

## WRONGFUL CONVICTIONS SEMINAR

*Spring Session 2023*

Katie Monroe  
kamonroe65@gmail.com  
202-997-9132

### **Course Objectives**

This course will focus on systemic errors in our criminal justice system that lead to the conviction of innocent people. You will learn about the causes and consequences of wrongful convictions, as well as about legal remedies available for correcting wrongful convictions and policy reforms for preventing them. You will also be introduced to innocence case investigation and post-conviction procedure.

Specific learning goals include: (1) exposure to all aspects of post-conviction innocence claims, including substantive causes of wrongful convictions and procedural mechanisms for litigating those claims; (2) introduction to essential and transferrable lawyering skills, such as investigative methods, fact development, persuasive storytelling, identification of legal issues, and fact and theory development; and (3) basic understanding of laws and policy reforms aimed at improving the accuracy and reliability of the criminal justice process.

### **Required Reading**

**Weekly Class Readings** (listed in syllabus below and otherwise assigned during the semester)

### **Recommended Resources**

- **Websites**

[www.innocenceproject.org](http://www.innocenceproject.org) (Innocence Project)

<https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (National Registry of Exonerations)

[www.survivorservices.com](http://www.survivorservices.com) (Healing Justice)

- **Books**

*Actual Innocence* by Jim Dwyer, Peter Neufeld & Barry Scheck

*Convicting the Innocent: Where Criminal Prosecutions Go Wrong* by Brandon Garrett

*Surviving Justice* edited by Lola Vollen & Dave Eggers

1

### **Virginia Case Studies**

Marvin Anderson, Michael Hash, Thomas Haynesworth, Mike McAlister, and the Norfolk Four. We will also examine recent cases from other jurisdictions. Any materials relating to these cases will be assigned as relevant.

### **Class Meetings**

Tuesdays, 6:05-8:05pm, via Zoom

## **Guest Speakers**

TBD

## **Grading**

Attendance and class participation – 30%; final paper – 70%

## **Syllabus & Class Readings**

*Tuesday, January 17 - Introduction to Wrongful Convictions, Post-Conviction Process & the Innocence Movement*

Read Before Class:

- National Registry of Exonerations, *Exonerations by Contributing Factor*, <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContributorsByCrime.aspx>
- National Registry of Exonerations, *The Contribution of Forensic and Expert Evidence to DNA Exonerations*, [www.law.umich.edu/special/exoneration/Documents/The%20Contribution%20of%20Forensic%20and%20Expert%20Evidence%20to%20DNA%20Exoneration%20Cases%20An%20Interim%20Report.pdf](http://www.law.umich.edu/special/exoneration/Documents/The%20Contribution%20of%20Forensic%20and%20Expert%20Evidence%20to%20DNA%20Exoneration%20Cases%20An%20Interim%20Report.pdf)
- Gross, et al., *Exonerations in the United States, 1989 through 2012*, Report by the National Registry of Exonerations (2012), [https://www.law.umich.edu/special/exoneration/Documents/exonerations\\_us\\_1989\\_2012\\_full\\_report.pdf](https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf)
- Findley, *Defining Innocence*, 74 Albany L. Rev. 1157 (2011)
- Ringer, *Convicting the Innocent: An Empirically Justified Wrongful Conviction Rate*, 97 J. Crim. Law & Criminology 761 (2007)

*Tuesday, January 24 - Legal Remedies for Post-Conviction Claims of Innocence: DNA Testing Statutes, Writs of Factual Innocence & Habeas Corpus*

Read Before Class:

- *Herrera v. Collins*, 506 U.S. 390 (1993)
- *Schlup v. Delo*, 513 U.S. 298 (1995)
- *House v. Bell*, 126 S. Ct. 2064 (2006)
- Findley, *Innocence Protection in the Appellate Process*, 93 Marquette L. Rev. 1 (2009)
- Medwed, *Up the River Without a Procedure: Innocence Prisoners and Newly Discovered Non-DNA Evidence in State Courts*, 47 Arizona L. Rev. 655 (2005)

*Tuesday, January 31 - Impact of Wrongful Convictions on the Original Crime Victims*

Read Before Class:

- Healing Justice, *Responding to Original Victims in Wrongful Conviction Cases OVC Grant Award #2017-VF-GX-K032: Summary of Information Gathered from Original Victims and the Field*, [https://www.survivorservices.org/media/dvcpwfw1/resources-for-practitioners\\_summary-project-report.pdf](https://www.survivorservices.org/media/dvcpwfw1/resources-for-practitioners_summary-project-report.pdf)

- National Institute of Justice, *Addressing the Impact of Wrongful Convictions on Crime Victims*, <http://nij.gov/journals/274/pages/victim-impact-wrongful-convictions.aspx>
- National Institute of Justice, February 22, 2016 *Listening Session for Original Victims and Survivors*, <https://www.ncjrs.gov/pdffiles1/nij/249931.pdf>

*Tuesday, February 7 - The Police Investigation: Tunnel Vision, Preservation of Evidence, and Official Misconduct*

Read Before Class:

- *California v. Trombetta*, 467 U.S. 479 (1984)
- *Arizona v. Youngblood*, 488 U.S. 51 (1988)
- *Evans-Smith v. Taylor*, 19 F.3d 899 (4<sup>th</sup> Cir. 1994)
- Findley & Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 Wis. L. Rev. 291
- National Registry of Exonerations, *Government Misconduct and Convicting the Innocent*, [https://www.law.umich.edu/special/exoneration/Documents/Government\\_Misconduct\\_and\\_Convicting\\_the\\_Innocent.pdf](https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf)
- Bazelon, *The Dark Dangers of Tunnel Vision*” Slate, December 4, 2012

*Tuesday, February 14 - Mistaken Eyewitness Identification*

Read Before Class:

- *Manson v. Brathwaite*, 432 U.S. 98 (1977)
- *State v. Henderson*, 27 A.3d 872 (N.J. 2011)
- *2019 Report of the Third Circuit Task Force on Eyewitness Identifications*, <https://www.ca3.uscourts.gov/sites/ca3/files/2019%20Report%20of%20Third%20Circuit%20Task%20Force%20on%20Eyewitness%20Identifications.pdf>
- *Identifying the Culprit: Assessing Eyewitness Identification*, National Academy of Sciences (selected sections for discussion will be provided in advance)
- Wells, et al., *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, *Law Hum Behav* (2010) 34:3–38

*Tuesday, February 21 - Flawed Forensic Evidence & Forensic Fraud*

Read Before Class:

- *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)
- *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)
- Garrett & Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 Va. L. Rev. 1 (2009)
- 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
- *Strengthening Forensic Science in the United States: A Path Forward*, National

Academy of Sciences (selected sections for discussion will be provided)

*Tuesday, February 28 - Police Interrogations & False Confessions*

Read Before Class:

- *Greenwald v. Wisconsin*, 390 U.S. 519 (1968)
- *Crane v. Kentucky*, 476 U.S. 682 (1986)
- National Registry of Exonerations,  
<https://www.law.umich.edu/special/exoneration/Pages/False-Confessions-.aspx>
- Kassin, et al., *Police Induced Confessions: Risk Factors and Recommendations*, *Law Hum Behav* (2010) 34:3–38
- Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L. Rev. 891 (2004)

*Tuesday, March 7 - Prosecutorial Mistakes & Misconduct: Suppression of Exculpatory Evidence & Reliance on Incentivized or Perjured Testimony*

Read Before Class:

- *Brady v. Maryland*, 373 U.S. 83 (1963)
- *United States v. Bagley*, 473 U.S. 667 (1985)
- *Napue v. People*, 79 S. Ct. 1173 (1959)
- *Giglio v. United States*, 92 S. Ct. 763 (1972)
- *Connick v. Thompson*, 131 S.Ct. 1350 (2011)
- Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 Wm & Mary L. Rev. 1587 (2006)
- Natapoff, *Beyond Unreliable: How Snitches Contribute To Wrongful Conviction*, 37 GGULR 107 (2006)
- Joy, *The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System*, 2006 Wisconsin L. Rev. 399
- Medwed, *The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence*, 84 Boston University L. Rev. 125 (2004)

*Tuesday, March 21 - Ineffective Defense Counsel*

Read Before Class:

- *Strickland v. Washington*, 467 U.S. 1267 (1984)
- Rigg, *The T-Rex without Teeth: Evolving Strickland v. Washington and the Test for Ineffective Assistance of Counsel*, *Pepperdine L. Rev.* 35 (1): 77–105 (2007)
- Bibas, *The Psychology of Hindsight and After-the-Fact Review of Ineffective Assistance of Counsel*, 2004 Utah L. Rev. 1

*Tuesday, March 28 - Investigating Post-Conviction Innocence Claims: The Paper Trail*

No required reading.

*Tuesday, March 28 - Investigating Post-Conviction Innocence Claims: The People Trail*

No required reading.

*Tuesday, April 11 - Post-Exoneration Issues & Policy Reforms*

Read Before Class:

- Innocence Project, *Making Up for Lost Time* (will be provided)
- National Registry of Exonerations, *25,000 Years*,  
[www.law.umich.edu/special/exoneration/Documents/25000%20Years.pdf](http://www.law.umich.edu/special/exoneration/Documents/25000%20Years.pdf)
- Quattrone Center for the Fair Administration of Justice, *Guidelines for Collaboration and Engagement: Prosecutors and Defense Counsel Working Together in Joint Post-Conviction Investigations*,  
<https://www.law.upenn.edu/live/files/12062-guidelines-for-collaboration-and-engagement>
- Innocence Project, individual reform pages, <https://innocenceproject.org>
- *National Summit on Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions*, International Association of Chiefs of Police.  
[www.theiacp.org/portals/0/documents/pdfs/Wrongful Convictions Summit Report WEB.pdf](http://www.theiacp.org/portals/0/documents/pdfs/Wrongful_Convictions_Summit_Report_WEB.pdf)
- *Mending Justice: Sentinel Event Reviews*, National Institute of Justice,  
<https://ncjrs.gov/pdffiles1/nij/247141.pdf>

*Tuesday, April 18 – Introduction of Final Paper*