable Cause (PC) concept and the totality of circumstances test, Gates, Aguilar-Spinelli cases

Search Warrants: PC & the use of “stale,” old, or unreliable information in PC determination, Leon

Search Warrants: PC & the intentional or reckless inclusion of false information in an affidavit, Franks v. Delaware remedy

Search/Arrest Warrants: PC & the victim’s inherent reliability as a witness

Search Warrants: PC & the neutral and detached magistrate requirement

Search Warrants: 4th Am & the Particular description of the place to be searched requirement

Search Warrants: Time limitations for the execution of the warrant

Search Warrants: Permissibility of the search of persons on premises of business where PC is focused on one person

Warrantless Searches

Warrantless Searches: The 4th Am and Racial profiling 4th Am search standards & computer or cell phone searches

Warrantless Searches: PC & Warrantless Arrests & Searches of the Person

Warrantless Searches: PC & Inventory: The viewing of the contents of a vehicle where a search incident to a lawful arrest does not suffice to for intrusion, Bertine, 1987

Warrantless Searches: PC or Reasonable Suspicion (RS) & Warrantless searches of premises incident to a lawful arrest, Chimel, the wing span doctrine and Buie, the protective sweep

Warrantless Seizures

Warrantless Seizures: The Terry v. Ohio Stop & Frisk or Reasonable Suspicion (RS) Standard and the unreasonable detention or seizure

Warrantless Seizures: 4th Am Reasonableness factors involving high speed chases & prison security settings

Warrantless Seizures: 4th Am & the judicial determination of PC following an arrest and the length of time allowed before seeing a magistrate, Gerstein & McLaughlin, 48-hour rule

Warrantless Seizures: PC & Pretext: The validity of a traffic stop conducted with PC but actually based on the Pretext to conduct a search or to investigate further, Whren

Additional 4th Am Issues

PC & rules dealing with the search of closed containers

The 4th Amendment implications of the abandonment of property

The 4th Amendment implications of standing where passengers are stopped while the driver is detained

The 4th Amendment and the anonymous tip

The 4th Amendment and the drug courier profile

The 4th Amendment and unexplained flight and a police seizure

The 4th Amendment and the protective search by an officer

The 4th Amendment and the brief detention in a racial profiling investigation

The 4th Amendment and administrative searches

The 4th Amendment and actual border (port of entry) searches

The 4th Amendment and vehicle checkpoints

The 4th Amendment and student searches at school

The 4th Amendment and random drug testing

The 4th Amendment and Network Surveillance, Necessity for Warrant in Email account

The 4th Amendment and a consent search after a verbal traffic warning

Two hour wait for search warrant reasonable when PC exists to arrest the Defendant

Exigent circumstances, arrest on warrant outside of home and the ability to search the interior of the home

Exigent circumstances, police need to assist injured occupant

Entry into home of another to arrest a suspect and the need for a search warrant

Warrantless Seizures & Searches of Vehicles and Containers

4th Amendment & third party consent, Rodriguez, Randolph, and Fernandez

The reasonable expectation of privacy

The federal and state rights (or lack thereof) to a Grand Jury Indictment

Constitutional Challenge to Trial Jury Composition and the Rule of Exclusion

Police Interrogation tactics and confessions

The Due Process “Voluntariness” vs “Totality of the Circumstances” Test for Admitting Confessions

Miranda and the current status of its viability in light of the 1968 Federal law, 18 USC §3501, and the voluntariness test

Adequacy of Miranda type warnings

Miranda type warnings and the consequences of silence

The determination of what constitutes custody

The determination of what constitutes custodial interrogation

Planting an agent in a custodial Jail Situation

Miranda type warnings and the booking info situation

Physical or demeanor evidence vs evidence of silence

Miranda type warnings and the Public safety exception

Miranda type warnings and the implied waiver of rights

Invocation of right to counsel; stopping interrogation; exceptions

Miranda warnings; suspect then initiates further communication with the police

The right to counsel: How clear and unambiguous must a suspect be to invoke right

The right to counsel: the 6th Am is offense specific, Cobb v. Texas

The right to counsel: The impermissibility of the production of a confession without warnings, & then graciously providing warnings and obtaining a second statement

The Due Process Voluntariness Test and the employment of Trickery & Deception after D waives his rights

Fabrication of scientific evidence and its impact on the confession's admissibility

Offering protection from other inmates to get D to talk

The 4th Am search exclusion and 6th Am right to counsel rules as altered by the Tex Code Crim Proc art. 38.23 (a) as they relate to activity by a private non-police actor

What constitutes Interrogation as compared to Deliberate Elicitation of an incriminating statement after having asserted Miranda rights

Passive vs Secret Agents and the admissibility of statements by suspects

The suggestiveness of Lineups, Showups, & Other Pretrial Identification Procedures

Right to counsel at a lineup where adversary judicial proceedings have been initiated

Right to counsel: Permissibility of photographic display without counsel

Transactional versus Derivative Immunity and the 5th Am Privilege

The Fruit of the Poisonous Tree concept and the Attenuation doctrine

The Inevitable Discovery Rule

The Use of Illegally Obtained Evidence for Impeachment Purposes

Permissibility of the Use of D's Prior Silence for Impeachment Purposes

Pretrial Release, The Right to Bail, and its incorporation status

The excessive bail concept and Constitutional Limits

Bail hearing is a critical stage

The Charging Decision: The DA's Decision Whether to Prosecute and what to charge

General and Texas limitations on the DA's Decisions: Tex Code Crim Proc art 2.01, the Duty of the Prosecutor to see that justice is done

Alleged racial/ethnic motive to prosecute and the need to establish not only discriminatory effect but also discriminatory purpose

Double Jeopardy rules: Determining if a sanction/punishment is criminal or civil

Double Jeopardy rules: Issue Preclusion Analysis, has the issue been resolved in another proceeding? *Ashe v. Swenson*

Double Jeopardy rules: The Manifest Necessity Mistrial exception

Double Jeopardy rules: when jeopardy attaches

Double Jeopardy rules: the need for the DA to "Goad" a mistrial to justify jeopardy, *Oregon v. Kennedy*

Double Jeopardy rules: Re-prosecution by a Different Sovereign, *Heath v. Alabama*

Sentencing rule: Retaliation for the exercise of one's Right to Appeal, *NC v. Pearce*

Speedy Trial violations: The four part test, *Barker v. Wingo*

The general right to Pretrial Discovery by the accused, Tex C. Crim. Proc. 39.14

The Constitutionally required *Brady v. Maryland* rule: the DA's duty to provide evidence that tends to diminish guilt, punishment or that tends to impeach witnesses, *Brady v. Md*

The rules related to Guilty Pleas and the waiver of the various rights of the accused pursuant to the *Zerbst* case: knowingly, intelligently, and voluntarily

Permissibility of an Alford Plea: The accused later claims his conviction was not voluntary; validity of plea is based on the standard of whether the plea was voluntarily and intelligently entered considering the alternative courses of action, *NC v. Alford*

The fundamental right to a Trial by Jury: The petty offense and no jury trial right

The fundamental right to counsel at Trial: The incarceration test [as opposed to the potential range of punishment]

Legal principles involving the size of the jury and the need for jury unanimity

The propriety of the use of the *Allen* or "dynamite" charge to the deadlocked jury

The existence of jury nullification and the inclusion or exclusion from the jury charge

The right to proportional representation on a jury of minorities or women

The use of peremptory challenge to strike a person on basis of race and gender and language

The due process implications of extensive Media, Pretrial Publicity and rules regarding a Change of venue

The right of the accused to be present and the waiver of the right to presence

The Right to Confrontation: testimonial vs non-testimonial statements, investigative versus emergency situations, Crawford, Davis v. Washington; Michigan v. Bryant

The Right to Confrontation: The informer's privilege and the remedy for nondisclosure, Roviario

The 6th Amendment Right to Compulsory Process for obtaining witnesses in his favor [to testify, to produce testimony], Rock v. Arkansas. #

Grading: Course Grade will be determined as follows:

Each student will be expected to participate and provide relevant class discussion when called upon. Failure to participate will result in a deduction of a point for each violation. The maximum number of a score for participation points is five (5).

The only other participation point I will accept include confirmed attendance at any felony criminal district court, e.g., like the 351st D Ct where I presided once and now one of our alums, the Hon. George Powell, presides. This judicial visit accounts for only one point for the entire semester. The other four points must be accumulated from CLASS input that involves correct renditions of criminal procedure law. Once you attend a court proceeding, I am sure you will find it interesting and you will want to go back on your own [if you have time].

A court attendance form is available on the Lexis web course page. Any confirmation form for your one court point, if you do want your court point, must be submitted by April 23.

In summary, the 100-point grading basis is set forth as follows:

1. An essay exam worth 25 points will be administered during the semester for your midterm exam. The essay portion, based on one fact pattern question, will require legal analysis and a persuasive and organized response, based upon your learning of US and Texas Criminal Procedure.

2. **The final exam counts for 70 points. The Exam will include scantron multiple choice questions and possibly some True and False submissions.**
3. **Participation points—maximum of 5 points total. It could be all 5 points in class participation or 4 points in class and one point in a court visit. However, lack of class participation may result in a one-point deduction for each unprepared when called upon.**

Accommodations

If you require special accommodations, please fill out the necessary forms with the Dean's office. Your application and documentation will remain confidential. Your prompt attention will allow the law school to accommodate you, as soon as it has been made aware of your situation.

Please see:

http://www.tsulaw.edu/student_affairs/docs/2011-2012AccommodationsHandbook.pdf

Attendance and Professionalism

Attendance policy: Arrival to class once the lecture or discussion of topics begins will be classified as an absence, although I will permit you to remain in the classroom. See the student manual regarding school policy regarding attendance for the number of absences permitted. The Student Rules and Regulations do **not** provide for excused absences under any circumstance(s), even school business. Keep records in the event you have to respond to Dean Mouton, Dean of Students.

Students are provided a certain number of absences per class, per semester that may be used/taken for any reason whatsoever. The allowed absences follow this formula: [number of credit hours x 2] – 1, (Example: 3(hrs.) x 2 = 6 – 1= 5 allotted absences for a three hour course).

Once the allotted number of absences are exceeded, a student's grade may be reduced. To this affect, a list of each student's name and the number of absences is submitted to the Office of the Dean at the end of each semester. As such, a scale is applied in order to calculate the grade reduction so that the rule is implemented in a uniform manner.

Academic Calendar

SPRING SEMESTER 2018 (SEVENTY DAYS OF CLASSES)

First Day of Class Monday January 8, 2018

M L K Holiday (No Classes) Monday January 15, 2018

Mid Term Examinations Mon – Fri March 5– 9, 2018

Spring Break Mon – Fri March 12 – 16, 2018

Good Friday (No Classes) Friday Mar. 30, 2018

Last Day of Classes Wednesday April 25, 2018

Final Examinations April 30- Fri May 11, 2018

Policies & Procedures--Please reference the Thurgood Marshall School of Law [Student Rules and Regulations Handbook](#).

Reading and Topic Assignments

Week 1

1/8 Introduction to Criminal Procedure: A Critical Historical Development; The 5th and 14th Amendments as they deal with due process and equal protection, and the Bill of Rights Provisions of the US Constitution, primarily Amendments 2, 4, 5, 6, and 8, as they relate to Criminal Procedure

1/10 Introduction to Criminal Procedure: The Bill of Rights; Constitutional Articles dealing with ex post facto and habeas corpus rights; the federal and state systems of justice and the concept of comity among the 52 jurisdictions

1/12 The Bill of Rights, Concept of Ordered Liberty; Palko v. Conn., 302 U.S. 319 (1937); The Supreme Court's National Consensus Test for deciding standards in Criminal Cases and the Concept of Ordered Liberty; The Selective vs Total Incorporation Doctrine;

Week 2

1/15 MLK—I have a dream! –Holiday Observance of this great leader for justice

1/17 No class –ICE Cancellation of Classes!! To be made up.

1/19 The Concept of Ordered Liberty; The Selective vs Total Incorporation Doctrine; The Supremacy Clause versus States Rights to Manage Criminal Justice; the Comity Concept and Federal Interpretation of the Bill of Rights; Limitations on state rights protections, Michigan v. Long, and the principle that a state court must rely on their ruling expressly and exclusively on the state constitution or state law;

Week 3

1/22 Palko v. Connecticut, 302 U.S. 319 (1937); A Modern Twist to the Supreme Court's National Consensus Test for deciding national standards in Criminal Cases; McDonald gun case: 1] the concept of ordered liberty, 2] the very essence of a scheme of ordered liberty, and 3] a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental to a fair trial;

1/24 5th and 14th Amend. Due Process v. Incorporation, Substantive Due Process, Rochin; Schmerber; Sacramento Co. v. Lewis; Michigan v. Long, 463 U.S. 1032 (Where state court provides greater protection than allowed under the US constitution, the state court must indicate “clearly and expressly” that its decision rests on independent state grounds)

1/26 Make-Up Class –Prof Salinas invited to Justice Sonia Sotomayor Lecture with UH Law Prof. Michael A. Olivas

Week 4

1/29 Race and the Constitution: Norris v. Alabama, Rule of Exclusion and the Prima Facie case; Hernandez v. Texas & a Class Apart Theory

1/31 Race and the Constitution: The Stop & Frisk or Reasonable Suspicion [RS] case, Terry v. Ohio; Racial Profiling and the 4th and 14th Amendments: Brignoni-Ponce, Montero-Camargo, Melendres v. Arpaio, 989 F. Supp. 2d 822 (D. Ariz. 2013) [Lexis]; accord, Floyd v. New York City, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

2/2 Police Practices, Arrest, Search & Seizure, Weeks & the Exclusionary Rule, Wolf; a reasonable expectation of privacy, Mapp & the Exclusionary Rule; the Attenuation Doctrine and the Good Faith Defense, US v. Leon; Franks v. Delaware, intentional or reckless inclusion of false info

Week 5

2/5 Race and the Constitution: Duncan v. Louisiana, 391 U.S. 145 (1968); Baldwin v. NY, 399 US 66 (1970) (No Jury required for a Petty Offense--6 months or less); Williams v. Florida, 399 U.S. 78 (1970) (Six person jury must be unanimous); Apodaca v. Oregon, 406 U.S. 404 (1972) (Among 12 jurors, convictions of 11-1 and 10-2 in non-capital cases permitted)Batson peremptory case; Miller-El v. Dretke capital murder case; United States v. Armstrong selective prosecution claim; Race-based sentencing decisions, Saldano v. Roach & Buck v. Davis, 137 S. Ct. 759 (2017); Racial animus in jury deliberation, Pena-Rodriguez v. Colorado, 137 S. Ct. 855 (2017);

2/7 The 4th Am Warrant Requirement vs Warrantless Searches: Terry v. Ohio Revisited in Rodriguez v. US, 135 S Ct 1609 (2015); Hudson v. Michigan, 547 US 586 (2006) (The Court Returns to Wolf v. Colorado); Katz v. United States, 389 U.S. 347 (1967) with focus on J. Harlan concurring opinion; California v. Greenwood, 486 U.S. 108 (1988);

2/9 The 4th Am: Exigent circumstances & warrantless searches in cases involving Intoxication, Birchfield v. North Dakota (2016); Schmerber v. Calif, 384 U.S. 757 (1966); Missouri v. McNeely, 133 S. Ct. 1552 (2013); Cole v. State, 490 SW3d 918 (Tex. Crim. App. 2016); Exigent circumstances to enter homes and private places: Search without a warrant where PO has PC evidence of a crime, Payton v. NY, 445 US 573 (1980); PO seeks to provide urgent aid to those inside, Brigham City v. Stuart, 547 US 398 (2006); PO is in “hot pursuit” of a fleeing suspect, Warden v. Hayden, 387 U.S. 294 (1967); and PO fears the imminent destruction of evidence, Kentucky v. King, 131 S. Ct. 1849 (2011)

Week 6

2/12 Consent & Third Party Consent: Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (No need for warnings); Illinois v. Rodriguez, 497 U.S. 177 (1990); Georgia v. Randolph, 547 US 103 (2006); Fernandez v. California, 134 S. Ct. 1126 (2014); Standards of Proof between Federal and State of Texas Consent—Preponderance vs Clear and Convincing

2/14 Right to Counsel at Trial & Poverty: Powell v. Alabama, 287 US 45 (1932); Betts v. Brady, 316 US 455 (1942); Gideon v. Wainwright, 372 US 335 (1963) (felony); Argersinger v. Hamlin, 407 US 25 (1972) (Misdemeanors); Scott v. Illinois, 440 U.S. 367 (1979) (Contradiction of the Argersinger rule);

Right to Counsel on Appeal/ Poverty: *Ross v. Moffit*, 417 US 600 (1974) (Counsel for mandatory appeal); *Griffin v. Illinois*, 351 US 12 (1965) (Transcript for Appeal); *Ake v. Oklahoma*, 470 US 68 (1985) (Assistance with Psychiatric Expert); *Caldwell v. Miss.*, 472 US 320 (1985) (Aid denied; exception to *Ake*, guidelines)

2/16 Right to Counsel of Choice: *Johnson v. Zerbst*, 304 US 458 (1938) (voluntarily, knowingly and competently waive rights); *Faretta v. CA*, 422 US 806 (1975) (pro se); *Indiana v. Edwards*, 554 US 164 (2008) (Limits to Pro Se); *US v. Gonzalez-Lopez*, 548 US 140 (2006) (Right to Counsel of Choice);

Week 7

2/19 Confessions: *Colorado v. Connelly*, 479 US 157 (1986)—(Brennan, dissenting: “Triers of fact accord confessions such heavy weight in their determinations that the introduction of a confession makes the other aspects of a trial in court superfluous, and the real trial, for all practical purposes, occurs when the confession is obtained”); *Massiah v. US*, 377 U.S. 201 (1964); *Miranda v. Arizona*, 384 US 436 (1966); What constitutes custody or custodial interrogation, *JDB v. NC*, 131 S Ct 2394 (2011); *Salinas v. Texas*, 133 S. Ct. 2174 (2013), Pre-arrest silence; *Doyle v. Ohio*, 426 U.S. 610 (1976) (DA’s comment during trial regarding the D’s post-Miranda silence is unlawful);

2/21 Interrogation and Right to Counsel: *Rhode Island v. Innis*, 446 U.S. 291 (1980) (PO comment about a missing gun); *Brewer v. Williams*, 430 U.S. 387 (1977) [*Williams I*—The “Christian burial speech” Case]; *Illinois v. Perkins*, 496 U.S. 292 (1990) (The Jail Plant Situation--OK); *U.S. v. Henry*, 447 U.S. 264 (1980) (Confession Not OK); *Texas v. Cobb*, 532 U.S. 162 (2001) (Rt to Counsel is Offense Specific & does not attach to other crimes, even if closely related)

2/23 Ineffective Assistance of Counsel (IAC) Claims: *Strickland v. Washington*, 466 U.S. 668 (1984) (2 Prong Test) (Florida Capital Murder); *Soffar v. Johnson*, 237 F.3d 411 (5th Cir. 2000) (Houston, Texas Capital Murder); *Padilla v. Kentucky*, 599 U.S. 356 (2010); *Lee v. US*, 137 S Ct 1958 (2017) (Plea after Counsel erred in advice re deportation) &

IAC Review: *US v. Cronin*, 466 U.S. 648 (1984); presumption of prejudice, *Powell v. Alabama* (1932); Per Se violations, e.g., *Geders v. US*, 425 US 80 (1976) (Interference cases); *Cuyler v. Sullivan*, 446 U.S. 335 (1980) (Counsel “burdened by an actual conflict of interest” representing co-defendants); *Burdine v. Johnson*, 262 F.3d 336 (5th Cir. 2001) (The Sleeping Lawyer Case) (Constructive Denial of Counsel--absence at a critical proceeding).

Week 8

2/26 The Attenuation or Fruit of the Poisonous Tree Doctrine: *Wong Sun v. US*, 371 US 471 (1963) (Illegal Arrest/Confession); *US v. Wade*, 388 US 218 (1967) (Right to Counsel Line-Up); The Independent Source and/or Inevitable Discovery Rule, *Nix v. Williams*, 467 US 431 (1984) [*Williams II*], the sequel to *Brewer v. Williams* [Christian Burial]; *Utah v. Strieff*, 136 S. Ct. 2056 (2016) (Discovery of Warrant—Inevitable)

2/28 Double Jeopardy Rights: Palko Revisited; Ashe v. Swenson, 397 US 436 (1970) (Identity issue resolved; res judicata); Illinois v. Somerville, 410 US 458 (1973) (Manifest Necessity Mistrial); Oregon v. Kennedy, 456 US 667 (1982) (DA “Goads” or forces a D’s Request for a mistrial); Heath v. Alabama, 474 U.S. 82 (1985); Commonwealth of Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016) (PR not a separate sovereign);

3/2 The 6th Am Right to Confrontation: Michigan v. Bryant, 562 U.S. 344 (2011); DA Misconduct: The Duty of the Prosecutor, Tex. Code Crim. Proc. Art. 2.01; Brady v. Maryland, 373 US 83 (1963); US v Bagley, 473 US 667 (1985); Kyles v. Whitley, 514 US 419 (1995); Peters Texas Code of Criminal Procedure Textbook [hereafter TEXT], Ch. 1, Arrest, pp 1-56 [Practice Q’s on your own for all chapters]

Week 9

3/5 Continue with Peters Texas Code of Criminal Procedure Textbook [hereafter TEXT], Ch. 1, Arrest, pp 1-56 [Practice Q’s on your own for all chapters]

3/7 TEXT, Ch. 2, Search Warrants and Motions to Suppress Evidence, pp 63-94

3/9 Prof. SpearIt—Combined Class Lecture, Rooms 106 & 107—Salinas on Business -- Symposium Lecture Travel, Michigan State University College of Law

Week 10 Spring Break—Mar.12-16, 2018

3/12 Travel

3/14 Arrival at East Lansing, MI

3/16 Presentation on Panel: Police Brutality, the Use of Unwarranted Deadly Force, and the Lack of Accountability

Week 11

3/19 TEXT, Ch. 2, Search Warrants and Motions to Suppress Evidence, pp 95-113; Ch. 3, Warrantless Searches, pp 121-43 [top 4 lines]

3/21 TEXT, Ch. 3, Warrantless Searches, pp 143-62 [top 4 lines]

3/23 TEXT, Ch. 4, Jurisdiction, Venue, & Charging Instruments, pp 171-202 [top 6 lines]; Dismissals, 217-220

Week 12

3/26 TEXT, Ch. 5, Bail, pp 227-251

3/28 Essay Exam (25 points) in Room 211 [1:50-2:55 PM]

3/30 Holiday

Week 13

4/2 TEXT, Ch. 6, Bail, pp 257-89

4/4 TEXT, Ch. 7, Pretrial Matters, pp 299-335

4/6 TEXT, Ch. 8, Plea Negotiations, pp 345-77

Week 14

4/9 TEXT, Ch. 9, Discovery, pp 383-403

4/11 TEXT, Ch. 9, Discovery, pp 403-21

Week 15

4/16 TEXT, Ch. 10, Statements, pp 429-68

4/18 TEXT, Ch. 11, Jury Selection, pp 475-512

4/20 TEXT, Ch. 12, Trial, pp 523-46

Week 16

4/23 TEXT, Ch. 12, Trial, pp 546-69 [Skip Ch. 13, Punishment]

4/25 TEXT, Ch. 14, Post-Conviction Relief, pp 627-48 [Skip Ch. 15, Evidence—but do review on your own for bar purposes]

Make-Up Classes—1/17/2018—Ice Storm Cancellation of Classes; 1/26/2018—Prof Salinas attended Justice Sonia Sotomayor Lecture with UH Law Prof. Michael A. Olivas

The 2 class hours can be made up in late March or early April on an agreed-upon Saturday for a Showing of the classic *Twelve Angry Men*, a 105-minute movie that is an incredible depiction of the jury deliberation process and the concept of guilt beyond a Reasonable Doubt, or BARD as we at times abbreviate the term.

The primary actor is Henry Fonda, father of Jane Fonda, is the primary star and protagonist. Following the closing arguments in a murder trial, the 12 members of the jury must deliberate, with a guilty verdict meaning death for the accused, an inner-city teen. As the dozen men try to reach a unanimous decision while sequestered in a room, one juror (Henry Fonda) casts considerable doubt on elements of the case. Personal issues soon rise to the surface, and conflict threatens to derail the delicate process that will decide one boy's fate.