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<b>COURSE:</b>	<b>LAWS 4802A – Criminal Jury Trials</b>
<b>TERM:</b>	Fall 2021
<b>PREREQUISITES:</b>	LAWS 2908, CRCJ 3001, or CRCJ 3002 and LAWS 2301, LAWS 2302 and fourth-year Honours standing.
<b>CLASS:</b>	<b>Day &amp; Time:</b> Please check Carleton Central for current Class Schedule.
	<b>Room:</b> This course will be delivered live, in person during our regularly scheduled class time each week. If needed, this course will switch to synchronous delivery over Zoom at the regularly scheduled class time.
<b>INSTRUCTOR:</b>	Dr. Patrick McCaffery
<b>CONTACT:</b>	<b>Office Hrs:</b> By appointment
	<b>Telephone:</b> 613 619-4895
	<b>Email:</b> <a href="mailto:Patrickmccaffery@cunet.carleton.ca">Patrickmccaffery@cunet.carleton.ca</a> <a href="mailto:p_mccaffery@hotmail.com">p_mccaffery@hotmail.com</a>

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### **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 and is divided into two parts. The goal of the first half is not the simple accumulation of facts (some of which you may already know), but the placement of those facts within a framework of knowledge. This will include an analysis of how and why the trial process came into being, why it survives and how it has evolved. Reasons for electing judge or jury, juror qualification, jury selection, applicable legislation, challenges, the trial process, jury composition and charging the jury will be discussed. The roles of the accused, victims, police, defense counsel, Crown attorney, judges, juries, media, politicians and the public will also be addressed. The interplay among these topics is intended not merely to inform but to encourage the cross-pollination of ideas that will be discussed in the second half of the course where the ‘law on the books’ is tested in the real world. 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 live, with occasional classes taught through synchronous Zoom lecture and/or with the assistance of co-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](https://www.youtube.com/watch?v=cl-dG0_EzKY&feature=youtu.be)

McKechney, R. (2019). Transparency around jurors and verdicts would help trail 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) 42<sup>nd</sup> Parliament. Retrieved from <https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP9871696/justrp20/justrp20-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.

### **COURSE DELIVERY**

The course will be delivered live, in person, at Carleton University and students are expected to attend. Lectures are not recorded. Instructor presentation slides will be made available on the day of class, except for guest lectures.

In the event of another pandemic wave, the course will switch to synchronous delivery on Zoom and lectures will not be posted. Students are expected to participate in 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. 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.

On those rare occasions that an in person live lecture cannot be delivered, a Zoom link will be posted on the 4802A class cuLearn page.

### **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 in class– **October 20, 2021**
2. 25% - Essay – **November 3, 2021**
3. 20% - In class presentation to be conducted in class between **November 3-24, 2021**
4. 30% - Final examination: essay question, to be held during formal exam period at the end of the 2021 Fall term (**December 11-23, 2021**)

### **IN CLASS PRESENTATION: 20 Marks**

In class presentations will take place from **November 3-24, 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. For the presentation students are expected 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 **September 15, 2021** and finalized on **September 22, 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.

**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. Hard copy essays are due at the beginning of class on **November 3, 2021**. 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.

### 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. 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

<b>LAWS 4802A : CRIMINAL JURY TRIALS - COURSE SCHEDULE (Fall 2021)</b>			
<b>Date</b>	<b>Class #</b>	<b>Topic</b>	<b>Readings available through library database</b>
Sept 8	1	Introductions, course overview, exams, essay and presentation discussed	Course outline 4802
Sept 15	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) <a href="https://www.youtube.com/watch?v=cl-dG0_EzKY&amp;feature=youtu.be">https://www.youtube.com/watch?v=cl-dG0_EzKY&amp;feature=youtu.be</a> <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
Sept 22	3	Jury Selection, Challenges, select Criminal Code sections and the psychology of groups.  <i>(presentation groups finalized)</i>	Scientific Selection Lieberman, D.J., (2011). The Utility of Scientific Jury Selection: Still Murky After 30 Years. <i>Association for Psychological Science</i> , 20(1), 48-52. 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

			<p>Personality &amp; Social Psychology Bull 1129 at 1129</p> <p>McKechney, R. (2019). Transparency around jurors and verdicts would help trail 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/9780190201340.01.0001</p>
Sept 29	4	Ottawa courthouse fieldtrip	
Oct 6	5	Guest Lecturer Supreme Court Chief Justice McLachlin <i>(Electronic court house exercise due)</i>	<i>Presenter readings to be announced</i>
Oct 13	6	Guest Lecturer Polygraph Examiner; 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.
Oct 20	7	In class midterm exam	Midterm exam completed during regularly scheduled class time.
Oct 27 <b>Fall Break</b> <i>(Oct 25-29 no class)</i>	8	<b>Fall Break (Oct 25-29 no class)</b>  <i>Group 1 readings and outline posted by Nov 1</i>	
Nov 3	9	Group 1 PTSD among jurors & jury secrecy  <i>Essay due.</i> <i>Readings and outline for group 2 due</i>  (Group 4 evaluates)	Standing Committee on Justice and Human Rights Report. (May 2018) 42 <sup>nd</sup> Parliament. Retrieved from <a href="https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP9871696/justrp20/justrp20-e.pdf">https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP9871696/justrp20/justrp20-e.pdf</a>
Nov 10	10	Group 2 <i>R v. Stanley</i> , preemptory challenges, race and juries	Assign additional reading <i>R. v. Chouhan - SCC Cases (lexum.com)</i> <a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18932/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18932/index.do</a>

		<i>Readings and outline for group 3 due</i>  (Group 3 evaluates)	Duncan, J. (2018) “the Legal Trial of Gerald Stanley – a second look at the case through the lens of law” Robson Crim: CanLII connects.
Nov 17	11	Group 3 Jury Nullification, hung juries <i>Readings and outline for group 4 due</i>  (Group 2 evaluates)	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.
Nov 24	12	Group 4 When the system gets it wrong (e.g., Milgaard, Morin, Marshall, Truscott, Riel) Types of evidence: eyewitness, confession and expert testimony  (Group 1 evaluates)	Department of Justice. (2015). Miscarriages of Justice: the Impact of Wrongful Imprisonment. Retrieved from <a href="https://www.justice.gc.ca/eng/rp-pr/jr/jr13/p5a.html">https://www.justice.gc.ca/eng/rp-pr/jr/jr13/p5a.html</a>
Dec 1	13	Final examination review & prep	
Dec 8	End of Term Final Examination ( <b>Dec 11-23</b> )		

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## **COVID-19 PREVENTION MEASURES**

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact [covidinfo@carleton.ca](mailto:covidinfo@carleton.ca)



Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

## **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:** 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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

**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 [click here](#).

### **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](mailto: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/>