

SYLLABUS
Wrongful Convictions and Factual Innocence:
Conviction Integrity Review
Fall 2022

INSTRUCTORS' CONTACT INFORMATION:

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Office Hours: Tuesdays 2-4pm. 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: Fridays 9:30am-1:30pm

Class dates: 8/26, 9/9, 9/23, 10/14, 10/28, and 11/18

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:

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 four "classroom hours" of in-class instruction every other week (2 hours per week), requiring at least four 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.

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.

The class will meet six times during the semester. Students will be expected to prepare class material, write reflections, and review 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 a minimum of 10.5 hours per week on casework. 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.

In addition to their casework, students will attend class which includes participating in case rounds involving issues raised by their petitions, preparing questions for our guest speakers, and leading discussions on the required reading/viewing course assignments. The Wrongful Conviction/Innocence Course counts toward the six credit experiential learning requirement.

Our grading rubric is posted in Canvas and we encourage you to review it as you begin work on your petitions. Grades will be determined as follows:

Class preparation, written reflections, and participation: 40%

Case notes in Clio and Final Memoranda: 60%

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>.

Procedure for Innocence Claim Review:

Each student will be assigned at least one petition received by the 4th Judicial Circuit State Attorney's Office Conviction Integrity Review Division. The student will review 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 working with Investigator Brady on additional avenues of investigation. 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.

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 Senior Legal Skills Faculty. Students will work remotely or in person, if permitted.

INSTRUCTIONS FOR COMPLETING WEEKLY TIMESHEETS:

Heather Flynn (externships@law.ufl.edu) will be monitoring your hours. You'll complete weekly time sheets which accurately describe work performed in a meaningful way. Please do not record time with a single, recurring description: "review trial transcript." Instead, if possible, break down the tasks involved:

"research law on judicial review —2 hours"

"create timeline for homicide—3 hours"

"begin writing Final Memorandum—2 hours"

Also, think carefully about the words you use to describe your work. Use persuasive verbs. "Motion to suppress brief" is not persuasive; "Researched, wrote, and revised motion to suppress brief" is persuasive. No matter what area of law practice you enter, being able to accurately and persuasively describe your work has tremendous value and this semester is a great time to hone these skills!

The time sheet you are to use will be available in Canvas under "files" and should be completed each week, signed by you, and sent to Heather Flynn at externships@law.ufl.edu. For this class, please disregard the line which asks for a supervisor's signature.

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 integrity. Teaching 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 RECORDING POLICY:

The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

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/>.

ASSIGNMENTS:

Class 1: August 26, 2022

Overview of Wrongful Convictions and Ineffective Assistance of Counsel

Review 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
- In-depth case review: Clifford Williams and Nathan Myers

Data Sources and Materials:

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

Out-of-Class Material:

- Begin watching *Outcry*
- Familiarize yourself with the Review Checklist and Review Guide
- Read victim's deposition in Taylor case
- Familiarize yourself with the National Registry of Exonerations website—
FL cases
- SAO CIR Wrongful Conviction case review

Class 2: September 9, 2022

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: Prof. Saul Kassin (John Jay College of Criminal Justice CUNY)

Data Sources and Out-of-Class 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
- 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

Legal Solutions/Next Steps:

- Eliminate the Reid technique?
- Videotape interrogations?

Class 3: September 23, 2022

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: Sandy Musumeci Foster (Riley Safer Holmes & Cancila)

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*)
- “Time Simply Passes”—documentary about James Richardson by Ty Flowers

Class 4: October 14, 2022

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: Josh Dubin (Dubin Research & Consulting)

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*, 156, 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: October 28, 2022

Incentivized Informants—Jailhouse Snitches

Class Discussion:

- CIR Petition review case rounds 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: Prof. Alexandra Natapoff (Harvard Law School)

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: November 18, 2022

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*
- 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 (Pulitzer Prize winning author)

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](https://www.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