

Yale University – YSS 2024

Ethics and the Law: Innocence, Death Penalty, Wrongful Convictions and 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. The course uses iconic films to demonstrate issues presented.

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:

** The midterm and final exam 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.
2. **Daily reading/assignment responses (due at the start of each class) will consist of a total of 20% of the final grade.** Reading responses should be submitted in PDF format on Canvas.
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.

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

Readings/Media:

Video: “Knowledge Seminar: Criminal Trials – Journey to Justice”, Federal Judicial Center, 12/4/19 (1 hour)

<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)

<https://www.c-span.org/video/?466766-1/the-complicity-lawyers-criminal-injustice-system>

Jeffrey Bellin, “*The Power of Prosecutors*”, 94 NYU L. Rev. 2 (May 2019)

[https://www.nyulawreview.org/wp-content/uploads/2019/05/NYULawReview-94-2-](https://www.nyulawreview.org/wp-content/uploads/2019/05/NYULawReview-94-2-Bellin.pdf?utm_source=The+Marshall+Project+Newsletter&utm_campaign=949088d96a-)

[Bellin.pdf?utm_source=The+Marshall+Project+Newsletter&utm_campaign=949088d96a-](https://www.nyulawreview.org/wp-content/uploads/2019/05/NYULawReview-94-2-Bellin.pdf?utm_source=The+Marshall+Project+Newsletter&utm_campaign=949088d96a-)

[EMAIL_CAMPAIGN_2019_05_09_11_40&utm_medium=email&utm_term=0_5e02cdad9d-949088d96a-174317969](https://www.nyulawreview.org/wp-content/uploads/2019/05/NYULawReview-94-2-Bellin.pdf?utm_source=The+Marshall+Project+Newsletter&utm_campaign=949088d96a-EMAIL_CAMPAIGN_2019_05_09_11_40&utm_medium=email&utm_term=0_5e02cdad9d-949088d96a-174317969)

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/>

Alice Ristroph, *The Thin Blue Line from Crime to Punishment*, 108 J. Crim. L. & Criminology 305 (2018).

<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)

<https://law.justia.com/cases/federal/appellate-courts/ca7/18-2113/18-2113-2019-10-24.html>

Class 2: 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://harvardlawreview.org/wp-content/uploads/2014/12/data_mining_dog_sniffs_and_the_fourth_amendment.pdf

Rodriguez v. U.S., 575 U.S. ____ (2015) (search warrant required before deploying a trained drug-sniffing dog after a traffic stop)
<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)

Christopher Beglinger, “*Florida v. Riley: Foreshadowing Fourth Amendment Issues in 21st Century Aerial Surveillance and the Need for Clarity*”, 103 Minn.L.Rev. (2/28/19)

<https://minnesotalawreview.org/2019/02/28/florida-v-riley-foreshadowing-fourth-amendment-issues-in-21st-century-aerial-surveillance-and-the-need-for-clarity/>

Anne Toomey McKenna, Amy C. Gaudion, Genni L. Evan, “*The Role of Satellites and Smart Devices: Data Surprises and Security, Privacy, and Regulatory Challenges*”, Penn State Law Review, Vol. 123:3, p. 591 (6/22/19)

<http://www.pennstatelawreview.org/wp-content/uploads/2019/06/Penn-StatimMcKenna-Formatted-FINAL.pdf>

Class 3: 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)
<https://www.c-span.org/video/?327720-1/supreme-court-landmark-case-miranda-v-arizona>

[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>

Erwin Chemerinsky, “*Why Have Miranda Rights Failed?*”, Democracy Journal (6/27/16) <https://democracyjournal.org/arguments/why-have-miranda-rights-failed/>

Tracy Maclin, “*The Right to Silence v. the Fifth Amendment*”, University of Chicago Legal Forum, Vol. 2016, Article 7 (2016)
<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)
http://www.abajournal.com/news/article/chemerinsky_silence_is_not_golden_supreme_court_says

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://deathpenaltyinfo.org/news/texas-court-rules-that-half-of-the-defense-team-can-be-asleep>

Jeffrey L. Kirchmeier, “Drink, Drugs and Drowsiness: The Constitutional Right to Effective Assistance of Counsel and the Strickland Standard of Prejudice”, Nebraska L.Rev., Vol. 75, Issue 3 (1996)

<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1548&context=nlr> [Article discusses *Strickland v. Washington*, 466 U.S. 668 (1984)

(ineffective assistance of counsel claim requires proof that counsel’s performance fell below that of a reasonably competent attorney, and that sub-standard performance resulted in prejudice to defendant); see also additional reference, *Brecht v. Abrahamson*, 507 U.S. 619 (1993) (effect of counsel’s cumulative errors)]

Shaun Ossei-Owusu, “*The Sixth Amendment Façade: the Racial Evolution of the Right to Counsel*”, 167 U.Pa.L.Rev. 1161 (2019)

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: Due Process: Potential Bias in Jury Selection

Readings:

Adam Liptak, “*When Does Kicking Black People Off Juries Cross a Constitutional Line?*”, New York Times, 2/18/19

<https://www.nytimes.com/2019/02/18/us/politics/black-jurors-constitution-curtis-flowers.html>

Flowers v. Mississippi, 588 U.S. ____ (2019) (conviction reversed based on discriminatory jury selection by prosecution) - *Read the majority, concurring and dissenting opinions. Discussion of *Batson v Kentucky*, 476 U.S. 79 (1986)

https://www.supremecourt.gov/opinions/18pdf/17-9572_k536.pdf

Thomas Ward Frampton, “*What Justice Thomas Gets Right About Batson*”, 72 Stanford Law Review (September 2019)

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

State of Connecticut v. Holmes, 334 Conn. 202 (2019)

<https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR334/334CR65.pdf>

Foster v. Chatman, 578 U.S.____, 136 S.Ct. 1737 (2016)

(death penalty reversed based on purposeful racial discrimination by prosecution in jury selection)

Julia C. Maddera, “*Batson in Transition: Prohibiting Peremptory Challenges on the Basis of Gender Identity or Expression*”, Columbia Law Review, Vol. 116, No. 1

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

Tania Tetlow, “*Discriminatory Acquittal*”, William & Mary Bill of Rights Journal, Vol. 18, Issue 1 (2009)

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

Class 5: 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 (2 hours)

<https://www.intelligencesquaredus.org/debate/abolish-death-penalty/#/>

Samuel R. Gross, “*The Death Penalty, Public Opinion, and Politics in the United States*”, St. Louis University Law Journal, Vol. 62, No. 4

https://www.slu.edu/law/law-journal/pdfs/issues-archive/v62-no4/samuel_gross_article.pdf

Scott Phillips & Jamie Richardson, “*The Worst of the Worst: Heinous Crimes and Erroneous Evidence*”, *Hoffstra Law Review*, Vol. 45, Issue 2 (April 2018)

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

Stephen B. Bright, “*Counsel for the Poor: the Death Sentence not for the Worst Crime but for the Worst Lawyer*”, 103 *Yale Law Journal* 1835 (1994)

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)

<https://constitutionallawreporter.com/2017/07/20/mcwilliams-v-dunn-2017/>

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 Conn. 653 (2005) (“next friend” appeal on behalf of death row inmate) and

State v. Ross, 273 Conn. 685 (2005) (death penalty affirmed)

Class 6: 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>

Jonathan F. Mitchell, “*Capital Punishment and the Courts*”, 130 *Harvard Law Review Forum* 269 (5/10/17)

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

Jill Lepore, “*The Rise of the Victims’-Rights Movement*”, *The New Yorker*,

5/21/18

<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)
[*Willingham v. State*](#), 897 S.W.2nd 351 (Tex.Crim.App. 1995)

Paul C. Giannelli, “[*Junk Science and the Execution of an Innocent Man*](#)”, Case Western Reserve University School of Law (2013).

Class 7: 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: Commonwealth Club, “*Jennifer Eberhardt: Understanding Bias*,” 10/10/19 (1 hour)
<https://www.youtube.com/watch?v=5KtMUBzkPbo>

[*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. Miranda*](#), 317 Conn. 741 (2015) (conviction of true perpetrator affirmed)

[*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: 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

Jeanne Bishop & Mark Osler, "Prosecutors and Victims: Why Wrongful Convictions Matter", *Journal of Criminal Law & Criminology*, Vol. 105, Issue 4 (Fall 2015)

<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)

N. Battaglia, "*The Casey Anthony Trial and Wrongful Exonerations: How 'Trial by Media' Cases Diminish Public Confidence in the Criminal Justice System*", 75 *Alb.L.Rev.* 1579 (2012)

<https://go.gale.com/ps/i.do?p=AONE&u=googlescholar&id=GALE|A297426813&v=2.1&it=r&sid=AONE&asid=d4c72114>

Class 9: 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.theatlantic.com/ideas/archive/2019/06/supreme-court-defends-death-penalty-again/591682/>

Dunn v. Price, 587 U.S. ____ (2019) (Breyer, J. Dissent from denial of last-minute challenge to method of execution without benefit of full court consideration)

https://www.supremecourt.gov/opinions/18pdf/18a1053_omjp.pdf

Bucklew v. Precythe, 587 U.S. ____ (2019) (unsuccessful “as applied” constitutional challenge to method of execution). *Read majority and concurring and dissenting opinions.

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 retroactive application of changes in law); *Perry v. Lynaugh*, 492 U.S. 302 (1989) (execution of mentally disabled did not violate cruel and unusual punishment clause of 8th Amendment), but see *Atkins v. Virginia*, 536 U.S. 304 (2002) (execution of individuals with intellectual disabilities constitutes cruel and unusual punishment).

Class 10: 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://www.psychologytoday.com/us/blog/the-crime-and-justice-doctor/201811/implicit-bias-within-the-criminal-justice-system>

Tracie L. Keesee, “*Three Ways to Reduce Implicit Bias in Policing*”, Greater Good Magazine, July 2, 2015

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

<https://www.americanbar.org/news/abanews/publications/youraba/2019/march-2019/5-steps-to-help-eliminate-socio-economic-bias/>

C. Hauser, “*Florida Police Chief Gets 3 Years for Plot to Frame Black People for Crimes*”, New York Times, 11/28/18 – available on-line with subscription only

<https://www.nytimes.com/2018/11/28/us/florida-police-chief-frame-black-people.html>

Pena-Rodriguez v. Colorado, 137 S.Ct. 855 (2017) (conviction reversed based on jurors’ anti-Hispanic bias)

Sonja B. Starr, 66 Stan.L.Rev. 803 (4/3/14), “*Evidence Based Sentencing and the Scientific Rationalization of Discrimination*”

http://www.stanfordlawreview.org/wp-content/uploads/sites/3/2014/04/66_Stan_L_Rev_803-Starr.pdf