THEORY & THEME

THEORY OF THE CASE
• LEGAL THEORY
• FACTUAL THEORY
• PERSUASIVE THEORY
• EQUALS CASE THEORY

LEGAL THEORY
• THE LAW THAT ENTITLES YOU TO WIN
  – JURY INSTRUCTIONS
  – STATUTUES
  – CASE LAW
FACTUAL THEORY

- CHRONOLOGY
- PROOF CHART
- FACTS NOT CONCLUSIONS
- IF TRUE, WHAT ELSE MUST BE TRUE
- HARD FACTS VERSUS SOFT FACTS
- WHY BELIEVE YOUR SIDE

PERSUASIVE THEORY

- WHY SHOULD YOU WIN AS A MATTER OF FAIRNESS AND JUSTICE

THEORY OF THE CASE

- GRANDMOTHER TEST
OTHER SIDE’S THEORY

TEN COMMANDMENTS
1. SHORT
2. SIMPLE
3. SATISFIES LEGAL REQUIREMENTS
4. CONSISTENT WITH FACTS
5. EMOTIONALLY APPEALING—PLACES MORAL BLAME AND APPEALS TO COMMON VALUES

TEN COMMANDMENTS
6. EXPLAIN MOTIVES
7. TELLS A STORY
8. USE IMPACT WORDS AND PHRASES
9. LIMIT TO ONE THEORY
10. YOU MUST BELIEVE IT
THEME

• THE ONE SENTENCE DISTILLATION

HOW TO DO IT

• RESEARCH THE LAW
• BRAINSTORM ABOUT GOOD FACTS AND BAD FACTS
• FACTS--NOT CONCLUSIONS
• DON’T ARGUE AT THIS POINT—CUTS OFF CREATIVITY
• SELECT YOUR BEST ___ GOOD FACTS AND YOUR WORST ___ BAD FACTS

• NOW WE CAN ARGUE ABOUT THE FACTS
  – Is it admissible
  – Is it understandable
  – Is it believable
  – Is it based on documents or testimony
– Do we need to draw any inferences
– Are the inferences reasonable
– If this fact is true what other facts must be true
– Is it consistent with common sense

– Does it square with the motives we would expect
– Will it be countered by other evidence
– In short, why should the judge or jury believe our side

• APPLY THE GRANDMOTHER TEST—IN ONE OR TWO PARAGRAPHS TELL THE STORY OF YOUR CASE IN SUCH A WAY THAT YOUR GRANDMOTHER WILL SAY “OF COURSE YOU SHOULD WIN”
• THE ONE OR TWO PARAGRAPHS MUST INCORPORATE YOUR BEST FACTS AND IMPLICITLY OR EXPLICITLY REFUTE YOUR WORST FACTS
• DEVELOP A THEME—A ONE SENTENCE DISTILLATION OF YOUR CASE THEORY
• MAKE SURE YOUR THEME CANNOT BE FLIPPED