

Course Outline

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<b>COURSE:</b>	<b>LAWS 4306B – Criminal Law Issues (Wrongful Convictions)</b>
<b>TERM:</b>	<b>FALL 2022</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> <b>Room: SA 313; Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Kelly Lauzon</b>
<b>CONTACT:</b>	<b>Office Hrs: By Appointment</b> <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?

**LEARNING OBJECTIVES**

Upon successful completion of the course, students 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 Brightspace. 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 via Big Blue Button. 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) and aim to reply within the same day. I do not check my e-mail regularly after these hours during the week or on the weekend/holidays. If you send your email during these times, I will aim to reply by the next business day.

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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.

#### 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. I ask that you come to the sessions willing to participate in the group discussions and to ask questions that will help advance your grasp of the material as well as the knowledge base of your peers.
- 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%.
- Attendance will be taken at the beginning of each class. Attendance grades will not be given retroactively.
- In accordance with the [Student Rights and Responsibilities Policy](#), discrimination and harassment will not be tolerated.

## 2. Personal Reflection – 15%

- Due **by 4pm on Friday, October 21** to the appropriate dropbox on Brightspace.
- In 5-7 pages (double spaced), critically engage with one of the topics discussed in class.
- 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.
  - 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.

## 3. My Conclusion – 15%

- Due at the beginning of class on **December 5**.
- In 5-7 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 (**December 9**).
  - This information will also be posted on Brightspace the following day.
- Responses are due by **4pm on December 22** to the appropriate dropbox on Brightspace.
  - Submissions after this time will require a deferral arrangement through the Registrar's Office.

### **LATE PENALTIES AND REQUESTS FOR EXTENSIONS**

All assignments are due via the appropriate dropbox on Brightspace. The submission deadline (date and time) is stipulated via the dropbox and on the class schedule below. Do not submit your assignment via email. Unless you have been granted an extension, one letter grade will be deducted for each calendar day (including weekends and holidays) that your submission is late. Assignments will not be accepted any later than seven days past their due date without prior instructor approval for an official extension.

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

**Extensions for longer than 7 days will normally not be granted.** In those extraordinary cases where

extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

**SCHEDULE**

<b>Week</b>	<b>Date</b>	<b>Material</b>
<b>1</b>	<b>Sep 12</b>	<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>
<b>2</b>	<b>Sep 19</b>	<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. <b>(excerpt only)</b></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>
<b>3</b>	<b>Sep 26</b>	<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 <b>(excerpt only)</b>.</li> </ul>
<b>4</b>	<b>Oct 3</b>	<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. <b>(Excerpt only)</b></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 <b>(Excerpt only)</b>.</li> </ul>
	<b>Oct 10</b>	<b>THANKSGIVING - NO CLASS THIS WEEK</b>

5	Oct 17	<p><b>Systemic Factors: Jailhouse Informants</b></p> <p><b>Systemic Factors: Bad Science</b></p> <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 <b>(excerpt only)</b>.</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>
	Oct 21	<b>Personal Reflection due to Brightspace Dropbox by 4pm</b>
	Oct 24	<b>Fall Break - No Class This Week</b>
6	Oct 31	<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 <b>(excerpt only)</b>.</li> <li>• Christophe Sherrin, "Guilty Pleas from the Innocent" (2011) 30 Legal &amp; So. Issues pp. 1-24 <b>(excerpt only)</b>.</li> </ul>
7	Nov 7	<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	Nov 14	<p><b>Guest Speaker: Jamie Nelson</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>• <a href="https://www.youtube.com/watch?v=DqDfPN9Tm2U">https://www.youtube.com/watch?v=DqDfPN9Tm2U</a></li> </ul>
9	Nov 21	<p><b>Guest Speaker: 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 p. 13-33 (<b>Excerpt only</b>).</li> </ul>
10	Nov 28	<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) pp. 1-33.</li> </ul>
11	Dec 5	<p><b>My Conclusion due at the beginning of class (by 6:00pm)</b></p> <p><b>Case Study: William Mullins Johnson</b></p> <ul style="list-style-type: none"> <li>• B. Anderson &amp; D. Anderson, Chapter 9: “The Case of William Mullins-Johnson” in Manufacturing guilt: Wrongful convictions in Canada (Halifax, N.S.: Fernwood, 1998).</li> </ul>
12	Dec 9	<p><b>Take Home Exam Assigned</b></p> <p><b>How do we Fix Wrongful Convictions?</b></p> <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: <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>
	Dec 22	<b>TAKE HOME EXAM DUE BY 4PM TO BRIGHTSPACE DROPBOX</b>

## **University and Departmental Policies**

### **DEPARTMENT POLICIES AND REGULATIONS**

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

#### **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: <https://carleton.ca/registrar/academic-integrity/>.

### **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://students.carleton.ca/course-outline/>.

#### **Pregnancy 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 accommodation regarding a formally scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

#### **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): <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances>.

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

[The Paul Menton Centre for Students with Disabilities](#) (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact 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 to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally scheduled exam (if applicable).

### **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 where 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: <https://carleton.ca/equity/sexual-assault-support-services>.

### **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. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation>.

### **COVID Update**

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are [a number of actions you can take](#) to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

**Feeling sick?** Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you must follow Carleton's [symptom reporting protocols](#).

**Masks:** Carleton has paused the [COVID-19 Mask Policy](#), but continues to strongly recommend masking when indoors, particularly if physical distancing cannot be maintained. It may become necessary to quickly reinstate the mask requirement if pandemic circumstances were to change.

**Vaccines:** Further, while proof of vaccination is no longer required as of May 1 to attend campus or in-person activity, it may become necessary for the University to bring back proof of vaccination

requirements on short notice if the situation and public health advice changes. Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible, and submit their booster dose information in [cuScreen](#) as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the [University's COVID-19 website](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact [covidinfo@carleton.ca](mailto:covidinfo@carleton.ca).