

REGINA V. GIRARD

ADVANCED MOCK TRIAL



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Acknowledgements

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The Society has several first-class resource materials, including other mock trials and *Guide to Mock Trials: The Basics*, that can help you and your group learn more about the courts and justice system in British Columbia and Canada. For more information, contact us or visit our website:

The Law Courts Education Society of B.C.
260-800 Hornby Street
Vancouver, B.C. V6Z 2C5
Tel: (604) 660-9870
Fax: (604) 660-3476
www.lawcourtsed.ca

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The Law Courts Education Society

We are a non-profit organization providing educational programs and services about the justice system in British Columbia and Canada. We help the public understand how our justice system works and we also help those people working within the justice system to better understand the justice-related issues that different people in our community face.

We work in partnership with the Ministry of Attorney General, the Ministry of Education, the Judiciary, the Canadian Bar Association (BC Branch), schools and communities.

With the support of our partners, funders and volunteers, we strive to maintain an accessible justice system for everyone.

Preface

This script was originally developed to be produced by Columneetza Senior Secondary School Law 12 and PACE 12 students in Williams Lake during Law Week in 1990. The script is based upon an actual case from Manitoba: *Regina vs. Lavallee*. The case was decided in the Supreme Court of Canada on 3 May 1990.

This is an advanced mock trial. It is produced for senior students who have some mock trial experience and who are ready for a new challenge. The trial demands that participants familiarize themselves with the responsibilities of various court personnel, and with the deeper issues raised by the case. For example, the students who play Crown and defence counsel should meet with local lawyers to discuss the case. Similarly, the expert witness for the defence should meet with a local professional in the area of spousal assault to become familiar with the issue.

The role sheets included here are designed to be used in conjunction with "Guide to Mock Trials: The Basics."

You can modify this trial for your own use. For example, you may want to make the dates current, change the names of the characters, and modify the location for local relevance. The students involved in the trial can take part in the modification process, and you can incorporate appropriate suggestions. Note that while the roles of Nicole Girard and Ken Cato are gender specific, the others are not.

The students, especially those who play the roles of the lawyers and the judge, may wish to read the judgments in the case of *R.v.Lavallee*. The decision of the Manitoba Court of Appeal is reported: (1988) 44 CCC (3d) 113. The case was appealed to the Supreme Court of Canada and the decision can be found in [1990] SCR 852, and in other law reports. A summary of these judgments can be found in the back of this book.

All of the students involved in this mock trial, especially those who are playing the roles of Drs. Holmes and Longsio and the role of Nicole Girard herself, might wish to read two books that are available in paperback form: "The Burning Bed" and "Life With Billy." The latter book concerns a case from Nova Scotia which was widely publicized in the early 1980s. It is referred to by former Supreme Court Madame Justice Wilson in her decision in the Lavallee case. (The actual court decision relating to "Life With Billy" is reported, *R. v. Whynot* (1983) 9 CCC (3d) 449. Wilson J. refers to it at p. 876.)

A few words of caution—the events portrayed in the script are violently unpleasant. The roles of some participants require the use of some coarse language. These features are not meant to offend; they are simply necessary to create a realistic scenario for the instruction of and use by senior students.

Judge C.C. Barnett

Sandra Hawkins

Getting Started

In *Regina vs. Nicole Girard*, Nicole Girard is charged with second degree murder of her live-in boyfriend, Kevin Steel. For years, Nicole Girard had been violently assaulted by her boyfriend.

The witness role sheets in this guide are designed to be used in conjunction with the companion publication, "Guide to Mock Trials: the Basics." This generic guide is available from the Law Courts Education Society.

This mock trial has the following witness roles:

FOR THE CROWN

Constable Kellsted
Kim Kendrick, neighbour of Nicole Girard and Kevin Steel
Ken Cato, friend of Kevin Steel
Constable Stevens

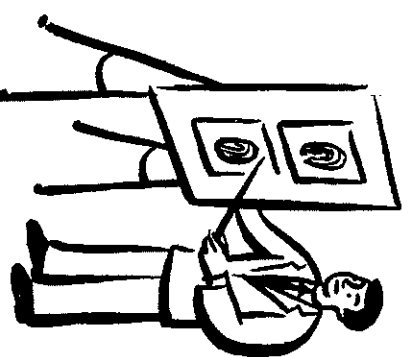
FOR THE DEFENCE

Nicole Girard
Dr. J. Holmes, a medical doctor
Dr. D. Longsio, a psychiatrist

Students should be warned that counsel **must not** ask questions on direct or cross-examination that will get the witnesses into areas not outlined in the role sheets. Students are expected to develop the roles but to keep them within the framework outlined in the role sheets.

Exhibits

There are two sets of exhibits. Exhibits 1A to 1D are photographs taken by Cst. Kellsted. These can be prepared by Cst. Kellsted, in cooperation with the court clerk. The second exhibit is the taped statement of Nicole Girard. Nicole Girard made the statement to Cst. Stevens at the R.C.M.P. detachment after shooting. Nicole, Cst. Stevens and the court clerk should cooperate in the preparation of this exhibit.



Materials for the Participants

CROWN AND DEFENCE COUNSEL NEED:

- All the witness role sheets
- The indictment, and admissions to be made
- Judge's charge to the jury
- Sections 34 (2) and 235 (1) of the Criminal Code
- Judgment in R.v.Lavallee
- Crown and defence files from "Guide to Mock Trials: The Basics"

Crown and defence should each meet with a lawyer to discuss the details of this case.

THE JUDGE NEEDS:

- All the witness role sheets
- The indictment, and admissions made
- Judge's charge to the jury
- Judge's file from "Guide to Mock Trials: The Basics"
- Sections 34 (2) and 235 (1) of the Criminal Code
- Judgment in R.v.Lavallee

The judge should meet with a local member of the judiciary, if possible, to discuss the case.

NICOLE GIRARD, AND DRS. HOLMES & LONGSIO SHOULD READ:

- Additional materials about the battered wife syndrome

Dr. Longsio also needs Nicole Girard's statement, and Ken Cato's role sheet.

THE COURT CLERK NEEDS:

- The indictment
- Copies of section 34 (2) of the Criminal Code to hand to the jury when the judge has charged them
- Exhibits 1A to 1D and exhibit 2
- Court clerk's file from "Guide to Mock Trials: The Basics"

Indictment

CANADA

PROVINCE OF BRITISH COLUMBIA

SUPERIOR COURT OF BRITISH COLUMBIA

IN THE SUPERIOR COURT OF BRITISH COLUMBIA
HER MAJESTY THE QUEEN
AGAINST NICOLE GIRARD

Nicole Girard stand charged:

THAT you, Nicole Girard, on or about the 29th day of October, A.D. 1990 at or near the City of Williams Lake, in the Province of British Columbia, did commit second degree murder on the person of Kevin Steel CONTRARY TO SECTION 235 (1) OF THE CRIMINAL CODE OF CANADA AND AGAINST THE PEACE OF OUR LADY THE QUEEN, HER CROWN AND DIGNITY.

DATED this 29th day of February, A.D., 1991, at the City of Williams Lake, in the Province of British Columbia.

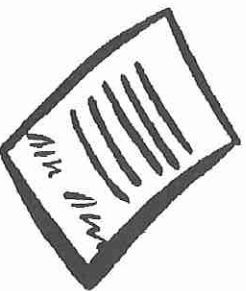
*Agent of the Attorney General for
The Province of British Columbia*

Admissions to be Made

Admissions are necessary to focus the case and to save some time. Admissions are made by counsel in many criminal trials and when they are appropriate, they are encouraged by judges. In a real case the admissions would normally be made by the lawyers involved, but in this mock trial, the judge should advise the jury at the outset that counsel have agreed upon certain admissions and have asked that the judge make those admissions known to members of the jury.

- 1) That Nicole Girard caused the death of Kevin Steel at Williams Lake, British Columbia, on October 29, 1989 about 02:07 hours. She did this by shooting him with a rifle.
- 2) That the various admissions and statements made by Nicole Girard to Cst. Stevens concerning the death of Kevin Steel are all admissible in evidence. It is specifically admitted that such admissions and statements were made voluntarily and that none of the rights accorded to criminal suspects by the Canadian Charter of Rights and Freedoms were infringed or violated.
- 3) That Dr. D. Longsio is qualified to testify as an expert witness upon the subject of spousal assault and the effect it has upon women.

NOTE: The judge should incorporate these admissions into his or her opening statement. For details on how to construct the opening statement, students should refer to the Judge's File, in "Guide to Mock Trials: The Basics."



Crown Witness #1 – Constable Kellsted

As Cst. Kellsted you will say that you are a member of the identification section of Williams Lake R.C.M.P. Detachment. You were called to #18 Cariboo Place on October 29, 1990, arriving at approximately 02:33 hours. You will say that the Cariboo Place townhouses are located on Second Avenue North near Western Avenue in the City of Williams Lake, British Columbia.

You attended the scene to take photographs and seize exhibits. You took the following photographs. These photographs will become court exhibits.

EXHIBIT 1A

A photograph of the deceased, identified to you as Kevin Steel. He is lying in an upstairs hallway and his head has been “blown away,” apparently from behind. He is wearing jeans, a Harley Davidson t-shirt, and biker boots.

EXHIBIT 1B

A photograph of a .303 rifle, observed on the floor in a bedroom (also visible on a dresser in an ornamental rooster).

EXHIBIT 1C

A photograph of the accused taken at the R.C.M.P. detachment at 04:14 hours. She is wearing jeans, a Harley Davidson t-shirt, and biker boots. She has a tattoo on her arm and her hair style is slightly “wild”. She has very obviously been crying.

EXHIBIT 1D

You took this photograph when you returned to the scene that same day at 09:18 hours. It shows the backyard of #18 Cariboo Place—the barbecue, beer boxes on the picnic table, etc.

How to prepare these exhibits

If you can, take some photographs of the person who is playing the role of Nicole Girard. Ideally, she will dress the part in order to be photographed. For the other photographs, you will have to improvise. For exhibits 1A and 1B, look for magazine pictures and past them onto a firm piece of cardboard. You may wish to construct exhibit 1D in your own backyard, or develop a collage from magazine pictures.

If you are unable to take photographs, prepare some drawings and paste them on pieces of cardboard. For the purposes of this mock trial, you can describe them as photographs.

Familiarize yourself with these exhibits in detail, because you will have to answer questions about them in court.

The court clerk should assist you in preparing these exhibits, because during the trial, the exhibits are the court clerk’s responsibility.

Crown Witness #2 – Kim Kendricks

In this mock trial you are going to play the role of Kim Kendricks, a high school English teacher.

You live in a town house (#16) complex known as Cariboo Place. You and your spouse returned home about midnight on Saturday, October 28, 1990. You noticed that your neighbours in #18 were partying—people were coming and going, barbecuing, and a ghetto blaster was blaring heavy metal rock. You could see many cases of beer on a picnic table.

You will say that when you went to bed at about 1 a.m. you covered your head with a pillow. You will say that otherwise “it sounded like a rock concert going on at the end of my bed.”

But things did quiet down about 1:30 a.m.

About 2 a.m. you heard an argument. You recognized the voices as those of your neighbours: Kevin Steel (known as “Rooster”) and his girlfriend, Nicole Girard. You recall hearing Nicole say, “I didn’t do anything to your sister. I didn’t do anything.”

You got out of bed to look out the window, but did not see anything out of the ordinary.

But just a few minutes after things quieted down again, you heard a loud bang. You thought it was a car backfiring. Then you heard another bang and realized that the noises were gunshots.

You got up and went to the window again. You heard a sound like a child crying. Then you could hear a woman’s voice in the neighbouring yard. The woman said, “*t!*”, he punched me in the face. He punched me in the face!”

You saw the woman wandering around the yard briefly before going back into the town house.

You telephoned the police at 2:07 a.m. While you were still on the telephone, two police cars arrived. You saw officers emerge with their guns drawn.

On cross-examination, you will say that during the course of the argument you could hear a woman screaming and, “I knew somebody was getting a beating.” The screams were those of “pain and fear.” The woman wandering around the yard after gunshots was Nicole, who was “completely hysterical.”

You will recall also hearing Nicole say, “I killed him. You guys are my witnesses. You guys are my witnesses!”

You will say that usually Rooster and Nicole were quiet enough neighbours. But sometimes the engine noises and exhaust from their Harleys were annoying.

Crown Witness #3 – Ken Cato

You are 22. You and Rooster had been best friends since childhood; the two of you used to shoot pool, drink beer, talk shop, etc. together.

You will explain to the court that you met Nicole when she and Rooster started going out, and that Rooster lived with Nicole for about four years until she murdered him.

You were at the party that night. Nicole and Rooster's sister, Wendy, argued about something and Wendy left. After that, Rooster and Nicole were arguing and then she went into the house. Rooster followed. You then heard a rifle shot and Nicole came running out screaming that she had killed Rooster and continued shouting other things that showed how upset she was.

Nicole and everybody else at the party drank lots of beer, but Nicole wasn't so drunk that she didn't know what she was doing.

You will also explain that in the beginning the relationship between Rooster and Nicole was all right. They were "just like any two kids starting up." But as time went on, they had "a few problems."

There was a lot of arguing and yelling, usually because Nicole objected to Rooster inviting his friends and relatives over to party. In your opinion Nicole "seemed snotty" and Rooster was an "aggressive guy who always wanted to be right."

When Rooster and Nicole argued and she got "mouthy," Rooster would "warn her" by making comments such as, "You know, if you keep it up, you're going to get it."

At such times you would usually leave because, "I don't like to be around stuff like that." Sometimes the arguments wound down when Nicole went upstairs to "get away from it all."

There were a few times when you actually saw Rooster and Nicole slapping and hitting each other. At other times you saw them after they had been fighting. On those occasions, "She looked like a mess and was always crying," and Rooster sometimes wound up with scratch marks on his arms, chest and face.

You remember an incident a month or so before Rooster was killed. You were helping Rooster move a couch into the town house. Rooster called Nicole to hold the front door open, but she really took her time about it. Then she started mouthing off at Rooster and he slapped her. She ran upstairs and came back with the .303 rifle. She stood on the stairs and said to Rooster, "If you ever touch me again, I'm gonna kill you." Rooster's response to this was, "You wait, you're gonna get it." You said, "I'm not putting up with this," and left.

Crown Witness #3 – Ken Cato (continued)

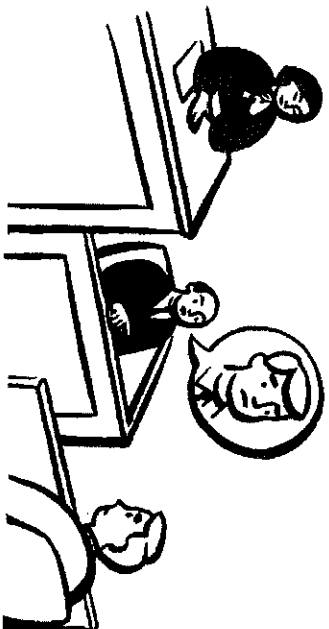
You will explain that Nicole moved out a few times but always returned within a few days or a week.

You used to tell Rooster that he should just “let her go...there’s all kinds of other girls out there.” On cross-examination, you will say that apparently Nicole had been asleep the time you and Rooster arrived to move the couch. You will agree that Rooster yelled words to the effect, “Hey, *f**t* bitch, get down here right now,” and that she was a “little upset” by Rooster’s yelling and name-calling.

On cross-examination you will also agree that you had seen Rooster throw Nicole “into walls, across the room, over the couch-stuff like that.” You will say that “it was his business...I didn’t want to get involved,” and that you had told Rooster not to beat on Nicole when you were around.

On cross-examination, you will also say that Rooster “had never really been very violent until he met Nicole.”

You will add that while Nicole was afraid of Rooster, “a lot of times she wasn’t because she was very aggressive and she never backed down...she always fought back.”



Crown Witness #4 – Constable Stevens

In response to a radio call you went to #18 Cariboo Place, arriving at 02:12. The accused was seated at a picnic table in the backyard. Ken Cato and Joanne Wright were there as well. When you first saw the accused, she was upset and had been crying. She looked up at you and said, "I didn't mean to do it."

Your partner, Cst. Arthur, went into the house briefly and returned to tell you that there was the body of a man—identified as Kevin Steel—inside.

You then told the accused that you were arresting her for murder. You "Chartered" her and warned her. (This means that you told her what her rights were, as they are guaranteed by the Charter of Rights.) You then told her, "Let's go," and she got into your police car. On the way to the detachment office the accused was crying and holding her head in her hands. You remember that she said:

"He kept beating me all the time...I couldn't take it any more.

I hope he lives...I really love him...I'm too young to go to jail...

He told me he was gonna kill me when everyone left..."

At the detachment office the accused was fingerprinted, photographed, and booked in. She then telephoned a lawyer, who arrived about 04:30 hours. The accused gave a tape-recorded statement commencing at 05:50 hours. Her lawyer was present.

(You need to arrange with Nicole Girard to tape her statement. The tape will be played at the mock trial, and the Crown will ask you when you made the tape, and who was present. The transcription of the tape will be entered by the Crown as exhibit #2. The court clerk should assist you in preparing the taped statement because during the trial, the exhibits are the court clerk's responsibility. The statement made to you by Nicole Girard is contained in her role sheet. You need to familiarize yourself with that statement, because it contains questions that you must ask Nicole.)

On cross-examination you will recall that as she was being booked in, the accused said:

"He hit me twice...He's done it before...Check the records...

He kept egging me on, telling me to shoot him..."

You will also say that the accused appeared to be genuinely distressed about Kevin Steel's death and was totally cooperative with yourself and the other police officers. After the statement was completed and the accused was told she was to be held in custody, she asked if she would be released to attend the funeral.

Nicole Girard

As the accused, Nicole Girard, you do not appear as a witness in this mock trial, because your lawyer has decided that it is in your own best interests not to appear.

However, the whole trial revolves around your actions, and you have an important role to play. Your major responsibility is to make the following taped statement. It will be used in the trial as evidence. You need to “become” Nicole Girard in order to make an effective statement. The strength of your presentation on the tape will be vital to your future. To enter into the role as fully as possible, you need to become really familiar with the “Battered Wife Syndrome.” You should find out as much about this syndrome as you can.

You also need to be photographed by Cst. Kellsted, for the exhibits. This is a photograph of you that was taken shortly after you shot your boyfriend. The role sheet for Cst. Kellsted describes how you need to dress in order to be photographed.

Statement

Cst. Stevens: Now Nicole, I have told you that you are under arrest for murder and you've talked to your lawyer here. I want to obtain a statement from you and I have told you that you are not bound to say anything, but that anything you do say may be taken down and will be tape recorded to be used as evidence at your trial. It is now 05:50 hours, October 29, 1990, and we are at the office of the Williams lake R.C.M.P. detachment.

Nicole: Can I ask you something off the record? What will I get for murder? My lawyer told me 25 years.

Cst. Stevens: I think, Miss Girard, that I shouldn't go into that with you. But you know that murder is a very serious offence. Right now I want you to tell us what happened tonight, okay?

Nicole: I don't know what I'm going to say. All I know is I was scared. It's not the first time.

Cst. Stevens: Just start at the beginning. Maybe from when you guys got back to your place from the Lakeview.

Nicole: We came back from the Lakeview and parked the bikes in the yard. Kevin wanted to have a shower, so he went up to have a shower. So me and Joanne went outside and sat at the picnic table and talked, and uh oh my sister phoned so I went in the house and talked to my sister for a while. By that time Kevin was out of the shower and he called me off the phone and asked me if there were clean jeans, and I said no but I'd wash them if he wanted. He said, no

don't bother. I got back onto the phone with my sister and by that time Kevin was downstairs and I had to get off the phone. I broke a wine glass and got shit for breaking it and name called. We all got our glasses of beer, and there was Keith, Kevin, Joanne and me. We just sat around and talked and drank.

Herb drove up and he got his glass of beer and then everyone sat around for about 15 minutes. Herb, Keith and Kevin decided to go to Canadian Tire to get some speaker wire.

Me and Joanne when they got back decided to go for ice because they forgot it, and a Big Gulp for Kevin and munchies and chips at the 7-11. We were back in 10 minutes with the stuff. By that time Ken was there.

We all sat at the picnic table drinking. Kevin's sister Wendy showed up with a girl and three guys I think. Herb sat down beside me and started talking to me. Kevin got mad. Kept saying, "Come here, come here, get your ass over here." Then we went downstairs. There was me, Joanne, Herb, and I think Ken and then oh then Kevin came downstairs and wanted to change a disk and I said, "No, you're too drunk," and I changed it. We argued a little bit over that. He sat down on the couch and kind of passed out, he was getting pretty drunk. Okay and then I went outside and one of the guys with Wendy was acting like a jerk so I told him to take off.

Wendy went downstairs and I guess she told Kevin and he came upstairs, outside. Me and Wendy argued as usual and I ran in the house after Kevin pushed me, I was scared, I was really scared. I went upstairs and hid in my closet from Kevin. I was so scared. My window was open and I could hear Kevin asking questions about what I was doing and what he said was, "Wench, where are you?" Okay, then he turned and he saw me in the closet. He wanted me to come out but I didn't want to come out because I was scared, so scared. He grabbed me by the arm right there. There's a bruise on my face also where he slapped me. He didn't slap me right then, first he yelled at me and then he pushed me and I pushed him back and he hit me twice on the right-hand side of my head. I was scared. All I thought about was all the other times he used to beat me, I was scared, I was shaking as usual. The rest is a blank, all I remember is he gave me the gun and it went off. This is all so fast. And then he loaded it the second shot and gave it to me. And I was going to shoot myself, I was so upset. Okay and then he went and I was sitting on the bed and he said something like, "You're my old lady and you do as you're told," or something like that. He said, "Wait till everybody leaves, you'll get it then," and he said something to the effect of "either you kill me or I'll get you," that's what it was. He kind of smiled and then he turned around. I shot him but I aimed out. I thought I aimed above him and a piece of his head went that way. There was blood and he kept calling my name. He went down just like in the movies.

I went running out of the house to the front lawn. Everyone was asking what happened and I told them and everyone, they all scrambled, like, "shit, I better get out of here." Then I went back in the house and Joanne was on the phone calling the police.

I wanted to see him but everyone said no. I want to go to his funeral. And then Joanne kept hugging me and saying, "I know, I know," and arguing with what I said.

And then you guys came, the police came. And that was it.

Cst. Stevens: You mention that Kevin kind of passed out when he came downstairs. Do you know how much he had to drink?

Nicole: I'd say about 12. He was kind of nodding off. Oh, he got sick. I remember he barfed on the carpet in the rec. room and I took him into the laundry room and I was comforting his back, like rubbing it, and he was sick over the sewer and he kept pushing me away. He didn't want me to comfort him, and he sobered up a bit.

Cst. Stevens: You say that Kevin gave you the gun. Where did he get the gun from?

Nicole: The guns were all kept in the second bedroom on the left hand side.

Cst. Stevens: Is that the bedroom you were in?

Nicole: No, I was in my bedroom. We have separate bedrooms.

Cst. Stevens: So Kevin had to leave your bedroom to get the gun?

Nicole: I guess so.

Cst. Stevens: You say a shot was fired after he gave you the gun. Who fired that shot?

Nicole: Me.

Cst. Stevens: Did you aim that shot anywhere?

Nicole: No.

Cst. Stevens: Did Kevin say anything when you aimed the gun at yourself?

Nicole: He didn't try to stop me. He said he was going downstairs. I guess he said, "You or me," and that I'd get it when everybody leaves. That I remember good.

Cst. Stevens: You say you thought you aimed above him for the second shot. Did you actually sight down the barrel of the gun before you pulled the trigger?

Nicole: No, I was too upset, scared. I tried to aim higher. I didn't want to shoot him. I was too scared.

Nicole Girard (*continued*)

Cst. Stevens: A number of people came and went to your place throughout the evening. Who all would have still been in the house when Kevin was shot?

Nicole: Keith, on the couch, passed out. In the house?

Cst. Stevens: Or at your residence?

Nicole: Ken Cato, Joanne Wright, Kevin, and Keith on the couch. Everyone else should have been gone.

Cst. Stevens: How long had you been living with Kevin?

Nicole: On and off for four years.

Cst. Stevens: How much had you had to drink prior to the shooting?

Nicole: Two at the bar. About four or five mugs of draught beer, that's it. Oh, and a couple of mugs of wine.

Cst. Stevens: Do you feel you were drunk?

Nicole: No, feeling pretty good.

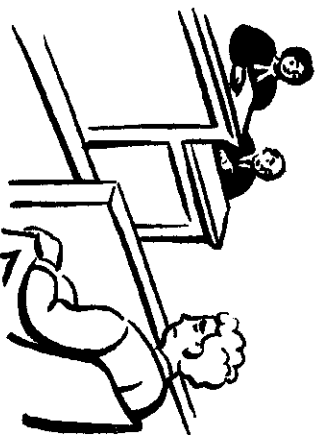
Cst. Stevens: Do you feel that you were in control of yourself?

Nicole: I don't want to answer any more questions.

Cst. Stevens: That's okay. Can I just ask your birthday and where you work?

Nicole: Sure. My birthday is April 26th. I'm 21. And I work at the Williams Lake Tribune.

Cst. Stevens: Thanks Nicole. The time is now 6:00 a.m. and this completes your statement.



Defence Witness #1 – Dr. J. Holmes

You are a medical doctor and you have been practicing in British Columbia for 10 years. You supervise the emergency department at Cariboo Memorial Hospital in Williams Lake.

You do not know the accused personally, but you have examined the hospital records concerning her. They record the fact that you treated her occasionally between January 1987 and October 1990. The records show she made the following visits to the emergency department.

- 1) June 26, 1987. She complained of chest pain. Dr. Judy Fothergill noted tenderness and some bruising.
 - 2) August 15, 1987. She complained of a sore toe. X-rays revealed that it was broken. She said she had dropped a cement block on her foot.
 - 3) October 10, 1987. She again complained of chest pain. She told Dr. Sandy Desai that she had been kicked while trying to stop a fight.
 - 4) October 24, 1987. She complained of pain in her left hand and a swollen nose. X-rays revealed broken bones in her hand and a fractured nose. Dr. Desai also observed that she had a black eye. She told Dr. Desai that she had fallen from a horse a week previously.
 - 5) December 23, 1987. She attended with a Mr. Kevin Steel, who she said was her boyfriend. She left before being examined. She had wanted a prescription for pain killers but had been told it could not be issued until after she had been examined.
 - 6) November 2, 1988. She attended with her father. She complained of a cut finger, which was stitched.
 - 7) June 8, 1989. She attended with Mr. Steel. Her lip was cut and bleeding, requiring stitches. Mr. Steel said that she had fallen against the kitchen table.
 - 8) December 1, 1989. She attended with her sister. She had a large bruise over her left eye, a bruise over her nose, which was bleeding, and scratches on her neck. Her teeth were painful to the touch. She said that she had fallen down the stairs when she got in the dark to the bathroom.
- On cross-examination, you will say that you saw the accused yourself on December 1, 1989. Your notes record that you told her that you did not believe her story. Your notes also record that you asked her if she was being beaten by her common-law husband.
- You will say that the accused emphatically denied this and said that she and Kevin Steel were planning to marry and start a family soon.

Defence Witness #2 – Dr. D. Longsio

The role of Dr. Longsio is critical to the success of this mock trial. The role cannot be precisely scripted.

You must acquire some real background knowledge about the subject and must be thoroughly familiar with all the evidence in the case, particularly Ken Cato's testimony and the subject of wife assault. To prepare for your role, you also need to examine the statement made by Nicole Girard and Ken Cato's testimony. Be sure to review their role sheets in detail.

As Dr. Longsio you will say that:

You are a psychiatrist who practices in Vancouver.

You have a private practice and you also lecture as an associate professor at U.B.C. Your special area of interest and expertise is family violence, wife assault and abuse. You will be accepted as an expert witness and will testify about the "Battered Wife Syndrome."

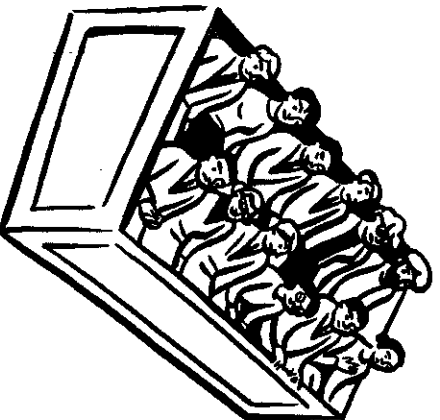
You will say that:

- 1) You saw Nicole four times in the fall of 1990. Your purpose was to prepare an opinion for Nicole's lawyer.
- 2) You have listened to the testimony of all the other witnesses during this trial.
- 3) You have interviewed Nicole's mother and read the various police reports made available to you by Nicole's lawyer.

You will say that in your opinion:

- 1) Nicole's killing Kevin Steel was "a reflection of her catastrophic fear" following more than three years of a "very chaotic and brutal relationship."
- 2) That the killing happened in a "moment of fear" when Nicole believed her own life was again in danger, had "totally lost control." And "felt she had to defend herself."
- 3) That the alcohol Nicole had been drinking, the marijuana she had been smoking, and the psychological stress from another threatening confrontation with Kevin "all came together and resulted in this ultimate, catastrophic act." (Counsel will ask about the marijuana, and you will say that Nicole told you she had been smoking it that night.)

- 4) That Nicole is a “tragic” person with a “disturbed personality” and a “sense of helplessness.” She “allowed herself to be beaten” and told transparently false stories to account for her injuries. You will explain that such conduct is typical for battered women.
 - 5) That Nicole stayed in the relationship for two typical reasons. Firstly, she was “paralyzed with fear” and thus unable to withdraw. Secondly, Kevin was always remorseful and begged for forgiveness after beating Nicole. He would give her flowers and other presents and would promise that it would never happen again. (Counsel will ask you how you know that Kevin did these things and you will say that Nicole told you.)
 - 6) That when Nicole did leave Kevin she always returned because of her disturbed personality, her sense of helplessness and vulnerability, and her “victim mentality.” And because she loved him.
 - 7) That the “discordant quality” of the relationship was “definitely escalating” in the weeks before the killing. Nicole told you so and it is also apparent from the fact that they were sleeping in separate bedrooms. Intimacy was lacking and tension was building. Nicole felt “threatened and overwhelmed by this man who had damaged her for so long,” so badly and so often.
- In your opening statement to the jury, which you can develop using the Judge’s File in “Guide to Mock Trials: The Basics,” remember to include the admissions, so that the jury understands what is going on. You should read “Admissions to be made,” in this guide.



Judge's Role – Charge to the Jury

For your charge to the jury, you can draw upon the following statement:

Mr./Madam Foreman, ladies and gentlemen of the jury, it is now my duty to give you certain instructions before you begin your deliberations.

We have separate responsibilities in this case. It is my responsibility to instruct you concerning the legal principles you must consider during your deliberations. You must accept my statements defining and explaining the law. It is your collective responsibility to assess the events that gave rise to the charge against Nicole Girard and to decide what happened. You are not obliged to accept the submissions of counsel or my own observations concerning the facts of the case.

There is a fundamental principle that you must understand and always recall during your deliberations. In Canada, when a person is accused of criminal wrongdoing, he or she does not have to prove innocence. It is the task of the prosecution to prove guilt beyond all reasonable doubt. If the evidence before you does not go that far, Ms. Girard is entitled to be acquitted or, possibly, to be found not guilty of murder, but guilty of the lesser offence of manslaughter.

The evidence in this case, like the evidence in almost every case, was, at times, surprising, conflicting, and confusing. It is your task to sort through the testimony of the various witnesses. You will use common sense and the wisdom that experience has taught you during your own lives. You may accept all or most of the testimony given by some witnesses. You may reject all or most of the testimony given by other witnesses. You may decide that some witnesses were honest, observed well, and recalled the events accurately. You may feel that other witnesses were untruthful or that their testimony cannot safely be relied upon for any number of reasons. Honest persons can be mistaken in their observations and recollections of traumatic events.

I am required to review those areas of evidence that may be particularly important to your deliberations. We know that Nicole Girard killed Kevin Steel in Williams Lake on October 29, 1990; she admits this. But she claims that killing was an act of justifiable self-defence and that she is therefore innocent of any crime. Alternatively, she says that if you find she acted in a criminally wrongful way, you should find the crime was manslaughter, not murder.

I believe that when you are deliberating you will wish to pay particular attention to the evidence from three persons:

First, there is the evidence of Ken Cato. He was Kevin Steel's long-time and good friend and was clearly not sympathetic or partial to the situation of the accused. But his testimony reveals a good deal about the violence inflicted upon the accused by Kevin Steel and her apparent inability to terminate the relationship. You will have to consider the testimony of this witness very carefully.

Second, there is evidence provided by Nicole Girard herself. She exercised her perfect right and chose not to testify in the courtroom, but her story of the killing was related to Cst. Stevens. You heard what she told Constable Stevens, and you have copies of that statement in transcribed form. You must decide how much weight or value you can give to this very important evidence, keeping in mind the circumstance under which the accused made her admissions to Cst. Stevens and the fact that they were not made under oath or subjected to cross-examination.

Third, there is the testimony of the expert witness, Dr. Longsio. When you are considering Dr. Longsio's testimony, you will remember that, although Dr. Longsio is a highly educated and respected professional person, it is your responsibility to decide this case. You may choose to act upon opinions of Dr. Longsio. But it is your perfect right to decide that you cannot go that far.

I must also direct your attention to the fact that Dr. Longsio's opinions may have been influenced by considerations that were not established during this trial. For instance, you will recall Dr. Longsio's reference to marijuana having been smoked that night by the accused. There is no actual evidence of that having taken place. If you consider this to be a matter of substantial importance, you may wish to assess Dr. Longsio's opinions with particular caution. On the other hand, you may decide that nothing much really turns on Dr. Longsio's unproven belief that the accused smoked a little marijuana that night.

I must tell you as a matter of law that not every killing of another person is unlawful. In this case s. 34 (2) of the Criminal Code is of particular importance. You must decide whether it provides a defence for the accused. I shall read that section to you:

(Read s. 34 (2) of the Criminal Code)

If you decide that the accused reasonably feared that she would suffer grievous bodily harm or death unless she acted to protect herself, and, if you also find that when she shot Kevin Steel, the accused reasonably believed she could not otherwise protect herself, then you will find the accused not guilty.

Crown counsel says you should not find that the accused shot Kevin Steel in a moment of fear and only to defend herself. Crown counsel points out that the accused had previously threatened Kevin Steel with the same rifle, and the Crown also reminds you of the accused's own statement to the effect that Kevin Steel was going downstairs when he was killed. You must weigh these facts along with all the other evidence in this tragic case. Crown says that the law does not permit any person to apply force to another person to prevent an imaginary assault. Crown counsel says that it is a sad but very clear case of murder.

Judge's Role – Charge to the Jury (*continued*)

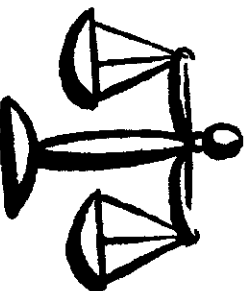
Defence counsel says that you should not judge Nicole Girard's action by the standard of the so-called "reasonable man." Defence counsel says that you must try to put yourselves in the shoes of Nicole Girard that terrible night, and you must understand that she had no other options. Defence counsel says that Nicole Girard believed she could not preserve herself from being killed by Kevin Steel that night except by killing him first. And defence counsel says that that belief is supported by that valuable testimony of Dr. Longsjo. It is the submission of defence counsel that his/her client was not guilty of any crime when she shot and killed Kevin Steel.

If you find that Nicole Girard's action in shooting Kevin Steel was justifiable self-defence, then you will find her not guilty. If, however, you decide that her actions were not justified, or, if you find that they were excessive, then you will find her guilty of a criminal offence.

If you find that Nicole Girard's actions were unlawful, you will find her guilty of murder if you also find that she intended to kill Kevin Steel or cause grievous bodily harm to him. If you are satisfied that her actions were unlawful, but cannot be sure beyond a reasonable doubt that she intended to kill Kevin Steel or cause grievous bodily harm to him, then you will find her not guilty of murder, but guilty of manslaughter.

Ladies and Gentlemen, you may now retire and begin your deliberations. The clerk will give you a cope of s. 34 (2) of the Criminal Code. You may also wish to take the exhibits with you into the jury room.

CAUTION: This "charge to the jury" was prepared for use during a mock trial only. It is necessarily abbreviated and simplified. It is not intended that any person should presume that the law is stated definitely here.



Actual Judgments

Regina v. Lyn Lavallee (1988) 44 CCC (3rd) 113 [1990] SCR 852

Facts

The accused killed her common law partner by shooting him the back of the head as he was leaving the room. She pleaded self-defense using the battered wife syndrome. A psychiatrist gave all the evidence of that syndrome and no evidence was given by the accused. At the trial the psychiatrist related many things that were told to him but were not evidence given at the trial. The jury acquitted the accused and the Crown appealed. At the Manitoba Court of Appeal the judges ruled that the trial judge did not emphasize enough the weight to be given the evidence of the psychiatrist especially in regard to evidence not before the court. A new trial was ordered but the accused appealed to the Supreme Court of Canada.

Issue

Whether or not the psychiatric evidence should have been before the court and whether or not the judge's instructions with respect to the weight given such evidence were adequate.

Decision

The appeal was allowed and the acquittal was reinstated. Expert evidence is admissible to explain the battered wife syndrome as it explains why the woman would not leave and why she thought her life was threatened. It does not usurp the jury's function of deciding whether or not in fact the accused's perceptions and actions were reasonable. The evidence was properly admitted. The judge should warn the jury that the more the expert relies on evidence not before the court, the less weight or importance should be attributed to the opinion. As this was done the verdict stands.