

Analyzing and Organizing Your Case
MACDL Post-Conviction
March, 2017

Why?

- Better Statement of Facts
- Better Harm/Harmless Error Analysis
- Helps find *Anomalies* and *Investigative Omissions* for Rule 30 Motion

But I already have a system!

- Where does it come from?
- Have you tested it?
 - Try one of these tables and see if you find something different.

Testimony & Exhibits

- Analyzing and organizing already-created written materials
 - Prosecution has created a narrative
 - You are looking for *anomalies* and *omissions*
 - Places where police or prosecutor prematurely focused on a specific suspect or theory and missed/ignored inconsistencies, gaps, or evidence of innocence

Overview Table

	Supporting Evidence	Contradictory Evidence	Omissions in Evidence
Who committed the offense?			
What was the offense?			
When did it happen?			
Where did it happen?			
Why did it happen? (Intent)			
How did it happen? (Outlining on all elements; consideration of lesser included offenses; consideration of affirmative defenses)			

Where Lighting was an Issue

Prosc. Brief: the lighting was "good". Then that the fight was "a few feet" and later, precisely "two feet" from a streetlight in a nearby intersection and a parking garage. (Str. 4, 44)

Reply Brief:

Oscar was nearly run over, and then assaulted shortly after he left Club NV. Where he was assaulted is not clear – the record puts the assault east, south, and north of the corner of High and Allyn Streets, making it impossible to draw more than very general conclusions about the location, and thus, the lighting during the fight.

Oscar told responding officers that he was walking east along Allyn Street from Club NV towards Club Blu when he was assaulted near 200 Allyn Street. (See MEx. 3) At trial, Oscar said he had crossed High Street south of the corner with Allyn Street and was 400-500 yards from Club NV's door when he was nearly run over and then assaulted. (T3 at 35, 84) Officer Robles said he saw a scuffle on High Street north of the corner about 150' from the intersection. (T4 at 72, 83) The trial court found that Oscar was assaulted in the area of 200 Allyn Street. (T8 at 8, 10) – a location consistent with Officer Rousseau's report, but inconsistent with Oscar's and Robles' trial testimony.



Comparing Witnesses

Comparing Different Sources

	Source 1 (name/date/time)	Source 2 (name/date/time)	Source 3 (name/date/time)
Who Present?			
Detail 1			
Detail 2			
Detail 3			

Detailed Comparison of Witnesses

	Source 1 (name/date/time)	Source 2 (name/date/time)	Source 3 (name/date/time)
Driver			
Description			
Actions			
Front Passenger			
Description			
Actions			
Rear Passenger			
Description			
Actions			

	Witness A	Witness B	Witness C
Who is the witness?			
any impairments in perception, memory, or recall?			
is witness familiar with or related to defendant, victim, or other witness(es)?			
Why is the witness testifying?			
any motive, bias, or interest, pressure or social expectation			
any health/physical, expected, or recorded			
Where was the witness?			
distance, lighting, obstructions			
What did the witness see?			
When did the witness first record what he/she saw?			
any challenges to accuracy of recording, suggestions, proper interview/interview procedures?			
What was the content of the first recording?			
What happened between the events and the first recording?			
How does the witness' testimony compare to			
prior statements?			
independent witnesses?			
independent physical evidence?			

Homework

- Watch (and record) the news tonight without taking any notes. Afterwards write down the content of the broadcast.
 - What was said? By whom? Can you recall quotes?
- Then compare your notes to the recording.
 - Odds are, you'll recall less than 20% of what you heard.
 - You will likely hear, understand, and recall, about half of the gist of this presentation when you leave, and about 25% by Monday.

Note Taking Systems

- College note systems are designed for structured information like a lecture, where the instructor has key points, which are repeated and signposted.
- Witnesses are different. Outside of the courtroom, they speak extemporaneously, often about stressful and emotional events.
- Witnesses may make good faith mistakes because of prior interviews or statements, intervening events, and the passage of time.
- Witnesses may be deliberately lying or omitting information.

Getting the Witness' Story

- **Plan** the interview ahead of time – what do you want to accomplish, what do you already know.
- **Engage** with the subject, explain what you want to do in the interview
- **Get the subject's Account**
 - Ask them to tell you the story in their own words without interruption.
 - Ask them to picture it in their mind and tell it again – ask the witness to sketch, use tokens, or white-boards. (Don't show crime scene sketches/photos yet.)
 - Ask them to tell it in another order (backwards, for example) to see if that fills in gaps.
 - Ask specific questions only after you've heard the narrative a couple of times.
- **Close** the interview – summarize your understanding, future steps, answer questions
- **Evaluate** your notes – once the witness has left go over your notes, remembering that memory fades rapidly over time with the biggest lost in the first hour.

Recommended Reading

- **General Criminal Practice:**

- Amsterdam and Hertz, Trial Manual for the Defense of Criminal Cases (6th Ed. 2016)
- Beger et al, eds., Pretrial Advocacy (4th Ed. 2013)
- Shepherd's Police Station Skills for Legal Advisers (3rd Ed. 2004)

- **Organizational Systems:**

- Heaton-Armstrong, et-al, Ed., Analysing Witness Testimony: A Guide for Legal Practitioners and Other Professionals 280-81, 288-291 (1999)
- National Centre for Policing Excellence, Practical Advice on Core Investigative Doctrine (2005)
- Shepherd, SE3R: A Resource Book (4th Ed. 2008)
- Shepherd & Griffith, Investigative Interviewing: The Conversation Management Approach (2nd ed. 2013)

- **Memory, Perception, Deception:**

- Duke et al, A Picture's Worth a Thousand Words: Conversational versus Eyewitness Testimony in Criminal Convictions, 44 Am. Crim. L. Rev. 1 (2007)
- Granhag, Vrij & Verschuere eds., Detecting Deception: Current Challenges and Cognitive Approaches (2015)
- Robbenoilt & Sternlight, Psychology for Lawyers (2012)
- Simon, In Doubt: The Psychology of the Criminal Justice Process (2012)
- Vrij, Detecting Lies and Deception (2nd Ed. 2008)
