

SYLLABUS
Wrongful Convictions and Factual Innocence:
Conviction Integrity Review
Fall 2023

INSTRUCTORS' CONTACT INFORMATION:

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Office Hours: Wednesdays 1-3pm. 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: 8/25, 9/8, 9/22, 10/13, 10/27, and 11/3

-All classes will be via Zoom except 9/22 which is in-person at UF Law-

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>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

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%

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:

Angie Hull (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 Angie Hull at externships@law.ufl.edu. For this class, please disregard the line which asks for a supervisor's signature.

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

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.

INTERNET USE DURING CLASS:

Use of the Internet during class is not permitted, unless directed by me. You may not check social media sites, may not check email (even Clinic or career related emails), and may not check news sites. Think of class as an important client meeting, and schedule your emailing

needs accordingly. Your internet use, even for a noble purpose, is a violation of the standards of professionalism. If you have concerns about this policy, please feel free to discuss them with me.

ASSIGNMENTS:

Class 1: 8/25/23

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:

- James Reason's Swiss Cheese Model
- Case discussion: Clifford Williams and Nathan Myers
- The Role of Defense Attorneys
- Ineffective Assistance of Counsel Claims
- FL Innocence Commission
- The Impact of Underfunded Public Defender Offices

Out of Class Material:

- Gideon's Army, documentary on YouTube, [Gideon's Army](#) (1:35:45)
- [America's Public Defense System is in Crisis](#), YouTube (12:40)
- Start listening to *Bone Valley*, podcast hosted by Gilbert King (9 episodes)
- Sign and return the SAO Confidentiality Agreement
- Familiarize yourself with the Review Checklist and Review Guide—provided
- Familiarize yourself with the National Registry of Exonerations website ([National Reg. of Exonerations](#)) with focus on the FL cases
- SAO4 CIR Wrongful Conviction case review—to be assigned

Class 2: 9/8/23

False Confessions

Class Discussion:

- Student-led discussion on the Norfolk 4
- Saul Kassin, [False Confessions - Vera Institute](#) (9:11)
- The False Confession Capital—60 minutes video [60 Minutes on False Confessions](#) (13:30)
- Interrogation techniques—Reid vs. Cognitive Interviewing

- Guest speaker: Jim Trainum

Out of Class Material:

- The Confessions, [PBS Frontline](#) (1:23:26)
- Wrongful Conviction with Jason Flom podcast, False Confessions—Norfolk 4 episode, October 5, 2020
- Write a 2-page reflection on the Norfolk 4 and write three questions for our speaker based on what you've read and watched

Class 3: 9/22/23

Eyewitness Misidentification

Class discussion:

- Student presentation of CIR assigned case facts (5-8 minutes each)
- Student-led discussion on the Brenton Butler case
- Motorcycle commercial video
- Innocence Project video on human factors
 - Dr. Jennifer Dysart –eyewitness memory
 - Elizabeth Loftus—human memory
- Jennifer Thompson/Ronald Cotton case—[Eyewitness Testimony part 1](#) (13:00) and [Eyewitness Testimony part 2](#) (13:06)
- Guest Speaker: Gilbert King

Out of Class Material:

- Wrongful Conviction with Jason Flom podcast, Junk Science, Nov. 11, 2020, episode on eyewitness misidentification
- PBS Nova: The Brain, Perception Deception (53:33)
- Murder on a Sunday Morning (1:51:13), YouTube, write a 2-page reflection and write three questions for our speaker based on what you have read and watched

Class 4: 10/13/23

Misapplied Forensic Science

Class Discussion:

- Student presentation of next steps in CIR assigned cases (5-8 minutes)
- National Academy of Science: Strengthening Forensic Science in the US (2009 report)
- Innocence Project video—Confirmation Bias, Dr. Sherry Nakhaeizadeh
- Brandon Mayfield--fingerprints
- Lime Street, Jacksonville, FL—arson case
- Guest Speaker: Mike Maloney

Out of Class Material:

- AAFs 2018 Plenary Session Part 2, Itiel Dror, YouTube

- Wrongful Conviction with Jason Flom, Junk Science, Arson episode, #149, 8.17.2020
OR
- Wrongful Conviction with Jason Flom, Junk Science, Fingerprint episode, #156, 9.9.2020
- Write a two-page reflection and write three questions for our speaker based on what you have read and watched

Class 5: 10/27/23

Incentivized Informants – Jailhouse Snitches

Class Discussion:

- Professor Alexandra Natapoff – snitching.org
- FL Innocence Commission Report – [Innocence Commission Report 2012](#)
- Systemic problems around the country – TX and CA
- Guest speakers: Josh Dubin and Derrick Hamilton

Out of Class Assignments:

- He’s a Liar, Con-artist, and a Snitch – ProPublica Paul Skalnik article
- Convicted Based on Lies, ProPublica article
- Wrongful Conviction podcast, Episode 4, Derrick Hamilton (10.31.16)
- Write a two-page reflection and write three questions for our speakers based on what you have read and watched

Class 6: 11/3/23

Government Misconduct and Culmination of Class

Class Discussion:

- Student presentations discussing investigative conclusions for CIR assigned case (5-8 minutes)
- Government Misconduct and Wrongful Convictions: Gvmt Misconduct and Convicting the Innocent
- *Brady* violations, Charles Testagrossa article (resigned after *Brady* violation disclosed)
- How confirmation bias and tunnel vision impact an investigation
- Innocence Project videos (Jim Trainum)
- Guest Speaker: Ty Flowers

Out of Class Assignments:

- *Time Simply Passes*, (54:00), by Ty Flowers, write a two-page reflection and write three questions for our speaker based on what you have read and watched