

Course Outline

COURSE: LAWS 4904 B – Topic: Failures of Justice

TERM: Winter 2007-08

PREREQUISITES: Fourth-year honours standing

CLASS: Day & Time: Monday - 8:30-11:30 am
Room: 417 SA (Southam Hall)

INSTRUCTOR: Professor Diana Young

CONTACT: Office: D498 LA (Loeb)
Office Hrs: Wednesdays – 12:30-1:30 pm or by appointment
Telephone: 613-520-2600 x. 1981
Email: Diana.Young@carleton.ca

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is March 14, 2008 for April examinations. For further information, please see, http://www.carleton.ca/pmc/students/accom_policy.html

The “failures of justice” referred to in the name of this course are cases which have been defined as wrongful convictions and the wrongful discounting of complaints by victims of crime. Although judges are often seen as the primary decision-makers in the criminal justice system, in fact outcomes in prosecutions are the result of a wide variety of activities and decisions made by numerous actors. These institutional processes often go unexamined until an error is identified – most frequently in cases of wrongful conviction. In these cases, the usually invisible processes underlying the judge’s decision at the conclusion of a prosecution become visible. In this course we will examine the discretionary decisions that lead to “failures of justice”, including the effects of the shift in focus from a criminal act to a criminal identity, the production of expert knowledges, and the ways in which the decisions at various stages of the prosecution process interact and shape each other.

GRADING: The Grades for this course will be based on the following:

- 10% - Class Participation
- 20% - Group Presentations
- 20% - Take home assignment
- 50% - Research paper

For the presentations students will be asked to divide themselves into groups, and select a “failures of justice” case to research and discuss with the rest of the class. For the take-home assignment students will be asked to answer, in 3 to 4 pages, a question that will be distributed in class. The research paper can be on any topic students would like, as long as it’s related to the course, and be 10 to 12 pages in length.

Please note that late assignments will be penalized at the rate of 5% per day. Extensions on assignments will only be granted in extraordinary circumstances such as a documented illness or family emergency.

REQUIRED TEXT:

All the required readings will be contained in a course pack, which will be available in the bookstore.

SYLLABUS

- January 7 Introduction to course**
- January 14 What is a wrongful conviction?**
Readings: Barry Anderson, "Introduction" in *Manufacturing Guilt* (Halifax: Fernwood Publishing, 1998)
Beckstead v. Ottawa (City) (1995), 37 O.R. (3d) 64.
- January 21 Judicial error and non-judicial sites of discretion: Cross-contamination of evidence**
Readings: George Castelle and Elizabeth F. Loftus, "Misinformation and Wrongful Convictions" in Sandra D. Westervelt and John A. Humphrey, eds., *Wrongly Convicted: Perspectives on Failed Justice* (New Brunswick, New Jersey: Rutgers University Press)
 Excerpt from *R. v. Nelles* (1982) 16 C.C.C. (3d) 97.
- January 28 Police: Perceptions of Guilt and the Creation of Criminal Identities**
Readings: Dianne L. Martin, "The Police Role in Wrongful Convictions: An International Comparative Study" in Sandra D. Westervelt and John A. Humphrey, eds., *Wrongly Convicted: Perspectives on Failed Justice* (New Brunswick, New Jersey: Rutgers University Press)
 Richard Ericson and Kevin D. Haggerty, "Identities" in *Policing the Risk Society* (Toronto; Buffalo: University of Toronto Press, 1997)
 Excerpt from the Royal Commission on the Wrongful Conviction of Guy-Paul Morin
 Excerpt from the Royal Commission on the Wrongful Conviction of Donald Marshall
- February 4 Crowns: Impartiality and Sober Second Looks**
Readings: Excerpt from FTP Heads of Prosecutions Working Group, "Report on the Prevention of Miscarriages of Justice".
 Melvyn Green, "Crown Culture and Wrongful Convictions: A Beginning" (2005) 29 C.R. (6th) 262.
 Excerpt from The Royal Commission on the Wrongful Conviction of Donald Marshall
- February 11 Witnesses**
Readings: Excerpt from the Royal Commission on the Wrongful Conviction of Guy-Paul Morin
 Excerpt from David C. Rubin, ed., *Remembering Our Past: Studies in Autobiographical Memory* (Cambridge; New York, NY: Cambridge University Press, 1986)
- February 18 Reading week**
- February 25 Experts: Science and the Production of Certainty**
Readings: Kristen Kramar, "Coroners' Interested Advocacy: Understanding Wrongful Accusations and Convictions" (2006) 48 Can. J. Criminology and Crim. Justice 803.
 Excerpt from the Royal Commission on the Wrongful Conviction of Guy Paul Morin
 Neil Gerlach, "Corrective Justice: Media Events and the Public Knowledge of DNA in the Criminal Justice System" in Neil Gerlach, *The Genetic Imaginary* (Toronto: University of Toronto Press, 2004)
 Kirk Makin, "The Reliance on Science as a Cure for Injustice", *The Globe and Mail*, November 22, 2004, p. A 1.

- March 3** **The Other Side of the Story: discretionary errors and failures to pursue prosecutions**
Readings: Jane Doe v. Toronto (Metropolitan) Commissioners of Police, (1998) 126 C.C.C. (3d) 12.
Martin Dionne, “Voices of Women Not Heard: the Bernardo Investigation Review” (1997) 9 Canadian J of Women and the Law, 394.
Excerpt from the Bernardo Investigation Review
- March 10** **Remedies**
Readings: *R. v. Marshall* (1972), 4 N.S.R. (2d) 417
The Honourable Mr. Justice Peter H. Howden, “Judging Errors of Judgment: Accountability, Independence & Vulnerability in a Post-Appellate Conviction Review Process” (2002) 21 WindsorY.B. Access Just. 569
- March 17** **Remedies and prosecutorial immunity**
Readings: *Nelles v. The Queen in Right of Ontario*, [1989] 2 S.C.R. 170.
Excerpt from *Hill v. Hamilton-Wentworth Regional Police Services* (2005) 76 O.R. (3d) 481.
- Class Presentations: Group 1
- March 24** Class Presentations: Groups 3 and 4
- March 31** Class Presentations: Groups 5 and 6