

Course Outline

COURSE:	LAWS 4904D
TERM:	Winter 2012
PREREQUISITES:	Fourth-year Honours standing and LAWS 2302. This course may not be taken by students who have completed the course as a special topics course.
CLASS:	Day & Time: Mondays, 11:35-2:25 Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Professor Diana Young
CONTACT:	Office: LA D498 Office Hrs: Tuesdays 12 p.m. to 1 p.m. or by appointment Telephone: 613-520-2600 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://www2.carleton.ca/pmc/students/accommodations> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 7 March 2012 for April exams. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

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 processes involving activities and decisions made by numerous actors, all of whom operate within a professional culture and exercise discretion in response to institutional pressures and practices. These 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.

REQUIRED TEXTS

A course pack will be available at Allegra Print & Imaging, 1069 Bank, near the corner of Sunnyside. Case law included in the readings will be posted on WebCT.

EVALUATION

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

- Class Participation: 10%
- Group Presentations: 20%
- Two comments on readings, written or oral: 15% each
- 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. 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.

Students will also be required to submit two written comments on the readings, or they may substitute one or both written comments with an oral comment given in class. The comments should not just summarize the reading; students will also be expected to engage in some critical analysis of the selected material.

Written comments: The two written comments should be about 3 pages in length, double-spaced, and can be on any of the readings in the syllabus. They can be handed in at any time during the semester up to March 17; however, students are strongly encouraged to complete this part of their course work sooner rather than later.

Oral comments: The oral comment should be about 10 minutes in length, and presented to the class on the day the selected reading is assigned. Students must advise me that they want to give an oral comment at least three days in advance. I can’t guarantee that every student choosing this option will be able to comment on the reading of his/her choice, as several students may want to present on the same material, but I will do my best to accommodate everyone.

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.

SCHEDULE

January 9 Introduction to course

January 16 What is a wrongful conviction?

Readings:

- 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 23 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 30 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 6 Crowns: Impartiality and Sober Second LooksReadings:

- Excerpt from FTP Heads of Prosecutions Working Group, "Report on the Prevention of Miscarriages of Justice" (Department of Justice Canada, 2004).
- 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 13 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 20 Reading week**February 27 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 5 More on Expertise: Forensic Pathology and the Charles Smith case

- Gerald Cradock, *Thinking Gouge: Fatal Child Abuse and the Problem of Uncertainty* (2011) 59 *Current Sociology*, 362-378.
- 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 12 Remedies and Prosecutorial ImmunityReadings:

- *R. v. Marshall* (1972), 4 N.S.R. (2d) 417
- *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 .
- 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 19 Class Presentations:
Groups 1 and 2**March 26 Class Presentations:**
Groups 3 and 4**April 2 Class Presentations:**
Groups 5 and 6