PREVENTING WRONGFUL CONVICTIONS
Graduate Seminar
CRI 2050H
(Fall 2019)

A wrongful conviction is a failure of justice in the most fundamental sense...If there is one theme that emerges from all the reports considering wrongful convictions and all of their recommendations it is vigilance—everyone involved in the criminal justice system must be constantly on guard against the factors that can contribute to miscarriages of justice”

--Report on the Prevention of Miscarriages of Justice, 2004

University of Toronto, Centre for Criminology and Sociolegal Studies
Fall 2019
Instructor: Marie Comiskey, BA LLB LLM SJD, Fellow at the Centre of Criminology and Sociolegal Studies and Senior Counsel, Public Prosecution Service of Canada

Course meeting times and locations
Wednesdays, 6:00-8:00 pm, Room 265, Ericson Seminar Room, Centre for Criminology and Sociolegal Studies, 14 Queen’s Park Crescent West

Instructor’s contact information
Email: Marie.Comiskey@utoronto.ca
Telephone: 416-973-8506
Office Hours: By appointment on Monday from 5:30-6:00 p.m. will often be an excellent opportunity to meet as well as after class from 8:00-8:30 p.m. We can also set up a time to speak by telephone if those two times do not work.

Course overview
In this seminar we will explore how miscarriages of justice occur and what steps can be taken to prevent wrongful convictions. While the primary focus will be on Canada, the seminar will also sometimes canvass cases and issues that have arisen in several other jurisdictions including the United States, the United Kingdom and Australia. Each week will be dedicated to a discrete topic. After an introduction to the course in Week 1, in Week 2, we will focus on how tunnel vision and confirmation bias by investigators often lie at the heart of wrongful convictions. In Week 3, we will examine the frailties of eyewitness testimony and the role that eyewitnesses have played in wrongful convictions. In Week 4, we will examine wrongful convictions in the Arctic and canvass the law on wrongful convictions in Canada and the routes which exist for the wrongfully convicted to pursue exonerations. In Week 5, we will look at the role of the prosecutor in creating and preventing wrongful convictions, and the phenomenon of false confessions and examine what factors might lead a person to falsely confess to a crime she or he did not commit. In Week 6, we will move to the topic of in-custody informers (or jailhouse informants) and discuss the motivations for false testimony and how the testimony is interpreted by juries. In Week 7, we will study the role of forensic pathology in wrongful convictions from the vantage point of the Charles Smith scandal in Ontario which led to the Goudge inquiry on Pediatric Forensic Pathology and consider whether the reliability of fingerprint analysis has been impugned. In Week 8, the role of DNA in exonerations will be the primary topic, while in Week 9, we will consider the legality of the Mr. Big technique in Canada and the risks it may create of wrongful convictions. In Week 10, the focus will be on the ability of jurors to comprehend juror instructions and to assess the reliability of coerced confessions. In Week 11, we will look at some of the flaws in past arson investigations and the reliability of so-called “junk science”. In Week 12, we will end with an examination of the potential for criminal justice and policy reform to prevent wrongful convictions.
Course Requirements:

1) A film review of a movie about a wrongful conviction case (6 to 8 pages double spaced). A list of suggested movies appears at the end of syllabus. If there is a movie that you would like to review, please ensure that it does deal with a wrongful conviction case. If in doubt, email me. Worth 10% of the mark. A separate sheet that describes the expectations for the book review will be provided in Week 2.

   Movie Review Due: By 5 p.m. on Thursday Oct 10, 2019 via email
   Worth 10% of mark

2) A brief oral presentation on a wrongful convictions case (10 minutes only). You will speak about a wrongful convictions case from any jurisdiction in the world. The case MUST BE DIFFERENT from the case covered in your movie review and cannot be the focus of your final paper (but it can be referenced very briefly as a footnote for example).

   You should rely on at least 3 sources (1 of which must be an academic article or a chapter from a commission on the wrongful convictions case). The other 2 sources can include:
   - a court decision, a podcast (i.e. the Syed case on Serial Season 1 or the Steven Avery case from "Making a Murderer" series on Netflix), newspaper or magazine article, academic article, book, chapter from a commission, movie etc. Not all of the sources that you consult need to deal directly with the wrongful convictions case. For example, you might want to read an article that covers an issue that contributed to the wrongful conviction (i.e. faulty crime scene investigations or junk science).

   You will be asked to briefly summarize the facts of the wrongful conviction case and address the cause of the wrongful convictions. You will provide observations and commentary on the issues, concerns, and shortcomings the case raises or points out about the criminal justice system. You may, but are not required, to use a presentation software such as Powerpoint or Prezi etc. Please limit your slides to 8 to 10 at a maximum. If you are presenting on a day for which there is an assignment due, you will receive an additional week to submit your assignment.

   There will be a signup sheet during the second week of classes.

   The day after your presentation, please email by 9 a.m. a copy of your slides if you decide to use a presentation software system. The last page should identify the 3 sources used. If you do not use a presentation software, simply email a list of the sources you used. Ensure that what you submit has your name on it (preferably on the cover slide or page).

   Worth 10% of mark

3) Response to Readings: You will provide a 2 page (double-spaced) response to the readings for five classes. You will provide critical commentary on the readings, and your reactions to the readings (1 page single spaced or 2 pages doubled spaced) and you will identify on a separate page five questions that you have after reading the materials. (these 5 questions should not exceed half a page). Please do not refer to any other texts than the assigned readings. Worth 5% (Each response will be marked as pass/fail. You earn 1% for each response successfully completed. These are to be emailed to the instructor by 12 p.m. on Friday before the class for which the reading is assigned.)
3) A 20 to 22 page (not including your bibliography) research paper worth 65% of the final mark. Students are to generate their own topics. A starting point will be the weekly topics. You may not write a paper focussed on the wrongful convictions case covered in your oral presentation or in your film review. Deadlines:

- Paper Topic Due: November 4, 2019
- Final Paper Due: December 5, 2019 by 5 p.m.

4) Class participation is worth 10% of the final mark and will be based on attendance in class and active participation in class discussions. Students are expected to attend every class and to come to class having completed the readings. Texting on your phone and surfing the net while in class does not count as participation.

Course Materials:

The course materials will consist of articles that should be accessible to you electronically through the excellent e-holdings for journals in the University of Toronto library.

There is no required textbook for the course. There are, however, useful reference texts listed below.

Reference Texts


Guest Speakers:

I am expecting to have one or two guest speakers visit our class. When the visits are confirmed, I will let you know. There may be some slight shifting to the assigned readings or order of topics covered in the syllabus.

Plagiarism

Plagiarism and other academic offences will not be tolerated at the University of Toronto. Academic discipline ranges from a mark of zero on an exam or assignment to dismissal from the University. For important information see UofT’s Academic Integrity website at [http://academicintegrity.utoronto.ca/](http://academicintegrity.utoronto.ca/). See also these academic integrity websites: School of Graduate Studies at [http://www.sgs.utoronto.ca/facultyandstaff/Pages/Academic-Integrity.aspx](http://www.sgs.utoronto.ca/facultyandstaff/Pages/Academic-Integrity.aspx) and Faculty of Arts and Science at [http://www.artsci.utoronto.ca/osai](http://www.artsci.utoronto.ca/osai).
Outline of Assigned Readings:

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<th>DATE</th>
<th>TOPIC</th>
<th>READINGS</th>
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<tr>
<td>SEP 9, 2019 (Week 1)</td>
<td>INTRODUCTION AND OVERVIEW</td>
<td>- No Assigned Readings to be completed before class.</td>
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<td>- Introduction to the Course and review of the syllabus.</td>
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<td>SEP 16, 2019 (Week 2)</td>
<td>THE INVESTIGATION</td>
<td>Batts, Anthony W, deLone, Maddy &amp; Stephen, Darryl.</td>
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<td>MacFarlane, Bruce, “Wrongful Convictions: The Effect of Tunnel Vision and Predisposing Circumstances in the Criminal Justice System” (read pages 1-56)</td>
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<td><a href="https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/policy_research/pdf/Macfarlane_Wrongful-Convictions.pdf">https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/policy_research/pdf/Macfarlane_Wrongful-Convictions.pdf</a></td>
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<td>(Google search terms: Macfarlane tunnel vision)</td>
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<td>(Google search terms: the path to justice preventing wrongful convictions)</td>
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<td>The Innocence Project, “Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of Misidentification” (July 2009) Benjamin Cardozo School of Law.</td>
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<td>(Google Search terms: Innocence Project Reevaluating Lineups (scroll down the page to download pdf of report))</td>
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<td>SEP 30, 2019 (Week 4)</td>
<td>THE ARCTIC and THE LAW ON MISCARRIAGES OF JUSTICE IN CANADA</td>
<td>Guest Speaker on Wrongful Convictions and The Artic – Sebastien Lafrance. Counsel, Public Prosecution Service of Canada.</td>
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<td>Innocence Canada, « The Legal Path to Exoneration » at</td>
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*Available at:* http://www.jaapl.org/content/37/3/332.full#ref-24. |
| OCT 14, 2019 | THANKSGIVING HOLIDAY | NO CLASS                                                                                                                                                                                                 |
Public Prosecution Service of Canada Deskbook, 3.3 Guidelines on Immunity Agreements.  
-Neuschatz et al. (2008), "The Effects of Accomplice Witnesses and Jailhouse Informants on Jury Decision Making" 32 *Law and Human Behavior* 137-149 |
| OCT 28, 2018 (Week 7) | FORENSIC PATHOLOGY ISSUES – Canada’s Experience | Executive Summary for the Goudge Inquiry https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/report/v1_en_pdf/Vol_1_Eng_ES.pdf (Google search terms: Goudge Inquiry Executive Summary)  
| NOV 4, 2019 | DNA EVIDENCE – EXONERATION & FALL READING WEEK | |
| (Week 8) | RELIABILITY CONCERNS | -Class will be re-scheduled if classes not held this week for graduate students.  


http://www.theatlantic.com/magazine/archive/2016/06/a-reasonable-doubt/48747/  


(Google search terms: the path to justice preventing wrongful convictions) |
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Google Search terms: Tim Moore deceit betrayal  


(Google search terms: R v. Hart Supreme Court of Canada) |


DEC 2, 2019  

ERROR CORRECTION & SYSTEMIC REFORM


(Soak search terms: Zalman criminal justice reform)


Papers Due Thursday December 5, 2019

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Ideas for Movie Review (Not a Comprehensive List):

*After Innocence* (won 2005 Sundance Film Festival Special Jury Prize – re 7 men exonerated)

*Amanda Knox*, 2016.


*The Central Park Five*, 2012 (Re 5 black and Latino teenagers arrested and charged with attacking and raping a white female jogger)

*The Confession Tapes* – Re Six different cases of persons who confessed to crimes they did not commit. (Choose one of the six cases covered.)

*Conviction*, 2010. (Re a sister’s fight to prove her brother’s innocence)

*The Exonerated*, 2006. (Re 6 men exonerated after being sentenced to death)

*The Hurricane*, 1999. (Re Reuben “Hurricane” Carter)

*Interrogation of Michael Crowe*, 2002. (Re Coercing a false confession of a 14 year old boy investigated for the murder of his sister)

*Murder on a Sunday Morning*, 2003 (Re Brenton Butler)

*In the Name of the Father*, 1993 (Re Gerry Conlon accused of IRA Bombing)


*Thin Blue Line*, 1988. (Re Randall Adams)


West of Memphis, 2013. (Re the 3 Young Men known as “The West Memphis Three” – Damien Echols, Jessie Misskelley, Jr., and Jason Baldwin.

The Wronged Man, 2010. (Re Calvin Willis)

For other ideas: see http://www.innocenceproject.org/must-see-films-and-tv-episodes-on-wrongful-convictions/

Books on Wrongful Convictions (May be Useful as a Starting Point for Research Papers):

Adeane, Anthony. Out of Thin Air: A True Story of Impossible Murder in Iceland (Collins, 2018)

Burns, Sarah, Central Park Five (Vintage, 2011)

Caldwell, Laura & Klinger, Leslie S. eds, Anatomy of Innocence: Testimonies of the Wrongfully Accused (Liveright, 2017) (fiction thriller writers were asked to write about those who have been wrongfully convicted)

Echols, Damien, Life After Death (Blue Rider Press, 2012)


Makin, Kirk, Redrum the Innocent (Penguin, 1998) (Re Guy Paul Morin)

Masters, Timothy & Steve Lehto, Drawn to Injustice: The Wrongful Conviction of Timothy Masters (Berkley, 2012)

Morton, Michael, Getting Life: An Innocent Man’s 25 Year Journey from Prison to Peace (Simon & Schuster, 2014)


Scheck, Barry, Neufeld, Peter & Dwyer, Jim, Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongfully Convicted (Doubleday, 2000)

Siegel, Barry, Manifest Injustice: The True Story of a Convicted Murderer and the Lawyers Who Fought For His Freedom (Henry Holt and Co., 2013)


For other ideas: see

http://www.innocenceproject.org/reading-list-books-on-the-subject-of-wrongful-conviction/

http://www.innocenceproject.org/ten-great-books-of-the-decade/

http://ipmn.org/books-about-wrongful-conviction/