

**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
  - STATUTES
  - 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. ENOTIONALLY 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

---

---

---

---

---

---

---

---