

LATINOS & THE LAW
COURSE NO. 850, SECTION 1
Tues & Thur—Room 105 11-11:50 AM Room 105
Fall 2019

PROFESSOR LUPE S. SALINAS

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The Professor

Name: LUPE S. SALINAS

Telephone: 713-313-7353-office; 832-276-6056-cell

Email: lupe.salinas@tmslaw.tsu.com

Office Location: Room 236J

Office Hours: Mon, 10AM-2 PM; Tues, 10-10:50 AM, 12-2 PM; Thur, 10AM-11 AM, 12-1 PM (All other times by appointment only)

About the Professor: Judge Lupe S. Salinas

A Retired Criminal Court Judge, I began my 16 years of service as a Harris County Trial Judge in 1983. I now have a total of 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 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.

After my victory in the Randy Webster throwdown gun case and an assignment with the US Attorney General in Washington, DC, I served 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 and police 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 system—SIGN IN IMMEDIATELY!!

Course Books & Material: Required Textbook: US Latinos and Criminal Injustice. Obtain immediately at TSU Bookstore, Amazon, the Publisher, or from the Professor. It generally sells for \$40 or less plus shipping. U.S. LATINOS AND CRIMINAL INJUSTICE, Copyright © 2015 by Lupe S. Salinas, Michigan State University Press, ISBN: 978-1-61186-176-1

The book US Latinos and Criminal Injustice serves as the foundation for class lectures and discussions. In addition, class lectures will provide information about the Civil Rights Act, 42 USC Sec. 1983 and 1981, as the statutes impact education, voting, employment, and other civil rights. These class discussions [5 points 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—The History of Chicanos/Latinos and the Law

Chicanos suffered discrimination and other atrocities across the nation, primarily in California and Texas. First, the judicial system appeared tilted against Blacks and Chicanos. For example, the 1970 US Commission on Civil Rights report stated that the court systems in the Southwest engaged in disparate treatment and outright bias when it came to minorities, particularly Mexican Americans. More specifically, in a sexual abuse case against a Mexican-descent juvenile, a white jurist in California declared in open court that maybe Hitler was right, that certain people had to be eliminated from our society like “animals.” The predominant white Anglo voters overwhelmingly retained this racist judge in the next election.

Second, farmworkers worked in horrific conditions and suffered permanent disabilities due to having to bend to protect the rancher's crops. The required Short-Handled Hoe forced farmworkers to bend over to remove weeds. Low pay then led to the late 1960s labor strikes that created the historic nationwide Grape Boycott inspired by Cesar Chavez and the United Farmworkers Union (UFW).

In addition, Raza youth and Blacks disproportionately served in the infantry in Vietnam, resulting in a not unexpected disproportionate loss of minority's lives. In 1970 during an anti-Vietnam march, Ruben Salazar, a prominent journalist, suffered a head injury from a tear gas canister discharged by a deputy directly into a café. The mere failure to file a charge constituted discrimination. The instructions clearly prohibit firing such a dangerous projectile directly towards any person.

After a few years of undergraduate involvement in a passive and socially-oriented Mexican American group, the University of Houston Chicanos changed the group's name to the Mexican American Youth Organization (MAYO) and assumed a more activist agenda. Later, as one of the few Chicano students at the UH Law School, I then conspired with the five students to form the Chicano Law Students Association (CLSA). One of the original five CLSA members, Ramon Garcia of Edinburg, later served as Hidalgo County Judge for 12 years until 2016.

After our elder statesman and military veteran J. M. Ramirez served as the founding President, I assumed the office as the CLSA President in the Fall of 1971. My primary goal centered on the creation of a course or seminar entitled Chicanos and the Law. Although unsuccessful in my initial efforts, I returned to Houston as an experienced civil rights lawyer and taught the first lecture undergraduate course on this topic in the nation as well as a seminar at my law school alma mater, beginning in 1975 until the 1990s. I have taught the Latinos and the Law seminar at Texas Southern University's TMSL since January 2001.

The result of these efforts can be found in my book publication, *US Latinos and Criminal Injustice*. The Book Outline is set forth below:

PART 1. THE U.S. LATINO AND AMERICAN SOCIETY

chapter 1. History and Evolution of the U.S. Latino Population.	3
chapter 2. The Legally White, Socially Brown Latino.	15
chapter 3. Anti-Latino Hate Crimes	29
chapter 4. Reactions to the Latino Threat.	47

PART 2. LATINOS AND LAW ENFORCEMENT

chapter 5. Racial Profiling of U.S. Latinos by Local Police Officers	65
chapter 6. Abuses Resulting from Federal Immigration Enforcement Efforts ...	87
chapter 7. State and Local Police Deprivations of Latino Civil Rights	107

PART 3. ISSUES FACING LATINOS IN THE COURTS

chapter 8. Inequality in the Formation of Grand and Petit Juries	147
chapter 9. The Rights of the LEP Proficient Accused in the Criminal Courts ...	171
chapter 10. Latino Victims of Denials of Due Process	195
chap 11. How Mass Incarceration Underdevelops Latino Communities, SpearIt	243

Grading: Course Grade will be determined as follows:

1. Five total points will be assigned to class participation in the form of your collaboration with the professor in the class presentation of a chapter assignment and in overall 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 entire book *US Latinos and Criminal Injustice*. The exam details and format—whether essay, T/F and/or Multiple Choice Questions—will be determined in March 2019 or sooner.
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: 2 hrs x 2 = 4– 1= 3 allotted absences for a two 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)

By the end of the semester, students will be expected to have accomplished the following SLOs:

The Evolution of the US Latino Population

The Legally White, Socially Brown Latino: Anti-Latino Discrimination, Whites and identifiable minority groups in the context of equal protection

Hate Crimes in the Latino Community—El Paso Revisited

Social Reactions to the so-called Latino Threat

US history and the role of Race, Ethnicity, and Poverty in shaping our criminal and civil rights jurisprudence

Racial Profiling by Local Police Officers: The 4th Am unreasonable seizure and the 14th Am equal protection deprivation or denial

See also, the 4th Am unreasonable seizure implications of a Stop & Frisk or Reasonable Suspicion detention

Are Undocumented Aliens Covered by Constitutional Protections and Guarantees?

The 287 (g) Program Agreements & Local Government Enforcement of Immigration Laws –a Dangerous Mix?

Joe Arpaio: The Classic Racial Profiling Abuser—Phoenix, Maricopa County, Arizona

Stopping the “right” people, i.e., minorities—the Floyd case in NYC

The Constitution’s 5th Am Due Process/Equal Protection—Bolling v. Sharpe, the 1954 Washington, DC segregation case [Brown v. Bd of Educ, 347 US 483 (1954)]

Immigration Enforcement Efforts: Racist and Abusive Immigration Policies

Deportation Operations from 1930—2010

Awareness of the Constitution articles dealing with the ex post facto rights of immigrants/resident aliens as impacted by the 1996 immigration acts, AEDPA & IIRIRA.

The Bracero Program during and after World War II

The Dream Act—a legal right or a policy issue—America’s Dilemma with Child Immigrants

Police Use of Excessive and Deadly Force: Ruben Salazar (1970); Twelve-Year-Old Handcuffed Boy Santos Rodriguez, Dallas, Texas (1975) ; The Shotgun Killing of Richard A. Morales (1977); Joe Campos Torres Drowning, Houston (1977); Luis Alfonso Torres (2002); Anastasio Hernandez-Rojas, Death in Border Patrol Custody (2010).

Inequality in the Formation of Grand and Petit Juries –The Landmark Case: Hernandez v. Texas, 347 US 475 (1954), the class apart DVD--US Latinos have an Equal Protection right to be free from systematic exclusion from Juries –Systematic exclusion vs Proportional Representation

Discrimination by “Mexicans against Mexicans”—Castaneda v. Partida (US 1977)

The Good News—Batson v. Kentucky--Equal Protection and Due Process in the Formation of the Petit Jury

The Bad News—Hernandez v. New York—Language as a Justification for Ethnic Discrimination

The Rights of the LEP Proficient Accused in the Criminal Courts—Negron v. New York—Awareness of the Constitution’s 6th Amendment rights to effective assistance of counsel and confrontation and the 14th Amendment right to being present at trial—Can a Monolingual Jurist Effectively Assess Whether an LEP Accused Understands Sufficient English to “Confront” Witnesses under the 6th Am?

The Texas Interpreter Provision, Tex. Code Crim. Proc. Art. 38.30; the Federal Interpreter Act, 28 USCS § 1827

The ABA Language Access to Justice Plan

Latino Victims of Denials of Due Process of Law:

Tex Code Crim Proc art 2.01, the DA’s duty to see that justice is done;

The prosecution and hanging of Chipita Rodriguez, Tx 1863;

Lynchings and the Outcome of State v. Gregorio Cortez—Tx 1901;

The Decision to Prosecute on the Basis of Insufficient Evidence, People v. Zammora, the Sleepy Lagoon Murder Case—1942;

California’s “Judge” Gerald S. Chargin and Hitler’s Theory Regarding Mexicans (1969)

Aldape Guerra v. Texas, the “Let’s Go After the Survivor” Case—1982

Christopher Ochoa and the Austin, Texas Police Department—Sending an Innocent Man to Prison for Life [1980s];

Race and the Criminal Justice System: Hispanic Status as a Basis or Justification for Deeming Victor Hugo Saldana in Texas [US 2004] a Continuing Threat to Society and Eligible for Execution

Race and the Criminal Justice System: Reference to Latino Status or Stereotype of Latinos During Jury Deliberation in a Criminal Case, Pena- Rodriguez v. Colorado [US 2017]

The role of Latino and Latina Civil Rights Leaders and the contributions of civil rights organizations in the making of law—LULAC, the American GI Forum, MALDEF, PRLDF aka LatinoJustice, and the National Council of La Raza (NCLR), now known as UnidosUS.

Employment Discrimination Issues: Coverage under 42 USC 2000d, 42 USC 2000e, 42 USC 1981, 42 USC 1983

Employment Discrimination Issues: Prohibition of Speaking Spanish at Work—Terminations Based on this Activity.

Voting Rights Issues: The Voting Rights Act of 1965, amended in 1975, 1982, and 2006 [42 USC 1973] [Sec 5]

Voting Rights Issues: The 2010 Census and Redistricting, Perry v. Perez (US 2012)

Latino Educational Neglect: What is the Constitutional Remedy?

The Pedagogical Basis for Language Segregation of Latino Children: Sound Policy or Racist Junk Educational Theory

The Classification of Latinos as Whites for Integration Purposes [Keyes, US 1973; Ross v. Eckels, 5th Cir. 1970]

The Evolution of Legal Barriers in the Field of Bilingual Education in the Post- Lau v. Nichols Era

Latinos and the Law—Readings and Class Assignments

Week 1

Tu 8/20 Introduction to Latinos and the Law—Take good notes of all discussions to maximize your grade; History and an Overview of the Course; Civil Rights Organizations & Chicano, Chicana, Latina leaders—Histories and Biographies

Th 8/22 Latinos and the Law—An Overview of the Course; Discussion of the Course Book: US Latinos and Criminal Injustice (MSU Press 2015)

Week 2

Tu 8/27 The Law School Writing Requirement and Selection of Your Topic

Th 8/29 Discussion of Handout: Meeting the Graduation Writing Requirement—The Bluebook, law review examples, thesis statement, and organization

Week 3

Tu 9/3 Introduction to Latinos and 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;

Th 9/5 Jury Rule of Exclusion and the Prima Facie case of Discrimination; Hernandez v. Texas and the Texas Class Apart Theory

Week 4

Tu 9/10 Race and the Constitution: Civil Rights Laws in Post-Civil War America: The 1866 Civil Rights Act, 42 USC Sections 1981 & 1982 [right to enter into contract and purchase land as is enjoyed by white citizens] [white Caucasian victim; white Iraqi-American; Mexicans, Jews, Aliens]

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; 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 Monell v. Dept. of Social Services, NYC, S Ct (1978)

Th 9/19 Guest Speaker—Civil Rights Litigation Sec. 1983 and the Concept of Attorneys Fees

Week 6

Tu 9/24 Lupe S. Salinas, US Latinos and Criminal Injustice (MSU Press 2015): Latinos and the dominant Anglo American Society, Chapter 1. History and Evolution of the U.S. Latino Population, 3-14 [Ch. 1 Footnotes, Notes at 284]

Th 9/26 History and Evolution of the U.S. Latino Population, 3-14 [Ch. 1 Footnotes, Notes at 284]

Week 7

Tu 10/1 Chapter 2. The Legally White, Socially Brown Latino, 15-28 [Ch. 2 Footnotes, Notes at 284-285]

Th 10/3 Chapter 3. Anti-Latino Hate Crimes, 29-46 [Ch. 3 Footnotes, Notes at 286-287]

Week 8

Tu 10/8 Chapter 4. Reactions to the Latino Threat, 47-64 [Ch. 4 Footnotes, Notes at 287-288]

Week 7

Th 10/10 Chapter 5. Racial Profiling of U.S. Latinos by Local Police Officers, 65-86 [Ch. 5 Footnotes, Notes at 288-292]; Race and the Constitution: The 4th & 14th Amendments: Stop & Frisk /Reasonable Suspicion [RS] Stops, Terry v. Ohio, 1968

Week 9—Mid-Term Examinations [Our only exam will take place on last day of classes]

Tu 10/15 Racial Profiling: Revisiting Terry v. Ohio: Brignoni-Ponce (1975), Montero-Camargo (2000), Melendres v. Arpaio, 989 F. Supp. 2d 822 (D. Ariz. 2013); accord, Floyd v. New York City, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

Th 10/17 Chapter 6. Abuses Resulting from Federal Immigration Enforcement Efforts, 87-106 [Ch. 6 Footnotes, Notes at 292-294]: The Incredible 2010 Beating Death of Anastacio Hernandez-Rojas and the Failure of the DOJ to Prosecute for Deprivation of Civil Rights

Week 10

Tu 10/22 Chapter 7. State and Local Police Deprivations of Latino Civil Rights, 107-146 [Ch. 7 Footnotes, Notes at 294-298]

Th 10/24 Chapter 7. State and Local Police Deprivations of Latino Civil Rights, 107-146 [Ch. 7 Footnotes, Notes at 294-298]

Week 11

Tu 10/29 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)

Th 10/31 Video: Cruz Reynoso: Sowing the Seeds of Justice, 2010 Documentary (58 minutes)—Cruz Reynoso, a lawyer, California Supreme Court justice and professor, has spent six turbulent decades fighting for civil rights. He began his work with the California Rural Legal Aid helping farmworkers in their quest for justice, but that was just the beginning!

Week 12

Tu 11/5 Chapter 8. Inequality in the Formation of Grand and Petit Juries, 147-170 [Ch. 8 Footnotes, Notes at 299-303]; Issues that Latinos Continue to Face in the Courts; Batson v. Kentucky (1986) and Swain v. Alabama (1962) and the peremptory challenge: Should it be eliminated?

Th 11/7 Chapter 8. Jury Inequality Continued: The Sixth Amendment’s “Impartial Jury”: Miller-El v. Dretke capital murder case (Prof. Salinas and the 1975 Dallas County, Texas Baby Prosecutors’ School); United States v. Armstrong selective prosecution claim; Race-based sentencing decisions, Saldano v. Roach & Buck v. Davis, 137 S. Ct. 759 (2017); Racial animus during jury deliberations, Pena-Rodriguez v. Colorado, 137 S. Ct. 855 (2017)

Week 13

Tu 11/12 Adriana Ramirez, Lexis Representative—TMSL Lexis Research Presentation

Th 11/14 Chapter 9. The Rights of the Limited English Proficient Accused in the Criminal Courts, 171-93 [Ch. 9 Footnotes, Notes at 303-305]

Week 14

Tu 11/19 Chapter 10. Latino Victims of Denials of Due Process, 195-242 [End with Section on Abuse in Decisions as to Whether to Prosecute] [Ch. 10 Footnotes, Notes at 305-310]

Th 11/21 Chapter 11. How Mass Incarceration Underdevelops Latino Communities, by Professor Spearlt, 243-59 [Contributing author] [Ch. 11 Footnotes, Notes at 310]

Week 15

Tu 11/26 Final Exam –25 Point Value; Last day of classes

W 11/27 Reading Period

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