

**Course Outline**

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<b>COURSE:</b>	<b>LAWS 4802B – Criminal Jury Trials</b>
<b>TERM:</b>	<b>WINTER 2020</b>
<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: Tuesdays, 18:05 – 20:55</b> <b>Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Dr. Patrick McCaffery</b>
<b>CONTACT:</b>	<b>Office: B442 Loeb Building (Contract Instructor's Office)</b> <b>Office Hrs: By appointment</b> <b>Telephone: (c) 613-619-4895 (please text)</b> <b>Email: p_mccaffery@hotmail.com</b>

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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. 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, challenge for cause, preemptory 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 second half of 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 the text, specific readings, the *Jury Act*, the *Criminal Code* and case law. The course will be taught through lectures, discussions and guest lecturers. Students will be encouraged to participate by applying and critiquing the various institutions, concepts, and case law. A detailed course outline as well as weekly assigned readings will be given on the first day of class.

**REQUIRED TEXTS**

Tanovich, David M., David M. Paciocco and Steven Skurka, *Jury Selection in Criminal Trials: Skills, Science and the Law*. Concord, Ont.: Irwin Law, 1997. (Has been ordered at the Carleton Bookstore.)

A recent Criminal Code edition (e.g. Martin's Annotated Criminal Code, Tremear's Annotated Criminal Code, Carswell's Pocket edition).

### **SUPPLEMENTARY TEXTS**

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>

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

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

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

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

Additional readings will be supplied.

### **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. 20% - Midterm examination: in class multiple-choice, short answer, closed book – **February 11, 2020**
2. 30% - Essay – **March 3, 2020**
3. 20% - In class presentation to be conducted from **March 3-24, 2020**
4. 30% - Final examination: multiple-choice, short answer, essay question, closed book to be held during formal exam period at the end of the 2020 Winter term (**April 13-25, 2020**)

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

In class presentations will take place from **March 3-24, 2020**.

Students will work in groups of three or four to present on a relevant Canadian jury topic. The week prior to their presentation, students shall 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 provide a 20 minute overview of the topic and must include a one to two page handout including non-course references. Students are also expected to lead a 20 minute discussion providing thoughtful insights and/or answers to the questions they have posed. Total presentation time of approximately 40 minutes per group. Groups will be selected starting **January 21, 2020** and finalized on **Feb 4, 2020**. Topics can be selected from below or if approved by the course instructor.

- i. PTSD among jurors
- ii. *R v. Gill* - juror secrecy and Sec 649CCC

- iii. *R v. Stanley* – Colten Boushie shooting
- iv. Jury Nullification
- v. Charging the jury and judges direction
- vi. Historical or current jury-related case (more than one group can present, provided different cases)
- vii. Media and juries
- viii. Race and juries
- ix. Eyewitness identification
- x. *R v. Oland*
- xi. When the system gets it wrong: David Milgaard, Guy Paul Morin, Donald Marshall and Stephen Truscott
- xii. Other topic with instructor approval by Feb 4, 2020

### **ESSAY: 30 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 practice or rule 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 Tuesday, **March 3, 2020**. Late assignments will be deducted marks and can be dropped through the Drop Slot in the corridor outside C-473 Loeb. Note the rules concerning the submission of assignments through the drop slot; these rules are clearly explained in the Department of Law and Legal Studies Policy and Procedure Statement. You are responsible for the date stamped on your paper if you choose to deposit it into the drop slot. You should verify the rules with the department before opting to use this method for handing in your essay. 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 30 marks, re: 30% 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

Consistent with Department policy, extensions are granted ONLY for verifiable exceptional circumstances. A verifiable exceptional circumstance generally means a death in your immediate family, or personal illness. Personal illness requires a certificate from a doctor. To guarantee fairness to all students, this policy is strictly enforced.

**Unless you have been granted an extension, one third grade point will be deducted for each day that your essay is late or presentation delayed.** For further explanation of the regulations in this regard, see the Policy and Procedure Statement or contact the Department of Law and Legal Studies. *Final Examinations will be scheduled during the formal final examination period, which runs between April 13-25, 2020.*

### SCHEDULE

<b>LAW 4802B : CRIMINAL JURY TRIALS - COURSE SCHEDULE (Winter 2020)</b>			
<b>Date</b>	<b>Class #</b>	<b>Topic</b>	<b>Readings</b>
January 7	1	Course overview; essay and presentation discussed	
January 14	2	Introduction and history of criminal jury system in Canada	Ch. 1 - Tanovich, Paciocco & Skurka (1997)
January 21	3	Jury Selection – Pretrial, In Court, Peremptory Challenge <i>(Presentation topics selected, dates set)</i>	Ch. 2, 3, 9, 10, 11 & Juries Act
January 28	4	Change of Venue – Ottawa Courthouse	
February 4	5	Jury Selection – Challenge for Cause	Ch. 4, 5, 6, 7, 8
February 11	6	In class exam	
February 18	7	<b>Winter Break (Feb 17-21 no class)</b>	
February 25	8	Guest Lecturer TBD	Readings for upcoming presentation assigned
March 3	9	Presentations – Essay Due	Readings assigned
March 10	10	Presentations	Readings assigned
March 17	11	Presentations	Readings assigned
March 24	12	Presentations	
March 31	13	Course review for Examination	
April 7	End of Term Final Examination ( <b>April 13-25</b> )		

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### ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**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 Equity Services website: [carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf](http://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf)

**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 Equity Services website: [carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf](http://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf)

**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) [www.carleton.ca/pmc](http://www.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: <http://carleton.ca/studentaffairs/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: [carleton.ca/sexual-violence-support](http://carleton.ca/sexual-violence-support)

### **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: [students.carleton.ca/course-outline](https://students.carleton.ca/course-outline)

### **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.

<http://carleton.ca/law/current-students/>