

People v. Carter
adapted from
Criminal Justice in America
Constitutional Rights Foundation 2000

Editor: Carolyn Pereira
Writers: Jennifer Rosenberger Faus
David Walters
Reviewer: Dawn Iles

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Materials and training available from: Constitutional Rights Foundation Chicago
407 S. Dearborn St., Suite 1700, Chicago, IL 60605
Ph: 312.663.9057 & Fax: 312.663.4321 & www.crfc.org & crfc@crfc.org

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Introduction

This Handbook

Why is the jury lesson first? Teachers often cite time, or lack thereof, as the reason they do not attempt mock trial. By doing the jury lesson first, you will accomplish several goals. First, the jury lesson can be used as a stand alone lesson, if you have only one or two class periods, this critical thinking lesson can be completed within that time period. Second, the jury lesson gives the students an overview of the case in a fun and easily digestible way. If your students were assigned a brief synopsis of the facts, they would have an incomplete picture of the case, if they were given all six witness statements to passively read they could have a muddled mess. By discussing and arguing over the facts presented by the witnesses as a jury, the students are synthesizing a vast amount of material in a brief period of time.

Each lesson in this handbook is designed to be the “last lesson” - in other words, you can do the jury lesson and stop, or do the jury lesson and then the opening statement lesson and stop, continuing though the final lesson, the trial. Each lesson works at different skills as well as building on things the students are mastering as they work through the process. Again, each lesson was designed with a potent combination of content, activity, and skills practice giving you flexibility to adjust the handbook to your time constraints and curricular goals.

The suggested time frame with each lesson is intended as a guide. Each classroom is different and each group of students assimilates information at varying rates. The best thing to do is to read through all the materials and, based on what you know about how your class learns, set your timetable from there.

Mock Trials Generally

Mock trials can be used to explore history; practice language arts skills; study the judicial branch, trial process, role of the jury, and the importance of witnesses. Mock trials strengthen critical thinking and questioning skills. Students participating in mock trials practice composition, persuasive writing, and oratory skills. Attorneys in the classroom lend expertise, real world experience, show career possibilities, and the importance of education to employment.

Doing a mock trial well is hard work. It takes outside preparation and organization. Knowing your objectives is essential to a successful mock trial. Before you begin ask - why are you doing this? What do you want your students to get out of it? What educational objectives are you serving? What skills, knowledge, beliefs or attitudes do you want to impart as a result of doing mock trial? Clearly defining goals and objectives can move the mock trial process from daunting to delightful.

What success looks like will vary depending on your course objectives. One teacher says: “When my students are walking, eating, and sleeping the facts; when they question over and over again what they’ve missed - then I know they’ve got it - they are thinking critically; examining the case from all the angles.” Another reports: “The student who never says anything in class, took the role of one of the attorneys and shined. Doing the mock trial reached him.”

Attorney Volunteers

Attorneys can be very helpful in the mock trial process. An attorney can listen to the jury exercise and respond to the process commenting on the similarities and differences between this jury and juries in a real trial. They can help with opening statements, coach closing arguments and are particularly useful when writing direct and cross examination questions. It is important to use an attorney experienced in litigation.

To recruit a volunteer, call Constitutional Rights Foundation Chicago, 312-663-9057, or contact your local bar association.

Lesson One: The Jury (two to three class periods)

Objectives:

- Practice reading for comprehension.
- Practice critical thinking skills.
- Understand and evaluate the reasons for having a jury.
- Experience being a member of a jury.

Teacher Instructions:

Opening springboards for discussion:

1. If you were accused of doing something wrong, who do you think should decide whether you are guilty or not guilty after hearing all of the evidence:
 - A judge (who has gone to school to become an expert on the law)
 - A jury (group of people like you)
2. What are the advantages/disadvantages of having a judge/a group of people like you decide whether you or guilty or not?
3. What does the Constitution say about this? (Have them read Article III, § 2; Amendments V, VI, VII)
4. Talk about the idea of INNOCENT UNTIL PROVEN GUILTY vs GUILTY UNTIL PROVEN INNOCENT.

Pass out the Police Crime Investigation Report and all of the witness statements(Karen Miller, Joel Robertson, Gail Duran, Thomas Wade Carter, Lillian Sweet) It is important that students become very familiar with these statements. A suggested technique is divide the testimony so that two to three students are asked to master that reading. They teach it to each other and then select one person to present the information to the class or divide the class into groups of six to twelve (with each group having all of the testimonies represented) and ask that every person get a turn at presenting their story.

All students should have copies of all the testimonies so that they can check the information during the jury deliberations. Once students have become familiar with the information, they should be given the jury instructions and some time spent explaining the charges.

Generate a list of rules for conducting a good small group discussion. Here are some rules that have been developed by groups:

- Everyone should participate.
- Listen carefully to what others are saying.
- Ask questions if you don't understand.
- Be respectful.
- Support your ideas with evidence.

Each group should have a foreperson. You may appoint or let the group select. If you have enough attorney volunteers, have an attorney sit in on each group to help clarify the charges and answer questions about the law. The jurors should be officially asked to swear that they will look at the facts and be fair. Give them a time limit. If they cannot reach a unanimous verdict, it is a hung jury.

Lesson One: The Jury Handout

Make sure your jury knows what each witness said. Then read the CHARGES. Choose one person to be the foreman. Discuss each charge. Find evidence to support or not support each charge. You can underline evidence which supports or does not support each charge.

JURY INSTRUCTIONS

Thomas Wade Carter has been **charged** with two crimes:

- **Second-degree murder** is the unlawful killing of a human being with **malice aforethought**. Malice aforethought is when a person intends to kill a human being or when the killing of the human being results from an intentional act that:
 1. is dangerous to human life, AND
 2. was done on purpose knowing the danger to human life and not caring about human life.

Malice does not mean that the accused acted in anger, but that the accused acted intentionally.

Aforethought means that the person thought about the action before, not after.

- **Involuntary manslaughter** is the unlawful killing of a human being without malice aforethought and without intent to kill. If the juror believes that Thomas Wade Carter unlawfully killed Joyce Ann Miller, but has a reasonable doubt to whether the crime is murder or manslaughter, the juror must give the defendant the benefit of this doubt and say that it is manslaughter, not murder.

In order to be found guilty of either of the crimes, ALL of the jurors must believe Thomas Wade Carter guilty beyond a reasonable doubt. That means the jurors must be SURE, not just think it is more likely than not, that Thomas Wade Carter is guilty of one of the charges. If a juror believes there is any reasonable chance that the defendant is not guilty, the juror must vote to acquit.

Questions for discussion:

1. **Did you reach a unanimous verdict? If not, why not?**
2. **Was this easy or hard?**

Do you think this is a fair way? Or can you think of other ways?

Lesson Two: Opening Statements (one to two class periods)

Objectives:

- Practice selecting information to create a story with a point of view.
- Practice peer editing to refine an expository writing exercise.

In this activity, each student will take the role of defense attorney or prosecutor and write an opening statement for the Thomas Carter trial and have it critiqued by fellow classmates and/or an attorney..

1. Divide the class in half: one half to take the role of lawyers for the state, the other for the defense.
2. List the most important facts of the Thomas Carter case *from your assigned point of view* (prosecution or defense).
3. Write a one or two page opening statement from your assigned point of view.
4. In class, have students meet in groups of four, deliver their opening statements to each other, and choose the best one and/or combine the best of all statements. Then the groups should join together to form new groups of eight, and the two students chosen should deliver their statements. The group should again decide which is best or help rewrite the statements. Have the finalists from each group stand and deliver their opening statements to the whole class.
5. As a class and/or with the help of a volunteer attorney, select the best opening statement given for each side on the basis of (a) use of facts, (b) clarity, and (c) presentation.

Lesson Two: Opening Statements Handout 1

Once the jury has been chosen, the attorneys for both sides deliver an **opening statement** about the case to the jury. Opening statements outline the facts that the attorneys expect to prove during the trial. An opening statement should present the jury with an orderly and easy to understand version of the case from the attorney's perspective.

In criminal trials, the prosecuting attorney goes first. Usually the defense gives its opening statement immediately afterwards.

You will be either an attorney on a team for the prosecution or the defense. You will meet with your team and list the most important facts from your assigned point of view. Once you have done that, write a short opening statement.

Writing an Opening Statement

To prepare an opening statement, attorneys must organize and outline the entire case they intend to prove at trial. A good opening statement:

- Explains what the attorney plans to prove and how they will do it.
- Presents the events of the case in a clear, orderly sequence.
- Suggests a motive or emphasize a lack of motive for the crime.
- Is not argumentative. Tell your story without arguing what the case is about.
 - Arguments are for closing statements.
- Puts forth your theme/theory of the case.
 - "your catch-phrase:" a sentence relating to everyday life:
 - i.e. "wrong place at the wrong time."
 - 1 or 2 sentences - Theory (What is this case really all about?)
- Summarizes your story
 - Be creative: Use adjectives "It was a dark and stormy night" to give jury a picture of what is going on in your case.
- Gives a road-map at the end.
 - Give the jury a guide for listening to your case
 - We want the jury to pay attention so explain what should they be listening for.
 - Defense: 1 to 3 pieces of evidence that they are going to see or hear.
 - i.e. - "You will hear Kai say"
 - "You will see a bag of money"
 - Prosecution: What are you going to prove?
 - i.e. - Police had probable cause
 - Police had consent
- Repeats your theme.
 - Repeat your "catch phrase"

Attorneys usually begin their statement with a formal introduction:

"Your honor, ladies and gentlemen of the jury, opposing counsel, my name is [full name], representing [the state or the defendant] in this action."

The attorneys then turn to the jury and begin their statements.

Opening statements often include such phrases as:

- The evidence will show that...
- The facts will prove that...
- Witness [name] will be called to testify that...

Now exchange papers or read statements to each other. The group should either choose the statement they think is the clearest or rewrite the statement using the best of all of the statements.

Lesson 2: Opening Statements Handout 2

I. INTRODUCTION

A. Attention Grabber- (use a 'catch phrase')

B. Introduce Yourself

II STORY

A. Theory- In chronological order

1. What happened first...

2. What happened next...

3. Finish story/theory

B. Tell what the EVIDENCE will show

1. "The evidence/facts will show that..."

2. "The evidence/facts will show that..."

3. "The evidence/facts will show that..."

III. ROADMAP - Tell the jury what they are going to hear and see.

A. "First you will hear the Prosecution..."

B. "Then you will meet and hear the Defense..."

C. "Finally you will listen to Closing Arguments..."

Lesson Three: Writing Questions (two to three class periods)

Objective:

Practice writing questions in order to tell a story.

Writing Direct and Cross Examination Questions

Assign one prosecution team (pair) to each of these tasks:

1. Direct examination of Joel Robertson
2. Direct examination of Gail Duran
3. Direct examination of Lt. Tony Jackson
4. Direct examination of Karen Miller

Once they have finished the direct examination questions, work on one of the following:

5. Cross-examination of Thomas Carter
6. Cross-examination of Lillian Sweet

Assign one defense team to each of these tasks:

1. Cross-examination of Joel Robertson
2. Cross-examination of Gail Duran
3. Cross-examination of Lt. Tony Jackson
4. Cross-examination of Karen Miller

Once they have finished the cross examination questions, work on one of the following:

5. Direct Examination of Thomas Carter
6. Direct Examination of Lillian Sweet

Each team should develop questions and then check the questions against their opening statements. The story that the jury hears on direct examination should be the same story the jury heard in the opening statement. Have volunteer attorneys help critique the questions.

Lesson Three: Writing Questions Handout

Your team should develop questions for the witness you are assigned to.

The prosecution must prove Thomas Carter guilty of murder beyond a reasonable doubt. It must bring up evidence in its favor and anticipate and attempt to dilute the impact of evidence against it.

The defense must raise every reasonable doubt it can about Carter's guilt.

In most states, a defendant charged with murder could be found guilty of manslaughter instead. Since Carter has no alibi and doesn't deny being in the car with the shotgun in his hand, the case will boil down to the issue of Carter's *intent*. The prosecution will try to prove that Carter knew exactly what he was doing and that he intended to shoot the gun. The defense, on the other hand, will try to show that Carter didn't really mean to hurt anyone and that the gun went off accidentally.

Since you can only cross-examine witnesses about what they testified about on direct examination, cross-examination questions can be difficult to write in advance. But the witnesses' statements should give you an idea of what witnesses are likely to be asked on direct, and you can write cross-examination questions accordingly. You should then be alert during direct examination so you can get rid of any inappropriate cross questions you have developed.

Direct Examination of Witnesses

Direct examination takes place when lawyers call their own witnesses to the stand and ask them questions.

Form of Questions

Generally, attorneys ask questions so that witnesses will give short answers, not too long or rambling. In direct examination, attorneys usually may not ask leading questions. A leading question is one that suggests the desired answer. It usually elicits a "yes" or "no" answer. Often, leading questions are really statements with something like, "isn't that right?", "isn't that so?", or "didn't you?" tacked on the end.

For example, this question would be proper on direct examination (assuming that the fact was in issue): "Mr. Stevens, when did you and your wife adopt Charles?" This one would be improper: "You and your wife adopted Charles two years ago, is that correct, Mr. Stevens?"

Cross-Examination of Witnesses

After direct examination, the lawyer for the opposing side cross-examines each witness. Cross-examination has two purposes. It is designed to:

- (1) clarify the witness's testimony from the other side's point of view, and
- (2) give the opposing side an opportunity to impeach the witness—that is, to attack the witness's credibility.

Form of Questions

While leading questions (e.g., "You drank like a fish that night, didn't you, Mr. Saski?") are usually not permitted during direct examination, they are allowed during cross-examination. Cross-examination questions are limited to matters that were brought out on direct examination. In other words, cross-examination may not go beyond the scope of the direct examination.

Lesson Four: Closing Arguments (one to two class periods)

Objectives:

- Practice persuasive writing.
- Exhibit a deeper understanding of the meaning of 2nd degree murder or manslaughter.

In this activity, students take the role of attorneys developing closing arguments in the case of *People v. Carter*.

1. Each student should:

- Choose to represent either the prosecution or defense.
- Review the witness statements and consider the main points brought out in witnesses' testimony in the previous activity.
- Develop a three-minute closing argument (250 to 750 words). (Be sure to follow the "Guidelines for an Effective Closing Statement.")

2. To evaluate the closing arguments using the "Guidelines" as a rubric form groups composed of two to three prosecutors and defense attorneys to hear each others' arguments. Ask that each person who is evaluating an argument should act as a juror and take a blank piece of paper and make a rating sheet as follows:

- Write each presenter's name and role (prosecutor or defense attorney).
- Under each presenter's name, write the numbers one through nine in a column. Each of the numbers corresponds to one of the "Guidelines for an Effective Closing Argument." After each presentation, place a check mark next to the item if the presenter's statement met the criterion.

Lesson Four: Closing Arguments Handout

Closing arguments are given after both sides have completed questioning witnesses and presenting evidence. These arguments give the attorneys a chance to summarize their cases, review the testimony of witnesses, and make a last appeal to the judge or jury.

Guidelines for an Effective Closing Argument

An effective closing statement should:

1. Be emotionally charged and strongly appealing (unlike the calm, rational opening statement).
2. Only refer to evidence that was admitted during the trial.
3. Emphasize the facts that support the claims of your side.
4. Note weaknesses or inconsistencies in the opposing side's case.
5. Summarize the favorable testimony.
6. Attempt to reconcile inconsistencies that might hurt your side.
7. Be presented so that notes are barely necessary.
8. Be well organized (starting and ending with your strongest point helps to structure the presentation and give you a good introduction and conclusion).
9. Focus on reasonable doubt. The prosecution should emphasize that the state has proved the elements of the crime beyond a reasonable doubt. The defense should raise questions suggesting that reasonable doubt exists.

Proper phrasing includes:

"The evidence has clearly shown that.

"Based on this testimony; there can be no doubt that..."

"The prosecution has failed to prove that..."

"The defense would have you believe that . .

10. Conclude with an appeal to convict or acquit the defendant.

Write a closing statement and be prepared to present it and listen to others' closing arguments as well. Use the Guidelines to both write your argument and rate others' arguments.

Lesson Five: The Trial

Objectives:

Practice listening, public speaking, and critical thinking skills.

Further understanding of the philosophy and content of the law as applied by our courts and the legal system.

Basic Trial Procedures

Courtroom and participants

judge	attorneys
witnesses	jurors
bailiff	court reporter
media	observers

Beginning the trial

Bailiff announces: "All rise. The Court of _____ is now in session, the Honorable Judge _____ presiding." Everyone remains standing until the judge enters and is seated. Next, the judge asks the bailiff to call the day's calendar (the "docket"), at which point the bailiff says, "Your Honor, today's case is *People v. Carter*." The judge then asks the attorneys for each side of the case if they are ready to begin the trial.

The trial

1. Students deliver opening statements.

Attorney for plaintiff rises and introduces him/herself: "May it please the court and ladies and gentlemen of the jury, my name is _____, counsel for _____ in this action." Attorney for Plaintiff always delivers his/her opening statement first. (no longer than 5 minutes) Defense attorney gives his/her opening statement immediately after.

2. Testimony of witnesses.

Plaintiff witnesses are called first. Order of witness presentations are determined by strategy, i.e., chronologically into overall story. Direct examination of plaintiff witnesses includes cross examination by defense and redirect examination by plaintiff. It is strongly suggested that teachers allow only a very limited redirect, if at all.

After the plaintiff rests its case, the defense may ask the judge for a directed verdict. A directed verdict asks the court to find for the defense on the grounds that the evidence is insufficient to sustain a finding against the defendant. In other words, the plaintiff has not made their case, and there is not reason to proceed further. In a real trial a request for a directed verdict preserves grounds for appeal. In a mock trial this is only a formality.

Defense case-in-chief then proceeds with direct examination of witnesses called by defense and cross examination by plaintiff, etc.

3. Closing arguments

The plaintiff presents its closing argument (no longer than 5 minutes). The defense will then present its closing. The plaintiff (because it has the burden of proof) has up to two minutes to present its rebuttal closing.

4. Finding

If the trial is a bench trial, the judge should take a few moments to deliberate, then give his/her finding. The judge should explain why he/she found for the plaintiff or defendant, commenting on the strengths and weakness of each side. What evidence did the judge find important? Was there anything the judge wanted to know? Would that knowledge have effected the outcome?

If there is a jury, they may retire to another room to deliberate, or deliberate “fishbowl” style, letting the trial participants in on their thoughts. If fishbowl style is selected, it is very important that the attorneys and witnesses remain silent throughout the deliberations. If the jury makes their decision in private, they can be asked to comment on the process, or how they came to their decision, either as a group or individually. They can be asked questions such as: Were some parts of the trial more important than others? Did either side forget to introduce any importance evidence? Could either side have been more effective or successful in their direct or cross examination of the witnesses?

5. De-brief.

Using handout five, review the mock trial experience with the students.

Lesson Five Handout: Questions for Reflection

What were the strongest arguments on each side?

Any suggestions for what either side might have done to strengthen its case?

Do you agree with the judge's or jury's decision? Was it fair?

What was the best part about doing the mock trial? The worst part?

What did you learn that you think other people should know?

Is the jury system the best possible system for determining the outcome of the case?

What changes could be made to improve the jury system?

What changes could be made to improve the trial procedures?

WITNESS STATEMENTS

Statement of Lt. Tony Jackson
Police Crime Investigation Report

Date of Investigation: July 6-7

Investigating Officer: Lt. Tony Jackson

Crime Description: At approximately 7 p.m. on Tuesday, July 6, Joyce Ann Miller, age 4, was hit in the head and chest by a shotgun blast at a range of about 10 yards. The victim died instantly.

Arrest: At 11:45 p.m. on July 7, I arrested Thomas Wade Carter and booked him for murder in the first degree.

Report of Investigation:

1. On Monday evening, July 5, the arrestee, Thomas Wade Carter, age 18, went to a party at the home of his girlfriend, Gail Duran. Witnesses at the party report that almost everyone there, including the suspect, consumed a lot of beer. A fight broke out at about 3 a.m. Witnesses could not identify everyone who was involved in the fight, but told me that suspect Carter was clubbed over the head with a beer bottle by another guest named Oscar Hanks. Friends took Carter to the hospital for treatment. Five stitches were required to close the wound.
2. On Tuesday, July 6, at about 5 p.m., Carter visited the apartment of a friend, Joel Robertson. Robertson stated that Carter was still angry about being hit during the fight the night before. Robertson also said that Carter remarked, "I'm going to get that guy once and for all. That man is going to pay in a big way." Carter also asked Robertson how to work one of his shotguns. Robertson is a hunter who owns several guns.
3. At about 6:30 p.m. on July 6, Carter visited the home of Gail Duran. Ms. Duran told me that Carter was still angry about what had happened the night before. She also said that Carter told her he knew who had hit him. Carter invited Duran to go for a ride with him and she agreed. He asked Duran to drive his car while he sat in the back seat giving her directions. Duran stated that Carter directed her to Fourth Street. When he spotted a red Toyota truck parked in front of one of the houses, he told her to slow down. At this point, according to Duran, she noticed for the first time that Carter was handling a shotgun. She said she became very nervous. Suddenly, according to Duran, there was a loud explosion inside the car. Startled, Duran stepped on the gas pedal and quickly drove away. She stopped on a quiet street nearby. Carter then got into the driver's seat and took her home. Duran stated that Carter told her on the drive back to her home that all of a sudden the shotgun had gone off by itself. He also stated that he did not think he had hit anything.
4. The only eyewitness to the shooting of Joyce Ann Miller was her mother, Ms. Karen Miller. At about 7 p.m. on July 6, Ms. Miller told her daughter to close the front gate to the yard. Ms. Miller watched as her daughter went to close the gate. Ms. Miller then noticed a black car driving slowly on the street in front of her house. She also saw a long gun barrel pointing out of its rear window right at her daughter. Before she could say or do anything, Ms. Miller stated, there was a loud blast and Joyce Ann collapsed. Ms. Miller and her neighbors rushed to help Joyce Ann. Paramedics were called, but Joyce Ann was pronounced dead on arrival at Central Receiving Hospital. Ms. Miller stated that she had no idea who killed her daughter and could offer no description of the occupants of the black car except that she thought the driver was a young woman.
5. The Miller residence is located three doors to the east of Oscar Hanks' residence on Fourth Street.
6. That evening at 10:05 p.m., I received an anonymous phone call at the police station. The caller said, "If you want to know who murdered that little girl, you better check out what happened at Gail Duran's party last night." After interviewing a number of witnesses at the party, including Joel Robertson and Gail Duran, I arrested Thomas Wade Carter at 11:45 p.m. on July 7. I read the suspect his Miranda rights and booked him for the first-degree murder of Joyce Ann Miller.

Statement of Karen Miller

My name is Karen Miller. I am 25 years old and divorced.

I was home on the evening of July 6. Around 7 p.m., Joyce was playing in the front yard. I asked her to close the front gate and come inside the house, since it was her bath time. As I watched her go to the gate, a black car slowly drove down the block. I think it was a late model Pontiac, but I'm not really sure. Suddenly the barrel of a rifle or shotgun was pointing from the car window right at Joyce. Before I could say or do anything, there was an explosion, and the car took off quickly.

At that instant, I looked at Joyce and saw her fall to the ground. Horrified, I ran to her and saw blood all over her face and body.

I can't describe the occupants of the black Pontiac. Still, I think the driver was a young woman.

A red Toyota truck was parked in front of my house that evening. I believe it belonged to a teenager named Oscar who lives across the street.

Statement of Joel Robertson

I am Joel Robertson and I am 21 years old. I have known Tom for a few years, but we're not close friends.

On the evening of July 5, I attended a party at Gail Duran's house. I and most of the others at the party drank beer for several hours. Around 3:30 a.m., a fight broke out. I was not involved in the fight, but I saw Tom Carter get hit over the head with a beer bottle. I did not know who did it. I and some of the others at the party took Tom Carter to the hospital for emergency treatment. On the way to the hospital, Carter kept asking who hit him with the bottle. He was really angry. The people in the car suggested several names, including Oscar Hanks.

The next day about 5 p.m., Tom Carter came over to my apartment. Carter was still very angry about what had happened the night before. I know from past experience that Carter is the type of guy to carry a grudge. He's a real hothead. He was always getting into fights with guys at school and in our neighborhood. Carter told me that he thought he knew the guy who split open his scalp. He said he thought the guy was Oscar Hanks. Carter told me, "I'm going to put a scare into that guy that he won't forget."

We watched a video for a while and had a soft drink. Carter was really nervous. A little later, Carter started asking me about my gun collection. I am a hunter and collect rifles and shotguns. Carter was especially interested in one of my shotguns. He asked me to show him how to work it. He also asked me how far a shotgun would shoot. I responded that a shot-gun would be effective up to about 20 yards. About 6 p.m., Carter left my apartment.

Statement of Gail Duran

My name is Gail Duran. I am 17. I have been dating Tom Carter for about a year.

On the evening of July 5, I had a party for about 50 of my friends while my parents were on vacation. During the party a lot of people got drunk on beer. Sometime around 3 a.m., a fight broke out among about a dozen guys. Tom was hit on the head with a beer bottle. There was blood all over the place. I asked Joel Robertson and some others to take Tom to the hospital while I tried to get everybody out of the house before the police came.

The next day Tom called me to say he was all right and would be over to see me later on. Around 6:30 p.m., Tom arrived at my place. He was very upset about getting hit the night before. He said he thought he knew who had hit him with the bottle. He said it was Oscar Hanks. Tom then asked me to go for a ride with him. I agreed to go with him.

Tom asked me to drive his car while he sat in the back. Tom owns a Pontiac Firebird. He told me he wanted to look for Oscar Hanks. He gave me directions to drive to Fourth Street. While driving down Fourth Street Tom said, "Hey; that's his truck. Slow down, Gail." As I slowed down, I noticed for the first time that Tom had a shotgun in the back of the car with him.

At this point, I really got scared and began to swerve down the street. I had never seen Tom act this way before. Then there was a loud bang, and Tom yelled to me, "Get us out of here, fast!" I managed to drive out of the neighborhood. I stopped on a quiet street. Tom got into the driver's seat and took me home.

On the way home, Tom told me that the shotgun just went off by itself, but he did not think he had hit anything. I did not actually see the shotgun discharge, but I believe that the swerving motion of the car must have caused Tom to accidentally pull the trigger. Tom would never intentionally shoot anyone. He's always been a sensitive and gentle guy. Sure, he had a few fist fights when we were in high school, but he didn't mean anything by it. He's basically a great guy.

Statement of Thomas Wade Carter

My name is Thomas Wade Carter, age 18. I have recently graduated from high school. I work at an auto parts store.

I was totally shocked when I was arrested for shooting a little girl. I have never been in serious trouble before. I was suspended from high school once or twice because of problems with other guys, but they always started the fights, not me.

Gail Duran is my girlfriend. She and I have been going together for about a year. I went to her party on July 5 and had a good time drinking beer with my friends until I got in a fight with a dozen other guys around 3 a.m. During the fight, I was struck in the back of the head with a beer bottle. Joel Robertson and some others at the party took me to the hospital. It took five stitches to close the wound on my scalp.

The next day (July 6), I called Gail and told her I was all right and that I would be dropping by later in the day.

I was angry at Oscar and wanted to pay him back some way. So I decided to take my father's shotgun and scare him a little.

After picking up the shotgun, I stopped by Joel Robertson's apartment around 5 p.m. I knew he was a hunter. I got him to tell me how to work a shotgun so I could make Oscar think I was serious; But I never knew the gun was loaded, and I never meant to hurt him. I just wanted to teach him a lesson.

From Joel's place, I went over to see Gail. I asked her to go with me for a drive. I had her drive my car while I sat in the back seat looking for Oscar's house. I knew he lived somewhere on Fourth Street I also knew he drove a red Toyota truck. Finally, I spotted his truck parked along the street. But the car suddenly lurched, and the next thing I knew the shotgun went off accidentally. I panicked. I didn't know it was loaded. I told Gail to get out of the neighborhood fast. I did not see anybody in the yard where Joyce Ann Miller was killed and certainly did not aim the shotgun at her. It was an accident.

Statement of Lillian Sweet

My name is Lillian Sweet. I am a retired school principal. I have a Ph.D. in educational administration from the University of Illinois. I was a history teacher and guidance counselor before became a principal.

I have known Tom Carter since he was a little boy. I've lived down the street from the Carters for almost 20 years, and I was principal of the high school that Tom attended. I did have to suspend him for brawling with other boys once or twice. But kids will be kids. I think Tom was just following the lead of his friends in those days. As a principal, I was not very seriously concerned about Tom's behavior. I knew he'd grow up to be the fine young man he is today.

Tom has always been a joy to have in the neighborhood. He is kind to old people and children. He helps his mother shopping. Sometimes he even drives me to my doctor appointments if the weather is bad or he has a free afternoon.

In my opinion, Tom could never have done what he is accused of doing. He's a very stable and responsible young man. He's just not capable of murder.

Additional Student Handouts:

CAST OF CHARACTERS

STATE CRIMINAL CODE

THOMAS CARTER/BACKGROUND

THEME

**OPENING, DIRECT, CROSS, AND
CLOSING**

THE TRIAL

Case Notes: Cast of Characters

A criminal courtroom in session is filled with people. Some are spectators. Some are friends and family of the victim or accused. Others take an active part in the trial itself. The following descriptions will give you an idea about the major participants. (Some you have already met, but review them again carefully.) As the trial of Thomas Carter progresses, you will be asked at times to take on their roles.

The judge presides over the trial. He or she rules on all motions made by the attorneys, on the admissibility of testimony or items in evidence, and on the procedures to be followed during the trial. At the end of the trial, the judge instructs the jury about the applicable rules of law. In a criminal trial, if the jury reaches a verdict of guilty, the judge then determines the sentence to be given the convicted person. (In almost all states, the jury determines the punishment in death penalty cases.) If the jury reaches a verdict of not guilty, the judge discharges the defendant.

The **bailiff** is usually a deputy sheriff, marshal, or some other law enforcement officer. The bailiff:

- keeps order in the courtroom.
- protects the jury from outside influence.
- assists the court clerk in ceremonial duties such as asking all to rise when the judge enters the court.

The **court clerk** is the main administrative assistant to the judge. The clerk:

- keeps track of courtroom proceedings.
- catalogs and takes custody of exhibits and other items of evidence.
- prepares all written orders of the court (summons and warrants, for example) as directed by the judge.
- administers oaths to witnesses.
- calls the jurors for selection.

The **court reporter** records by machine or shorthand everything said in the trial. The court reporter prepares a typewritten transcript of these records.

The **prosecution lawyers** are members of the district attorney's office, city attorney's office, or state and federal attorney general's office. They represent either the people of the state or the U.S. government. They must prove that the accused is guilty of a particular crime beyond a reasonable doubt.

The **defense lawyers** are private attorneys or members of publicly supported organizations, such as the public defender's office. They must defend the accused by showing that the government does not have enough evidence to convict the defendant. All lawyer~ both prosecution and defense~are officers of the court. They must therefore observe all rules of law and ethics so that a fair trial will take place.

The **defendant** is the person accused of a crime. The defendant assists the defense lawyers in presenting the case and accepts or appeals the results of the trial.

Police officers investigate crimes and arrest suspects when they uncover enough facts to establish probable cause. The rest of the criminal case process tests these facts. Their job does not end with arrest, however. They also help prosecutors prepare for trial and frequently testify as witnesses.

Witnesses are persons asked to tell under oath what they know about the case. Most may only testify about what they actually saw and heard. But **expert witnesses** may testify about their knowledge and give opinions. They are persons with special knowledge, such as doctors, psychologists, and scientists.

The **jury** is a panel of adult citizens (usually 12) from the community. It must decide questions of fact from the evidence presented in the courtroom and reach a verdict based on those facts.

Case Notes: State Criminal Code

In the state where Joyce Ann Miller was killed, the following criminal laws define the various forms of criminal homicide.

Section 274: Degrees of Murder

Any killing committed *with* malice aforethought.

(a) Murder in the First Degree: All killings that are premeditated.

(b) Murder in the Second Degree: All other killings *with* malice aforethought.

Section 298: Manslaughter

Any killing committed *without* malice aforethought.

(a) Voluntary Manslaughter: All *intentional* killings committed as a result of serious provocation or *extreme anger*.

(b) Involuntary Manslaughter: All *unintentional* killings that are the direct result of committing:

1. any *dangerous* and *unlawful* act or
2. any *lawful act* in an extremely *careless* or negligent manner.

File: Thomas Carter/Background

Prior Arrests/Convictions

No prior convictions. One arrest for disturbing the peace. The charges were subsequently dropped. At the age of 17, Carter was cited for reckless driving, and his driver's license was suspended for six months.

Employment

Employed full time as an assistant manager of the parts department of a local auto dealership. He has held his present position for nearly six months after having worked there part time during high school. His current income is \$26,000 a year.

School Record

Carter was an average student throughout high school. Because of poor attendance, however, he completed some credits for graduation at a continuation high school. He was suspended twice, once for fighting, once for truancy. Recently he completed a special three week course offered by Ford Motor Company in parts management before qualifying for his present job.

Residence

Carter's dad died when he was 5. He lives at home with his mother, sister, and younger cousin. He makes monthly contributions for rent, utilities, food, and maintenance.

Theme

The theme of your case is a one sentence catch phrase that reminds the jury why your side should win. Below is a list of catch phrases. Study this list, review the facts of the case, and brainstorm as many themes as you can that will fit your case. Use a theme from those suggested here or create your own.

Catch Phrases:

This is a case of he said she said.

If it doesn't fit, you must acquit.

The elevator doesn't go all the way to the top.

The sun always rises in the east.

To be or not to be. (Shakespeare).

Justice is the harvest of nations. (Robert Hughes Fleicite de Lamennais).

If it looks like a duck and walks like a duck, it's probably a duck.

Two bricks short of a load.

A bee in your bonnet.

Do as I say, not as I do.

Grass is always greener on the other side.

If a tree falls in the forest...

If you have time to lean, you have time to clean.

In one ear and out the other.

Skeleton in the closet.

Like a bull in a china shop.

One bird in the hand is better than two in the bush.

You catch more flies with honey than you do with vinegar.

If any question why we died, tell them because our fathers lied. (Rudyard Kipling).

Quit while you're ahead.

Every Cloud has a silver lining.

Feed a fever starve a cold.

All the news that's fit to print. (New York Times).

A stitch in time saves nine.

Haste makes waste.

All personal secrets have the effect of sin or guilt. (Carl Gustav Jung).

As a rule we disbelieve all facts and theories for which we have no use. (William James).

Seek the truth, Listen to the truth, Teach the truth, Love the truth, Abide the truth, And defend the truth, Unto death. (John Hus).

Now what I want is, Facts...Facts alone are wanted in life. (Charles Dickens).

OPENING STATEMENT

First impressions are lasting impressions!
Tell the story.
Focus on the people.
Stick to the facts - not your opinion.
Remember the law.
Give the jury a theme - a psychological anchor.
Present yourself as credible - trustworthy - believable.
Be enthusiastic!

DIRECT EXAMINATION

Let the witness tell the story.
The witness is the STAR!
Elicit exciting, vivid testimony.
Present your witness as credible.
Use open ended questions - don't lead your witness by the nose!

CROSS EXAMINATION

Start and End crisply.
The lawyer is the STAR!
Know the probable answer before you ask the question.
Listen to the witness' answers.
Don't argue with the witness.
Don't ask the witness to explain.
Keep control of the witness.
Don't ask the one question too many! - Make your point, STOP! And sit down!

CLOSING ARGUMENT

Now is the time to argue!
Summarize the evidence.
Draw conclusions.
Repeat the theme - repeat the theme - repeat the theme.
Tell the jury what you want.
After all - you're a winner!

Adapted from *Trial Techniques* Thomas A. Mauet.

Trial

● Key Step: Trial Procedures

Strict rules ensure that each side in a trial will have an equal chance to present its case. A judge must make sure that each side follows these rules closely. The major procedures observed in a criminal court trial are outlined below.

1. Jury Selection

In all criminal jury trials, the first step is impanel, or select, a jury. Prosecution and defense attorneys pose questions to prospective jurors. The judge may also take an active role in the process.

2. Opening Statements

After calling the court to order, the judge will ask for the trial to begin with opening statements from the prosecution and defense. The opening statements outline the evidence each side intends to present during the trial. The prosecution delivers its opening statement first. The defense attorney usually follows immediately with a statement, but may delay it until after the prosecution presents all its evidence.

3. Presenting Evidence

The prosecution presents its side of the case first. This is called the prosecution's **case-in-chief**. It usually consists of introducing material objects called exhibits (e.g., a gun), as well as questioning prosecution witnesses. After the prosecution has finished presenting its side, the defense may introduce its exhibits and witnesses. Both exhibits and witnesses' testimony are trial evidence. Strict rules of evidence must be followed, however, before either is allowed into the trial.

Attorneys conduct **direct examination** when they question their own witnesses. After direct examination, opposing attorneys **cross-examine** the witnesses. Lawyers conduct cross-examination to test and find weaknesses in the testimony of their opponents' witnesses. They may also try to put doubts into the minds of the jurors about the believability of these witnesses.

4. Closing Arguments

After each side has presented all its evidence, each side makes a closing statement to the jury. In these closing arguments, attorneys summarize what has been established or not established during the trial. The closing argument presents attorneys with their last chance to persuade the jury. The defense delivers the first closing argument to the jury. The closing argument of the prosecution ends the evidence phase of the trial.

5. Instructions to the Jurors

Following the closing arguments, the judge gives instructions to the jury. These instructions state the law that applies to the case. The judge reminds the jurors to base their verdict solely on the evidence admitted during the trial. Since the prosecution has the burden of proof, the judge instructs the jurors to find a verdict of guilty only if the state has proved its case beyond a reasonable doubt.

6. Jury Deliberations

After hearing the judge's instructions, the jury leaves the courtroom and meets in a jury room to decide on a verdict. Jury members first select a foreperson who will lead their discussions. The jury then reviews the evidence and votes on a verdict. Although the U.S. Supreme Court has ruled that unanimous verdicts of guilty or not guilty are not mandatory in all criminal cases, almost every state still requires them.

Several votes may be necessary before the jurors arrive at a unanimous verdict. If after a reasonable time, the jurors cannot reach a unanimous verdict, they become a hung jury." The foreperson will report this fact to the judge. If the judge believes that further jury deliberations are futile, the judge will declare a mistrial. The prosecutor will then have to either request another trial with a new jury or drop the charges against the defendant. If the jury returns a unanimous verdict of not guilty; the defendant goes free. When the jury unanimously finds the defendant guilty the judge will set a date for a sentencing hearing.