

**Course Outline**

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| <b>COURSE:</b>                    | <b>LAWS 4306 C – Criminal Law Issues (Wrongful Convictions)</b>   |
| <b>TERM:</b>                      | <b>WINTER 2020</b>  |
| <b>PREREQUISITES:</b>             | <b>LAWS 2908, CRCJ 3001 or CRCJ 3002 and LAWS 2301, LAWS 2302 and 4<sup>th</sup> year Honours standing</b>                                      |
| <b>CLASS:</b>                     | <b>Day &amp; Time: Monday 6:05-8:55 p.m.</b><br><b>Room: Please check with Carleton Central for current room location</b>                       |
| <b>INSTRUCTOR:<br/>(CONTRACT)</b> | <b>Kelly Lauzon</b>   |
| <b>CONTACT:</b>                   | <b>Office: B442 Loeb Building (Contract Instructor's Office)</b><br><b>Office Hrs: By Appointment</b><br><b>Email: kelly.lauzon@carleton.ca</b> |

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**CALENDAR COURSE DESCRIPTION**

Selected issues and problems in the area of criminal law. The topics may vary from year to year depending on demand and interest and are announced in advance of registration.

**COURSE DESCRIPTION**

In this class, we will rely on Canadian and American research to examine and analyze the factors that have been linked to wrongful conviction cases. We will use this knowledge to study known cases of wrongful conviction within the Canadian justice system to help us consider the implications that a wrongful conviction has for the accused person who is subsequently exonerated. In doing so, we will attempt to answer a variety of questions such as what impact do wrongful conviction cases have on the credibility of the criminal justice system? How do the state and the justice system respond when people complain that they have been wrongfully convicted? What role do police, crown attorneys, judiciary and other justice officials play in wrongful conviction cases? What impact do wrongful convictions have on the lives of the wrongfully convicted and their families? Finally, can anything be done to reduce the frequency with which people are wrongfully convicted by the criminal justice system in the future?

Upon successful completion of the course, student should be able to:

- Identify the various sociological, legal and psychological factors that contribute to wrongful convictions.
- Appreciate the role played by justice officials in wrongful conviction cases.
- Understand the impact that wrongful conviction cases have on the lives of innocent people as well as their families and the families of the original victim.
- Identify avenues of redress for the wrongfully convicted.
- Identify mechanisms that can be introduced to reduce or prevent wrongful convictions in the future.

## **REQUIRED TEXTS**

All journal articles will be available on CU Learn. Canadian articles are highlighted in red.

## **COMMUNICATION**

The primary means of communication for this class will be through cuLearn. However, I am always happy to answer any questions you may have or to discuss the class material further. If you would like to talk to me in person, we can set up an appointment to meet. If you would like to communicate via email, please be sure to use your Carleton email account.

Email policy: I check my email regularly from 8 am to 4pm (Monday to Friday). I do not check my e-mail regularly after these hours during the week or on the weekend/holidays. If you send me an email during these hours, I will try to reply within the same day. If you send your email outside of these hours, I'll try to reply within 24 hours. If you send me an email on the weekend, you should expect a reply on Monday.

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## **EVALUATION**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

**(All components must be successfully completed in order to get a passing grade) – this includes the attendance and participation components.** If you do not receive a passing grade (50%) on *each of* the attendance and participation components, you will not receive a passing grade for this course.

A **printed** copy of all assignments is **due at the beginning of class**. **Do not** submit your assignment via email. Any assignments submitted after the beginning of class will be marked as late. If you cannot submit your assignment at the beginning of class, you must submit it to the main office in the Department of Law and Legal Studies (4th floor Loeb Building) via the Drop Box by 4pm to get the same day date-stamp. **All late assignments will be subject to a deduction of one letter grade per day, including weekends and holidays – no exceptions.**

Assignments will not be accepted any later than seven days past their due date without prior instructor approval for an official extension.

### **Extensions**

Consistent with Legal Studies policy, extensions are only granted under verifiable exceptional circumstances. This generally means a death in your immediate family or personal illness. Personal illness requires a certificate from a doctor. To guarantee fairness to all students, this policy is strictly enforced.

### 1. Attendance and Contribution to Discussion – 25%

- This class will focus strongly on discussion. You are expected to come to class prepared to discuss the readings and the course material. Class attendance will only account for 10% of your grade. You need to be prepared to contribute to the class discussions to earn the additional 15%.
- Students are expected to sign in at the beginning of each class. Attendance grades will not be given retroactively.

## 2. Personal Reflection #1 – 15%

- Due at the beginning of class on **February 10**.
- In 5-7 pages (double spaced), critically engage with one of the topics discussed in class.
- How has this new knowledge affected what you thought you knew? How has this challenged your assumptions of the workings of the criminal justice system?
- No secondary material is to be used for this assignment. This is a reflection upon what you have learned and how this has shaped your outlooks. You are asked to reflect on what you have learned so far, how your thinking about one of the topics discussed in class has changed since the beginning of class.

## 3. My Conclusion – 15%

- Due at the beginning of class on **April 6**.
- In 3-5 pages (double spaced), discuss how wrongful convictions can be prevented.
- What have you learned that may help us to avoid issues of wrongful conviction in the future? What practices do you think we could implement to prevent wrongful convictions?
- **No secondary material** is to be used for this assignment. This is a reflection upon what you have learned and how this could be used to prevent miscarriages of justice from happening.

## 4. Take Home Exam – 45%

- Instructions and information will be provided during our last scheduled class (**April 6**).
  - This information will also be posted on cuLearn the following day.
- Responses are due by **4pm on APRIL 25**. Anything received after 4pm will be stamped with the next day's date (ie: it will be late).
- Responses are to be submitted via the Department of Law and Legal Studies drop box. Emailed submissions will **not** be accepted.

**cuLEARN**

I will use cuLearn when I need to send important messages and/or announcements to the class. Keep in mind that you are responsible for being aware of all announcements that may be presented during lectures and through cuLearn, whether or not you attend class. In case of absence, you should arrange with another student to inform you of any announcements.

**SCHEDULE**

| Week | Date   | Material   |
|------|--------|--|
| 1    | Jan 6  | <b>Introduction to the Course</b> <ul style="list-style-type: none"> <li>Review Syllabus</li> <li>Briefly discuss wrongful convictions and what they say about our justice system</li> </ul>   |
| 2    | Jan 13 | <b>The History of Wrongful Conviction</b> <ul style="list-style-type: none"> <li>Kent Roach, "Wrongful Conviction in Canada" (2012) 80 University of Cincinnati Law Review pp. 1465-1476.</li> <li>Jon B. Gould &amp; Richard A. Leo, "One Hundred Years Later: Wrongful Convictions after a Century of Research" (2010) 100 The Journal of Criminal Law &amp; Criminology pp. 825-838.</li> <li>Keith A. Findley, Learning from our mistakes: A Criminal Justice Commission to Study Wrongful Conviction (2002) 38 California Western Law Review pp. 333-353.</li> </ul>  |
| 3    | Jan 20 | <b>Systemic Factors: Tunnel Vision &amp; Public Pressure</b> <ul style="list-style-type: none"> <li>Dianne L. Martin, "Lessons about Justice from the "Laboratory" of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence" (2002) 70 UMKC pp. 847-864.</li> <li>Brian Reichart, "Tunnel Vision: Causes, Effect, and Mitigation Strategies" (2016) Hofstra Law Review pp. 451-477.</li> <li>Bruce MacFarlane, "Wrongful Convictions: The Effect of Tunnel Vision and Predisposing Circumstances in the Criminal Justice System" Prepared for the Inquiry into Pediatric Forensic Pathology in Ontario, The Honourable Stephen T. Goudge, Commissioner (2008) Part III: Tunnel Vision in the Criminal Justice System pp.28-45 (excerpt only).</li> </ul>  |
| 4    | Jan 27 | <b>Systemic Factors: Eyewitness Testimony</b> <ul style="list-style-type: none"> <li>Sandra Guerra Thompson, "Beyond a Reasonable Doubt? Reconsidering Uncorroborated Eyewitness Identification Testimony" (2008) 41 UC Davis Law Review pp. 1506-1528.</li> <li>Gary L. Wells, "Applied Eyewitness-Testimony Research: System variables and Estimator Variables" (1978) 36 Journal of Personality and Social Psychology pp.1546-1557.</li> <li>John T. Wixted &amp; Gary L. Wells, "The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis" (2017) 18 Psychological Science in the Public Interest pp.10-20 (Excerpt only).</li> </ul>   |
| 5    | Feb 3  | <b>Systemic Factors: Jailhouse Informants</b><br><b>Systemic Factors: Bad Science</b> <ul style="list-style-type: none"> <li>Alexandra Natapoff, "Beyond Unreliable: How Snitches Contribute to Wrongful Convictions" (2006) 37 Golden Gate University Law Review pp. 107-130.</li> <li>Bruce MacFarlane, "Wrongful Convictions: The Effect of Tunnel Vision and Predisposing Circumstances in the Criminal Justice System" Prepared for the Inquiry into Pediatric Forensic Pathology in Ontario, The Honourable Stephen T. Goudge, Commissioner (2008) Part IV: Some Lessons Learned, and Their Potential Application to Forensic Pathology pp.57-86 (excerpt only).</li> <li>Irina Zakirova, "Forensic Evidence in Wrongful Conviction Cases: From Being a Right-Hand Man to Becoming a Snake in the Grass" (2018) 81 Albany Law Review pp. 877-894.</li> </ul> |

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| 6  | Feb 10 | <p><b>Personal Reflection due at the beginning of class</b></p> <p><b>Systemic Factors: Other Systemic Factors that lead to a Wrongful Conviction (ex: False Confessions, Guilty Pleas, Prosecutorial Misconduct, Criminal Record)</b></p> <ul style="list-style-type: none"> <li>• Joan Brockman, "An Offer You Can't Refuse: Pleading Guilty When Innocent" (2010) 56 Crim. L.Q. pp.116-134.</li> <li>• Christopher Sherrin, "False Confessions and Admissions in Canadian Law" (2005) Queen's Law Journal pp. 601-622.</li> <li>• Christophe Sherrin, "Guilty Pleas from the Innocent" (2011) 30 Legal &amp; So. Issues pp. 1-24 (<b>excerpt only</b>).</li> </ul>  |
|    | Feb 17 | <b>Spring Break – No Class</b>   |
|    | Feb 24 | <b>No Class This Week</b>  |
| 7  | Mar 2  | <p><b>Mr. Big Operations</b></p> <ul style="list-style-type: none"> <li>• Kate Puddister &amp; Troy Riddell, "The RCMP's "Mr. Big" sting operation: A case study in police independence, accountability and oversight" (2012) 55 Canadian Public Administration pp. 385-409.</li> <li>• Steven M. Smith, Veronica Stinson, &amp; Marc W. Patry, "Using the Mr. Big Technique to Elicit Confessions: Successful Innovation or Dangerous Development in the Canadian Legal System?" (2009) 15 Psychology, Public Policy, and Law pp. 168-193.</li> <li>• Timothy E. Moore, Peter Copeland and Regina A. Schuller, Deceit, "Betrayal and the Search for Truth: Legal and Psychological Perspectives on the "Mr. Big" Strategy" (2010) 55 Crim. L.Q. pp. 378-399 (<b>excerpt only</b>).</li> </ul> |
| 8  | Mar 9  | <p><b>Case Study: Alain Olivier</b></p> <ul style="list-style-type: none"> <li>• Victor Malarek, Chapter 11: "Seeds of Deception" in Gut Instinct: The making of an investigative journalist (Toronto: Macmillan, 1996) pp238-271.</li> <li>• Appellant's Factum. Available at <a href="http://www.jdsupra.com/documents/edc27da8-4d20-4d0f-ab4c-11203e6bc857.pdf">http://www.jdsupra.com/documents/edc27da8-4d20-4d0f-ab4c-11203e6bc857.pdf</a></li> </ul>  |
| 9  | Mar 16 | <p><b>Case Study: Steven Truscott</b></p> <ul style="list-style-type: none"> <li>• B. Anderson &amp; D. Anderson, Chapter 7: "The Case of Steven Truscott" in Manufacturing guilt: Wrongful convictions in Canada (Halifax, N.S.: Fernwood, 1998) pp. 101-113.</li> <li>• Sydney L. Robins, "In the Matter of Steven Truscott: Advisory Opinion on the Issue of Compensation" (2008) available at <a href="https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/truscott/robins_report.pdf">https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/truscott/robins_report.pdf</a> pp 1-33</li> </ul>   |
| 10 | Mar 23 | <p><b>Case Studies: Jamie Nelson &amp; Bill Mullins-Johnson</b></p> <ul style="list-style-type: none"> <li>• <a href="http://injusticebusters.org/index.htm/Nelson_Jamie.htm">http://injusticebusters.org/index.htm/Nelson_Jamie.htm</a></li> <li>• B. Anderson &amp; D. Anderson, Chapter 7: "The Case of William Mullins-Johnson" in Manufacturing guilt: Wrongful convictions in Canada (Halifax, N.S.: Fernwood, 1998).</li> </ul>   |

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| 11 | Mar 30 | <b>How do we Fix Wrongful Convictions?</b> <ul style="list-style-type: none"> <li>• Myriam S. Denov &amp; Kathryn M. Campbell, "Criminal Injustice: Understanding the Causes, Effects, and Responses to Wrongful Conviction in Canada" (2005) 21 Journal of Contemporary Criminal Justice pp. 224-249.</li> <li>• Myles Frederick McLellan, "Innocence Compensation: A Comparative Look at the American and Canadian Approaches" (2013) 49 Crim. L. Bull. 218. Available at SSRN: <a href="https://ssrn.com/abstract=2245845">https://ssrn.com/abstract=2245845</a></li> <li>• Thomas P. Sullivan, "Preventing Wrongful Convictions" (2004) 52 Drake L.R. pp. 605-617.</li> </ul> |
| 12 | Apr 6  | <b>My Conclusion due at the beginning of class</b><br><b>Take Home Exam Assigned</b><br><b>Guest Speaker: Jamie Nelson</b>  |

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### **ACADEMIC ACCOMMODATIONS**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

#### **Pregnancy obligation**

Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit Department of Equity and Inclusive Communities (EIC) website.

#### **Religious obligation**

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC) website.

#### **Academic Accommodations for Students with Disabilities**

If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) [www.carleton.ca/pmc](http://www.carleton.ca/pmc)

#### **Plagiarism**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn

from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. *More information on the University's Academic Integrity Policy can be found at:* <http://carleton.ca/studentaffairs/academic-integrity/>

### **Survivors of Sexual Violence**

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: [carleton.ca/sexual-violence-support](http://carleton.ca/sexual-violence-support)

### **Accommodation for Student Activities**

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://students.carleton.ca/services/accommodation/>

### **Department Policy**

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations. <http://carleton.ca/law/current-students/>