**SYLLABUS**

**Wrongful Convictions and Factual Innocence:**

**Conviction Integrity Review**

***Fall 2021***

**INSTRUCTORS’ CONTACT INFORMATION:**

Shelley Thibodeau, Director

Conviction Integrity Review, 4th Judicial Circuit State Attorney’s Office

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***Office Hours:*** Tuesdays and Wednesdays 1-2pm. Students should feel free to contact Professor Wolking at any time to discuss legal issues or to ask questions.  Students are welcome to contact the professor via email, text, or phone.

**COURSE OBJECTIVES AND GOALS:**

The primary goal of this course is to educate law students about the issues which lead to wrongful convictions and to engage students directly in the review of actual innocence claims made by individuals who have been convicted of a felony. Students will learn about the causes of wrongful convictions, review data sources and materials, and take part in efforts to address innocence claims.

This course will provide an opportunity for students to learn about systemic errors in our criminal justice system that lead to the conviction of innocent people. Students will also learn about complex legal remedies available for correcting wrongful convictions, as well as policy reforms for preventing them. Actual cases and existing laws will be scrutinized during class. Specifically, students will learn how to identify, analyze, and develop a post-conviction innocence case. This aspect of the course will include learning about common elements in wrongful conviction cases: mistaken eyewitness identification; false confessions; misuse of informants; flawed forensic evidence; mistakes and misconduct by law enforcement officials; poor defense representation; legal barriers to post-conviction relief; and use of DNA and non-DNA evidence for achieving justice. We will also examine the role of racial and ethnic bias, profiling, and tunnel vision in wrongful convictions. Students will have an opportunity to hear from police, prosecutors, defenders, exonerated individuals, and other key stakeholders affected by wrongful convictions and involved in improving the accuracy and reliability of our criminal justice system.

The class will be divided into two components:

1. Academic class work; and

2. Out-of-class innocence review

Recognizing that prosecutors have a continuing, post-conviction ethical obligation to pursue justice, students will work closely with the Fourth Judicial Circuit State Attorney’s Office Director of the Conviction Integrity Review (CIR) Division in Jacksonville. Established in 2018, this unit was the first of its kind created within a State Attorney’s Office in the State of Florida and was designed to review and investigate claims of actual innocence and provide analysis and assistance to address the prevention of errors which might lead to a miscarriage of justice. The CIR investigates and resolves claims of actual innocence arising out of felony convictions obtained in the Fourth Judicial Circuit that are substantiated by credible, factual information or evidence previously not considered by the original finder of fact. Plausible claims of actual innocence are those which are worthy of acceptance and provide a reasonable and probable likelihood that the petitioner did not participate in or commit the crime.

Students will be involved in the investigation and legal analysis of petitions which may include a review of agency files, review of trial, appellate and post-conviction legal briefs and transcripts, conducting witness interviews and obtaining sworn statements, submitting evidence for testing or retesting, and otherwise examining and investigating the claims made by the petitioner.

**LEARNING OUTCOMES:**

At the conclusion of this course, students should be able to:

* Identify the broad range of factors that contribute to the wrongful conviction of the innocent, including: faulty eyewitness-identification procedures; coercive and deceptive police interrogation protocols; mishandling of confidential informants, cooperating witnesses, and jailhouse snitches; junk science, disorganized crime labs, and incompetent and corrupt experts; police and prosecutorial failures to preserve and disclose exculpatory evidence; and incompetent and underfunded defense counsel;
* Analyze facts and legal arguments in transcripts;
* Document legal research, petition review, and investigative efforts in Clio (case management system);
* Orchestrate investigation, including forensic testing and interviews;
* Articulate investigative reforms that could be implemented to guard against the conviction of the innocent;
* Speak professionally with trial counsel or other witnesses;
* Write memoranda for each innocence petition reviewed which thoughtfully outlines the facts of the case and continued investigative steps or denial of the petition;
* Identify policy changes that will reduce wrongful convictions in the future;
* Present investigative and/or policy reforms to stakeholders;
* Develop skills in interviewing and professionalism.

**COURSE PREREQUISITES:**

* Evidence
* Criminal Procedure (*either Police Practices or Adversary Systems*)
* Trial Practice

**MAXIMUM COURSE ENROLLMENT:** 12

**CLASS TIME & DATES:**

This course will meet on the following dates and times:

Alternating Fridays 9:30am-1:30pm

Class dates: 9/3, 9/17, 10/1, 10/22, 11/5, and 11/19

The class will meet every other week for academic class time, and, during non-class weeks, students will be expected to review class material and participate in the review of innocence claims. It is anticipated these will be homicide cases. The course is reading intensive as students must digest a trial transcript and case file in its entirety in addition to assigned course materials. It is possible that students will meet or talk with incarcerated individuals and/or with witnesses. They will be expected to do legal research and analysis. ***Students will meet/speak weekly with the course instructors and should expect to spend 14 hours per week on casework.*** In addition to their casework, students will attend a bi-weekly seminar including case rounds involving issues raised by the petitions, as well as guest speakers and discussions regarding the required reading/viewing course assignments. The Wrongful Conviction/Innocence Course counts toward the six credit experiential learning requirement.

**CLASS ATTENDANCE:**

You must of course attend class. Absence will be excused for illness or emergencies and for significant educational or career opportunities. If you need to miss a class, please let the professors know as soon as possible. Unexcused absence from class will result in a 5-point reduction in a student's final grade (on the 100 point scale) for each missed class. Further information about the law school's attendance policy is available here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

**CLASS PREPARATION AND USE OF ELECTRONIC DEVICES:**

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This course has 4 “classroom hours” of in-class instruction every other week (2 hours per week), requiring at least 4 hours per week of preparation outside of class. Assignments will be posted on Canvas prior to the start of class and current events articles and other materials will be added to your assignments periodically throughout the semester.

This course will differ from those in large classrooms and is more like a team meeting in the workplace. To encourage discussion and engagement, use of laptops will be limited. You may be able to refer to your laptop when presenting to the group or researching an issue requested by the professors, but that’s it. Most of the time, laptops and other electronic devices should be closed in class.

**PERFORMANCE EXPECTATIONS AND INFORMATION ON GRADING & CREDITS:**

For this course, you will earn five (5) total credits. Three (3) of these credits are pass/fail (Satisfactory/Unsatisfactory) and two (2) of these credits are graded. Our grading rubric is posted in Canvas and we encourage you to review it as you begin work on your petitions. This course follows the grading policies at the Levin College of Law, available at https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies. The law school recognizes the following grades:

|  |  |
| --- | --- |
| A 4.00 (excellent) | C 2.00 (satisfactory) |
| A- 3.67 | C- 1.67 |
| B+ 3.33 | D+ 1.33 |
| B 3.00 (good) | D 1.00 (poor) |
| B- 2.67 | D- 0.67 |
| C+ 2.33 | E 0.00 (failure) |

The law school policy on exam delays and accommodations can be found here:

https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form.

***6 weeks of Out of Class Innocence Claim Review:***

Each student will be assigned at least one petition received by the 4th Judicial Circuit State Attorney’s Office’s Conviction Integrity Review Division. The student will initiate a review of each petition to determine whether it is facially sufficient.

Using a review checklist, the student will investigate the claim, including:

* Review of the trial transcript and post-conviction motions
* Review of depositions and provide deposition summaries
* Review of police reports and forensic analyses

The student will determine what information is necessary to support the innocence claim and will devise a plan for investigation, including:

* Possible DNA testing
* Interviewing additional witnesses not called at trial
* Re-interviewing trial witnesses
* Ordering additional forensic testing which may not have been previously available
* Evaluating whether questionable methods were used to obtain a confession or eyewitness identification

Depending upon the complexity of investigation, the student is expected to participate in investigation of the innocence claims. This investigation may include internet searches, case law research, witness interviews, forensic testing submission, correspondence with the petitioner, expert witness consultation, and tasking of Investigator Brady. The student is expected to review the case history and engage in active investigation of the innocence claim.

For each case, the student will create a Final Memorandum setting forth their findings and rationale as to whether or not the innocence claim is viable.

***Process for Case Review:***

Remote access to case documents will be provided through Clio (case management system). Students will be supervised by the Director of the State Attorney’s Office Conviction Integrity Review Division and the UF Law Legal Skills Faculty and students will work remotely or in person, if permitted.

***Grades will be determined as follows:***

Class preparation and participation: 35%

Case notes in Clio and Final Memoranda: 65%

**LEARNING ENVIRONMENT AND PREFERRED NAME:**

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with us on any issues related to the class.  If your preferred name is not the name listed on the official UF roll, please let Professor Wolking know as soon as possible by e-mail or otherwise.  We would like to acknowledge your preferred name, and pronouns that reflect your identity.  Please let us know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. We welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL.  The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison."   To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom.  This change may take up to 24 hours to appear in Canvas.   This does not change your legal name for official UF records.

**GETTING HELP:**

For technical difficulties with E-learning in Canvas, please contact the UF Help Desk at:

helpdesk@ufl.edu or 352-392-HELP

http://elearning.ufl.edu/ (See “Message Us” at the top of the page)

**DISCOURSE, INCLUSION, AND THE CLASSROOM ETHOS:**

We consider this classroom to be a place where you will be treated with respect, and we welcome individuals of all ages, backgrounds, beliefs, ethnicities, genders, gender identities, gender expressions, national origins, religious affiliations, sexual orientations, ability – and other visible and non-visible differences. All members of this class are expected to contribute to a respectful, welcoming, and inclusive environment for every other member of the class. As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, we encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

**UF LAW HONOR CODE:**

Academic honesty and integrity are fundamental values of the University community. The University of Florida College of Law Honor Code represents a commitment by students to adhere to the highest degree of ethical integrityTeaching and learning flourish best in an environment where mutual trust and respect form the bedrock of relationships. The Honor Code helps create a community in which students can maximize their intellectual and academic potential. Students are bound by the UF Honor Code, which may be found at https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code.

**COMMUNICATION COURTESY AND CIVILITY:**Please follow rules of common courtesy in all email messages, threaded discussions and chats. Do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class. We reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

**STATEMENT RELATED TO ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES:**  
Students requesting accommodations for disabilities should first register with the Disability Resource Center (352-392-8565, https://disability.ufl.edu/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Asst. Dean Brian Mitchell). Students with disabilities are encouraged to follow this procedure and to share their accommodation letter with me as early as possible in the semester.

**CLASS RECORDINGS:**

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled.  The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding.  All other purposes are prohibited.  Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

**STATEMENT REGARDING ONLINE COURSE EVALUATION:**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevals.aa.ufl.edu/public-results/.

**HEALTH AND WELLNESS RESOURCES:**

***U Matter, We Care***: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit U Matter, We Care website to refer or report a concern and a team member will reach out to the student in distress.

***Counseling and Wellness Center***: Visit the Counseling and Wellness Center website or call 352-392-1575 for information on crisis services as well as non-crisis services.

***Student Health Care Center***: Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care Center website.

***University Police Department***: Visit UF Police Department website or call 352-392-1111 (or 9-1-1 for emergencies).

***UF Health Shands Emergency Room/Trauma Center***: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; Visit the UF Health Emergency Room and Trauma Center website.

**BASIC NEEDS ASSISTANCE:**

Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs.  If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

**ASSIGNMENTS:**

**Class 1: Overview of Wrongful Convictions and Ineffective Assistance of Counsel**

***Overview of the six areas/factors most commonly associated with wrongful convictions:***

1. Eyewitness misidentification

2. False Confessions

3. Misapplied Forensic Science

4. Incentivized Informants

5. Government Misconduct

6. Ineffective Assistance of Counsel

***Class Discussion:***

* The Role of Defense Attorneys
* James Reason’s Swiss Cheese Model
* Innocence Project videos (Dr. Sherry Nakhaeizadeh, Professor Song Richardson)
* Ineffective Assistance of Counsel Claims
* The Impact of Underfunded Public Defender Offices
* Case discussion: Clifford Williams and Nathan Myers
* Guest Speaker—Nina Morrison—Innocence Project

***Data Sources and Materials:***

* The Innocence Project
* National Registry of Exonerations
* Florida Innocence Commission
* Texas Innocence Commission

***Out of Class Material:***

* Start reading *Devil in the Grove* by Gilbert King
* Familiarize yourself with the Review Checklist and Review Guide—provided
* Victim’s deposition in Taylor case—provided
* Familiarize yourself with the National Registry of Exonerations website—FL cases
* Wrongful Conviction case review—to be assigned

**Class 2: Eyewitness Misidentification**

***Class discussion:***

* + - Motorcycle Commercial Video
    - Innocence Project video on human factors
    - Dr. Jennifer Dysart –eyewitness memory
    - Elizabeth Loftus—human memory
    - Jennifer Thompson/Ronald Cotton case—60 minutes video
    - Guest speaker—Ty Flower, documentary filmmaker

***Legal Solutions:***

* Double blind identification procedures—FL statute (2017)
* Jury Instructions

***Out of Class Material:***

* Wrongful Conviction with Jason Flom podcast, Junk Science, Nov. 11, 2020, episode on eyewitness misidentification
* Valentino Dixon—exonerated; Golf Digest story.
* *“*Time Simply Passes*”—*documentary about James Richardson by Ty Flowers

**Class 3: False Confessions**

***Class Discussion:***

* Brenton Butler case
* Saul Kassin video—expert in False Confessions
* The False Confession Capital—60 minutes video
* Interrogation techniques—Reid vs. Cognitive Interviewing
* Guest speaker—State Attorney Melissa Nelson and Nathan Myers, exoneree

***Data Sources and Materials:***

* Richard A. Leo, PhD, JD. “False Confessions: Causes, Consequences, and Implications,” *J Am Acad Psychiatry Law* 37:332–43, 2009
* National Registry of Exonerations <https://www.law.umich.edu/special/exoneration/Pages/False-Confessions-.aspx>
* 2019 Report of the United States Court of Appeals for the Third Circuit Task Force on Eyewitness Identifications

***Legal Solutions/Next steps:***

* Eliminate the Reid technique?
* Videotape interrogations?

***Out of Class Material:***

* Murder on a Sunday Morning—Brenton Butler documentary
* Exonerated Five (Central Park Jogger case), Dixmore Five, Robert Davis case
* Wrongful Conviction with Jason Flom podcast, False Confessions—Norfolk 4 episode, October 5, 2020

**Class 4: Misapplied Forensic Science**

***Class Discussion:***

* National Academy of Science: Strengthening Forensic Science in the US (2009 report)
* Innocence Project video—Confirmation Bias, Dr. Sherry Nakhaeizadeh
* Brandon Mayfield case, Vox fingerprint video
* Lime Street, Jacksonville, FL—arson case
* Guest Speaker—John Lentini—fire investigation expert

***Data Sources and Materials:***

* Innocence Project and National Registry of Exonerations
* Dror. I. E., & Charlton, D. (2006), “Why Experts Make Errors.” Journal of Forensic Identification, 56, 600-616
* Dror, I. E., Charlton, D., & Peron, A. (2006), “Contextual Information Renders Experts Vulnerable to Making Erroneous Identification.” *Forensic Science International*, I56, 74-78

***Out of Class Material:***

* National Academy of Science Report (2009)
* Wrongful Conviction with Jason Flom, Junk Science, Arson episode.
* Innocence Files on Netflix, Episodes I and II, bite mark evidence

**Class 5: Incentivized Informants—Jailhouse Snitches**

***Class Discussion:***

* CIR Petition review round table and discussion
* Professor Alexandra Natapoff—snitching.org
* FL Innocence Commission Recommendations
* Systemic problems around the country—TX and CA
* John Nolley case--TX
* Guest speaker—Seth Miller, Innocence Project of Florida

***Data Sources and Materials:***

* Innocence Project and National Registry of Exonerations
* FL Innocence Commission
* Snitching.org

***Legal Solutions/Next steps:***

* Statutory changes—Florida 2014

***Out of Class Assignments:***

* John Nolley case review
* New York Times article on James Dailey case (Florida)
* The Marshall Project—Jailhouse snitches
* Fordham Law Review article: “See No Evil: Wrongful Convictions and the Prosecutorial Ethics of Offering Testimony by Jailhouse Informants and Dishonest Experts”

**Class 6: Government Misconduct and Culmination of Class**

***Class Discussion:***

* Brady violations, Charles Testagrossa article (resigns after Brady violation disclosed)
* You’ve Been Lied to About Lying, The Atlantic Article
* How confirmation bias and tunnel vision impact an investigation
* Innocence Project videos (Jim Trainum, Dr. Par-Anders Granhag)
* Marty Stroud video—Glenn Ford case
* Guest Speaker--Gilbert King—*The Devil in the Grove*—Zoom

***Data Sources and Materials:***

* Innocence Project and National Registry of Exonerations (Government Misconduct and Convicting the Innocent, September 2020)
* Alafair S. Burke, “Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science.” 47 Wm & Mary L. Rev. 1587 (2006)
* Cline, Austin. “Confirmation Bias: Flaws in Reasoning and Arguments.” *ThoughtCo*., June 22, 2018, [thoughtco.com/confirmation-bias-250361](http://thoughtco.com/confirmation-bias-250361)
* Bazelon, Emily. “The Dark Dangers of Tunnel Vision.” *Slate*, December 4, 2012.
* King, Gilbert. *The Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America*. HarperCollins Publishers, 2013.

***Legal Solutions/Next steps:***

* Do we hold law enforcement and prosecutors more accountable? (NY Prosecutor Misconduct Panel, FL proposed legislation)
* Procedures to avoid tunnel vision?