

ECONOMIC ANALYSIS

REPORT RE: ANGELA MEEKS

Prepared by

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TABLE I

**SUMMARY OF ECONOMIC LOSSES
ANGELA MEEKS, AGE 32 TO 60**

Date of Birth: 3/16/62 Date of Death: 2/23/94
Marital Status: Married Education: BS (legal admin.)
Position/Occupation: Paralegal with the firm of James and Ballard
Appraisal Period: 1993 to 2022, 29 years
Projected Retirement: Age 60, 2022 (1)

A. Future Earnings (2)	\$2,344,144
B. Personal Consumption (3) (74% of A)	1,734,667
C. Future Value of Household Work (4)	1,232,050
D. Subtotal (A + C - B)	1,841,527
E. Net Present Value of Loss	478,797

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1. Projected retirement at age 60 is a conservative estimate as most individuals work beyond age 60. Such a projection, however, has built in latitude for absences from the labor market for such things as child bearing and illness. It is assumed that Mrs. Meeks would finish out the work year in which she turned 60.
 2. see Table II, These figures for future earnings also make an allowance for any fringe benefits.
 3. see Table IV and application of Table IV
 4. see Table V

TABLE II
PROSPECTIVE INCOME STREAM OF ANGELA MEEKS
FROM AGE 32 TO 60

Date of Birth: 3/16/62

Date of Death: 2/23/94

Appraisal Period: 1993 - 2022, 29yrs.

Projected Retirement: Age 60, 2022

YEAR	FUTURE INCOME	PRESENT DISCOUNTED VALUE AT 1994
1993	\$ 31,254	\$ 31,254
1994	33,035	30,223
1995	34,917	29,226
1996	36,907	28,262
1997	39,011	27,329
1998	41,235	26,427
1999	43,585	25,555
2000	46,069	24,712
2001	48,695	23,897
2002	51,471	23,108
2003	54,405	22,345
2004	57,506	21,608
2005	60,784	20,895
2006	64,249	20,205
2007	67,911	19,538
2008	71,782	18,893
2009	75,874	18,270
2010	80,199	17,667
2011	84,770	17,084
2012	89,602	16,520
2013	94,709	15,975
2014	100,107	15,448
2015	105,813	14,938
2016	111,844	14,445
2017	118,219	13,968
2018	124,957	13,507
2019	132,080	13,061
2020	139,609	12,630
2021	147,567	12,213
2022	155,978	11,818
TOTALS	\$2,344,144	\$601,021

Notes follow on the next page.

NOTES FOR TABLE II

1. Projected at a 5.7% annual rate of increase based on current averages for paralegals nationwide as presented in Legal Assistants Today (Vol. 10, No. 5 May/June 1993, p.48+)
2. The earnings for 1993 are based on a national average for a paralegal with 10 years of experience working in a private law firm of 6 to 9 attorneys. (found in same article)
3. Discounted at 9.0%, the average annual yield on long-term U.S. government bonds over the last ten years. This rate (9.0%) represents the rate of return a person could expect on investments with virtually no risk. If interest rates should rise above this in the future, wage, and salary growth will also rise, and thus the present discounted values presented here will remain essentially unchanged. The key here is the difference between the growth in compensation and the discounted rate: $5.7\% - 9.0\% = -3.3\%$. Therefore, the real income would have suffered an annual decline of 3.3%. This figure is quite conservative.
4. Rounding may slightly affect the Totals.

TABLE III
ANNUAL CHANGES IN EARNINGS AND COMPENSATION
IN THE PRIVATE BUSINESS SECTOR

YEAR	PERCENT CHANGE
1984	7.0
1985	7.4
1986	7.1
1987	7.0
1988	7.5
1990	4.4
1991	4.0
1992	3.5
1993	3.6
<hr/>	
AVERAGE	5.7

TABLE IV
SUMMARY OF FAMILY EXPENDITURES,
INCOME, AND SAVINGS, FOR FAMILY
WITH INCOME OF \$30,000 OR MORE

	AVERAGE IN DOLLARS	PERCENTAGE OF MONEY INCOME
Money Income, before taxes	\$57,364	100%
Taxes	10,326	18%
Money Income, after taxes	47,038	82%
Current Consumption	40,154	70%
(Housing Expenditure)	12,046	21%
(Personal Insurance)	287	.5%
(Case Contributions)	1,147	2%
Savings	7,457	13%

APPLICATION OF TABLE IV TO MEEKS HOUSEHOLD

The deceased Angela Meeks's net contribution to household welfare (what Jeffrey Meeks will lose monetarily as a result of his wife's death) will consist of:

1. Her contributions to savings,
2. Her gifts and other contributions, and
3. One-half of the housing expenditures.

Based on the information contained in Table IV, savings will average 13% of income, gifts and other will average 2.5% of income, and one-half of housing will average 10.5% of income.

Therefore, the total income available to the household's discretionary use in any given year will average 26% of the decedent's income.

If the 26% figure is used as the deceased's projected contribution to the household welfare, her projected income, discounted to present value, should be reduced by 74% in order to project the net losses to her husband caused by her death.

TABLE V
PROJECTED VALUE OF HOUSEHOLD ACTIVITIES OF
ANGELA MEEKS FROM AGE 32 TO 60

YEAR	FUTURE VALUES	PRESENT DISCOUNTED VALUE AT 1994
1993	\$ 16,425	\$ 16,425
1994	17,361	15,883
1995	18,351	15,359
1996	19,397	14,852
1997	20,503	14,362
1998	21,672	13,888
1999	22,907	13,430
2000	24,213	12,987
2001	25,593	12,558
2002	27,052	12,144
2003	28,594	11,743
2004	30,224	11,355
2005	31,947	10,980
2006	33,768	10,618
2007	35,693	10,268
2008	37,728	9929
2009	39,878	9601
2010	42,151	9284
2011	44,554	8978
2012	47,094	8682
2013	49,778	8395
2014	52,615	8118
2015	55,614	7850
2016	58,784	7591
2017	62,135	7340
2018	65,677	7098
2019	69,421	6864
2020	73,378	6637
2021	77,561	6418
2022	81,982	6206
TOTALS	\$ 1,232,050	\$ 315,842

Notes follow on the next page.

1. It is assumed that a working wife would on the average spend three hours per day on household work. The value of Mrs. Meeks's present time is \$15.00 per hour as a paralegal. (\$31,254/2080) Thus, $\$15.00/\text{hr} \times 3 \text{ hrs/day} \times 365 \text{ days/yr.} = \$16,425.$

2. Projected at the same 5.7% increase and 3.3% discount.

3. Again, totals may be slightly off due to rounding.

March 14, 1994
POLS 403

EVALUATING THE CASE
SETTLE/PLEA BARGAIN OR GO TO TRIAL

Questions to ask

- How much is this going to cost? (money/time)
- What kind of psychological impact will there be?
- What are your chances of winning?

Evaluation of this type is extremely important and will involve discussion with your attorney, other paralegals on the case, and the client. Objective and open discussion increase your chances of success in making the right decision. To begin, you should establish some objective criteria by which you can evaluate any case.

Criteria

1. Can we win? (% chances)
2. How much is involved? (time/money)
3. What is our evidence?
4. What are the clients wishes?

SETTLEMENT

Form 7.1 reflects basic negotiating concepts:

- You must know before starting the negotiation what you (and what you anticipate your opponent) would be satisfied with and what would be a "good" settlement.
- A planned opening demand.
- Knowledge of the course of negotiations.

Some thoughts are:

- You must understand the needs, desires, concerns and fears of your client and your opponent.
- As plaintiff, your initial figure will be higher than you would be willing to settle for, but is within a realistic range.
- Concessions from you will come reluctantly and then will be small.
- You will continually emphasize fairness.
- If your opponent's response is to decline to make a counteroffer, attempt to draw a counteroffer by emphasizing that your proposal was sincere and thoughtful with a desire to settle the matter.
- A formal offer of settlement should be made and the response recorded.

NEGOTIATION HISTORY

Opponent's Demand/Response

My Response Will Be:

__/__/__ _____ __/__/__ _____

__/__/__ _____ __/__/__ _____

__/__/__ _____ __/__/__ _____

__/__/__ _____ __/__/__ _____

SETTLEMENT WORKSHEET

7.1

OBJECTIVES

The least my client should settle for is _____

A "good" settlement for my client is _____

My opponent will probably settle for _____

The anticipated initial response/demand of my opponent is _____

My initial response/demand will be _____

MY NEGOTIATING IMAGE

I will project an image of:

- Having complete knowledge of the facts.
- Being totally prepared to litigate.
- An ability and eagerness to try the case.
- Firmness - reasonableness is not for me, it's for the judge.
- Confidence in my ability and the client's cause.

THE INTERESTS OF THE PARTIES

My client's needs, desires, concerns and fears are:

The opponent's needs, desires, concerns and fears are:

These interests can be reconciled by:

POSSIBLE ALTERNATIVE SOLUTIONS ARE:

OBJECTIVE STANDARDS THAT COULD BE USED IN ACHIEVING A SETTLEMENT ARE:

CONSEQUENCES

If this case is not settled, the consequences to my opponent are:

If this case is not settled, the consequences to my client are:

THE 4 POINTS I WILL EMPHASIZE IN THE NEGOTIATIONS ARE:

THE POINTS THE OPPONENT WILL EMPHASIZE ARE:

His Points

My Response Will Be:

Legal Theory and a Plan

How to begin:

1. get the facts
2. organize the facts
3. make a fact chronology
4. break out the most important facts that will motivate the trier of fact to rule in your favor
 - a. appeal to common sense
 - b. appeal to sense of fairness
5. know which facts you must prove (do the same for your opponent)
6. make a list of the facts most dangerous to your case
7. identify your opponents general position
8. do evidentiary research
9. DEVELOP THE THEME

Developing the Theme

The theme is the summary of your case and should be concise (25 words or less). Your entire case should revolve around this summary. Its important to prepare several themes in order to revise, expand, and elaborate. The theme that you choose will be the heart of your case. It is important to remember that perception is reality, and the jury will believe what they perceive to be true.

Getting Started

1. review your opponent's theme
2. review your favorable facts
3. brainstorm
4. be creative, be bold, be honest, be blunt

Revising the Theme

1. always be conscious of your opponent's position
2. Is it logical/simple?
3. Is it consistent with common sense?
4. Is it understandable?
5. Will the facts, as perceived, support your theme.
6. Does it appeal to fairness/equity?
7. Does it overcome your opponent's favorable facts?

Uses for your Theme

1. simplification of your case
2. precise description of your position
3. voir dire
4. frame for your opening and closing statements

Outline of Defense Presentation

Order of Witnesses

1. Victoria Williams
2. Juanita Williams
3. Charles Shrackle
4. Elizabeth Buchanan
5. Alice Mallory

Physical Evidence

1. Photograph of sidewalk in question; shows sidewalk markings were faded. Use with Marilyn Kelly's cross examination.
2. Condition of Shrackle's vehicle. Use with direct examination of Charles Shrackle.
3. Location and length of skid marks. Use with deposition of expert or with expert as witness.

Visual Aids

1. Scale Drawing of intersection of Kirby and Mattis will be used with all witnesses with the exception of E. Buchanan, R. Glenn, J. Potter and the Coroner.
2. Display with pictures of vehicle which shows condition of vehicle. Use with Charles Shrackle's testimony.

Scientific Data

1. Location and length of skid marks and average speed of Shrackle's vehicle. Use with expert and/or expert's deposition.

THINGS FOR ME TO DO

J. Potter

v. Shrackle and Shrackle Construction Company

Client's Address 1701 W. Johnston Nita City

NOW	BY 4 WEEKS BEFORE TRIAL	SHORTLY BEFORE AND AT START OF TRIAL
Confirm witnesses	complete depositions	Complete ^{trial} preparation
acquire all evidence	make final witness arrangements	docket case
complete depositions		organize exhibits
review pleadings	complete research	organize evidence
additional discovery	pretrial client conferences	complete voir dire outline
review depositions	write theme	
evaluate case		draft instructions
develop a plan		prepare testimony
investigation		
contact experts		

CRITICAL DEADLINE DATES ARE:

jury selection By 4/11/94 research due By 2/17/94
 trial begins By 4/18/94 By / /
 exhibits due By 2/28/94 By / /

CASE STATUS CHECKLIST

<u>Check Action--To Do</u>	<u>Deadline</u>	<u>Completed</u>	<u>Check Action--To Do</u>	<u>Deadline</u>	<u>Completed</u>
<input checked="" type="checkbox"/> Insurance coverage	<u>3/7/94</u>	<u>1/24/94</u>	<input checked="" type="checkbox"/> Expert's reports	<u>3/7/94</u>	<u>1/24/94</u>
<input type="checkbox"/> D's auto ownership	_____	_____	<input checked="" type="checkbox"/> Blowups--document evidence	<u>3/7/94</u>	<u>2/25/94</u>
<input type="checkbox"/> City directory info.	_____	_____	<input checked="" type="checkbox"/> Xrays and medical illus	<u>3/7/94</u>	<u>2/16/94</u>
<input checked="" type="checkbox"/> Newspaper articles/photos	_____	<u>Various</u>	<input type="checkbox"/> Models	_____	_____
<input checked="" type="checkbox"/> Corporate agents	_____	_____	<input checked="" type="checkbox"/> Statement of facts	<u>1/24/94</u>	<u>1/24/94</u>
<input checked="" type="checkbox"/> Photos--P's injuries	<u>3/7/94</u>	<u>2/25/94</u>	<input checked="" type="checkbox"/> Outline issues & research	<u>4/4/94</u>	<u>4/4/94</u>
<input checked="" type="checkbox"/> Photos--scene (aerial?)	<u>3/7/94</u>	<u>2/25/94</u>	<input checked="" type="checkbox"/> Analyze pleadings & orders	<u>3/7/94</u>	<u>2/25/94</u>
<input checked="" type="checkbox"/> Photos--P's & D's vehicles	<u>3/7/94</u>	<u>2/25/94</u>	<input checked="" type="checkbox"/> Amendments to pleadings	_____	<u>done made</u>
<input type="checkbox"/> Motion pictures	_____	_____	<input checked="" type="checkbox"/> Outline of proof	<u>4/4/94</u>	_____
<input checked="" type="checkbox"/> Statements--client/D	<u>3/7/94</u>	<u>1/25/94</u>	<input checked="" type="checkbox"/> Jury list & investigation	<u>4/11/94</u>	<u>trial</u>
<input checked="" type="checkbox"/> Statements--witnesses	<u>3/7/94</u>	<u>1/24/94</u>	<input checked="" type="checkbox"/> Voir dire outline	<u>4/11/94</u>	<u>trial</u>
<input checked="" type="checkbox"/> Accident reports	<u>3/7/94</u>	<u>2/25/94 (fixed)</u>	<input checked="" type="checkbox"/> Opening statement outline	<u>4/11/94</u>	<u>4/11/94</u>
<input checked="" type="checkbox"/> Weather reports	_____	<u>2/7/94</u>	<input checked="" type="checkbox"/> Witness list & subpoenas	<u>4/4/94</u>	<u>3/25/94</u>
<input checked="" type="checkbox"/> Maps & diagrams	<u>2/25/94</u>	<u>2/25/94</u>	<input checked="" type="checkbox"/> Direct exam outline	<u>4/11/94</u>	<u>4/11/94</u>
<input checked="" type="checkbox"/> Books & records	<u>1/24/94</u>	<u>1/24/94</u>	<input checked="" type="checkbox"/> Exhibit index	<u>4/11/94</u>	<u>trial</u>
<input checked="" type="checkbox"/> Medical reports	<u>3/7/94</u>	<u>2/16/94</u>	<input checked="" type="checkbox"/> Cross-exam outline	<u>4/11/94</u>	<u>4/12/94</u>
<input checked="" type="checkbox"/> Hospital records	<u>3/7/94</u>	<u>2/16/94</u>	<input checked="" type="checkbox"/> Rebuttal outline	<u>4/11/94</u>	<u>4/12/94</u>
<input checked="" type="checkbox"/> Death certificate	<u>3/7/94</u>	<u>2/16/94</u>	<input checked="" type="checkbox"/> Jury instructions & authority	<u>4/11/94</u>	<u>trial</u>
<input checked="" type="checkbox"/> Coroner's report	<u>3/7/94</u>	<u>1/24/94</u>	<input checked="" type="checkbox"/> Trial brief	<u>4/11/94</u>	<u>trial</u>
<input checked="" type="checkbox"/> Laboratory reports	<u>3/7/94</u>	<u>2/16/94</u>	<input checked="" type="checkbox"/> Expert witness conf.	<u>4/11/94</u>	<u>4/11/94</u>
<input checked="" type="checkbox"/> Medical expenses--past/future	<u>3/7/94</u>	<u>2/16/94</u>	<input checked="" type="checkbox"/> Lay witness conf.	<u>4/11/94</u>	<u>4/9/94</u>
<input checked="" type="checkbox"/> Lost-income verification	<u>3/7/94</u>	<u>1/24/94</u>	<input checked="" type="checkbox"/> Client conference	<u>4/17/94</u>	<u>Various</u>
<input type="checkbox"/> Property repair estimates	_____	_____	<input checked="" type="checkbox"/> Final argument outline	<u>4/25/94</u>	<u>?</u>
<input checked="" type="checkbox"/> Other special damages	_____	<u>Various</u>	<input checked="" type="checkbox"/> All witnesses subpoenaed?	<u>4/11/94</u>	<u>Various</u>
			<input checked="" type="checkbox"/> Trial outline completed	<u>4/11/94</u>	<u>4/4/94</u>

Explanations & Instructions (Ref. to Nos. Above)

1. go to scene when doing investigation 5.
2. observe a civil trial 6.
3. to get feel of atmosphere, work w/ other attorneys 7.
4. closely 6.

CASE IN A NUTSHELL

WHY You will find it helpful to be able to summarize the case in a few sentences:

- to the Court: at hearings, on motions, and at other pre-trial matters.
- to the potential witnesses in interviews and trial preparation.
- to the jury in voir dire.
- to ultimately incorporate into your opening statement and closing argument.

HOW The summary should be structured so as to pose the issue fairly, but favorably; should incorporate the one or two facts most persuasive of your position.

Example:

"This is a divorce case where 75% of the marital estate in this 8 year marriage came from gifts and inheritances from the wife's parents. The court's task is to decide how much of the marital estate is to be given to the husband."

FACTS

On this form you will record the facts underlying your client's case. At this point, do not concern yourself with organizing the facts in any particular fashion — just get all the facts down on paper.

CASE IN A NUTSHELL WORKSHEET

1. ISSUE

The main issue in this litigation is:

Is/Was Shrackee negligent in the accident of November 30, 1992?
 Was Katherine Potter negligent in the accident of Nov. 30, 1992?

2. FACTS

The 1 or 2 facts most persuasive of my client's position are:

- Katherine Potter's body was found some distance from the crosswalk.
- J. Williams witnessed C. Shrackee driving carefully and cautiously.

3. RESTATEMENT

A fair, but favorable summary of this case and the issue is:

We, the defense, agree that the unfortunate death of Katherine Potter is a tragedy; however, due to actions on the part Mrs. Potter this accident was unavoidable. She clearly breached her duty as a pedestrian to cross the street with caution. Charles Shrackee acted as he should as a cautious and lawful driver of a motor vehicle. The facts in this case will prove contributory negligence on the part of Mrs. Potter and free our client of any liability.

FACT CHRONOLOGY

WHAT Here, you will arrange the facts bearing on the case in chronological order.

HOW When in doubt the chronology will include a fact rather than omitting it. As the case progresses the chronology will be revised as you learn more about the case. The chronology will always include the materials covered in sections 4 and 5. Your initial draft of the chronology should leave ample space between entries to facilitate insertion of additional facts. In complex cases the witnesses, documents and other back-up sources of the facts noted so that later the source can be easily pinpointed.

WHY The chronology will be useful:

- in giving an overview of the facts and to prevent an important fact from be overlooked.
- in your witness preparation.
- in assuring that all important facts have been obtained from the client.
- in preparing opening statement and closing arguments.
- in determining the order in which witnesses will be called.

FACT CHRONOLOGY WORKSHEET

2.1

The facts which bear on this case in chronological order are:

DATE/ TIME	FACT/CIRCUMSTANCE	SOURCE
11/30/92 3:15pm	Shrackle was making his way to a better job.	Shrackle
3:15pm	K. Potter was walking east on the South sidewalk of Kirby all	
3:25pm	Jessita Williams waited for light to turn green	J. Williams
3:26pm	Mrs. Kelly comes to a stop at red light (Mattis)	M. Kelly
3:26pm	A little boy runs in front of car on Mattis and was hit/immolated by Alice Mallory after she follows him from west to east	A. Mallory
3:30	Victoria Williams was turned around in the back seat watching the children at the intersection	V. Williams
3:30	James Marshall was discussing a clutch car to a co-worker.	Marshall
3:30	K. Potter steps off of sidewalk to cross then walks down median	V. Williams A. Mallory
3:30	C. Shrackle waits for car then makes a gradual left turn.	C. Shrackle
3:30	M. Kelly glances at light	M. Kelly
3:30	K. Potter steps into the path of Shrackle's truck	V. Williams
3:30	A noise is heard - then brakes are applied witnesses see K. Potter thrown onto hood - truck stops	all
3:31	Shrackle gets out and starts CPR	Shrackle
3:31	police are called	Marshall
3:45	report is made inaccurately	Young
12-4-92	K. Potter dies	Potter
1-9-93	coroner's inquest death by accident	Wilso

MY MOST IMPORTANT FACTS

Out of the universe of facts that may be relevant to the case, you must select those which are truly important. A judge or jury is only able to appreciate and retain a portion of the evidence presented.

You must identify those facts which are going to motivate the trier to decide in your client's favor. Most of the time these will be facts which create an appeal to justice, equity, and common sense. Of course you must not overlook the necessity of presenting evidence which will support the legal requirements of your claim or defense.

MY MOST IMPORTANT FACTS WORKSHEET

3.1

MOTIVATING FACTS

The 10 or 15 facts which are most likely to motivate the trier of facts to rule in my client's favor, and which would appeal to one's sense of fairness, justice and common sense are:

	WITNESS/DOCUMENT
1. K. Potter's body was some distance from the crosswalk.	A. Mallory, V. Williams
2. C. Shrackle made a lawful turn onto Mattie	J. Williams
3. The police report is favorable.	police report
4. The coroner's inquest concluded death by accident.	inquest
5. One plaintiff's strongest witnesses did not actually see the impact or location thereof.	M. Kelly, J. Marshall
6. Shrackle applied first aid immediately.	Shrackle
7. Alert crossing guard is a <u>very</u> good witness	A. Mallory

LEGAL REQUIREMENTS

Other facts which I must prove to satisfy the legal requirements of my claim or defense are:

Contributory negligence

	WITNESS/DOCUMENT
1. duty - to cross street w/ care	law
2. breach of that duty-	witnesses, location of body
3. proximate cause of damages incurred	death due to injuries
4. damages.	death

MY OPPONENT'S MOST IMPORTANT FACTS

Proper preparation requires that you anticipate the facts that your opponent will present. This prevents surprise and enables you to feel comfortable when that evidence comes. Most importantly, identifying the opponent's facts will permit you to rebut those facts if they are not true or to blunt their effect if they are true. A knowledge of your opponent's facts is also necessary for effective witness preparation.

MY OPPONENT'S MOST IMPORTANT FACTS WORKSHEET

4.1

MOTIVATING FACTS

The facts most harmful to my client's case, which my opponent may attempt to prove are:

Katherine is dead / Shrackee hit her.

Katherine suffered for four days.

Katherine was on the road to great success.

There are a couple of witnesses that saw her in the crosswalk.

THE GENERAL POSITIONS MY OPPONENT WILL TAKE ARE:

Counsel for the plaintiffs will try to prove that the tragic, painful death of K. Potter, J. Potter's loving wife, was caused by C. Shrackee's negligent behavior as a motorist and his negligence in not signaling his approach.

THE LEGAL REQUIREMENTS OF MY OPPONENT'S CLAIM OR DEFENSE WHICH HE MAY HAVE DIFFICULTY IN PROVING ARE:

They will have difficulty proving that Charles breached his duty to use reasonable care as a motorist.

RESPONSE

I will defeat my opponent's position by showing that his facts are not as he pictures them or I will avoid their impact. Specifically, I will:

I will discredit his eye witnesses. I will also downplay the death of Mrs. Potter.

THEME OF THE CASE

The most important and productive 20 minutes of trial preparation will be spent selecting an appropriate theme. The theme of the case is the answer you would give if asked to explain in 20 words or less why your client's position is meritorious.

The theme is the basic concept which everything at trial is going to revolve around. If the whole case is the body, the theme is the spine. It is the equivalent of the headline in a newspaper article - it's the central message.

You are going to prevail because of what the trier of facts perceives the facts to be. You will not win because of eloquence or an exciting cross-examination. Prevail by showing that the result you desire will serve justice. It's the "right" decision. Satisfying the legal requirements of a claim or defense is not enough to prevail.

It takes courage and good sense to ruthlessly discard all but the most important parts of the case. Responding to the fear that the trier will make his decision on an obscure point results in a scatter-gun approach; one whose impact is defused.

THEME OF THE CASE WORKSHEET

5.1

DONE

My Facts

Review the favorable facts listed in Form 3-1 which you believe are most likely to motivate a decision favorable to your client.

✓

Opponent's Facts

Review the unfavorable facts listed in Form 4-1 which you anticipate your opponent will seek to prove.

✓

Possible Theme

List 2 or 3 possible themes drawn from your favorable facts. Brainstorm and think boldly and creatively. The fine tuning and deep thinking can come later.

1. We, the defense, agree that the unfortunate death of Mrs. Potter is tragic; however, due to actions on the part of Mrs. Potter, the accident of 11/30/92 was unavoidable.
2. Mrs. Potter's death is tragic, but her body was found some distance from the crosswalk indicating that she breached her duty as a pedestrian to cross the street with care.
3. Witnesses in this case will show that C. Smacker was driving as a normal, reasonable motorist would and did everything he possible could to avoid this type of accident.

✓

Revised Theme

Review the possible themes to harmonize one with the other or to make one of them a logical sub-part of another or simply choose the strongest of the possible themes. The revised theme reads:

See themes on next page.

POSSIBLE THEMES FOR THE DEFENSE

c. Shrackle Defense

1. We, the defense, agree that the unfortunate death of Katherine Potter is a tragedy; however, due to actions on the part of Mrs Potter this accident was unavoidable. She clearly breached her duty as a pedestrian to cross the street with caution. Charles Shrackle acted as he should as a cautious and lawful driver of a motor vehicle. The facts in this case will prove contributory negligence on the part of Mrs. Potter and free our client of any liability.

2. We are in agreement that Katherine Potter's death is a tragic one; however, due to actions by Mrs. Potter, the accident of November 30, 1992, was unavoidable. Evidence will show that Mrs Potter was struck some distance from the crosswalk and that Charles Shrackle was driving as a normal and cautious motorist. Katherine Potter was contributorily negligent relieving any liability from the defense.

Investigation

1. Direct

Direct investigation is used to get the facts and get the facts as quickly as possible. It is usually the gathering of pertinent documents and witnesses to the accident or action in question. Investigations should be as completely thorough as possible. Most times it is as simple as asking questions and piggybacking on the work of others like insurance companies and newspapers. It is important to include the client in this process, but do not allow the client to control the information. YOU decide what is of importance. Do not assume that all of the information you get is correct either. Read everything and make any necessary corrections.

a. information to obtain

- accident reports/police reports
- driving records
- coroner's report
- medical histories and hospital records
- news reports
- weather information
- insurance policies
- tax returns

*Know your rights to find this information under FOIA (Freedom of Information Act)

2. Indirect

Indirect investigation compliments the facts obtained in direct investigation by working to add human opinion and perception to them. It is important here to make an effort to think critically, analytically, and creatively about the facts.

a. things to do

- go to the scene yourself/get a feel for the environment--Could things have happened like the statements say?
- Act out the occurrences
- get measurements and video tape the accident from your point of view
- have client keep a diary of their injuries

EYEWITNESS STATEMENT

My name is Marilyn J Kelly

My address is 1910 Elder Ln. Nita City

My phone number is 555-1213

I am/am not related to or acquainted with any of the parties involved in the accident.

I have previously made statements regarding the accident to Officer Michael Young 12/4/92

To the best of my knowledge and recollection, the accident was at Mattis and Kirby Ave's on 11/30/92 at approximately 3:30 o'clock p.m.

At that time I was driving my car on Mattis Ave when the traffic light turned yellow as I approached. I came to a stop just south of the crosswalk in the easterly northbound lane. I was on my way to the beauty salon.

Prior to the accident, I observed the following: I saw a little boy run across Mattis and be reprimanded by the crossing guard on the southeast corner of the intersection. I saw a dark haired woman slip into the crosswalk.

During the accident, I observed the following: I glanced back up at the stop light when I heard a thud. I looked and saw the young woman flying through the air and then land on the hood of the truck. She then flipped backwards and ended up underneath it.

After the accident, I observed the following: The truck stopped approximately 50 ft south of the south line of Kirby. I stayed at the scene for a couple of minutes and left after seeing that help was being called.

Other observations and comments: I don't know the Pater or Shracker families or anyone at Shracker Construction Co. The rain was brisk, and the intersection was busy. I definitely heard the thud before I heard brakes.

Signed

Marilyn J Kelly

INVESTIGATION

WHAT DID YOU KNOW OF PLAINTIFF'S PERSONAL LIFE WITH FAMILY & FRIENDS? (SUMMARIZE) nothing

PLEASE ADD ANY COMMENTS OF YOUR OWN After reading about the accident in the paper the following morning I thought Ed better come forward and tell what I saw.

DESCRIBE WHAT YOU OBSERVED ABOUT THE PLAINTIFF THAT CHANGED AFTER THE INJURY. (GIVE SPECIFIC EXAMPLES IF POSSIBLE, i.e., STOPPED BOWLING, FACE SHOWED TENSION, PAIN, ETC.)

IN REGARD TO APPEARANCE _____

IN REGARD TO WORK MISSED, WORK DIFFICULTIES _____

IN REGARD TO RECREATIONAL ACTIVITIES _____

IN REGARD TO HOME ACTIVITIES (NO MORE GARDENING, SEWING, LAWN CARE, ETC.) _____

Mrs. Potter died on 12/4/92

EYEWITNESS STATEMENT

My name is Alice Mallory

My address is P.O. Box 123 Daleville

My phone number is 378-4019

I am/am not related to or acquainted with any of the parties involved in the accident.

I have previously made statements regarding the accident to

Tracy Williams 6/7/93

To the best of my knowledge and recollection, the accident

was at Mathis and Kirby Ave's (SW corner of intersection)
11/30/92 at approximately 3:25 on Mathis o'clock
P.m.

At that time I was reprimanding a little boy who
had jost-crowded the street unsafely.

Prior to the accident, I observed the following: I saw a lady
walking west to east in the crosswalk; when she
reached the median, she turned south and began
to walk south down the median strip.

During the accident, I observed the following: I heard a
thump and looked up immediately.

After the accident, I observed the following: I saw Mrs.
Petter being carried on the hood of a pick-up truck
about 30 ft. south of the crosswalk. The truck
stopped about 30 ft. later.

Other observations and comments: I am supposed to
be aware of everything in the interaction.
That's my job.

Signed Alice Mallory

INVESTIGATION

WHAT DID YOU KNOW OF PLAINTIFF'S PERSONAL LIFE WITH FAMILY & FRIENDS? (SUMMARIZE) _____

PLEASE ADD ANY COMMENTS OF YOUR OWN *I didn't come forward at first because I didn't want to hurt Mrs. Potter or her family.*

DESCRIBE WHAT YOU OBSERVED ABOUT THE PLAINTIFF THAT CHANGED AFTER THE INJURY. (GIVE SPECIFIC EXAMPLES IF POSSIBLE, i.e., STOPPED BOWLING, FACE SHOWED TENSION, PAIN, ETC.)

IN REGARD TO APPEARANCE _____

IN REGARD TO WORK MISSED, WORK DIFFICULTIES _____

IN REGARD TO RECREATIONAL ACTIVITIES _____

IN REGARD TO HOME ACTIVITIES (NO MORE GARDENING, SEWING, LAWN CARE, ETC.) _____

I believe that Mrs. Potter passed away after the accident.

EYEWITNESS STATEMENT

My name is James Marshall (Marshall's Texaco)

My address is 1601 Mattis Nita City

My phone number is 555-0033

I am/am not related to or acquainted with any of the parties involved in the accident.

I have previously made statements regarding the accident to

Joseph Lucey 12/12/92

To the best of my knowledge and recollection, the accident

was at the intersection of Mattis and Kirby on 11/30/92 at approximately 3:30 p.m. o'clock

At that time I was working in my station rebuilding an engine.

Prior to the accident, I observed the following: I saw a dark-haired woman walking east on the South Sidewalk.

During the accident, I observed the following: I turned to talk to an employee when I heard a thump. I looked out and saw a pickup truck carrying a lady on it.

After the accident, I observed the following: I sent an employee out to be a field and I called the police. I then went out and noticed that the woman I saw earlier was lying on the pavement.

Other observations and comments:

Signed

James Marshall