1. **Foundations**
criminal law: statutory
1. formal logic; elements
2. how to read a statute
3. relation to common law
People v. Keeler
1. statute: elements
2. how to interpret--history, decisions, legislative intent, words, general principles, constitution

notes after Keeler
1. the dissent: rationale
2. formalism v. instrumentalism
3. "strict construction?"
4. amendment: "or a fetus"

- mens rea
- actus reus (act, circumstances, result)
- Calif. murder statute: mens & actus
- problem: "killing a cloned human"
  1. in a frenzy of regret
  2. accidentally (recklessly)
  3. failing to supply nutrients

United States v. Zandi
possession as a crime
constructive possession
1. actus reus?
2. mens rea?
3. hypothetics: (a) arrest before knowledge pkg has arrived; (b) buy-burn by brother overseas; (c)

jury unsure whether Zandi believed opium in pkg
4. conspiracy or attempt
proof beyond a reasonable doubt
1. contrast civil burden
2. knowledge in Zandi: what does "knowledge" mean?
3. the hypothetical unsure jury in Zandi
4. the jury’s proof standard contrasted to the reviewing court’s "Criminal Law (5303):
substantive criminal law; basic concepts [of the criminal process]; elements of crime; theories of punishment [i.e. sentencing]."
"basic concepts" means the burden of proof, screening mechanisms, & stages of a criminal case.
also, usually covered: legitimacy of the criminal law; victims' rights, etc.

2. **Homicide**
"Penna. Pattern"
murder = "malice aforethought"
1. misnomer (wise to use misnomer; jury instructions?)
2. express = intent
3. implied = "abandoned & malignant heart" (metaphor useful?)
Pennsylvania Pattern cont'd
1. murder 1st deg
2. murder 2d deg
3. vol mansl: "sudden quarrel" or "heat of passion"
4. invol mansl ("w’out due caution/circumcision")
5. [negligent homicide]

Murder = mal. afore
1st deg = "premeditated," "deliberate"
2d deg = not

Cw. V. Carroll:
- instant premeditation?
1.-2. what if jury?
3. does this mean no 2d degree?
4. misnomer of malice aforesaid? jury understanding?

People v. Anderson:
- stabbing pursuit
1. prep; 2. means; 3. motive
What is premeditation?
Planning, care, appreciation, motive?
1. random: as bad as planned?
2. jury "discretion": desirable?
3. what’s wrong in Anderson?
a. statute; b. court’s review;
c. both; d. neither

4. are Carroll & Anderson backward?
5. MPC approach: no degrees
6.-7. Perez: "manner of killing"; does intent = premeditation?

Pa. pattern: historical malice aforesaid=
1. intent,
2. serious bod injury,
3. "depraved heart," or

4. felony.

MPC critique:
"arbitrary symbol"
1. vague; arbitrary
2. policy: bad grading

a vague, metaphorical instruction to the jury:
"If you decide that the accused is as EVIL
as a POMEGRANATE,
then it is your duty to convict; if not, you must acquit."

--this gives jury "discretion"
--but is that a good thing?

Counsel’s job: voir dire, opening statement, jury argument
- purposes of argument
- order: P, D, P
- structure: similarity to IRAC; differences; "example" method; evidence (inferences & credibility); ultimate values (emotion)

Voluntary manslaughter
1. passion as negating malice (or as a separate factor)
2. requirements: a. adequate cause, b. ordinary person, c. timing, d. victim
3. instruct jury: when "raised" by evidence

Mahe v. People
1. assault w/intent to murder
2. intent to assault (even to kill) not enough; malice
3. what is relevance of passion evidence?
Problem: Cw. v. Carroll

1. how argue manslaughter to jury?
2. impact of the burden of proof?
3. changing facts: a. more or less time? b. D kills police officer? c. greater or lesser vehemence in the disagreement?

"depraved heart": unintended malice meanings: 1. wickedness (badness in general); 2. recklessness

Cw. v. Malone: Russian roulette
1. "accidental murder"?
2. how instruct jury (depraved heart v. outrageous recklessness)
3. accident that isn’t a crime: Malone’s own story

4. depraved heart v. involuntary manslaughter (People v. Berry)

invol manslaughter
[Tx: manslaughter]

Cw. v. Feinberg: the Sterno case
1. why not murder?
"knowledge" v. "recklessness"
2. why Feinberg not neg hom? "recklessness" v. "crim neg."
"crim neg." v. "civil neg."
3. homicides: distinct crimes, or sliding scale?
4. recall People v. Berry: murder, involuntary ms, or neg hom?

Texas (modified MPC):
1. murder? 19.02
   (b)(1): intent, knowl
   (b)(2): intent, SBI

[2. vol. manslaughter?]
19.02(d): included in murder; reduces sentencing range

3. [invol] mansl?
   19.04: "recklessness"
4. crim. neg. hom?
   19.05: "crim neg"

[5. capital murder = "murder plus"]

Tx. PC § 6.03
intent
knowledge
recklessness
crim. negligence
[strict liability]

Dan shoots & kills Vic.
1. wants to kill him
   1a. aims carefully at him, not caring.
   1b. wants to injure.
2. just heard, Vic stole his girlfriend
3. shoots at target, aware pedestrians frequently behind it
4. shoots at target, unaware of frequent pedestrians

[5. robs Vic & kills, execution style]

Sentence reduction charge:
If D proves in the affirmative, by a preponderance of the ev., that he caused the death under the immediate influence of sudden passion arising from an adequate cause, you will so say by your verdict....

Therefore, if you find by the prepond...that Martinez caused the death of Cox [sudden passion adequate cause]..., verdict.

If you so find, you shall fix d’s sentence at any term of years from 2-20.
"adequate cause" means....
If you do not so find by a preponderance, you shall consider the range of sentence of 5-99 or life.

We, the jury, find that Martinez by a prepond. caused death under...[sudden pass., adequate cause], and fix his sentence at [2-20].

[Alternate form verdict: 5-99 or life]

two Texas cases
--typicality
1. Rivera v. State:
   Timotheo stabbed; Gilbert shot
   • legal & factual sufficiency
   • "parties" concept
   • 4 kinds of murder:
     intent/cause death
     intent/cause ser. bod. inj.
     as party, intent/death
     as party, intent/SBI
   • "application ¶"
   • excused juror
2. Martinez: stabbed more than 2 dozen times; claims defending vs. same-sex assault; expert: blood spatters inconsistent.
   • claimed error: [invol.] manslaughter omitted.
   • what's a lesser included?
   • what's manslaughter?
   • why no error?

• what about "voluntary" manslaughter?

Notes (Supp.)
1. judges' "politics"?
2. Rivera's "application ¶"
3. Martinez: how use "sudden passion . . . adequate cause"?
4. does Martinez qualify?
5. [invol] manslaughter?

the felony murder doctrine: implied malice
limits of fel murder
1. "dangerousness"?
   a. "dangerous felony?"
   b. "dangerous act"
2. merger--a lesser included [homicidal] crime shouldn't be used as predicate
3. in furtherance
4. causation
   a. "agency" approach--only acts of D
   b. proximate cause
   c. broader cause (but-for; "set in motion")

felony-murder
People v. Hansen:
shot into inhabited home; 13-yr-old girl hit in head.
• Cal: "imputed" malice, homicide caused in course of "inherently dangerous felony"
• why the rule? justice?
  deterrence? other?
• dangerous "felony," or dangerous "act"?
• the "merger" issue: not an assault
Roth & Sundby [not read]
(against fel murder)
1. "patchwork" attempts to mitigate
2. most serious sanction shouldn't be for accident
3. deterrence illogical
   a. how deter unintended act?
   b. felons won't know the rule
4. transferred intent/ constructive malice: illogical
5. retributive purpose operates
   "regardless of culpability"

Crump [not read]
(defense of fel murder doctrine)
1. rational classification, grading:
   robbery w/death isn't just a robbery.
2. condemnation: human life.
   condemnation "operates on the upright"--society, victim.
3. deterrence--opponents' assumptions

[4. other arguments]
[5. limits aren't patchwork but related to purposes; every crime has limits]

The Lawyering Problems:
What Are They About?
lawyering strategies: what areas?
1. negot/agreement
2. document prep
3. persuasion
4. client relation’s
5. malpractice prevention
6. the process itself
7. strategy
8. uncertainty/adaptation
why see "how it works"?
1. changes the theory
2. shows difficulty:
   a. management of crowded systems
   b. time
   c. task definition
   d. facts
   e. law
   f. failure
   g. personal issues
   h. distraction
   i. adaptation
3. prof. competencies
   1. case analysis is only one
   2. it is intellectually easier than some
   3. it is less important than some
what get out of it?
1. estimating effort
   a. recognize steps
   b. recognize difficulty
2. client
   a. information
   b. cooperation
   c. protection
   d. appreciation (fee)
   e. result
   f. malpractice
3. documents
   a. ambiguous facts
   b. hidden issues
   c. errors
   d. efficiency
   e. drafting vs. doc prep.
3. **Elements of Crimes**
break this into elements:
"A person commits an offense if s(he)
knowingly enters a private place on a
Sunday with intent to defraud and
manifests loud, raucous or belligerent
behavior toward any person or animal
while bearing a firearm on or about
his/her person, unless the person is
acquainted with any person who
regularly inhabits the private place so
entered."

an unprovable offense [why?]
"... a person who keeps within the
territory of the city any number of [list
of animals], and who is not in the
business of boarding animals, is guilty
of a misdemeanor."

What elements in DWI?
- main statute, 49.04
- additional provisions (revised list)
- the "drunk, drugged or sleepy"
  apparent "wheelchair pedestrian"
"Harassment"--(1) why hard to
prosecute? (2) no crime if caller (3) no
crime unless "obscene"

Tx. P.C. § 6.01: voluntary act,
omission, possession
"actus reus" also includes: act,
circumstances, result
what is actus reus for
- murder? § 19.02(a)(1)
- attempted murder? § 15.01
- felony murder? § 19.02(a)(3)

People v. Newton: unscheduled N.Y.
landing; D has weapon.
1. voluntary act?
2. he "caused" the landing!
3. voluntary act & strict liability

United States v. Plaza Health: what is
the actus reus? ("point source")

causation: Rivera

omission: Jones--concept of "duty"

possession: Zandi, Newton
1. an act, condition, or what?
2. constructive possn & the jury
3. "suddenly realized" possession (coupled w/not getting rid of it)? "status" related offenses: Robinson, Powell
"loitering"
1. physical elements?
2. due process?
3. mens rea?

mens rea:
MPC: purpose, knowledge, recklessness, criminal negligence?
1. mens rea for loitering
2. purpose v. knowledge; the "I-don't-care" killing
3. to which elements does the mens rea apply?
4. reckless, crim negligent, simple negligence: State v. Warden (the careless doctor whose patient died)

United States v. Plaza
"knowingly" disch
"knowing" endangerment
1. D's argument
2. MPC "knowingly"?
3. Cong. rejected MPC
4. "awareness" of "high probability"

mens rea variations (notes)
1. ostrich problem: the drug courier;
   United States v. Sanchez-Robles
   (a) is the negligence comparison apt?
   (b) is there really no middle ground?
   (c) the misdemeanor ostrich who commits a felony
2. transferred intent: the drug courier
3. specific intent v. general: Maher
4. strict liability: when? why?

1. false stmt to obtain gambling license: mail fraud? COVERS: "artifice to (a) defraud or (b) obtain propty"
2. intentional damg to computer data owned by corporation. Computer fraud? COVERS "damage to individual"

interpreting the elements?
formalism
instrumentalism
1. murder statute, construed by each
2. Douglas's penumbra, Black's no provisin
natural law
positivism
1-2. Iredell & Chase
3. rt to define "meaning of universe"?

Bobbitt's 6 Interp Modalities
textual
historical
structural
doctrinal
prudential
ethical
1. const of death penalty
2. different interp of Bible?
3. which modalities superior/disfavored?

Language: "They offered that tush hog
Billy Ray Bonebreaker a dime, but he never sensed how much of a whale he really was and so he rolled the dice and got popped for ninety-nine rodeos."
--what does this mean?
--what does it imply about speaker's attitude twd process?
1. the case against settlement
2. the case for settlement
(Does the case against settlement depend on an unspoken assumption that conviction in a single trial by a single jury is absolutely accurate or universally authoritative, & conviction by plea of guilty is not?)

Gross/Seyverud
1. jury trial = scarce resource.
2. not to be wasted.
3. far scarcer than believed.
4. settlement = norm.
5. adjudicatn = rare xceptn.
6. usually adjudicatn = disaster for at least 1 pty.
7. why so few jury trials?
8. why does a trial result?
9. reform?
10. your role as a trial lawyer?

why settlement? 12 judges,
30,000 indictmts
= less than 5 min. per case on most.
"solutions"?
• screening; selectivity
• more courts
• decriminalization
• reform (radically alter jury trials)
• regard settlement as acceptable

Guilty Plea Process
Fed. R. Crim. P. 11
Tex. Code Crim. P.
1. written waiver
2. written approval
3. evidence
4. admonitions
5. voluntariness
Tullos v. State:
indictmt = threatened.
stipulation = stabbed.
2d case, admonition defective.
Decotiis & Steele, "Skills of the Lawyering Process"
1. "capabilities": which?
2. reading, writing, case analysis, research?
3. skilled generalists, here; contrast other practitioners
4. teaching documt prep: start w/legal pad?
5. relevance of law schl?
6. Nimmer report
   a. bleak--professors conform
      perceptn to fit own
      behavior(!)
   b. Festinger's theory of
      cognitive dissonance
7. Nielsen: a "hoax"? why done this way, then? (easier?)
dealmaking: contract elements
1. why study?
   a. a second contracts course?
   b. nontraditnl here
2. five (6?) elts/contract
   a. parties?
   b. preconditions?
client relations

1. why effort projectn?
2. defining problem
3. "niceness"
4. how project effort?
   a. attention (phone)
   b. do somethg now
   c. prob/important
   d. suit: uniform
   e. sell 'em paper
      1. every paper
      2. Dear Mr. Jones
   f. bill projects effort

5. accept addtl responsbl
6. community

negotiation methods

- firm, fair offer
- THE negot method:
  - unreas 1st
  - conceal point
  - pretend reas
- other techniques
  - merits
  - blame client
  - reverse psych
  - agenda
  - drafter
  - barg chip
  - time
  - collateral cons
  - whipsaw
  - focal points
  - clubbiness

- physicalities
- mediator
- feigned emotion
- test/strength

Graham: docket mgmt

1. pros's "enemy #1"?
2. why?
3. how respond?
4. increase offer for late acceptnc?
5. legit delays--how handle?
6. early sure trial setting [compare CJRA]

malpractice avoidance

1. 3 biggest areas, complaints
2. examples
   a. 2 co-workers
   b. "found/poker game"
   c. client’s story = innocence;
      wants to plead g.
   d. "changed" story
   e. parents hire
   f. burg d pleads
   g. "ridiculous" offer

3. clients’ character?
4. document it

conviction rates (trial)

1. different, today?
2. conviction rate
   a. prejudiced juries?
   b. another explanatn?
3. Crump’s theory:
   rate should be 85-90%
4. judge vs. jury
5. offer vs. adjudicatn
5. The Burden of Proof
const req'mt/proof: Winship
1. what provision?
2. how so conclude?
   (a. text, b. hist., c. struct., d. doct.,
   e. policy, f. ethic)
3. what is meaning?
4. effects (juvenile)
what about an issue not an "element"?
1. Mullaney: passion negates malice
2. Patterson: passion independent of malice
3. play upon words?
4. elements, defenses, & aff.
defenses
5. passion killing in Tex.
6.-7. what should be element, defense, aff. def?

1. Tex. P.C. 2.01:
   elements/exceptions
2. should court define? (Paulson)
3. defense formulas
4. prosecution formulas
5. examples
6. circumstantial suffice?
the "n" controversy: how many guilty
to be freed?
1. 1 ≤ n ≤ 1,000?
2. n skeptics
3. n & crime rate?
4. does acceptable n value exist?
5. unacceptable if n affected by
   prejudices?
6. only better is better?
costs/err/acquittal: Langley case
1. critique jury (argument: acquittal
   was wrong--or right?)
2. was this an "error"? what costs?
3. does "reasonableness" of doubt
   depend on harmfulness of
   acquittal error?
costs/err/conv.
1. the protections
2. "We’re Sorry": why didn’t
   protectns work?
3. costs/erroneous conv.
4. the ethical q: erroneous acquittal
   preferred?
5. real-world ethics: case for saying
   erroneous acquittal not ethically
   superior?

Stogsdill v. State: hair evidence,
Kump’s evidence, etc.
1. critique? (deference to jury?)
2. cumulative, circumstantial?
3. TV: "motive, opportunity, means"
4. other questionable elements?
5. "manner & means unknown"?

DNA & Statistics
1. would DNA change Stogsdill?
   (sorry, but no)
2. "where’s the DNA?"
3. experts needed, DNA
4. what does "1 in a million" mean?
5. when DNA is powerful: product
   rule & Bayes’ Theorem
6. popular understanding of Bayes
7. how good is DNA? (lab errors)
eyewitness ev:
1. "preferred"? why?
2. "better" than sci or circumstantial?
3. serial crimes: law enforcement
   method?
4. experts on ID?
5. factors?
6. instructions?

experts on ID:
factors
1. forgetting curve
2. stress = distortion
3. assimilation
4. feedback
5. confidence ≠ accuracy
6. second-ID transfer
7. cross-racial

other burdens (not trial, guilt, elements)
1. true defenses?
2. redraft: difficult elements, change to D's defenses/reductns?
3. sentencing
4. screening stages
5. presumptions?

procedures influencing proof burden
1. evidence: similar crimes
2. joinder/similar crimes
3. pretrial motions
4. confessions statute
5. corroboration as a proof element

6. The Stages in a Criminal Case: Screening Mechanisms
arrest etc.
1. warrantless
2. probable cause
3. warrant
   commitment
capias
4. complaint
5. examining tr (prelim hearing)

bail; indictment
1. bond factors: ensure compliance, not oppressn, offense, ability, safety
2. personal bond
3. amount: e.g., repeat mult. robbery
4. grand jury indictment
   formal requisites
   information
5. omission/formality
6. represent witness?

other screening:
1. arraignment
2. appt. counsel
3. attack indictmt
   mot/set aside
   exc/substance
   exc/form
   amendmt
4. dismissal
5. post-tr motions
6. expunction
7. habeas corpus

7. Assault & Related Offenses
State v. Boutin: "[1] attempt to cause or [2] purposely, knowingly, or recklessly cause bodily injury"
22.01 assault
   .021 agg assault
   [attempted murder]
   .04 injury/child
   .05 deadly conduct
   .07 terroristic threat

specific intent assaults
sexual assault (rape)
1. actus reus: force, etc.; nonconsent;
sexual act
- how much force (what kind)?
- what is nonconsent?
2. mens rea
- does it attach only to sexual act?
- does it attach only to sexual act plus force?
- does it attach to sexual act; plus force, plus nonconsent?
(knowledge of nonconsent, recklessness, or crim negligence?)

22.011 basic sexual asssl
t 1. (a) D (b) intent, knowl, (c) causes (d) penetratin e anus or fem sexual org (f) w/out consent
2. What is "w/out consent"?
3. What mental state?
4. Is intent to do act enough, or does D need to know/intend nonconsent?

22.011 sex asssl/child
["strict liab"?]
22.021 agg sex asssl
[by threat SBI; DW]
[amendment]
20.03-.04 kidnap; agg
20.01(2) abduct
20.02 unlawful restraint

8. General Defenses
1. self-defense
2. defense of another:
"step into shoes" vs.
[Tx. § 9.33] reasonable belief
3. defense/propty, § 9.41-44
"when & to degree reas belief immed necess" [deadly force]

4. law enforcement, § 9.51
when & to degree reas believes necess & reas believes valid [deadly force] [civil liability]
5. resist/arrest, § 9.31(c)
usually: NO!
exception: unreas force, first
6. necessity, § 9.22
7. public duty, § 9.21
8. discipline, § 9.61-62
self-defense
NY: (1) D may (2) when (3) to extent (4) reas believes (5) necessary (6) defend (7) reas believes (8) use or imminent (9) unlawful physical. For deadly force: (10) about to use deadly force or commit [felonies]. objective std (why?)
MPC: subjective (limited)
TEX: when & to degree he reas believes immed necessary to protect agnst others use unlawful force

duress & entrapment
1. duress: *Conteno-Pachon*:
"imminent death/SBI"
TX: § 8.05 similar; affirmative defense
2. entrapment
*Russell*: subjective
dissent: objective
TX: § 8.06, requires both:
"induced" by "persuasion . . . likely to cause"
insanity definitions
1. *M'Naghten*: cognitive--
knowledge of act/wrong
2. "irresistible impulse"
3. *Durham*: "product" of "mental
disease/defect" [rejected]
   • responsibility v. determinism
   • strategy (deterrence) v.
determinism
   • meaning of "product"?

insanity cont’d:
what about:
• compulsive gambling as
defense/robbery?
• intoxication, alcoholism-related?
• severe environmental deprivation
("rotten social bkground
defense")?
• clinical depression, postpartum
onset?
• PTSD; rape trauma syndrome?
• XYY syndrome?

more insanity definitions
4. *Freeman*: MPC
criticisms of M’Naghten
"as a result/mental defect, lacks
subst capacity/appreciate
wrongfulness or conform
conduct" [since John Hinckley,
widely rejected]
5. abolition; guilty but insane
6. TX: § 8.01, M’Naghten-like
affirmative defense
   • intoxication
   Tx § 8.04
   • mistake/fact
   Tx § 8.02

reas belief,
egates mental
• mistake/law
  Tx § 8.03
  no defense, but
aff defense:
reas belief +
written documt

9. *Theft and Related Offenses*
larceny
1. property
2. of another
3. caption
4. asportation
5. intent/deprive
larceny by trick
1. poss’n obtained
2. trick, not caption
false pretenses
1. title obtained
2. by deception
embezzlement
1. fraudulent
2. appropriation of
3. prop of another
4. by entrusted
consolidation of theft offenses
1. the problem
2. the solution
Tx. 31.03:
1. appropriate [defn: exercise
control]
2. property [defn]
3. intent to
4. deprive [defn: perm or extended]
5. the owner
6. w/out effective consent [defined]
   • remaining issues; theft/services?
     § 31.04; services defined.
   • temporary deprivation?
     UUV, § 31.07
   • forgery, § 32.21
   • check, § 32.41(a)(b)
   • related offenses

receiving stolen prop
1. defined as theft.
2. why?
3. importance
4. difficulties; solutions
   a. proof/knowledge
   b. corroboration
   c. similar transactions
   d. record keeping
   e. stings by law enf

10. "Theft-Plus" Offenses
    • robbery
      1. course/theft
      2. intent/control
      3. reckless inj/knowing threat
    • agg robbery:
      SBI/DW/etc.
    • Burglary
      1. enters
      2. bldg or portion
      3. not open/public
      4. intent
    or: concealment;
  entry & obj crime
    • extortion
      1. intent/extort
      2. money/value
      3. interstate comm

4. threat/injure: propty; reputatn; crime
   • Hobbs Act
1. robbery/extortion
2. commerce
3. extortion [defined]:
   under color/official right
   • bribery: Tex. § 36.02

11. Sentencing
    general justicicatsn of sentence
    1. rehabilitation
    2. incapacitation
    3. deterrence
       a. specific deterrence
       b. general deterrence
    4. retribution
       a. "revenge" or "justice"?
       b. blameworthiness
       c. proportionality
       d. uniformity

Ethical Philosophies
Teleology = nature & purpose
  consequentialism
  utilitarianism
  Bentham, Mill
Deontology = non-purposive
  (not cost/benefit)
  Kant
  imitation principle
  categorical imperative

1 Utilitarianism & slavery--slave
   owners wd like. But Kantianism
   opposes; why?
2 Utilitarianism & vulnerable
   minorities: how treat ADA,
   confiscation of amusement park?
Kant: conflicting categorical impo? (performance of promise illegal?)
Kant: must you tell truth to terrorist (neighbor in closet?) or: contract bankrupts promisor w/negligible benefit

2. works on upright people
3. many facets
   vindication (reinforcement)
   solidarity
   auth disavowal
   symbolic nonacquiescence
   absolution

Gregg v. Georgia: death penalty goals of deterrence, justice
1. incapacitation, too?
2. should rehabilitation be a factor?
3. arguments against?

United States v. Bergman
--4 months/prison
--the "4 factors": rehabilitation, deterrence, incapacitation, retribution
--probation or prison?
--"measuring" the sentence
1. goal inconsistencies
2. "have you ever . . . nursing home?"
3. "disparity"

Kant on punishment
1. non-objectification
2. blameworthiness
3. equality; jus talionis
4. .: must punish guilty (even if not utilitarian).

objections
1. eye-for-eye unworkable
2. in practice: poorer class
3. utilitarianism is important
4. "cast first stone"

5. shared guilt
result: mixed feelings

utilitarians and retribution
1. "condemnation"
2. discretionary better?
3. distortion
distortion
4. cost
cost
5. plea bargaining
plea bargaining
6. responsiveness/change
responsiveness/change
7. sentencing goals
--note conflict
   a. rehabilitation
   b. deterrence
c. incapacitation
d. retrib justice
7. sentencing goals
   a. rehabilitation
   b. deterrence
c. incapacitation
d. retrib justice
8. right level/discretion
right level/discretion
9. hardest cases: conflicting goals
hardest cases: conflicting goals

The federal sentence guidelines
The federal sentence guidelines
1. base offense level
   base offense level
2. relevant conduct
   relevant conduct
3. specific offense characteristics
   specific offense characteristics
4. adjustments
   a. victim-related
   b. role in the offense
   c. obstruction
   d. multiple counts
e. acceptance of responsibility
5. criminal history category
criminal history category
6. sentencing table
   sentencing table
7. departure
   departure
8. probation; mandatory
   minimum/maximum
   probation; mandatory
   minimum/maximum

1. "Bubba Shot the Juke Box . . .
   Last Night"; $10,000 total loss;
   previous 3-yr conviction; plea to
   malicious destruction
2. Bubba also shoots & kills bar
   owner; voluntary mansl.
3. critiquing guidelines vs. discretion
4. factors of retardation,
   employment, wealth, etc.

- guideline interpretation
  [what's "obstruction"?]
- preponderance std

1. why?
due process?
Calculatn in Scheele case:
1. no rules/evi
2. drug tables
3. estimate
4. degree/precision
5. is this "preponderance"?
6. proportionality?
sentence options

1. incarceration
   parole issues
   parole limits
   enhancements, e.g.
   Tx. 12.42(c) (1 prior)
   Tx. 12.42(d) (2 priors)
2. probation: Fed
   eligibility
term
   conditions:
   mand/uniform
   others
   confinement
3. commun correctns
   Tx. (not "probation")
   authority/eligibility
term
   nonqualifying offenses
   boot camp
   confinement as conditn
   community svc
   violations
   revocation--no jury, indictmt, reas
doubt, or crime req’d
4. monetary
restitution
fine
[forfeiture]

sentencing hearing: Tx
1. jury election
   when elect?
   good law?
2. the process: jury
   relevant evid
crim record;
character;
unadjudicated
3. PSI (judge)
   Fed j must
   D: interview?
   "hearing": papers?
   D object/writing;
   affidavits

capital murder, § 19.03:
"murder-plus"
[2/3 are robbery-murders]
sentence hearing
relevant evid except
   excluded/Constitution
3 questions:
   violence
   anticipation
   [mitigation]
burden/proof

against death p:
1. barbarism?
2. innocence errors?
3. causes murders?
4. race discrim?
5. blameworthiness errors?
pro death p:

1. deterrence?
2. incapacitation?
3. justice?

12. Inchoate (Preparatory) Offenses
attempt
1. four types
   try & fail, interrupt, mistake,
desistance
2. elements:
   a. specific intent
   b. sufficient act
      (1) substantial step
      (2) more than prep
      (3) others
3. Tx: § 15.01
   attempt "defenses"
1. renunciation
   voluntary, complete
   avoid/commission
2. impossibility
   a. "factual"--NO
   b. "false legal"--NO
   c. true legal--YES
   d. inherent--?

crim instrumt, § 16.01
solicitation, § 15.03

conspiracy:
• 2+ people, agreemt,
purpose/intent, felony/crime,
overt act
• conspiracy-related procedures
• agreemt: how formal?
• mens rea: is knowlg enough?
• Tx § 15.02
• overt act: can it be innocent
  (noncrime)?
13. Vicarious Liability (Multiple Parties)

vicarious liability
[guilt based on acts of another]
1. usual rules: aid & abet or aid & encourage
2. Pinkerton liability
   a. based on consp
   b. but liab is for completed crime
   c. agency basis
   d. scope, furtherance, foreseeability
   e. Texas' version, 7.02(b)

multiple parties
1. common l: principal 1st, 2d; accessory before, after
2. federal: aid & abet
3. how much aid?
4. mens rea?
5. Texas: "parties"

1. Tx. 7.02(a)
   a. culpable mental, nonresponsible agent
   b. intent/promote, aid, encourage, etc.
   c. duty/prevent, etc.
2. after: hindering, compounding
3. corporate: 7.22-24, for usual felony, reckless toleration, high managerial; diligence
4. individuals; "throwdown prisoners"

RICO elements
--civil (treble damages) & criminal

1. assoc/enterprise
2. interstate comm
3. conduct/participate
4. enterprise affairs
5. pattern/racketeering
   a. at least 2
   b. named crimes
   c. w/in 10 yr.
   d. continuous
   e. related
RICO forfeiture: interest acquired or maintained in violatn

14. Contraband Offenses
controlled substances: Tx.
1. schedules
2. registration
3. precursor reports
4. penalty groups
   1. e.g., heroin
   1A. LSD
   2. e.g., psilocin
   3. e.g., barbiturates
   4. e.g., "Robo"
5. manufacture [defn]
6. delivery [defn]
7. possession

search warrant
1. prob cause [affidavit]
   a. basis/knowl
   b. credibility
   must extend to
   a. specific offense
   b. evidence
   c. location
2. court's order
   a. state/Tx.
b. name items
   [statute lists]
c. place
d. command
e. date, sign

possession
1. "actual care, custody, control, mgmt"
2. mens rea: intent/knowl
3. evidence sufficiency
   a. personal possession
   [b. negate others?]
   c. close proximity
d. recent use
e. occupancy

15. Non-Criminal Crime Reduction
non-criminal remedies
I. forfeiture: (a) basis & extent; (b) is it really civil; (c) transportation-related
II. licensing
III. other
IV. preventive detention/civil commitment
   1. architecture
   2. behavior modification
   3. transportation
   4. pvt security and suits
   5. civil/admin penalites
   6. police prevention
   7. mediation; confrontation
   8. the economy; societal
   9. quality-of-life
   10. social spending
   11. decriminalization

16. Victim/Survivor Issues
victims’ issues
A. compensation
B. notice, information, warning, protection
C. participation
D. justice; resolution
E. solidarity; understanding
F. crime defn; process; humane treatment
G. official liability
H. offender confrontation

17. Criminalization: Legitimacy
legitimacy/criminalization
1. notice?
2. definition?: "reas people not have to guess"
   a. citizens, complying
   b. law enf, arrest
   c. judge/jury, adjudicate
3. ex post facto:
   com l crime?
   strict against govt?
   interpret? evolve?
4. crime and harm
5. better alternative?

18. Lawyer Lifestyle Issues
1. What % dissat?
where I want you to be (satisfied)
2. Why these stats?
3. Compare phycns
4. what makes diff?
   (do we know?)
5. why this coverage? mushy content
6. if trying to avoid pitfalls, what will be nature of what you study?
   (a) pleasant things
   (b) unpleasant ones

7. time usage
   billable rec’ds
   administrative
   personal life
   short tm deadlns
   long tm deadlns
   wipeouts (flex)

(most imp variable?)

8. adversary sys
   oppos attys
   oppos parties
   judges
   rules
     cost
     unpredict
     unintended

9. people/"your side"
   clients
     morals
     intellect
     popular knowl
     attitude/you
   co-counsel
   employees
     saying "NO"

What Rambo does: push, trip, passive-aggress, waste time & $, offend, accuse, collateralize; make as unpleasant as possible, as a strategy
What Rambo does to you and your

client: anger, stress, time, mistakes, capitulation, $

Why it’s hard to "call the law" on Rambo
What to do: slow down; explain client; act normal; careful about adopting tactics; or going to judge

10. business mgmt
     business plan?
     financing?
     [KONTEST]
     personnel?
     equip/inventory?
     style?
     accounting?
     systems?
     govt/employr?
     change/technology?

11. stress
     what it is
     what produces
     what it does
     managing

12. relatnships

13. dealing w/failure
     law sch
     practice
     Lombardi

14. anger

15. health

16. subst abuse