

## SIXTH AMENDMENT: FAIR TRIAL V. FREE SPEECH

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Free speech and fair trial issues come to the Supreme Court in many ways. This activity explores **Carey v. Musladin**, 549 U.S. 70, 127 S. Ct. 649 (2006) and asks students to separate emotions from reason when they decide the following question: Is a defendant, who is facing murder charges, deprived of the right to a fair trial when spectators in the courtroom wear buttons that display pictures of the deceased?

### About these Resources

- The [agenda](#) may be used as it is, or it may be modified.
- Analyze the [facts and case summary](#) for *Carey v. Musladin*.
- Build arguments for both sides, starting with these [talking points](#).

### How to Use these Resources

This activity is a modified [Oxford style debate](#).

1. To get started, have participants read the *Carey v. Musladin* [facts and case summary](#).
2. Assign student attorneys to the issues listed in the [talking points](#). They are suggested points— not a script—for the debate. Student attorneys are encouraged to add their own arguments.
3. All other students are jurors who deliberate (and may refer to these talking points) during the open floor debate. They debate among themselves in the large group or smaller groups and come to a verdict after the attorneys present closing arguments.

## AGENDA

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Use the sample agenda as a guide for a classroom or courtroom activity.

<b>9:00 AM</b>	Student Attorneys' Final Preparation. Eight student attorneys, selected by their teacher well in advance, have prepared themselves with the Internet materials provided. On the day of the event, the student attorneys (four on each side of the issue) meet with their attorney coaches (one on each side) at the counsel tables in the Judge's courtroom. They review their talking points and ask last-minute questions. The rest of the students have a stand-up continental breakfast at another location in the courthouse. (The student attorneys pick up their refreshments on the way to the courtroom). (30 minutes)
<b>9:30 AM</b>	Courtroom Set Up. The student attorneys continue to prepare quietly at the counsel tables while the rest of the students arrive in the courtroom. Half of the students sit on each side of the courtroom seating area. Four students are the family of the deceased. They put on the lapel pins (picture of the deceased) and sit in the front row of the audience on the prosecution side of the courtroom. (15 minutes)
<b>9:45 AM</b>	Orientation. The program coordinator explains the program. Adult attorneys introduce themselves (why they chose the law, and their career path) and explain the case. (15 minutes)
<b>10:00 AM</b>	Welcome. The Judge takes the bench and welcomes everyone. May mention some historical/high-profile cases heard in this courthouse. (5 minutes)
<b>10:05 AM</b>	Introduction. Adult attorneys open by presenting the facts of the case, procedures, and issue only. No mention of Supreme Court decision. (5 minutes)
<b>10:10 AM</b>	Oxford Debate. The debate starts with both sides presenting Talking Points 1, 2, and 3. (20 minutes ~ 3 minutes per speaker per point)
<b>10:30 AM</b>	Open Floor. Students are allowed to move to the side of the courtroom in the audience area behind the respective parties they favor – Carey or Musladin. In essence, they vote with their feet. The attorney coaches go into the audience and gather participants around them on each side of the case. The attorneys help the students come up with thought-provoking questions and hypotheticals that they will raise with the students on the other side of the courtroom. They participate by raising comments and questions directed to anyone on the other side of the issue/courtroom. At this time, students may not address the Judge or adult attorneys – that comes during the debriefing. The facilitator should balance the audience interaction with the student attorneys so that students in the audience spend most of the time debating each other. Student attorneys have a greater opportunity to be in the spotlight when they argue before the judge. (20 minutes)
<b>10:50 AM</b>	Summation. The debate is concluded by the student attorney who has volunteered to speak last for his/her team and summarize the team's position, incorporating points made during the Open Floor debate. (5-10 minutes)
<b>11:00 AM</b>	Verdict. The host Judge asks the students, again, to vote with their feet by moving to the side of the courtroom they support – Carey or Musladin. Once settled, the Judge asks the students to vote on the question with a show of hands. (5 minutes)
<b>11:05 AM</b>	Summary. The adult attorneys present the Supreme Court's ruling and reasoning. (5 minutes)

<b>11:10 AM</b>	The Judge and adult attorneys take questions from the students about the case. Once those questions wind down, the Judge opens the floor to questions about any topic. (15 minutes)
<b>11:25 AM</b>	Informal socializing with the Judge and the attorneys in the courtroom. (20 minutes)
<b>11:45 AM</b>	Program adjourns and the students go to lunch.

## FACTS AND CASE SUMMARY

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

*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.*

<b>FACTS</b>	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.
<b>PROCEDURE</b>	Musladin was convicted, and his conviction was upheld by the California state courts. Musladin then filed a <i>habeas corpus</i> suit in appropriate U.S. District Court. A <i>habeas corpus</i> suit allows a defendant to sue the government, arguing that the government has violated the defendant's rights. If the court agrees, it releases the defendant. 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.
<b>ISSUE</b>	Whether courtroom spectators wearing buttons showing a picture of a murder victim during the trial of the alleged murderer may 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.
<b>RULING</b>	No. 9-0. The Supreme Court vacated (set aside) the U.S. Ninth Circuit Court of Appeals decision that the buttons could have prejudiced the jury. This reinstated the state court decision that wearing such buttons did not deprive the defendant of an impartial jury.
<b>REASONING</b>	There was no clearly defined prohibition against such behavior by private citizens. Past Supreme Court decisions only dealt with state-sponsored practices. Since there was no prior Supreme Court holding regarding the potentially prejudicial effect of spectators' courtroom conduct, the Supreme Court let stand the California State Appellate Court decision that wearing the buttons did not deprive the defendant of an impartial jury.
<b>CONCURRENCES</b>	
<b>Justice Kennedy</b>	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.
<b>Justice Souter</b>	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.

# TALKING POINTS

**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)
<p><b>1. Should the victim's interests prevail over the defendant's right to a Fair Trial?</b></p>	
<p><b>Affirmative.</b> Yes. The victim's interests should prevail.</p> <p>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.</p>	<p><b>Negative.</b> No. The defendant's rights should prevail.</p> <p>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.</p>
<p><b>2. Should the spectators have been allowed to wear the lapel pins in court?</b></p>	
<p><b>Affirmative.</b> Yes.</p> <p>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.</p>	<p><b>Negative.</b> No.</p> <p>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.</p>
<p><b>3. Should the First Amendment be applied in this case?</b></p>	
<p><b>Affirmative.</b> Yes.</p> <p>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 "nondisruptive" 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.</p>	<p><b>Negative.</b> No.</p> <p>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</p>

whim of the spectators - not justice - will be done.