

**CIVIL RIGHTS LAW
COURSE NO. 747, SECTION 1
Tues & Thur—Room 105 2:30-3:45 PM
Fall 2019**

PROFESSOR LUPE S. SALINAS

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The Professor

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About the Professor: Judge Lupe S. Salinas

I began my 16 years of service as a Harris County Trial Judge in 1983 and am now a Retired Criminal Court Judge of the 351st District Court of Harris County, Texas. I now have 47-plus years of legal experience. I began as a civil rights litigator with the Mexican American Legal Defense & Educational Fund (MALDEF) in school desegregation and educational equity cases in federal court. I then served as a Harris County Assistant DA, an Assistant US Attorney in Houston, Special Assistant to the US Attorney General in Washington, DC, returned to Houston as Chief of the US Attorney's Civil Rights Division, as a Visiting Professor of Law at the UH Law Center, then Chief of the Federal Trials Division for the Harris County Attorney in 1985 before I returned to the state bench in 1989.

After my jury victory in the Randy Webster throwdown gun case and an assignment with the US Attorney General in Washington, DC, I returned to serve as Chief of the Civil Rights Division of the US Attorney's Office in Houston during the period of 1980-83. In Sept. 1983 Gov. Mark White appointed me to the criminal court bench, serving until Dec. 31, 1984 due to a defeat generated by the President Reagan landslide. After six months as a Visiting Professor of Law at the University of Houston, in June 1985 I began my service as the Harris County Attorney's Chief of the Federal Trials Division, defending the county sheriff and officers in Section 1983 civil rights cases.

I also taught Civil Rights Litigation as an adjunct professor at the University of Houston Law Center in 1992-93. From time to time, I taught the Chicanos/Latinos and the Law Seminar, beginning in 1975 until 1994 at the undergraduate level and at the UH Law Center. I then began teaching the course in Jan. 2001 at TMSL as Latinos and the Law.

Note from the Professor: Copies of the syllabus and special assignments such as the writing requirement will be available through the LEXIS NEXIS WEB COURSE system—SIGN IN IMMEDIATELY DURING THE WEEK OF AUG. 19, 2019!! We plan to have a LexisNexis Representative provide a class presentation on how to utilize Lexis Advance for your research needs. For your writing requirement, be sure to take advantage of this service. LAW 747 [Civil Rights Law] IS A COURSE THAT MEETS THE WRITING REQUIREMENT and it requires an article even if you already have done a writing requirement paper.

COURSE BOOK & MATERIALS

- **Salinas Class Handout of Lecture Material: Civil Rights Statutes, Cases, & News Materials**

Professor Salinas will provide the relevant statutes in the handout and will add on the Lexis Web Course relevant SCOTUS and other federal court cases as well as those new cases that arise during the semester.

- **Recommended as a Source Book or Research Tool: U.S. LATINOS AND CRIMINAL INJUSTICE, Copyright © 2015 by Lupe S. Salinas, Michigan State University Press, ISBN: 978-1-61186-176-1. You can purchase the book through the Michigan State University Press or from Amazon and me or maybe even at a Half Price Books store. It generally sells for \$40 or less plus shipping. The book refers to various issues related to 42 USC Sec. 1983.**

Please understand that the book went to print at the time our current President began his campaign on a rather strange note with his June 2015 statement that Mexico sends the US its worst: He described Mexican immigrants as rapists and criminals (adding in his now-familiar traditionally contradictory style—"but some of them are good") and recently added that immigrants "infest" our nation. See TIME Staff, Here's Donald Trump's Presidential Announcement Speech, TIME, June 16, 2015, <http://time.com/3923128/donald-trump-announcement-speech/>; David A. Graham, Trump Says Democrats Want Immigrants to

'Infest' the U.S., The Atlantic, June 19, 2018,
<https://www.theatlantic.com/politics/archive/2018/06/trump-immigrants-infest/563159/>.

I present this information to you to incentivize, encourage and/or stimulate your thoughts on writing a legal paper to depict what Thurgood Marshall would have done if he were with us and writing a legal brief against the actions of the POTUS.

- **SCOTUS –the Supreme Court of the US—Opens a New Term on the First Monday in October, this year on Oct. 7, 2019. In order to see what cases the Court has decided or will consider for argument, go to <https://www.supremecourt.gov/opinions/opinions.aspx> This link will give you a list of S Ct opinions from the past term of Court.**

In addition, class lectures will provide information about the various Civil Rights Acts besides 42 USC Sec. 1983 as they impact education, voting, employment, and other civil rights. These class discussions [5 points student participation] provide the foundation for the material that will be tested on the end-of-semester exam [25 points]. The writing requirement counts for 70 points.

Course description & objective—Civil Rights Law

Our history has been tainted with racism, and we as the people of the United States need to face this reality. Our nation began as one favoring white citizens, generally referred to as Caucasians and as Anglos in the US Southwest and West. The racism and violence focused on Blacks and Native Americans from the inception until the 1820s when Whites began to move west into Mexican Texas. By 1836, the predominantly Southern Anglos who brought their slaves defeated the Mexican Army and Texas became an independent republic. Ten years later, in 1846, the US Army invaded Mexico and took a big chunk of the Mexican Empire because Manifest Destiny and God allegedly destined the US to own the territory from coast to coast. By 1848, it was all over, and Mexico signed a treaty giving up a huge chunk of land in return for some money.

As a result of the changed border, one that now crossed where Mexicans had lived for a century, a new people were introduced to this nation. By becoming citizens by treaty, they were assumed to be “white.” The problem then became: are they white, brown, yellow, red or what? The mestizo population of Mexico became eligible for citizen status by the treaty’s edict, but the Anglo society was not so willing to accept the judge’s decision in 1897. Today Mexicans, as well as any other Latino that can be confused for being a Mexican, will be told to “Remember the Alamo” and to “Return to Mexico!”

And then came the Asians—Chinese, Japanese, and Filipinos—and a new group began to become a target. In the World War II era, we saw the attacks on Japanese Americans and Jews in Europe. In 1969 when your professor was in your shoes as a student, he vicariously suffered a verbal assault by a white California jurist against a Mexican-descent juvenile by declaring in open court that maybe Hitler was right in that certain people had to be eliminated from our society like “animals.” Notwithstanding this extremeist and

unethical act, the predominant white Anglo voters overwhelmingly retained this racist judge in the next election.

In more recent years, we have witnessed Muslims in general as the focus of the hatred. Yes, hate has been part of the history of our nation, but it is not a justification for tolerance of hate crimes and overt discrimination. The course will also discuss and be open to research of hate crimes against the LGBT community and gender inequality.

Grading: Course Grade will be determined as follows:

1. Five total [5] points will be assigned to class participation of the various topics in class discussions. Such involvement is an essential aspect of a seminar. Each student will be expected to participate in and provide relevant class discussion.
2. An exam worth 25 points will be administered towards the end of the semester. Take good notes. The exam will cover the guest speakers, lectures, DVDs, and the contents of the Civil Rights Course Handout containing Cases, Statutes, and Materials. The exam details and format will be T/F and/or Multiple Choice Questions and will be administered on the last day of class, Nov. 26, 2019.
3. The required writing assignment counts for 70 points. The electronic copy in Word is due by email to lupe.salinas@tmslaw.tsu.edu on or before Dec. 8, 2019.
4. A failing overall grade is any score below 60 total points. Take good notes of all discussions to maximize your grade.

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

Participation, Attendance & Professionalism

Attendance policy: See student manual regarding school policy regarding attendance for the number of absences permitted. 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.

The Student Rules and Regulations do not provide for excused absences under any circumstance(s). 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, equals the number of absences permitted (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. The 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.

Again, arrival to class once the lecture or discussion of cases or class material begins will be classified as an absence, although I will permit you to remain in the classroom. If you come in late, check with me after class to see if you arrived before I began the lecture.

Academic Calendar Fall 2019

First Day of Class Tuesday, August 20, 2019

Mid Term Examinations Monday–Friday October 14–18, 2019

Last Day of Classes Tuesday November 26, 2019

Reading Period (NO CLASS) Wednesday November 27, 2019

Thanksgiving Holiday Thursday–Friday November 28–29, 2019

Final Examinations Monday–Friday December 2–December 13, 2019

Student Learning Outcomes (SLOs)

Student Learning Objectives (SLOs): SLOs are the knowledge base and skills that the professor desires the students to exhibit at the completion of the course. SLOs are measured by performance criteria that indicate the specific characteristics students should exhibit in order to demonstrate the desired achievement of the learning outcome.

Eventually, the student should be able to engage in various progressive levels of analysis:

- * Remembering the unique facts,
- * Understanding their importance,
- * Applying them to the legal standards,
- * Analyzing the overall impact,
- * Evaluating and determining the culpability or lack of responsibility of the person accused of a violation of civil rights.

After completing course materials and participating in class discussions, a student in Civil Rights Law will be in position to identify what statutory and constitutional rights have been possibly violated, will be able to assess the merits of a claim, and will then be able to prepare the necessary pleadings to prosecute claims for an alleged plaintiff victim or to defend against these claims.

In order to evaluate the student's accomplishment of these objectives, the professor will employ an end-of-the-term multiple choice exam by which the students will be able to apply their knowledge and application of the principles of civil rights litigation as well as issues discussed in the criminal justice system that result in injustice, such as racial profiling.

Some of the Student Learning Outcomes topics to be covered include:

Elements of a Plaintiff's 1983 Claim
The "Under Color of" Law Concept—State Action
Actions as to Official and Individual Capacity
Private Persons as State Actors
Combination of Private and Public Actors
Policymakers and Persons, Monell v. Department of Social Services, NY
Policymakers: Single act; lack of training
Bivens v. Six unknown named agents, actions against Federal Officers
Routes to Governmental Liability: Direct action [official policy]; custom; attribution; failure to train, and others
Defenses to Liability
Absolute Immunity: Legislative; Judicial; Prosecutorial;
Exception to Absolute: Qualified Immunity if acting outside jurisdiction
Qualified Immunity: The Clearly Established Law Concept
The Status of States as Persons
Compensatory vs Punitive Damages
Injunctive Relief
Property
Liberty
Procedural Due Process
Substantive Due Process
Fourth Am & Police Misconduct
Equal Protection
Public Employee Speech Rights
Litigation of Section 1983 claims in State court
Eleventh Am. Jurisprudence
Attorney's Fees

Class Reading Assignments

Week 1

Tu 8/20 Introduction to Civil Rights Law—Take good notes of all discussions to maximize your grade; we will cover a general history leading to the passage of the Civil Rights Legislation after the Civil War

Th 8/22 An Overview of the Course; Discussion of the Course Materials Handout; Recommended readings for your research: US Latinos and Criminal Injustice (MSU Press 2015)

Week 2

Tu 8/27 The Law School Writing Requirement and Selection of Your Topic; Discussion of Handout: Meeting the Graduation Writing Requirement—The Bluebook, law review examples, thesis statement, and organization

Th 8/29 Introduction to the Constitution: The federal and state systems of justice and the 5th and 14th Amendments as they deal with due process and equal protection: Yick Wo v. Hopkins, S Ct (1886); Norris v. Alabama (1935), the Scottsboro Youth Injustice;

Week 3

Tu 9/3 Jury Rule of Exclusion and the Prima Facie case of Discrimination; Hernandez v. Texas and the Texas Class Apart Theory

Th 9/5 Qualified immunity, Is there a clearly-established constitutional right?, Harlow v. Fitzgerald; Safford Schools v. Redding, school search limits; Mitchell v. Forsyth, 472 U.S. 511 (1985); White v. Pauly, 137 S. Ct. 548 (2017) (Qualified Immunity: PO Arrives Late to Shooting Scene) *versus* Absolute Judicial Immunity: Pierson v. Ray, 386 U.S. 547 [1967], The Seminal Case on Sec 1983 Judicial Immunity; Forrester, Employment decision by Judge, No Judicial Immunity; Kalina v. Fletcher, 522 U.S. 118 (1997) (No Absolute Prosecutorial Immunity for DA when acting outside duties of trial lawyer—investigator in this case) (Prosecutorial Immunity (generally available while acting in trial)

Week 4

Tu 9/10 Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977)—The Arlington Heights Equal Protection Intent Test; United States v. Armstrong, 517 US 456 (1996), selective prosecution claim

Th 9/12 Race and the Constitution: Civil Rights Laws in Post-Civil War America: The 1871 Civil Rights Act, codified at 42 USC § 1983; The “Under Color of” Law Concept—State Action, as explained by Monroe v. Pape, S Ct (1961) and then by Monell v. Dept. of Social Services, NYC, S Ct (1978) and several other cases.

Week 5

Tu 9/17 Monroe v. Pape, 1961, Police Misconduct, 4th Am violation—Home search without a warrant; No to Municipal Liability; City of Chicago is not a “person;” Introduction to Civil Rights Law—The 1871 Civil Rights Act, 42 USC Sec. 1983

Th 9/19 Monell v. Dept. of Social Services, NYC, S Ct (1978), reversing Monroe; Yes to Municipal Liability; City of New York as a “person;” the 1871 Civil Rights Act, 42 USC Sec. 1983

Week 6

Tu 9/24 Guest Speaker—Civil Rights Litigation Sec. 1983 and the Award of Attorney’s Fees to the Prevailing Party

Th 9/26 The State Action Requirement for Sec. 1983 Relief: Voting Rights and the Democratic “White” Primary, Smith v. Allright, 321 U.S. 649, compared to Burton v.

Wilmington Parking Authority, 365 U.S. 715; Private actors who collaborate with state actors become actors under color of state law;

Week 7

Tu 10/1 Conspiracy cases, e.g., United States v. Price, 383 U.S. 787 (1966), the Freedom Riders murders, 18 USC Sec. 241; Griffin v. Breckenridge, 403 U.S. 88 (1971), 42 USC Sec. 1985 (3) Conspiracy coverage; Dennis v. Sparks, 449 US 24 (1980), Collaboration of Private Party with a State Judge

Th 10/3 Screws v. United States, 1945, 18 USC Sec. 242; Criminal Prosecutions of Lawless Police Behavior—Abuses Resulting from Federal Immigration Enforcement Efforts: The Incredibly Vicious 2010 Beating and Tasing Death of Anastacio Hernandez-Rojas and the Failure of the DOJ to Prosecute Border Agents and Supervisors for Deprivation of His Civil Rights

Week 8

Tu 10/8 Bivens v. Six Unknown Federal Narcotics Agents, 403 U. S. 388, (1971), and the Right to Sue the US Govt for Deprivations of Liberty; Hernandez-Rojas family filed a Bivens action and settled; another Bivens Action has been dragging in the courts in the Shooting of a Mexican teenager on the Mexico side of the river by an Agent standing on American Soil, claiming the kid was throwing rocks at him: see Hernandez v. Mesa, 137 S. Ct. 2003 (2017)

Th 10/10 Racial Profiling: The 4th & 14th Amendments--Revisiting Terry v. Ohio and the Unwarranted Seizure: Brignoni-Ponce (1975), Montero-Camargo (2000), Melendres v. Arpaio, 989 F. Supp. 2d 822 (D. Ariz. 2013); and Floyd v. New York City, 959 F. Supp. 2d 540 (S.D.N.Y. 2013); But See: Substantive Due Process, The Shocking the Conscience Standard, The Unreasonable 4th Amendment seizure established in Tenn. v. Garner; Graham v. Connor, the objective standard of reasonableness; Sacramento County v. Lewis, 523 U.S. 833 (1998), seizure not intentional.

Week 9

Tu 10/15 Race and the Constitution: Civil Rights Laws in Post-Civil War America: The 1866 Civil Rights Acts, 42 USC Sections 1981 & 1982 [rights to enter into contract and to purchase land as is enjoyed by white citizens] [these statutes are broad enough to protect white Iraqi-American; Mexicans, Jews, Aliens, and even white Caucasian victims of racial discrimination]; see McDonald v. Santa Fe Trail Transportation, 427 U.S. 273 (1976);

Th 10/17 Employment Discrimination: Civil Rights Act of 1964, 42 USC Sec. 2000e; The Equal Pay Act of 1963; Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007); President Obama signed the Lilly Ledbetter Fair Pay Act on January 29, 2009 to help address the unfair and unacceptable wage gap between men and women and restored the

protection stripped away by the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), which severely restricted the time period for filing complaints; the Act contains an explicit retroactivity provision; *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Price Waterhouse v. Hopkins*, 490 US 228 (1989) (corrected the standard of proof back to a preponderance from a clear and convincing standard); *Disparate impact v. Disparate treatment standards*; *Termination for Speaking Spanish on the Job*, *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980); *Garcia v. Spun Steak Co.*, 13 F.3d 296 (9th Cir. 1993);

Week 10

Tu 10/22 The Civil Rights Act of 1957, The Commission on Civil Rights; Civil Rights Act of 1964, Title II, Public Accommodations, *TMSL Alumnus Brandon Ball Case* [The Gas Lamp, Houston, Texas]; Non-Discrimination in Federally-Funded Activities: Civil Rights Act of 1964, 42 USC Sec. 2000d; Title VI, Intent v. Effect Test, *Lau v. Nichols*, 414 U.S. 563 (1974); Agency enforcement, 42 USC Sec. 2000d-1; Title VI and Need for Disc Intent Proof?; personal plaintiff-initiated litigation limited to intent test theory, *Guardians Association v. Civil Service Comm'n*, 463 U.S. 582 (1983); the U.S. Department of Education's Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972 which protects people from discrimination based on "sex" in education programs or activities that receive Federal financial assistance; see *Jackson v. Birmingham Bd. of Ed.*, 544 U. S. 167 (2005).

Th 10/24 Voting Rights Act of 1965 as amended in 1975 and 2006—effective through 2032]; *Barbara Jordan's 1975 Bilingual Ballot Amendment*; The 2006 Amendment effective through 2032; sections 2, 4, and 5; *LULAC v. Perry*, 548 U.S. 399 (2006) (Henry Cuellar, Laredo); *Shelby County v. Holder*, 133 S. Ct. 2612 (2013) [voided 2006 Section 4 coverage as outdated!]; Redistricting Issues have undermined access by minorities to a fair vote, *LULAC v. Perry*, 548 U.S. 399 (2006) (Henry Cuellar, Laredo); in June 2019, the Court threw a major barrier by ruling that "partisan gerrymandering claims present political questions beyond the reach of the federal courts" [NC and Maryland Cases]

Week 11

Tu 10/29 Video: DVD--Reconstruction: The Second Civil War—175 minute series—65 min/day, Day 1 of 2;

Th 10/31 Video: DVD--Reconstruction: The Second Civil War—175 minute series—65 min/day, Day 2 of 2;

Week 12

Tu 11/5 Lexis Nexis Rep Presentation on use of Lexis Advance

Th 11/7 Writing Tips and Bluebook Refresher Lecture

Week 13

Tu 11/12 Are Undocumented and other Aliens Covered by Constitutional Protections and Guarantees?; The Constitution's 5th & 14th Am Due Process/Equal Protection Protectionns—Bolling v. Sharpe, the 1954 Washington, DC segregation case [Brown v. Bd of Educ, 347 US 483 (1954)]; Plyler v. Doe (Undoc Students); Anastacio death settlement with US Govt

Th 11/14 The Justice Kennedy Legacy: Evolution of Gay Rights, from Griswold v. Conn., the right to privacy case, to Roe v. Wade, to Lawrence v. Texas, the right to privacy case in the bedroom case, and finally, the Obergefell v. Hodges, the right to marriage equality case (2015)

Week 14

Tu 11/19 Hate Crimes in America—El Paso, Texas Aug. 3, 2019; in 1981, nineteen-year-old Michael Donald was lynched by two members of the United Klans of America abducted him, beat him, cut his throat and hung his body from a tree on a residential street in Mobile, Ala. In retaliation for an interracial jury that failed to convict another black man for killing a white police officer in Birmingham. The two Klansmen who carried out the ritualistic killing were eventually arrested and convicted. Others burned a cross on the court grounds. Lawyers for the Southern Poverty Law Center sued the Klan itself on the theory that they should be held responsible for the lynching. In 1987, the Center won an historic \$7 million verdict against the men involved in the lynching. The United Klans group was forced to turn over its headquarters to Beulah Mae Donald, Michael Donald's mother. This same group engaged in beating the Freedom Riders in 1961, murdering civil rights worker Viola Liuzzo in 1965, and bombing Birmingham's 16th Street Baptist Church in 1963.

Th 11/21 Video: A Class Apart, an educational video about Hernandez v. Texas, 347 US 475 (1954) and the “Class Apart” from-other-Whites Theory—Gus C. Garcia, Carlos C. Cadena, and John J. Herrera (55 minutes)

Week 15

Tu 11/26 Final Exam –Multiple Choice & T/F; Last day of classes;

Th Thanksgiving Day

Week 16 & 17

Final Examinations Monday–Friday, Dec. 2–Dec. 13, 2019