
COURSE:	LAWS 4802B – Criminal Jury Trials
TERM:	Winter 2021
PREREQUISITES:	LAWS 2908, LAWS 2301, LAWS 2302, CRCJ 3001 or CRCJ 3002, LAWS 2908, and LAWS 2301, LAWS 2302 and fourth-year Honours standing.
CLASS:	Day & Time: Please check Carleton Central for current Class Schedule.
Room:	All Courses in the Winter 2021 term are offered online. Lectures in this course will be delivered synchronously, in-person over Zoom, during our regularly scheduled class time each week.
INSTRUCTOR: (CONTRACT)	Name Dr. Patrick McCaffery
CONTACT:	Office Hrs: By appointment over Zoom
	Telephone: 613 619-4895
	Email: p_mccaffery@hotmail.com

CALENDAR COURSE DESCRIPTION

Critical analysis of the criminal jury system including its history and context, the role of the judge, jury dynamics and jury composition. Perspectives and roles of the accused, victims, police, defence counsel, Crown attorney, judges, juries, media, politicians and the public.

COURSE DESCRIPTION

This course is a critical analysis of the criminal jury trial system. The first half of the course will analyze how and why the trial process came into being, why it survives and how it has evolved. This will include a discussion of the reasons for electing judge or jury, juror qualification, jury selection, applicable legislation, challenge for cause, peremptory challenge, change of venue, the trial process, closing addresses, jury composition and charging the jury. The roles of the accused, victims, police, defense counsel, Crown attorney, judges, juries, media, politicians and the public will also be addressed. After learning the structural fundamentals of the jury system, the course will critically examine how the system actually operates. This will focus on actual cases, perceived weaknesses and strengths, precedence and relevant legislation.

Reference will be made to specific readings, the *Charter*, *Jury Act*, the *Criminal Code* and case law. The course will be taught through synchronous Zoom lectures, discussions and guest lecturers. Students will be encouraged to participate by applying and critiquing the various institutions, concepts, and case law.

REQUIRED TEXTS

Electronic access to the *Canadian Criminal Code* (e.g. Martin's Annotated Criminal Code, Tremear's Annotated Criminal Code, Carswell's Pocket edition).

May also be purchased through the Carleton University Bookstore website:

<https://www.bkstr.com/carletonstore/home>)

SUPPLEMENTARY READINGS

Bornstein, Brian H. and Edie Greene. *The Jury Under Fire: Myth, Controversy, and Reform* (Oxford: Oxford Scholarship Online, 2017), online <https://www-oxfordscholarship-com.proxy.library.carleton.ca/view/10.1093/acprof:oso/9780190201340.001.0001/acprof-9780190201340>

Canadian Charter of Rights and Freedoms, s. 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c11

Conrad, Clay S. *Jury nullification: The evolution of a doctrine*. Cato Institute, 2013.

Cramer, R. J., Stanley, L, Brodsky & Decoster. (2009) Expert Witness Confidence and Juror Personality: Their Impact on Credibility and Persuasion in the Courtroom. *The journal of the American Academy of Psychiatry and the Law*, Vol 37 No 1, Feb. 2009.

Criminal Code of Canada, RSC 1855 cc C-46

Delisle, R.J. and Don Stuart, *Learning Canadian criminal procedure* (Toronto: Carswell, 2000).

Department of Justice. (2015). Miscarriages of Justice: the Impact of Wrongful Imprisonment. Retrieved from <https://www.justice.gc.ca/eng/rp-pr/jr/jr13/p5a.html>

Duncan, J. (2018) "the Legal Trial of Gerald Stanley – a second look at the case through the lens of law" Robson Crim: CanLII connects.

Juries Act, RSO 1990 c J3

Jury Duty in Ontario (video) https://www.youtube.com/watch?v=cl-dG0_EzKY&feature=youtu.be

McKechney, R. (2019). Transparency around jurors and verdicts would help trial fairness. *Law Now: Relating law to life in Canada*, 43(3), 20-23.

Morrison, Mike DeVaul-Fetters, Amanda & Gawronski, Bertram, "Staking the Jury: Legal Professional's Peremptory Challenges Reflect Jurors' Levels of Implicit Race Bias" (2016) 42:8 *Personality & Social Psychology Bull* 1129 at 1129

Nowlin, C. (2007). The Real Benefit of Trial by Jury for an Accused Person in Canada; A Constitutional Right to Jury Nullification. *Criminal Law Quarterly*, 53, 290-330.

Phillion v. R., [1978] 1 S.C.R. 18

R v. Sheratt [1991] 1 SCR 509.

R. v. Parks [1993] OJ No 2157 (QL).

Saks, Michael J. and Barbara A. Spellman, *The psychological foundations of evidence law* (NY: NYUP, 2016).

Scientific Selection Lieberman, D.J., (2011). The Utility of Scientific Jury Selection: Still Murky After 30 Years. *Association for Psychological Science*, 20(1), 48-52.

Sonia R. Chopra, S.R.; Ogloff, R. P. Evaluating Jury Secrecy: implications for Academic Research and Juror Stress, 44 *Crim. L.Q.* 190 (2000)

Standing Committee on Justice and Human Rights Report. (May 2018) 42nd Parliament. Retrieved from <https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP9871696/justrp20/justp20-e.pdf>

Stuart, Don, Tim Quigle R.J. Delisle, *Learning Canadian criminal procedure* (Toronto: Carswell, 2010).

Tanovich, David M., David M. Paciocco and Steven Skurka, *Jury Selection in Criminal Trials: Skills, Science and the Law*. Concord, Ont.: Irwin Law, 1997.

ONLINE DELIVERY

The course will be delivered synchronously (live) on Zoom and lectures will not be posted. Instructor presentation slides will be made available on the day of class, except for guest lectures. Students are expected to attend the synchronous lectures and are invited to turn on their cameras when speaking or discussing a point. In the event the instructor experiences a technical failure with his equipment at the beginning of a lecture, class will restart 30 minutes later (6:05pm will restart at 6:35pm). If technical problems persist, that week's lecture will be recorded and posted.

The link to the weekly Zoom meeting will be posted on the 4802B class cuLearn page.

Students are advised to test their systems ahead of time, and to make sure that they have working cameras and microphones so that they are prepared to participate in the class.

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

The grade in this course will be based on the following:

1. 25% - Midterm examination: essay / short answer, completed synchronously on line– **February 8, 2021**
2. 25% - Essay – **March 1, 2021**
3. 20% - In class presentation to be conducted synchronously on Zoom from **March 8-29, 2021**
4. 30% - Final examination: short answer, essay question, to be held online during formal exam period at the end of the 2021 Winter term (**April 16-27, 2021**)

IN CLASS PRESENTATION: 20 Marks

In class presentations will take place from **March 8-29, 2021**.

Students will work in groups of five or six to present on a relevant Canadian jury topic. Groups will be formed based on student topic selection. The week prior to their presentation, students shall post a two-three page overview including non-course references, assign a relevant reading(s) and at least three open-ended discussion questions. Students will be deducted marks for failing to meet this criteria. Students are expected to use Zoom to provide a 30-40 minute overview of the topic. Other designated students will lead in answering the discussion questions and evaluating their peers using a template. All students are expected to provide thoughtful insights, commentary and opinions. Total presentation time of approximately 60-90 minutes per group. Groups will be selected starting **January 18, 2021** and finalized on **Feb 1, 2021**. Students will be assigned a group if they have not identified a topic preference. Presentation topics are listed in the SCHEDULE section of this outline (March 8-29).

ESSAY: 25 Marks

Topic: Identify one change to the Canadian jury system you feel warrants serious consideration. In your essay, clearly identify what this change is. Be sure to consider such fundamental issues such as why this issue or practice currently exists? What attempts to change have already occurred? What would be necessary to change the status quo? What are the pros, cons, costs and opportunities associated with

making the changes you have highlighted? (e.g., paying jurors minimum wage, reducing/increasing number of jurors, changing jury duty rules, etc.) Keep in mind that even a modest change can carry disproportionate impact or cost, and might require Constitutional, *Jury Act* or other legislative amendments.

Essays should be about 10 typewritten pages double-spaced (not to exceed 2,500 words), excluding bibliography and footnotes. If you exceed the maximum length, your paper may be returned for shortening prior to marking. Electronic copy essays are due at the beginning of class on **March 1, 2021** and a confirmation email will be provided to each student. Late assignments will be deducted marks. Late essays will be penalized one-third letter grade per day (i.e., if non penalized grade was A, after one day it would be penalized to A-, then to B+ after two days, etc.)

Only original work will be accepted. It is an instructional offence to submit work that has previously or is currently being submitted for credit in this or another course. Essays must be written specifically for Laws 4802, and cannot have been submitted to another instructor. The essay will account for 25 marks, re: 25% of your final grade and marks will be posted online.

Essay Grading considerations include the following

1. Writing quality (i.e. clarity of writing, as well as proper spelling, grammar, legal case citation, and footnote use) following APA referencing style or proper legal citation.
2. Presentation and structure
 - Introduction with clear research question or statement
 - Scope of inquiry
 - Arguments in favor and opposing change
 - Critical analysis
 - General conclusion
3. Quality of Research: Have you presented the current research in the field, and cited the work and studies of the leading Canadian experts and authorities?
4. Quality of Critical Analysis: Students need to go beyond describing the current situation. Have you discussed and analyzed the research in a thorough, balanced and objective fashion?
5. Meeting deadline.

Essay & Presentation Extensions

Extensions are granted for exceptional circumstances generally related to a death in your immediate family, or personal illness. The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than seven days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>. Extensions for longer than seven days will normally not be granted. In those extraordinary cases where extensions lasting longer than seven days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days). **Unless a student has been granted an extension, a partial grade point will be deducted for each day that an essay is late or presentation delayed.** Final examinations will be scheduled April 16-27, 2021.

Course expectations

- Deliverables must be completed in a professional manner. Clear, concise, and complete.

- Student work must comply with the academic integrity policy.
<https://carleton.ca/registrar/academic-integrity/>
- Submission deadlines must be met unless a request for accommodation has been granted.
- Missed classes. The synchronous lectures are not recorded. In the event that a student misses a class they are still expected to keep up with lecture material.
- Behaviour. All individuals are expected to engage with each other politely and professionally. Abusive behaviour of any kind will not be tolerated.

SCHEDULE

LAWS 4802B : CRIMINAL JURY TRIALS - COURSE SCHEDULE (Winter 2021)			
Date	Class #	Topic	Readings available through library database
January 11	1	Introductions, course overview, exams, essay and presentation discussed	Course outline 4802
January 18	2	Introduction and history of criminal jury system in Canada. Jury selection exercise.	Sonia R. Chopra, S.R.; Ogloff, R. P. Evaluating Jury Secrecy: implications for Academic Research and Juror Stress, 44 <i>Crim. L.Q.</i> 190 (2000) Tanovich, David M., David M. Paciocco and Steven Skurka, <i>Jury Selection in Criminal Trials: Skills, Science and the Law. Chapter One.</i> Concord, Ont.: Irwin Law, 1997. R v. Sheratt [1991] 1 SCR 509. Jury Duty in Ontario (video) https://www.youtube.com/watch?v=cl-dG0_EzKY&feature=youtu.be <i>Criminal Code of Canada</i> , RSC 1855 cc C-46 s649, 633 <i>Canadian Charter of Rights and Freedoms</i> , s.11,15 <i>Juries Act</i> , RSO 1990 c J3
January 25	3	Jury Selection, Challenges and select Criminal Code sections (<i>Presentation topics selected, dates set</i>)	Scientific Selection Lieberman, D.J., (2011). The Utility of Scientific Jury Selection: Still Murky After 30 Years. <i>Association for Psychoogical Science</i> , 20(1), 48-52. Morrison, Mike DeVaul-Feters, Amanda & Gawronski, Bertram, “Staking the Jury: Legal Professional’s Peremptory Challenges Reflect Jurors’ Levels of Implicit Race Bias” (2016) 42:8 <i>Personality &</i>

			<p>Social Psychology Bull 1129 at 1129</p> <p>McKechney, R. (2019). Transparency around jurors and verdicts would help trial fairness. <i>Law Now: Relating law to life in Canada</i>, 43(3), 20-23.</p> <p>R. v. Parks [1993] OJ No 2157 (QL)</p> <p>Bornstein, B., Green, E. (2017). The Jury Under Fire: Myth, Controversy and Reform. Jury Selection Can Effectively Identify Biased Jurors (Chapter 3). Oxford Scholarship Online: Feb 2017 DOI: 10.1093/acprof:oso/9780190201340.001.0001</p>
February 1	4	Ottawa courthouse panel discussion: The effect and legacy of covid on the trial process (<i>presentation groups finalized</i>)	
February 8	5	In class midterm exam (<i>Electronic courthouse exercise due</i>)	Midterm exam completed online during regularly scheduled class time.
February 15	6	Winter Break (Feb 15-19 no class)	
February 22	7	Polygraph Examiner Sgt Pascal Labine; Expert witnesses	Phillion v. R., [1978] 1 S.C.R. 18 Cramer, R. J., Stanley, L, Brodsky & Decoster. (2009) Expert Witness Confidence and Juror Personality: Their Impact on Credibility and Persuasion in the Courtroom. <i>The journal of the American Academy of Psychiatry and the Law</i> , Vol 37 No 1, Feb. 2009.
March 1	8	Guest Lecturer Superior Court Justice Douglas Rutherford Charging the Jury (<i>Essay due. Readings for group presentations due.</i>)	Presenter readings Rutherford, D. (2020). Canadian Criminal Jury Instructions (assigned notes from Justice Rutherford) Regina v. Dylon Tyrone Barnett (final jury instructions from Justice Rutherford) (<i>Both of Justice Rutherford's readings will be posted on the cuLearn page</i>)
March 8	9	Group 1 PTSD among jurors & Jury Secrecy (Group 4 evaluates)	Assign additional reading Standing Committee on Justice and Human Rights Report. (May 2018) 42 nd Parliament. Retrieved from https://www.ourcommons.ca/Cont

			ent/Committee/421/JUST/Reports/RP9871696/justrp20/justrp20-e.pdf
March 15	10	Group 2 <i>R v. Stanley</i> , preemptory challenges, race and juries (Group 3 evaluates)	Assign additional reading Duncan, J. (2018) “the Legal Trial of Gerald Stanley – a second look at the case through the lens of law” Robson Crim: CanLII connects.
March 22	11	Group 3 Jury Nullification, hung juries Group 2 evaluates	Assign additional reading Conrad, Clay S. <i>Jury nullification: The evolution of a doctrine</i> . Cato Institute, 2013. Nowlin, C. (2007). The Real Benefit of Trial by Jury for an Accused Person in Canada; A Constitutional Right to Jury Nullification. <i>Criminal Law Quarterly</i> , 53, 290-330.
March 29	12	Group 4 When the system gets it wrong (e.g., Milgaard, Morin, Marshall, Truscott, Phillion) Types of evidence: eyewitness, confession and expert testimony Group 3 evaluates	Assign additional reading Department of Justice. (2015). Miscarriages of Justice: the Impact of Wrongful Imprisonment. Retrieved from https://www.justice.gc.ca/eng/rp-pr/jr/jr13/p5a.html
April 5	13	Final examination review & prep	
April	End of Term Final Examination (April 16-27)		

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

Pregnancy obligation

Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

Religious obligation

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

Academic Accommodations for Students with Disabilities

If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) <https://carleton.ca/pmc>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/studentssupport/svpolicy/>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://students.carleton.ca/services/accommodation/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations: <https://carleton.ca/law/current-students/>