



Theory of Defense: Facts, Genres, Headlines, Themes, Characters

2006 Regional Juvenile
Defender Workshops

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What Is Not a Theory of Defense

- The state can't prove it beyond a reasonable doubt
- Buzzwords
 - Self-Defense! Alibi!
- Alternate Realities
 - I wasn't there, but if I was, I was entrapped
- Play for the fumbles



What Is a Theory of Defense

- One central theory that summarizes the factual, emotional, and legal reasons why the judge or jury should return a favorable verdict. It tells your client's story of innocence, reduced culpability, or unfairness; provides a roadmap for you for all phases of trial; and resolves problems or questions the judge or jury may have about returning the verdict you want.



Sample Theory: In re Jones

When called into the gas station, teenaged Gary Jones was shocked to discover that Adam Rogers had stabbed the gas station attendant and was pointing a large knife at him. Terrified and confused, and fearing for his life, Gary obeyed Adam's commands to take the money and give it to Adam. Under these circumstances, Gary is NOT GUILTY of any crime because he was coerced, under threat of bodily harm, into participating in the robbery.



Keys to Effective Theory

- **One central theory** that summarizes the factual, emotional, and legal reasons why the jury should return a favorable verdict. It tells your client's story of innocence, reduced culpability, or unfairness; provides a roadmap for you for all phases of trial; and resolves problems or questions the jury may have about returning the verdict you want.



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Constructing a Theory

- Bust the facts
- Pick a genre
- Come up with a headline
- Write a theory paragraph
- Draw out your themes, develop your characters



Bust the Facts

- What interests you about the case?
 - Crime facts, events, actions
 - People (personalities, motivations, relationships, influences)
 - Places, objects
 - Investigative and other procedures
 - Things worth looking into further
 - NOT LAW
- Be factual, nonjudgmental, inclusive, associative



Pick a Genre

1. It never happened (mistake, setup)
2. It happened, but I didn't do it (mistaken id, alibi, setup, etc.)
3. It happened, I did it, but it wasn't a crime (self-defense, accident, elements lacking)
4. It happened, I did it, it was a crime, but it wasn't this crime (lesser offense)
5. It happened, I did it, it was the crime charged, but I'm not responsible (insanity)
6. It happened, I did it, it was the crime charged, I'm responsible, so what? (nullification)



Come Up with a Headline

- Imagine you're an editor of a sleazy tabloid newspaper. Come up with a phrase or sentence that captures the dominant emotion, image, or reality of your theory of defense.
- Or, pretend you're talking to the person on the next barstool who wants to know why you should win.



Sample Headlines for Jones Case

- Innocent kid victimized twice, first by robber, then by state
- Youth stares death in face, makes only possible choice
- Teenager saves day—avoids further bloodshed and defuses volatile situation



Headlines for Our Case



Write a Theory Paragraph

- Naive and too-trusting high school freshman Jake was left holding the bag or, more precisely, the box. Just hold these cigars for me until the end of the school day, street-smart Fred insisted, before forcing the box into Jake's hands and rushing off through the crowded school hall. Jake never knew that the cigar box containing what, by all appearances, looked like cigars, contained anything but cigars. Even when he was hauled, scared and alone, before the principal and the toughest SRO in the county, he never wavered in telling the truth: he had no idea that the cigars contained marijuana. His only offense was naïveté, one he won't commit again.



Draw Out Your Themes

- Also known as catch phrases, memorable lines, verbal melodies
 - You can use all or part of your headline as a theme (if not too tabloid-sleazy)
- Use them again and again as a shorthand way to evoke your overall theory
- For ex., for Jones, themes might include
 - "only possible choice"
 - "stared death in the face"



Develop Your Characters

- Develop the principal characters to
 - Provide you with direction in how to open, close, examine witnesses, etc.
 - Give your story texture and credibility
 - Shape the judge's impression of whether your juvenile client requires intervention
- Examples in our case
 - Naïve freshman
 - Savvy Fred
 - Tough SRO
