

Course Outline

COURSE:	LAWS 4904 B – Topic: Failures of Justice
TERM:	Winter 2009-10
PREREQUISITES:	Fourth year Honours standing
CLASS:	Day & Time: Wednesday – 1805-2055 Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Professor Diana Young
CONTACT:	Office: D498 LA (Loeb) Office Hrs: Wednesday – 12:00-1:00 pm or by appointment Telephone: 613-520-2600 x 1981 Email: diana_young@carleton.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

The "failures of justice" referred to in the name of this course are cases which have VCC 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:

- Class Participation: 5%
- Group Presentations: 25%
- Comments on readings: 30%
- Research paper: 40%

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. Students will also be required to hand in **two** comments, three or four pages in length, on the course readings of their choice. The research paper should be 10 to 12 pages in length, and can be on any topic students would like to write about, as long as it's related to the subject-matter of the course.

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 6 Introduction to course

January 13 What is a wrongful conviction?

Readings:

- Excerpt from Bruce McFarland, *Convicting the Innocent*, (2006) 31 Man L.J. 403.
- Margaret E. Beare, "Shouting Innocence from the Highest Rooftop" in Margaret E. Beare, ed., *Honouring Social Justice* (Toronto: University of Toronto Press, 2008).
- *Beckstead v. Ottawa (City)* (1995), 37 O.R. (3d) 64.

January 20 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 27 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 Report of the Royal Commission on the Proceedings Involving Guy-Paul Morin, (Toronto: Queen's Printer for Ontario, 1998), pp. 784-800
- Excerpt from the Royal Commission on the Donald Marshall Jr. Prosecution (Halifax, 1989), pp. 34-68

February 3 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 Donald Marshall Jr. Prosecution (Halifax, 1989), pp. 68-79.
- Excerpt from the Report of the Lamer Commission of Inquiry into the Proceedings Pertaining to: Ronald Dalton, Gregory Parsons, Randy Druken, (St. John's: Office of the Queen's Printer, 2006) pp. 176-179, 265-296.

February 10 Witnesses:

Readings:

- Excerpt from the Report of the Royal Commission on the Proceedings Involving Guy-Paul Morin, (Toronto: Queen's Printer for Ontario, 1998), pp. 801-834.
- Robert F. Belli and Elizabeth F. Loftus, "The Pliability of Autobiographical Memory: Misinformation and the False Memory Problem" in David C. Rubin, ed., *Remembering Our Past: Studies in Autobiographical Memory* (Cambridge; New York, NY: Cambridge University Press, 1996).

February 17 Reading week**February 24 Experts: Science and the Production of Certainty**Readings:

- Excerpt from the Report of the Royal Commission on the Proceedings Involving Guy-Paul Morin, (Toronto: Queen's Printer for Ontario, 1998), pp. 90-117, 834-847.
- 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 More on Expertise: Forensic Pathology and the Charles Smith case

- Kristen Kramar, "Coroners' Interested Advocacy: Understanding Wrongful Accusations and Convictions" (2006) 48 *Can. J. Criminology and Crim. Justice* 803.
- Excerpt from the Report of the Inquiry into Pediatric Forensic Pathology in Ontario (Toronto: Queen's Printer for Ontario, 2008), pp. 171-204.

The Other Side of the Story: discretionary errors and failures to pursue prosecutionsReadings:

- *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.

March 10 RemediesReadings:

- *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 *Windsor Y.B. Access Just.* 569

March 17 Remedies and prosecutorial immunityReadings:

- *Nelles v. The Queen in Right of Ontario*, [1989] 2 S.C.R. 170.
- Excerpt from *Hill v. Hamilton-Wentworth Regional Police Services* [2007] S.C.J. No. 41 .

Class Presentations:

Group 1

March 24 Class Presentations:

Groups 3 and 4

March 31 Class Presentations:

Groups 5 and 6