

Lesson Plan: A Fair and Impartial Trial? You decide...

The *Carey v. Musladin* case was selected for the 2008-2009 Open Doors to the Federal Courts program. It has been used with students and teachers from across the nation and has stimulated the most lively courtroom interactions and enthusiastic evaluations of any Open Doors program to date.

Anyone may use this lesson for their Law Day program with high school students. The PBA has used the case in a variety of programs, including programs through the Eastern District Court. It can be used in a classroom setting by a teacher— and a local attorney or judge could be invited into the classroom to assist with the lesson.

The lesson is ready for immediate courtroom or classroom use. It is based on a 2006 Supreme Court decision in a murder trial. The lesson requires participants to decide if the defendant was deprived of an impartial trial because the murder victim's family and friends came to court wearing pictures of the deceased that may have

influenced the jury. The program isn't scripted, however, talking points are provided for the student attorneys to study in advance and take to the podium when they argue in the courtroom. The judge, lawyer or teacher has the option to ask questions of the student attorneys during their presentations. A unique feature of the format is that it gives all students the opportunity to voice their opinions during a 20-30 minute open floor segment.

To learn more about the other Educational Outreach programs of the federal courts please visit their Web site at:

<http://www.uscourts.gov/index.html>

or the Educational Outreach page at:

<http://www.uscourts.gov/outreach/index.html>

The case materials and handouts for the *Carey v. Musladin* case are included on the following pages.

Students engaged in mock appellate arguments and preparation during Eastern District Court of Pennsylvania Open Doors programs in its Allentown, Philadelphia and Reading courthouses. The programs were held in conjunction with celebrations for Law Day and Juror Appreciation. More than 450 students and their teachers and over 50 local attorneys and judges participated at the three locations.



Carey v. Musladin, 549 U.S. 70, 127 S. Ct. 649 (2006)

Background

Free speech and fair trial issues come to the Supreme Court in many ways. This case asks students to separate emotions from reason when they decide the following question: If the friends and family of a murder victim sit in the trial of the alleged murderer wearing buttons printed with a picture of the deceased, does that prejudice the jury and risk depriving the defendant of his Sixth Amendment right to an impartial jury?

Facts and Case Summary

FACTS

Matthew Musladin was on trial for the murder of Tom Strudder in California. At his trial, members of the Strudder family wore buttons with a picture of Strudder on them. They sat in the seating area reserved for the public. The buttons were about two to four inches in diameter and were visible to the judge, jury, prosecutor, defense lawyers, and the defendant. The trial judge denied a defense motion to order the members of the family to remove the buttons, arguing that they could be used to unfairly prejudice the jury, and thus deny Musladin a fair trial by an impartial jury as required by the Sixth Amendment, as incorporated to the states via the due process clause of the Fourteenth Amendment. The trial judge allowed the buttons because there was "no possible prejudice to the defendant" in wearing the buttons.

PROCEDURE

Musladin was convicted, and his conviction was upheld by the California state courts. Musladin then filed a *habeas corpus* suit in the appropriate U.S. District Court. A habeas corpus suit allows a defendant to sue the government, arguing that the government has violated the defendant's rights, and is, in essence, illegally holding his body. If the court agrees, it releases the defendant.

HABEAS CORPUS

Latin term for "you have the body". Prisoners often seek release by filing a petition for a writ of *habeas corpus*. A writ of *habeas corpus* is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody.

A *habeas corpus* petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment. The petition must show that the court ordering the detention or imprisonment made a legal or factual error. *Habeas corpus* petitions are usually filed by persons serving prison sentences.

Habeas petitioners are not entitled to *habeas* relief based on trial error unless they can establish that it resulted in actual prejudice. In this case, the U.S. District Court rejected the defendant's argument, but the U.S. Ninth Circuit Court of Appeals found that the buttons could have prejudiced the jury. The U.S. Supreme Court agreed to hear this case.

ISSUES

Whether the wearing of buttons showing a picture of a murder victim by spectators in a courtroom during the trial of the alleged murderer may prejudice the jury so as to deprive the defendant of his Sixth Amendment right to an impartial jury, as applied to the states via the due process clause of the Fourteenth Amendment.

Is the First Amendment Freedom of Speech involved in this case? Do the victim's family members have a right to show their support for the victim through the expression of wearing buttons?

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

<http://www.law.cornell.edu/constitution/constitution.billofrights.html>

The First Amendment test begins by asking two questions:

1. Does the conduct constitute expression at all?
2. Is it meant to communicate an idea?

If it is speech, the court might ask other questions:

1. Is the speech defamatory, obscene, vulgar or lewd?
2. Does the speech cause disruption?
3. Is there evidence of viewpoint discrimination?

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

<http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentvi>

The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt overzealous prosecutor and against the compliant, biased, or eccentric judge.

<http://caselaw.lp.findlaw.com/data/constitution/amendment06/04.html#1>

**What is
Due Process?**

These are the kinds of procedures that might be claimed in a "due process" argument, roughly in order of their perceived importance, and not a list of procedures that will in fact be required.

- An unbiased tribunal.
- Notice of the proposed action and the grounds asserted for it.
- Opportunity to present reasons why the proposed action should not be taken.
- The right to present evidence, including the right to call witnesses.
- The right to know opposing evidence.
- The right to cross-examine adverse witnesses.
- A decision based exclusively on the evidence presented.
- Opportunity to be represented by counsel.
- Requirement that the tribunal prepare a record of the evidence presented.
- Requirement that the tribunal prepare written findings of fact and reasons for its decision.

From "Some Kind of Hearing" by Judge Henry Friendly

Rights of Criminal Defendants

The Bill of Rights promises fair treatment for criminal defendants.

There are two fundamental aspects of the U.S. criminal justice system:

1. The presumption that the defendant is innocent, and
2. The burden on the prosecution to prove guilt beyond a reasonable doubt.

But criminal defendants have other rights, too, including the rights to:

- remain silent
- confront witnesses
- have a public trial
- have a jury trial
- have a speedy trial
- be represented by an attorney
- receive adequate representation
- not be tried twice for the same offense ("double jeopardy").

What is an Appellate Brief?

The brief or memorandum establishes the legal argument for the party, explaining why the reviewing court should affirm or reverse the lower court's judgment based on legal precedent and citations to the controlling cases or statutory law. When it is a trial or motion brief, the brief argues that the court should rule based on previous decisions of controlling courts. In either case, the brief may also include policy arguments and social statistics when appropriate; for example if the law is vague or broad enough to allow the appellate judge some discretion in [their] decision making, an exploration of the consequences of the possible decision outside of legal formalism may provide guidance. Such arguments may also support a legal argument when the purpose of the law at issue may be clear, but the particular application of that law in service of that purpose is in dispute.

The party filing the appeal - called the petitioner or appellant, who is attempting to convince the appellate court to overturn the lower court decision - is responsible for submitting [their] brief first. The responding party - the *respondent* or *appellee*, who is satisfied with the lower decision - then files a reply brief within a specified time. Depending on the local rules of procedure, the court may allow or even require the parties to then file additional replies to the opposing party's briefs, multiplying the back-and-forth responses of the parties. Depending on local rules, the court may then decide the case purely based on the submitted briefs or may hear oral arguments by the parties.

Source: http://en.wikipedia.org/wiki/Brief_%28law%29

Talking Points for *Carey v. Musladin*, 549 U.S. 70, 127 S. Ct. 649 (2006)

Question:

Is a defendant, who is facing murder charges, deprived of his Constitutional right to a fair trial when spectators in the courtroom are permitted to wear buttons that display pictures of the deceased?

Carey (State of California)

Musladin (Defendant)

1. Should the victim's interests prevail over the defendant's right to a Fair Trial?

Affirmative. Yes. The victim's interests should prevail.

The victims in this case had a right to show their grief and demand justice by wearing buttons with a picture of their murdered loved one. They were not being disruptive in the courtroom, and they did not try to pressure the jury. The defendant's guilt or innocence is determined by the evidence presented at trial, not on the actions of spectators. Thus, the defendant's rights do not trump the spectator's rights in this case.

Negative. No. The defendant's rights should prevail.

While victims of violent crime certainly have a right to grieve, and to express this grief and demand justice in appropriate ways, they do not have a right to try to influence the outcome of a murder trial. Our judicial system is based upon the rule of law, not emotion. Victims' rights cannot be used as a means to undermine a defendant's constitutional rights in a criminal trial.

2. Should the spectators have been allowed to wear the lapel pins in court?

Affirmative. Yes.

There is no evidence that the mere wearing of buttons showing the picture of a murder victim during the alleged murderer's trial will unduly prejudice the jury. By the end of the trial, the jury knows the facts of the case, including the identity of the victim. Therefore, the spectators' actions will not come as a surprise. More importantly, though, the jurors have taken an oath to judge the case on its merits, based solely on the testimony presented at trial. Every juror comes to a trial with some prejudices; however, our system survives because jurors can set aside these prejudices. There is no reason to believe that the jurors could not disregard any possible prejudices that arise from seeing the victim's face on a button when they had to decide the case.

Negative. No.

Common sense should dictate the outcome of this case. The spectators were members of the victim's family. They wore buttons showing a picture of the victim. Their intent clearly was to remind the jurors that their loved one had been murdered, and they expected justice. Given the circumstances, these are powerful images that could very easily influence the jurors' decision. Whether or not they did in actuality is beyond the point. The main point is that, as a precautionary measure, the court should have ordered the removal of the buttons.

3. Should the First Amendment be applied in this case?

Affirmative. Yes.

Although not properly briefed/discussed in this case, the First Amendment is still relevant. No one argues that the First Amendment protects the right of spectators and/or anyone else to actually disrupt a judicial proceeding. However, there is no reason why it should not protect "non-disruptive" behaviors, such as wearing small buttons showing the victim of a crime into a courtroom. This type of behavior would almost certainly be protected by the First Amendment in any other forum.

Negative. No.

The First Amendment was not properly briefed and/or discussed in this case. Therefore, it should not play a role in the outcome. Even if it had been free speech/expression concerns must yield to the right of a defendant to have a fair and impartial jury decide the case on its merits, not on emotions. Anything else risks turning criminal trials into kangaroo courts where the whim of the spectators - not justice - will be done.

Audience Participation

The teacher, judge, lawyer or program moderator may decide at appropriate times during the oral arguments to open the floor to the audience for 20-30 minutes. This is time for the audience to join in the arguments, ask questions, and take positions on the issues. After a debate question has been fully responded to by both sides, and when the audience seems eager to become involved, the (moderator) may call for an open floor discussion during which students volunteer to speak on the questions just argued by the teams.

Any audience member may stand and make a comment or pose a question to the (moderator) who will direct it to the following, in this order:

- Different debate team members.
- Students in the audience without putting a specific student on the spot.
- The adult attorneys.

Questions directed to the judge or lawyer are put on hold until the debriefing at the conclusion of the program.

The audience will observe the following four rules:

1. Students will abide by the Rules of Civility (see below).
2. Any audience member may speak only once until everyone who wishes to voice an opinion has had one opportunity.
3. Students direct questions and comments to the (moderator), who refers them to different debaters on a rotating basis so that one team member does not answer all or most of the questions.
4. The moderator holds student questions until the program debriefing.

Rules of Civility

During this exercise, participants are to exercise civility toward each other. Students must wait to be recognized by the moderator before speaking. No one else is to speak to the group or to other individuals when another student has the floor. Participants are expected to 1) listen to the positions taken by others; 2) ask clarifying questions of others; 3) build on, agree, or disagree with the previous speakers' comments. Students are not to make disparaging remarks about others. Although heated debate is to be expected (and, to an extent, encouraged), the conversation should not devolve into sarcastic or disrespectful remarks or inappropriate facial expressions, or personal comments of any kind. Positions should be supported by evidence, not emotion.

Additional resources:

Supreme Court Opinion (provided)

Also online at <http://www.supremecourtus.gov/opinions/06slipopinion.html> (#5 in the "R" column, near the bottom of the Web page)

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=05-785>

RULING	No. A defendant in a murder trial is not deprived of his Sixth Amendment right to an impartial jury if courtroom spectators wear buttons showing a picture of the deceased.
REASONING	<p>The Court, via Justice Clarence Thomas, said that a state court's determinations in a <i>habeas corpus</i> proceeding must be overturned only if they run contrary to "established federal law." The Court said that no "established federal law" controlled in this case. In <i>Estelle v. Williams</i>, 425 U.S. 501 (1976), and <i>Holbrook v. Flynn</i>, 475 U.S. 560 (1986), the Court noted that some actions during trial may be so prejudicial to the defendant as to justify a new trial. However, in <i>Flynn</i>, the Court held that positioning several plain-clothed police officers behind the defendant during the trial was not prejudicial. Similarly, in <i>Estelle</i>, the Court ruled that a state regulation requiring a defendant to wear prison clothing during trial was not prejudicial.</p> <p>Finally, the Court noted that <i>Flynn</i> and <i>Estelle</i> both dealt with state actions. In this case, private actors (spectators at trial) wore the buttons. So long as the spectators were not disrupting the proceedings, their actions were not prejudicial, and, thus, the defendant's right to an impartial jury was not infringed upon.</p>

CONCURRENCES

Justice Kennedy	Justice Anthony Kennedy said that there was no evidence that the buttons caused any type of disruption; thus, they should be permitted. He did, however, note that perhaps courts have the authority, as a preventive measure, to prohibit the wearing of buttons or other signs of expression in a courtroom if the buttons (or other forms of expression) concern the case being heard.
Justice Souter	Justice David H. Souter concurred with the majority opinion, but added that the court should have focused solely on the issue of whether the spectators' actions were "unreasonable." Since the wearing of buttons by spectators was not "unreasonable," they were permitted. Moreover, Justice Souter notes that, although the issue was not addressed substantially in this case, perhaps the First Amendment's guarantees of freedom of speech and expression afforded the spectators some protection in this case.
Justice Stevens	Justice John Paul Stevens agreed with Justice Souter's concurrences, but said that, contrary to Justice Souter's suggestion, the First Amendment cannot be read to protect expression by spectators in the courtroom that might impact courtroom proceedings.

Case Brief Format Worksheet

Party in Dispute (circle one)	Petitioner _____ Respondent _____
Case name & date	
Facts of the Case	
Procedural History	
Questions of Law	
Relief Sought	
Constitutional Precedent	

Question:

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