

San Mateo County Mock Trial

Theory of the Case

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From time to time team members will hear the phrase “the theory of the case,” and they may wonder if this is just another one of those obscure legal phrases that attorneys use as secret code. Well, it is, but it’s a lot more important than many other terms—even those in Latin. It’s pretty basic. Essentially, the theory tells the story of the case. As you might imagine, there are lots of stories for most cases. In Mock Trial you will be concerned with two stories about your case, *People v. Buschell*. One story says he/she did it, and one says he/she didn’t. And just like when you’re accused of doing something wrong, there are facts and reasons to explain it.

How Attorneys Work

District attorneys are a bit like detectives. They look at the available evidence and try to figure out what happened. The first pieces of evidence that comes to them are the witness statements which are police reports from their investigation. Based on that the District Attorney’s office may begin their own investigation as they put a case together. Too bad that in Mock Trial you can’t do an investigation, but you can see why. CRF, however, does a good job of giving you conflicting information. You have to pick through it.

The Role of Witnesses

As you can tell from reading the witness statements in the casebook, the witnesses don’t all agree. In a real case that is based on memory of what was seen; partly it comes from their perspective and biases and partly because they want to have an explanation that sounds reasonable. Then too, events can happen really fast. Unless you are trained in observation you may not notice how tall someone is or if they have brown eyes. With only a moment’s glance witnesses may be confused as to whether someone was holding a gun or a coke bottle. So, testimony and its conflicts become the meat of closing when an attorney argues the validity of a theory of the case. Basing their testimony on the casebook’s Fact Situation and the witness statements Mock Trial witnesses aren’t trying to recall what they saw. They are trying to be authentic. Many presiding judges in Mock Trial have said that they are less influenced by the forensic evidence than by which witnesses are seen as most reliable and credible. That’s not a surprise. Mock Trial scores student performance, not a paper exhibit.

Developing Your Theory

So how do you develop a theory of the case? Start by reading the case and the witness statements. What do you think happened? Does that story indicate whether you think like a prosecutor or a defender? Write down your theory in a few sentences at the top of the Case Analysis Form #1 – Theory. Think about it. What’s your supporting evidence? Jot those ideas next, and decide which of the witnesses can provide that testimony. Talk with your team mates to evaluate that piece of evidence. What do they think? What does your coach and advisor think?

Uses for Your Work

A theory of the case will keep you focused. That reduces distraction. A classic story from SMCMT took place several years ago. When the last witness was called time was nearly exhausted. Thirty seconds, in fact, remained for cross examination of an important witness. A time to panic? No. The attorney quietly looked down at her notes, and saw that there was only one piece of evidence that she absolutely had to have. She thought a moment before she asked a single, closed-ended question. She got the answer she needed and even more for the scoring attorneys were amazed at her composure and understanding of how you build your case.

By the way, once your team has settled on the case theories that your prosecution and defense will present to the court, save the final chart for your checklist during the match. Did you get everything in? If not, you can’t talk about that evidence in your closing argument.

Weaknesses in Your Theory

OK, so not everything is going to be perfect. There is, after all, the other side who will want to discredit your evidence and dispute your theory. You can prepare for that with Case Analysis Form #2 – Weaknesses.

The Forms

There is no magic to these forms, and you can modify them to suit your own needs. Just be sure that you write a short summary of your theory and identify the evidence you need. That’s the whole point of the exercise.