Yale University – EPE S421 01 (SA21) – YSS 2021

*Ethics and the Law: Death Penalty, Wrongful Convictions and Best Practices in Criminal Justice*

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Course Description:

This course will examine constitutional principles of due process and fair trial, and how bias influences the criminal justice system, focusing on wrongful convictions and administration of the death penalty. The course will emphasize understanding the role of potential bias at various levels, and the competing interest of finality of judgments and protecting due process, and the innocent. Topics will include the efficacy of the death penalty, actual innocence, gender/race/economic bias and its effects on the justice system, as well as best practices for improving our sense of justice. The course will also explore the varying roles of the prosecution and defense in criminal cases, including analysis of ineffective assistance of counsel claims.

By the end of the course, students will be able to recognize the factors which contribute to the denial of due process and fair trial, and to recognize the role bias plays in criminal prosecutions and wrongful convictions. Students will also develop an understanding of how society’s conflicting views on the legitimacy of the death penalty inform the justice system’s efforts to establish best practices in order to prevent wrongful convictions.

Reading/reviewing assignments and class preparation are essential to an understanding of the course objectives. Students should be prepared for engaging class discussions, inclusive of all points of view. The University’s policy prohibiting plagiarism shall be enforced; students are expected to work alone on assignments, unless otherwise instructed. Most reading and media/video assignments are available on-line.

Required written work consists of daily reading/assignment responses (due at the start of each class), a mid-term exam due approximately mid-term, and the final exam.

Course Requirements and Grading:

*All written work shall be emailed to Prof. Goodrow in Word format.*

1. Attendance and participation in class are required and will consist of 20% of the final grade. Students are expected to read/review the assignments prior
to class, to attend class and to participate in class discussions. With the exception of an emergency, students must seek permission to be absent from class. Unexcused absences from class will result in a decrease in the final grade by one full letter grade. Due to COVID restrictions, this course will be taught remotely.

2. **Daily reading/assignment responses (due at the start of each class) will consist of a total of 20% of the final grade.**

3. **A mid-term exam will be distributed approximately mid-term and will consist of 25% of the final grade.**

4. **The final examination will be a take-home exam distributed prior to the last day of class and will consist of 35% of the final grade.** Students are required to answer all questions on the final exam, unless otherwise instructed.

*Due to a scheduling conflict, the second scheduled day of class (June 10, 2021) will be held instead on Saturday, June 12, 2021 from 9:30 a.m. to 12:30 p.m. E.S.T. Students who have scheduling conflicts with the make-up date of June 12, 2021 should immediately notify Prof. Goodrow by email (above).*

**Class 1 (June 8): Introduction:** discussion of course schedule, syllabus, grading, etc.; ethical considerations in the law in general; right to due process in criminal cases.

**Readings/Media:**

https://www.youtube.com/watch?v=SYSTnUvqTaE

Video: C-Span: Alec Karakatsanis, author of “Usual Cruelty: the Complicity of Lawyers in the the Criminal Justice System”, 11/25/2019 (approx. 1 hour)  


James M. Anderson, Maya Buenaventura & Paul Heaton, 132 Harv.L.Rev. 819
(1/10/19), “The Effects of Holistic Defense on Criminal Justice Outcomes”
https://harvardlawreview.org/2019/01/the-effects-of-holistic-defense-on-criminal-justice-outcomes/

https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7629&context=jclc

United States v. Atwood (7th Circuit, 10/24/19) (sentence overturned due to ex parte email communications between judge and prosecutor)

Class 2 (Saturday, June 12 – class will not meet on Thursday, June 10):
Due Process: Fourth Amendment Search & Seizure

Readings/Media:

Podcast: Electronic Frontier Foundation (EFF), “Podcast Episode: Fixing a Digital Loophole in the Fourth Amendment”, 11/17/20 (36 minutes)
https://www.eff.org/deeplinks/2020/11/podcast-episode-fixing-digital-loophole-fourth-amendment

Note, 128 Harv.L.Rev. 691 (12/10/14), “Data Mining, Dog Sniffs, and the Fourth Amendment”

https://supreme.justia.com/cases/federal/us/575/13-9972/ (*read the majority opinion by Justice Ginsberg, located at syllabus link)

U.S. v. Jones, 565 U.S. 400 (2012) (installing a GPS tracking device on a vehicle and using the device to monitor vehicle’s movements constituted a search under the 4th Amendment)
https://supreme.justia.com/cases/federal/us/565/400/ (*read the majority opinion by Justice Scalia, located at syllabus link)


Class 3 (June 15): Due Process: Fifth Amendment Right to Remain Silent; Sixth Amendment Right to Effective Assistance of Counsel

Readings/Media:

Video: C-Span Landmark Cases, “Miranda v. Arizona”, 12/14/15 (1.5 hours)  

[For reference only/not required reading for class: Miranda v. Arizona, 384 U.S. 436 (1966) (suspect subjected to custodial interrogation has right to consult with attorney, have attorney present during questioning, etc.; police must explain rights before questioning); see also Davis v. U.S., 512 U.S. 452 (1994) (during custodial interrogation, post-Miranda warnings, police not required to stop and clarify ambiguous request for counsel)]  
https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-miranda-v-arizona


https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1569&context=uclf

Erwin Chemerinsky, “Silent is not Golden, Supreme Court Says”, ABA Journal (6/25/13)

*State v. Purcell*, ____ Conn. ____ (2019) (custodial interrogations; Connecticut state constitution affords greater protection than federal constitution; police officers required to stop and clarify an ambiguous request for counsel before they continue an interrogation)
https://law.justia.com/cases/connecticut/supreme-court/2019/sc19980.html

Paul D. Butler, “*Poor People Lose: Gideon and the Critique of Rights*”, 122 Yale Law Journal 2176 (2013)

Video re sleeping lawyer in McFarland case
https://www.youtube.com/watch?v=bN9tKD_T-MY

Death Penalty Information Center (DPIC), “Texas Court Rules That Half of the Defense Team Can Be Asleep”, 5/20/2005

https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1548&context=nlr

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9664&context=penn_law_review

*The following two cases are for reference, and are not required reading:* 

*Burdine v. Johnson*, 262 F.3d 336 (5th Cir. 2001) (sleeping lawyer)

*Muniz v. Smith*, 647 F.3d 619 (6th Cir. 2011) (sleeping lawyer)
Class 4 (June 17): Due Process: Potential Bias in Jury Selection

Readings:


https://www.stanfordlawreview.org/online/what-justice-thomas-gets-right-about-batson/


Foster v. Chatman, 578 U.S. ____, 136 S.Ct. 1737 (2016) (death penalty reversed based on purposeful racial discrimination by prosecution in jury selection)

https://columbialawreview.org/content/batson-in-transition-prohibiting-peremptory-challenges-on-the-basis-of-gender-identity-or-expression/

https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1003&context=wmborj

Class 5 (June 22): Death Penalty: public policy and the death penalty; is the death penalty reserved for the “worst of the worst” in society?

*Mid-Term Exam Due at start of class by email to Prof. Goodrow (Word format)
Readings/Media:

Video: Intelligence Squared Debates, “Abolish the Death Penalty”, 4/15/15 (1.5 hours)
https://www.intelligencesquaredus.org/iq2-search?t=death+penalty


https://files.deathpenaltyinfo.org/legacy/files/pdf/PhillipsRichardsonArticle.pdf


McCoy v. Louisiana, 584 U.S. ____ (2018) (reversal of death penalty; defense attorney argued that defendant was guilty, in spite of defendant’s claim of innocence and potential alibi defense)
https://supreme.justia.com/cases/federal/us/584/16-8255/

McWilliams v. Dunn, 582 U.S. ____ (2017) (reversal of death sentence; mental health expert not constitutionally sufficient)

Ross v. Lantz, 408 F.3d 121 (2nd Cir. 2005) (death sentence affirmed; claims of ineffective assistance of counsel); see also for reference only – not required reading:
In re Application on behalf of Michael B. Ross, 272 Con. 653 (2005) (“next friend” appeal on behalf of death row inmate) and
State v. Ross, 273 Conn. 685 (2005) (death penalty affirmed)

Class 6 (June 24): Death Penalty: victims’ rights, junk science and residual doubt.

Readings/Media:

Video: ABC News, “Polly Klaas’ father, Marc Klaas, on Gov. Gavin
Newsom’s death row order”, 3/14/19 (17 min.)
https://www.youtube.com/watch?v=o9txHu1CZO4

https://harvardlawreview.org/2017/05/capital-punishment-and-the-courts/

https://www.newyorker.com/magazine/2018/05/21/the-rise-of-the-victims-rights-movement

David Grann, “Trial by Fire: did Texas Execute an Innocent Man?” Todd Willingham case, New Yorker Magazine (September 7, 2009)


Class 7 (June 29): Death Penalty: actual innocence and exonerations

Readings/Media:

Video: PBS Frontline, “The Case Against DNA Evidence”, 6/24/15 (3 min.)
https://www.youtube.com/watch?v=fXsn5VoKokg

Video: C-Span, Prof. Jennifer Eberhardt, author of “Biased”, 3/26/19 (1 hour)
https://www.c-span.org/person/?jennifereberhardt

Video: “12 Angry Men” – original Live TV Version, 1964 (1 hour) – available on YouTube

State v. Ireland, 218 Conn 447 (1991) (perjured testimony by state’s witnesses led to wrongful conviction, affirmed on appeal; 2008 exoneration based on DNA)

State v. Benefield, 153 Conn. App. 691 (2014) (true perpetrator in State v. Ireland case convicted based on same DNA evidence which exonerated Mr. Ireland)

State v. Roman, 224 Conn. 63 (1992) (jailhouse informant testimony led to wrongful conviction, affirmed on appeal; 2006 exoneration based on DNA)
State v. Miranda, 145 Conn. App. 494 (2013) (true perpetrator in State v. Roman case convicted based on same DNA evidence which exonerated Mr. Roman)


State v. Tillman, 220 Conn. 487 (1991) (erroneous cross-racial eye-witness identification led to wrongful conviction, affirmed on appeal)

For reference only; not required reading:

Tillman v. Commissioner of Correction, 54 Conn.App. 749 (1999) (habeas petition denied; subsequent DNA evidence established Mr. Tillman’s innocence in 2006; same DNA evidence led to arrest of true perpetrator, who pled guilty to crimes)

Class 8 (July 1): Actual Innocence: the societal costs of wrongful convictions

Readings/Media:

Video: The Moth Podcast, “Bucket List”, 3/10/18 (13 min.)
https://themoth.org/stories/bucket-list

Review Innocence Project website: focus on causes of wrongful convictions and efforts to reform the criminal justice system in order to prevent wrongful convictions

Lozman v. City of Riveira, Florida, 138 S.Ct. 1945 (2018) (existence of probable cause to arrest did not bar criminal defendant’s First Amendment retaliatory arrest claim)
https://www.leagle.com/decision/insco20180618c25

Jennifer Thompson and Ronald Cotton TEDTalk, 1/19/2011 (30 min.)
https://www.youtube.com/watch?v=qB7MrfJ7X_c&feature=youtu.be

https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7576&context=jclc
G. Shay, “What we can Learn about Appeals from Mr. Tillman’s Case: More Lessons from Another DNA Exoneration”, 77 U.Cinn.L.Rev. 1499 (2009)

http://www.albanylawreview.org/Articles/Vol75_3/75.3.0015%20Battaglia.pdf

Class 9 (July 6): Appeal and Post-Conviction/Habeas Relief; Finality of Judgments

Readings/Media:

Video: Prof. Steve Bright, Yale Law School, “Appellate and Post-Conviction Review”, 9/15/14 (27 min.)  
https://www.youtube.com/watch?v=6nUWdudDFf0

Video: National Institute of Justice, “Just Wrong: the Aftermath of Wrongful Convictions", 10/1/17 (20 min.)  
https://nij.ojp.gov/media/video/23546

Garrett Epps, “Debunking the Court’s Latest Death-Penalty Obsession”, The Atlantic, June 17, 2019  


https://www.supremecourt.gov/opinions/18pdf/17-8151_1qm2.pdf

Additional references (not required reading): Teague v. Lane, 109 S.Ct. 1060 (1989) (limitations on post-judgment habeas claims; restrictions on

Class 10 (July 8): Gender/Race/Economic Bias: general discussion.

Readings/Media:

Video: TED Talk, Bryan Stevenson, “We Need to Talk about an Injustice”, 3/4/14 (24 min.)
https://www.ted.com/talks/bryan_stevenson_we_need_to_talk_about_an_injustice/up-next#t-838704

Michael Pittaro, Ph.D., “Implicit Bias in the Criminal Justice System”, Psychology Today, November 21, 2018

https://greatergood.berkeley.edu/article/item/three_ways_to_reduce_implicit_bias_in_policing

American Bar Association, “5 Steps to Help Eliminate Socio-economic Bias”, March 2019
