



Building a Theory of Defense

Genres, Headlines, Theories, and Themes

North Carolina Defender Trial School

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What Is Not a Theory of Defense

- The state can't prove my client is guilty beyond a reasonable doubt
- Legal 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 jury should return a favorable verdict. It helps tell 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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Sample Theory: S v. Jones

When called into the gas station, Gary Jones was shocked to discover his friend, 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.



Sample Theory: S v. Jones

Under these circumstances, Gary is NOT GUILTY of any crime because he was coerced, under threat of bodily harm, into participating in the robbery.



Another Sample: S v. Jake

Naïve 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 pressing 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



Another Sample: S v. Jake

appearances, looked like cigars, contained anything but cigars. Even when he was hauled, scared and alone, before the principal and the toughest school cop in the county, he never wavered in telling the truth: he had no idea that the cigars contained marijuana.



Constructing a Theory

- Pick your genre
- Identify your three best facts and three worst facts (optional)
- Come up with a headline
- Write a theory paragraph
- Develop recurring themes



Criminal Defense Genres

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? (jury nullification)



Best and Worst of Our Case-1

■ Best

■ Worst



Best and Worst of Our Case-2

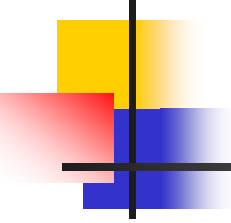
■ Best

■ Worst



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 Robbery Case (Gary Jones)

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



Headlines for Our Case



More Headlines



Our Theory Paragraph



Our Theory Cont'd



Themes

- A shorthand way to evoke your overall theory and move your audience
 - catch phrases
 - memorable lines
 - verbal melodies
- For ex., for Jones case
 - “only possible choice”
 - “stared death in the face”



Themes for Our Case
