**SYLLABUS**

**Wrongful Convictions and Factual Innocence:**

**Conviction Integrity Review**

***Spring 2021***

INSTRUCTORS’ CONTACT INFORMATION:

Shelley Thibodeau, Director

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Virtual Office Hours: Mondays 4-6pm. Please join Sarah Wolking’s Personal Meeting Room https://ufl.zoom.us/j/9800804098. Students should feel free to contact the professor 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 Director of the Conviction Integrity Review (CIR) Division in Jacksonville. Established in 2018, this unit was the first of its kind 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;
* Orchestrate investigation, including forensic testing and interviews;
* Articulate investigative reforms that could be implemented to guard against the conviction of the innocent;
* Speak professionally to trial counsel;
* Write memoranda for each innocence petition reviewed which thoughtfully outlines continued investigation steps or denial of the petition;
* Identify policy changes that will prevent 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: 1/15, 1/29, 2/12, 2/26, 3/19, and 4/9

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 clients. 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 with incarcerated clients and/or with witnesses. They will be expected to do legal research and analysis. Students 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 6 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 professor 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: http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3.

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 Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent:

Letter Grade Points Letter Grade Points

A (Excellent) 4.00 C (Satisfactory) 2.00

A- 3.67 C- 1.67

B+ 3.33 D+ 1.33

B (Good) 3.00 D (Poor) 1.00

B- 2.67 D- 0.67

C+ 2.33 E (Failure) 0.00

The law school grading policy is available at: [http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9](http://www.law.ufl.edu/student-affairs/current-students/academic-policies%239).

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

Each student will assigned at least two petitions 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

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 completion of assignments: 30%

Participation in case rounds/discussions during class: 25%

Case notes in Clio and final Memorandum: 45%

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.

COVID-19 PROTOCOLS:

We will have participatory instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of any in-class interactions:

* You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, any noncompliance will be reported to the relevant state board of bar examiners.
* This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between one another. Please do not move desks. Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class. Practice physical distancing to the extent possible when entering and exiting the classroom.
* If you are experiencing COVID-19 symptoms (https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html), please do not come to the State Attorney’s Office or campus or, if you are already on site at either of those places, please immediately leave. Use the UF Health screening system and follow the instructions about when you are able to return too campus. https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/. Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/.

PROHIBITION ON STUDENT RECORDING, PHOTOGRAPHY & SOCIAL

MEDIA POSTING:

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online.  Students failing to follow this rule will be referred to the College of Law Honor Code Council and UF’s Office of Student Conduct and Conflict Resolution.

GETTING HELP:

For technical difficulties with E-learning in Canvas, please contact the UF Help Desk at: helpdesk@ufl.edu; 352-392-HELP

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

UF LAW HONOR CODE:

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. Further information may be found here: https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code.

STATEMENT RELATED TO ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES:

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, https://disability.ufl.edu). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs. Students with disabilities should follow this procedure as early as possible in the semester.

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 me on any issues related to the class.  If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise.  I would like to acknowledge your preferred name, and pronouns that reflect your identity.  Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I 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.

NETIQUETTE/COMMUNICATION COURTESY:

Please follow rules of common courtesy in all email messages, threaded discussions and chats. See http://teach.ufl.edu/wp-content/uploads/2012/08/NetiquetteGuideforOnlineCourses.pdf

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: January 15, 2021**

**Overview of Wrongful Convictions and Ineffective Assistance of Counsel**

***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

***Research:***

* 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
* Florida Innocence Commission Report

***Data Sources and Materials:***

* The Innocence Project, Nina Morrison, guest speaker
* National Registry of Exonerations
* Florida Innocence Commission
* Texas Innocence Commission
* Quattrone Center for the Administration of Fair and Just Prosecution
* Fair and Just Prosecution

**CLASS 2: January 29, 2021**

**Eyewitness Misidentification**

* + - Motorcycle Commercial Video and discussion
		- Innocence Project video on human factors (Dr. Jennifer Dysart)
		- Jennifer Thompson/Ronald Cotton case
		- Elizabeth Loftus–research on memory + IP video

***Legal Solutions:***

* Double blind identification procedures
* Jury Instructions

**CLASS 3: February 12, 2021**

**False Confessions**

***Recognizing a False Confession:***

* Richard A. Leo, PhD, JD. *J Am Acad Psychiatry Law* 37:332–43, 2009
* Innocence Project video (Chris Ochoa)
* National Registry of Exonerations <https://www.law.umich.edu/special/exoneration/Pages/False-Confessions-.aspx>

***Research on Causation:***

* Saul Kassin interview and Innocence Project video
* Factors—age, length of interrogation, cognitive function, interview techniques
* Reid Method vs. Cognitive Interviewing

***Data Sources and Materials:***

* Innocence Project and National Registry of Exonerations
* Innocence Project videos
* Exonerated Five, Dixmore Five, Robert Davis case
* 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?

**CLASS 4: February 26, 2021**

**Misapplied Forensic Science**

***Research:***

* Junk Science—Hair analysis, bite mark, arson investigation, etc.
* How outside information can impact the forensic results
* FBI --Analyst testifies falsely in hair analysis cases

***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

**CLASS 5: March 12, 2021**

**Incentivized Informants—Jailhouse Snitches**

***Research:***

* Professor Alexandra Natapoff and others
* FL Innocence Commission Recommendations
* Systemic problems around the country—TX and CA
* John Nolley case

***Data Sources and Materials:***

* Innocence Project and National Registry of Exonerations

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

* Statutory changes (Florida)

**CLASS 6: April 9, 2021**

**Government Misconduct and Culmination of Class**

***Research:***

* How confirmation bias and tunnel vision impact an investigation
* Innocence Project videos (Jim Trainum, Dr. Par-Anders Granhag)
* Marty Stroud--Glenn Ford case

***Misconduct:***

* Gilbert King—*The Groveland Boys*—speak to class via Zoom
* Brady violations

***Data Sources and Materials:***

* Innocence Project and National Registry of Exonerations
* 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)
* How do we check for tunnel vision?