CASE PREPARATION—AN OVERVIEW
by Michael G. Karnaras

Prior Preparation Prevents Poor Performance

Preparing a case for trial is similar to writing, acting, producing and directing a play for a live, though not necessarily captive, audience. Each case must be prepared, tried and set up in anticipation of an appeal. You must make sure you have preserved your appellate points.

Know Your Case

The best place to start is with the documents within the file. Read the file thoroughly several times to make sure you understand the events and the cast of characters (witnesses). Review the law. Note any defenses that come to mind. In a criminal case, list the elements of each charge so you can focus on what must be proven, the possible lesser-included offenses, and any evidence the defense must introduce in order to argue for any affirmative defense available (such as accident, self-defense, etc.).

Interview the Client

Now that you have a grasp on the facts, the law, and possible defenses, meet with your client. The initial interview should be fairly extensive. At the conclusion of the interview, you should have a witness list with addresses/telephone numbers and a general idea of the possible theories of the case.

Brainstorming/Developing a Theory

Brainstorming is the most important phase of case preparation. After reviewing the discovery and discussing the case with the client, start analyzing every aspect of the case. The legal elements of each charge will serve as a starting point. By reviewing the discovery in conjunction with the law, you will notice the strengths and weaknesses of your opponent’s case. Since the ultimate goal at trial is to distill the case to its essentials, it is at this stage of preparation that the case is dissected from the general (theory of the case) to the specific (strengths/weaknesses of your case).

At the brainstorming session, all ideas and theories that come to mind should be listed and analyzed. The testimony of each possible witness should be considered; evidentiary issues should be identified (and eventually briefed if necessary); possible substantive and in limine motions should be listed; parameters for any investigative tasks should be set with deadlines; the need for consulting expert witnesses should be addressed; a visit to the incident scene and examination of the physical evidence should be arranged (an absolute must in every case); the use of demonstrative evidence should be considered; etc. While in most cases the need for such extensive brainstorming will not be necessary, it is important to get into the habit of approaching each case methodically and thoroughly.

If the case will require investigative efforts, it is paramount to always include the investigator in the brainstorming session. Investigators are great sounding boards and often will view the case from a more detached and objective vantage point. It is also helpful to run your ideas and theories
through other lawyers or support staff. Their task will be to challenge your positions, point out any weaknesses of your theories, and make valuable suggestions. In other words, they are there to act as the judge and opposing counsel by arguing against you—thus forcing you to logically articulate your theory of the case.

Preparing the Trial Notebook

Once you have met with your client (hopefully several times) analyzed the discovery, filed substantive and in limine motions, investigated the case, examined the incident scene and physical evidence, consulted with experts (if necessary), you are now ready to write the script for trial. By this time, you should be capable of outlining your closing. Since the final act of trial entails the argument of the facts in conjunction with the applicable law, the elements that must be proven and the law that will be applied (jury instructions) should serve as your outline. These statutory/constitutional elements act as a checklist throughout the trial.

Organize your trial notebook around the key themes of your opening and closing arguments. This is the safest method to ensure that the golden thread—your theory of the case—is woven through your entire performance at trial. The trial notebook should be outlined and organized to allow easy access to specific information. All anticipated evidentiary issues should be listed and briefed with memoranda of law (don’t forget to make a copy for the court and opposing counsel). Each witness should have their own folder with an outline of the anticipated direct and cross examination, a summary of their prior statement, a list of any voir dire issues that may need to be raised before the witness testifies (such as lack of competency, relevancy, hearsay, etc.) and, finally, any references or notes on your pre-arranged strategy, e.g., style of cross, use of demonstrative/real evidence, method of impeachment, etc.

The Ultimate Objective

Each case should be prepared with the understanding that it ultimately will be tried and appealed. Since the trial lawyer is only as good as his/her current performance, the client only benefits from the efforts and commitment put forth in each case and not from past performances. Prior preparation is the key to presenting the best possible case at trial and winning on appeal.

It’s good to be good and better to be lucky,
but you will neither be good nor lucky if you’re not prepared.
A CHECKLIST FOR PREPARING THE CASE FOR TRIAL

I. LEARN EVERY FACT POSSIBLE
   - Obtain all the discovery
   - List the established facts that are good, bad, and identify wishful facts you hope to develop through investigation
   - Talk to witnesses
   - Go to the scene
   - Examine the physical evidence
   - Study the statements of witnesses in detail (instead of reading a statement, outline it line by line; the insight that can result is sometimes amazing)

II. ANALYZE THE FACTS BY BRAINSTORMING
   - Key facts relied upon by opposing counsel
   - Can these facts be interpreted in some other way (look at the big picture: reality)
   - Is the witness providing the facts biased, prejudiced or incompetent (hearsay)
   - Can the facts be disproved and, if so, how
   - What are the possible explanations to damaging facts
   - What facts are beyond change (facts that cannot be explained away)
   - What possible inferences and conclusions can be drawn from the facts (don’t forget to look at the big picture, keeping in mind that certain isolated facts, when considered by themselves, may be misleading)
   - How can you piece the facts together so that you can establish your theory/reasoning of the events

III. EXAMINE CAREFULLY THE APPLICABLE LAW
   - Study the statutes/case law that opposing counsel is relying on
   - List all the elements to each charge/claim
   - Search for alternative interpretations of the law
   - Search for available defenses provided by statutes/case law

IV. LIST ALL POSSIBLE LEGAL DEFENSES

V. LIST THE ANTICIPATED ATTACKS FOR EACH POSSIBLE LEGAL THEORY YOU WILL RELY ON

VI. SELECT THE BEST POSSIBLE THEORY OF THE CASE
   - Use every possible combination of the facts to establish your position
   - Look for favorable and logical interpretations, inferences and conclusions that can be drawn from the facts
   - Focus on the facts by examining them from every possible angle until you can find a plausible explanation for your client’s conduct
   - Develop an argument as to how the opposing counsel has erred by superficially looking at the facts
   - Demonstrate how a closer examination of the facts proves your theory
NOTE: Unless you can articulate clearly and concisely what the case is all about, you do not know your theory of the case. Identify and focus your preparation on the central issues. List every possible fact that supports your theory, along with all the reasons/explanations. Moreover, identify opposing counsel’s anticipated arguments and list your counter-arguments to every point of contention. Finally, keep in mind the court’s and the jury’s concerns—REALITY. You must identify and find explanations for all personal, professional or political conflicts your arguments will raise with the judge, or during jury deliberation.

VII. CHOOSE A THEME—THE DOMINANT HUMAN EMOTION WHICH WILL HELP ADVANCE YOUR THEORY OF THE CASE

What feelings you wish to convey, e.g., fear, love, hate, shock, loneliness, etc.

VIII. ATTACK YOUR OPPONENT’S CASE

Search for inconsistencies in each witness’s statements or conduct
Are the opposing witness’s testimony inconsistent with the physical facts
List opposing counsel’s errors in legal analysis and application of the law
Are there inconsistencies between the witnesses as to the time/place/events, etc.
Examine each witness as to motive—what are the reasons for a witness’s testimony and/or action

IX. DEVELOP A STRATEGY

What is your position as to each witness
What points do you wish to make on cross or direct and why. Ask yourself how does this point advance the theory of the case
What is your position as to each piece of evidence
What motions will be filed and when
What evidence will you introduce at trial
Will you call witnesses
★You must articulate why the witness is necessary, what will s/he say and how does it help your case. Be sure to anticipate the opposing counsel’s cross examination.
What is your central point (issue) of attack
★The best theory is to choose a single point/issue to attack. Develop your argument by listing in order of importance all the strengths of your case against that single point/issue. During the trial, you must focus your attack on this and only this point/issue. Respond to opposing counsel’s argument, but direct the court’s/jury’s attention at all times to the central point/issue of attack.

X. CONCLUSION

In order to develop a trial strategy, you must have a theory. Through brainstorming, you will choose the best possible theory. The strongest theory in any case is a single point based on a single issue which opposing counsel is least capable of attacking. By advancing a single theory, you maintain continuity, credibility and integrity with the
court and jury. If you must have more than one theory, make sure that they are complementary and not conflicting. If you have a choice of conflicting theories, choose the most persuasive theory.

DO NOT SWITCH THEORIES IN THE MIDDLE OF TRIAL

YOUR THEME SHOULD BE CONSISTENT WITH YOUR CHOSEN THEORY

YOUR THEORY MUST BE PLAUSIBLE
OPENING STATEMENTS

The opening statement is akin to the first scene in a play—it had better capture the audience. It is the trial lawyer’s first direct contact with the jury, save in those jurisdictions that permit substantial lawyer participation in the voir dire examination of the jury. Even in those states, in the overwhelming majority of cases, it is the lawyer’s first opportunity to present the jury with an intelligent, cohesive description of the case.

Some trial lawyers tend to minimize the importance of an opening statement. We do not. We regard it as crucial to the successful outcome of the trial.

There is no excuse for a poor opening statement (unless, of course, the case is so poor it should not be tried). The opening statement is essentially ex parte; it can and should be prepared well in advance of its presentation, and it should be rehearsed.

It is a skill that can be mastered with practice more readily than any other skill. The general guidelines for opening statements are:

1. Practice, rehearse, try out, and listen to your opening statements before you make them. You have a wife, a husband, a friend, a colleague who will listen if you ask. As you rehearse, you can listen, too. The preferred audience is a lay one.

2. Recognize the opening for what it is: a prologue or synopsis of a play, a blueprint, a travel guide folder, or the old favorite—the picture on the jigsaw puzzle box. We do not urge that you use these similes when you address the jury. We do urge that you recognize the opening statement for what it is. Indeed, in conjunction with the evidentiary portion of the trial and the closing argument, it is the trial lawyer’s application of the oldest of public speaking techniques: tell your audience what you are going to say, say it, and tell them what you have said.

3. Recognize the opening statement for what it is not: it is not an argument. This is not the time to infer, plead, or fulminate. It is a time to tell the jury what the case is about and what you expect your evidence will be.

4. An opening statement in behalf of the plaintiff or prosecution should include:
   (a) A request of the court and the jury: “If the court please, ladies and gentlemen of the jury.”
   (b) An introduction of yourself, your client, your opponent, and his client, if not already done sufficiently during jury selection.
   (c) A cohesive, succinct, and confident summary of what your evidence will be.
   (d) A conclusion, indicating that at the close of the case you will return and request the jury to find in favor of your client.
(c) Some lawyers include the following either at the beginning or the end of the opening statement:

(i) A brief statement of the nature of the case.

(ii) A brief statement of the issues of the case.

(iii) A candid acknowledgment that the burden of persuasion rests on you and the degree of the burden.

(iv) A reading of the indictment or information (which is required in some jurisdictions).

5. An opening statement in behalf of the plaintiff or prosecution should not include:

(a) Reference to evidence, or which the availability or admissibility is doubtful.

(b) Anticipated defenses or defense evidence.

6. In most cases, an opening statement for a defendant should be made immediately following that of plaintiff or prosecution. If the court has granted you permission to defer your opening statement until the close of your opponent’s case, be certain the jury knows this. Be very cautious about waiving a defendant’s opening statement entirely.

7. An opening statement in behalf of a defendant should include:

(a) A request of the court and the jury: “If the court please, ladies and gentlemen of the jury.”

(b) An introduction (or reintroduction) of yourself and your client, if not already done sufficiently during jury selection.

(c) An admonition that opening statements are not evidence.

(d) An acceptance of the issues as defined by your opponent, plus any additional ones that will be raised by the defense.

(e) A reinforcement of the principle that the burden of persuasion rests with your opponent, plus a candid recognition of any issues in respect to which it rests with you.

(f) A cohesive, succinct, and confident (but non-argumentative) reference to anticipated deficiencies in your opponent’s evidence, plus a like summary of what your evidence will be.

(g) A conclusion, indicating that at the close of the case you will return and request the jury to find in favor of your client.
8. As with your counterpart, a defense counsel's opening statement should not include references to evidence of which the availability or admissibility is doubtful.

9. Opening statements for defendant's in criminal cases often present special problems:

   (a) Never assume the burden of proving innocence.

   (b) If you have any doubt as to whether your client will testify, do not tell the jury he will. On the other hand, if you are certain he will testify, tell the jury and admonish it that it cannot fairly form any judgment in the case until it has heard from the defendant.

   (c) We would not presume to outline an opening statement in a "no defense" criminal case. Perhaps we will see one during our exercises.

10. In criminal cases, some jurisdictions permit counsel for the defendant to reserve opening statement until the close of the state's case in chief. Counsel should always consider very carefully the pros and cons of reserving the opening statement until after the state's case.
CLOSING ARGUMENTS

Here is the advocate in his final and finest hour! She won it with her closing argument! She was magnificent! Legion are the legends of summations.

A lawsuit is won during the trial, not at the conclusion of it. It is won by the witnesses and the exhibits and the manner in which the lawyer paces, spaces, and handles them.

The likelihood of a lawyer’s snatching victory from the jaws of defeat with his or her closing argument is so slight that it hardly warrants consideration. (Compare last of the ninth multi-run, game-winning home runs; but see Bobby Thompson’s shot heard round the world in Giants v. Dodgers (1951).)

On the other hand, lawsuits are lost by fumbling, stumbling, incoherent, exaggerated, vindictive closing arguments.

This is not intended to minimize the importance of the closing argument. It is merely to relegate it to its proper position, which is a summation of the evidence that has preceded it, and a relation of that evidence to the issues in the case.

Although the closing argument is not quite as controllable as is the opening statement, it is very close to it—close enough that we can say that there is no excuse for a poor closing argument.

Many trial lawyers begin to prepare their closing arguments with their first contact with the case: as the facts make their initial impressions on their minds. That is when they are as close to being jurors as they ever will be. From that first impression forward they shape and reshape their closing arguments as the facts develop. Finally they shape the trial to what they believe their strongest arguments will be; they prove their arguments.

Thus, the closing argument has a considerable impact on the trial because an able trial lawyer knows that an argument without evidence to support it is no evidence at all.

The basic guidelines for closing arguments are:

1. Think about, prepare, and rehearse your closing argument before trial, leaving sufficient flexibility to meet the exigencies of trial.

2. Think about, modify, and rehearse your closing argument at each break in the trial in light of the record to date.

3. Think about, modify, and, if time permits, rehearse your closing argument at the close of the evidence and the conference on instructions.

4. Base your closing argument on the issues, the evidence, the burden of proof in the case, and your client’s right to a verdict.
5. From the standpoint of format,
   (a) Address the court, the jury, and your opponent.
   (b) Tell the jury your purpose—to summarize the facts and relate them to the issues in the case.
   (c) Make your argument.
   (d) Tell the jury what its verdict should be.
   (e) Sit down.

6. From the standpoint of delivery: do not shout, do not engage in personalities, do not tell the jury what you believe, but act and speak as though you do believe, to the depths of your soul, every word you are uttering. If you can't do the latter, don't argue.

7. As for some of the canned approaches:
   (a) Do not repeat in chronological order the testimony of each witness. Give the jury some credit; it has heard the witnesses. Put it all together.
   (b) Do not tell the jury what you say is not evidence. Why belittle your argument? The judge will do that for you.
   (c) Do not assume a burden of persuasion that is not yours.
DIRECT, CROSS, AND REDIRECT EXAMINATION

The ability to examine and oppose the examination of witnesses in open court in an adversary setting is the most basic skill of the trial lawyer. Yet, the most common criticism of trial lawyers is that they are unable to conduct proper, intelligent, and purposeful examinations, and to oppose these examinations.

As with any skill, practice is the only sure way to achievement. The practice should be conducted with some guidelines in mind:

1. The purpose of any witness examination is to elicit information.

2. The basic format is an interrogative dialogue.

3. The witness is probably insecure. He or she is appearing in a strange environment and is expected to perform under strange rules. This is a handicap you must overcome on direct and an advantage you have (and may choose to exploit) on cross.

4. Your questions should be short, simple, and understandable to the witness, the judge, and the jury on both direct and cross examination.
   
   (a) It is imperative that your audience the judge and the jury understand your question so that they reasonably can anticipate and comprehend the answer.

   (b) On direct examination the insecurity or anxieties of the witness will be increased if he or she does not understand your questions.

   (c) On cross examination the complex or argumentative question provides a refuge for the witness to evade the point.

5. As a general proposition, you may not lead on direct except as to preliminary matters or to refresh the recollection of the witness. Both of these exceptions are discretionary with the trial judge.

6. In any event, on direct examination leading questions and the perfunctory answers they elicit are not persuasive.

7. In cross examination you may lead and you should do so. Control of the witness on cross is imperative.

8. At the outset of direct examination, have the witness introduce himself. Then place him or her in the controversy on trial, and elicit the who, where, when, what, how, and why of the relevant information the witness has to offer. Then quit. Do not be repetitious.

9. If you know that the cross examination will elicit unfavorable information, consider the possible advantage of eliciting it during your direct examination.
10. Do not conduct a cross examination that does nothing other than afford the witness an opportunity to repeat his or her direct testimony.

(a) If there is nothing to be gained by cross examination, waive it.

(b) If you can accomplish something by cross examination, get to it. Organize your points and make them.

(c) Be cautious about cross examining on testimony elicited on direct that was favorable to your position. You may lose it.

(d) Be cautious about asking questions to which you do not know or cannot reasonably anticipate the answer. Be particularly cautious in these situations if the only evidence on the point will be the unknown answer.

11. Listen to (do not assume) the witness's answers. As an examiner on either direct or cross examination, you are entitled to responsive answers. Insist on them with a gentle nudge on direct or a motion to strike on cross (unless, of course, the answer is favorable, in which event accept it and return to the pending question).

12. Objections to the question's form must be made before an answer is given. If the question reveals that the answer sought will be inadmissible, an objection must precede the answer. The grounds of the objection should be succinctly and specifically stated. If the question does not reveal the potential inadmissibility of the answer, but the answer given is inadmissible, a prompt motion to strike should be succinctly and specifically stated. Only the interrogator is entitled to move to strike an answer on the sole ground that it was unresponsive to the question. If the answer is unresponsive and contains objectionable matter, then the opposing counsel is entitled to object.

13. If an objection to the content of the answer (e.g., relevancy, hearsay, etc.) as opposed to the form of the question is sustained, then the interrogator should consider the need for an offer of proof at the first available opportunity. If an objection to the form of the question is sustained, then the interrogator should rephrase the question to cure the objection.
PROBLEM 1
(Direct and Cross Examination)

NITA LIQUOR COMMISSION v. CUT-RATE LIQUOR AND JONES
(James Bier)

The Liquor Commission has charged the defendants with a civil violation of Nita Liquor Commission Regulation 3.102 for “Knowingly selling intoxicating beverages to an intoxicated person.” Violation of this regulation carries a maximum penalty of $1,000 for a business and $100 for an individual defendant. The business can also lose its retail sales permit.

The elements of the civil complaint under Regulation 3.102 are:

1. Knowing (defined as “knew or should have known”)
2. Sale
3. Of intoxicating beverages (beer, wine, fortified wine or spirits)
4. To an intoxicated person (one who is appreciably impaired).

As a civil case, the Plaintiff Liquor Commission has the burden of proving each element of Regulation 3.102 by a preponderance of the evidence. Defendants have requested a jury trial.

The Liquor Commissions complaint alleges that Dan Jones, an employee of Cut-Rate Liquor, knowingly sold a bottle of Thunderbird wine to Walter Watkins, who was at the time intoxicated. Jones and Cut-Rate deny the allegations of the complaint.

The chief witness for the Liquor Commission is Investigator James Bier. Bier is a seven-year veteran of the Liquor Commission. Before serving in this position, he was a police officer for eight years. During his career as a Liquor Commission Investigator, he has investigated the full range of potential violations of the Nita Liquor Commission Regulations.

In answer to discovery requests, the plaintiff provided to the defendants the investigative report that Bier filed on the evening of June 5, YR-1. The text of that report is as follows:

"Undersigned investigator assigned with partner, Donald Smith, to investigate the complaints by citizens that the Cut-Rate Liquor Store at the intersection of Seventh and Jackson in Nita City was selling liquor to intoxicated persons. Surveillance begins at 7:30 p.m. on June 5, YR-1. Set up surveillance on the east side of Jackson Avenue, across the street and south of the Cut-Rate Liquor Store. From this position could see the entirety of the intersection, and also could see into the subject place of business through a plate glass window that extends most of the frontage of the subject business along Jackson Avenue. View into business somewhat obstructed by advertising in the window.

From 7:45 p.m. until approximately 8:45 p.m., no unusual activity noted. Several customers enter store, make purchases, and exit store. Store clerk, later determined to be Dan Jones, is only one operating the business. At approximately 8:45 p.m., subject, later determined to be Walter Watkins, is observed on the northwest corner of the intersection
leaning on lamp post. He appears disheveled, and he is wearing dark pants, white shirt, sneakers, and a wrinkled light-weight tan raincoat. Watkins pushes self off post and proceeds south across the intersection. Watkins staggers badly as he crosses street and in the center of the street he stumbles, but catches self before falling. Watkins proceeds to curb on southwest corner where he stumbles again and trips while stepping up onto the curb in front of subject store, at which time he puts both hands out in front of himself to brace for the fall and he manages to regain his balance without actually hitting the pavement.

After tripping and falling at the curb, Watkins straightens himself up and he walks to the entrance of the Cut-Rate Liquor Store where he pauses for a moment in front of glass door to subject business, and then he enters the store. He proceeds to counter where the clerk, Jones, is standing and appears to have a conversation with him. While Watkins is in the store, we can see him and Jones from the shoulders up, due to the obstructing advertising in the window. No other obstructions noted. After brief conversation, Jones turns away from Watkins and goes out of sight for a brief period of time and then returns to the counter in the area of the cash register. After completing his transaction, Watkins exits store holding a brown paper bag that was not in his hand at the time he entered the store.

Partner and I approach Watkins and detain him outside the store. Note an odor of alcohol about the person of subject and note that eyes are glassy and bloodshot. Ask for identification which is provided. Upon questioning, subject provides name and address. Note that speech is somewhat slurred. Take bag from subject. Bag contains unopened and sealed bottle of Thunderbird Wine. No receipt found in bag. Subject responds to question as to where he purchased the wine and states that it was from the Cut-Rate Liquor Store. Perform field sobriety tests. Subject is unable to walk heel-to-toe in a straight line, pick up coins from sidewalk, or touch finger to nose from arms extended out to the side. Subject Watkins is arrested for public intoxication.

Proceed inside store to issue citation to clerk, Dan Jones, and the Cut-Rate Liquor Store for a 3.102 violation of knowingly selling intoxicating beverages to an intoxicated person. Jones makes no statement. Note that the entry door to the store is plate glass with steel security bars and alarm system, only decal on the door lists the store hours of operation, and that wall of store facing Seventh Street is also plate glass with some advertising. Note also the width of the counter, location of the cash register, and that store sells Thunderbird Wine which is stored on a shelf, approximately 15 feet behind counter. Return to vehicle and transport Watkins to Nita City Police Station for processing. (Diagram attached to report.)

Signed: James Bier, Investigator, NLC
Further investigation of the case revealed that Watkins was found guilty of public intoxication in a bench trial and paid a $25 fine. Investigator Bier testified at that hearing consistent with his report.

Dan Jones and the Cut-Rate Liquor Store deny all of the allegations in the complaint and assert that Walter Watkins did not appear to be intoxicated on the evening of June 5 when he was in their store. The defendants also assert that Walter Watkins is a chronic alcoholic and that he always looks the way he did on the evening of June 5, YR-1.

Dan Jones was deposed by the plaintiff and gave, in part, the following information:

"I was working the 4 to 12 shift at the Cut-Rate Liquor Store at the corner of Seventh and Jackson in Nita City on the evening of June 5, YR-1. I do not specifically recall making a sale of Thunderbird Wine to Walter Watkins on that date. I have been shown his picture and although he looks familiar to me, I cannot say that I remember him as ever being a customer on June 5th or any other time. At the same time, I cant say that he never was a customer of mine. He might have been.

The evening of June 5, YR-1, was moderately busy from 4 p.m. to 10 p.m. I made a number of sales during that period of time. At no time on that date did I sell liquor to someone who appeared to be drunk. That is against company policy and I can be fired for doing so. On June 5, YR-1, I did receive a citation from an Investigator Bier for knowingly selling intoxicating beverages to an intoxicated person, but I deny making such a sale. Bier gave me the citation and asked me if I wanted to make a statement to him. To be honest, he surprised me, and I almost did talk to him, but I remembered our policy at Cut-Rate to make no statements to Liquor investigators if ever confronted with an allegation of a violation of Liquor Regulations."

It has been determined that Walter Watkins is no longer in the jurisdiction and will not be available to testify. Investigator Smith is also unavailable.

The case is now at trial and Investigator Bier is the first witness for the Liquor Commission.

For the plaintiff, conduct the direct examination of Investigator Bier.

For the defendant, conduct the cross examination of Investigator Bier.

For the plaintiff, conduct any necessary redirect examination.
EXHIBIT ONE—Problem 1—Diagram of Intersection

Path of Watkins

A  Cut-Rate Liquor Store
B  Plate Glass Windows
C  Cash Register
D  Officer's Vehicle
E  Watkins Arrested
⊗ Traffic Signal -- Street Light

N

65 ft
PROBLEM 2

BAKER v. BAKER
(Harold Balbach)

The plaintiff, Mary Baker, has sued her husband, Robert Baker, for divorce, alleging extreme cruelty. He has counterclaimed, alleging that she committed adultery with Don Roberto, an artist. Included in the evidence offered on the counterclaim will be the testimony of Harold Balbach, a 45-year-old private investigator of fifteen years experience. His report to Robert Baker reads:

Surveillance of subjects MB and DR commenced at 5:30 p.m., 10/11/YR-1, from vantage point 150 feet west of and around the corner from DR's apartment at first floor east, 510 Ohio Street, Nita City. At 6:10 p.m., DR arrived in red VW, license 4679. At 6:30 p.m. MB arrived in blue Chevelle convertible, license 3821. MB stepped from her vehicle carrying small black valise. After both had entered, moved location to front of building. Observed MB and DR in first-floor right apartment. MB was dancing and twirling in what appeared to be living room. MB and DR danced. At 10:20 p.m. MB and DR exited apartment and drove off in DR's red VW. Surveillance of apartment maintained. Subjects returned at 12:30 a.m. on 10/12 and re-entered apartment building. Lights on in apartment briefly. Then out by 12:45. Placed markers on doors at 1:00 a.m. At 8:00 a.m. 10/12 DR exited apartment and drove off in Chevelle. Surveillance terminated 8:25 a.m. 10/12.

/s/ Harold Balbach

During the taking of her discovery deposition, Mrs. Baker testified that she spent the night of October 11/12, YR-1 at a friend's apartment following a quarrel with her husband. Her friend will corroborate this at trial. Mrs. Baker's friend lives in the same apartment complex as Don Roberto, but not in the same building. Her apartment is located northeast of Don Roberto's apartment building.

The front and rear doors to Don Roberto's apartment building are wooden doors with glass panes on the top one third portion of the door.

Roberto has gone to Mexico to paint.

A diagram of the location of Don Roberto's apartment follows this problem.

(a) For the defendant, conduct a direct examination of Balbach.

(b) For the plaintiff, conduct a cross examination of Balbach.

(c) For the defendant, conduct any necessary redirect examination.
Exhibit (Problem 2)

North

To other apartment buildings

rear door

3 story building
12 apartments

picture window

Parking

Don Roberto Apartment

street light

front door

618 E. OHIO STREET

low shrubbery

OHIO Street

street light

Balbach location

bench

Balbach car

PARK

FIFTH Street

street light

-25-

Problems
PROBLEM 3
(Direct and Cross Examination)

MANNING v. CARLETON
(Melvin Carleton)

On May 6, YR-1, Melvin Carleton, a graduate student in Social Work at Nita University, was at home studying for final examinations. Carleton lives in Apartment 2A of the Coventry Court Apartments in Nita City. On the evening of May 6th, and the early morning hours of May 7th, Carleton claims that he heard a child being beaten in Apartment 2C, which at that time was occupied by Ms. Doris Manning, and her four-year-old son, Robby. Carleton reported the alleged child beating to his landlord, Bruce Hill, telling him that Manning was a drunk and that she was beating her son. As a result, Manning was evicted from her apartment. Manning has sued Carleton for slander, claiming in excess of $50,000 in damages. Carleton defends, saying that his statement was true.

The following are the relevant excerpts of the deposition of Melvin Carleton.