

# Theme: The Heart of Your Legal Writing

## Law & Literature Series, Part 3

BY MARK KITRICK AND MARK LEWIS



What do you care about when you're immersed in reading a good story?

Better, as a writer, what do you want your readers to care about when reading your stories?

Better still, what lasting values, emotions or enduring feelings do you hope to inspire in your readers?

Answer these questions—no easy task—and we might find some understanding of that notoriously obscure but most vital of story ingredients - *theme*. It is the organizing principle, the emotional core and the value-laden heart of all great writing.

This is especially true of persuasive legal writing. Theme drives and organizes emotional engagement. A well-crafted theme works beneath the surface, unspoken and implicit, where its persuasive appeal nudges or taps our subconscious, the place from which we decide most matters in our lives.

But theme doesn't *tell* us how to live well, relate to others or make the right decisions. It *shows* us the way. It reveals what's relevant. It evokes meaning. It is inherent, generative and implicit.

So, the first rule of theme is not to talk about theme in your legal writing—at least not *explicitly*. A surefire way to imperil theme is to call it out directly. We've all seen the familiar and often ill-advised opening, "This case is about . . ." Although we can usually summarize our cases in tidy opening lines that encapsulate moral or emotional cornerstones, be wary of doing so automatically. Most of us don't enjoy being told how to think at the outset of writing intended to persuade us. As you know from our earlier Law-Lit articles, we recommend showing readers the way through character, conflict and arc.

It follows that the second rule of theme is to let theme emerge, at least in part, organically from your writing. In other words, let the act of writing extract or suggest possible themes. Close attention to the important facts will often help theme emerge. Ask yourself which facts are the most crucial to your legal story, and why? Your answers will not only focus your legal argument, but also likely suggest the emotional

core of the story. As always, be sure to consider the other side's best facts too.

Still, you may want to use certain professional writing techniques, especially if you're not so comfortable with the organic emergence of theme. We recommend five useful prompts and thought experiments that will help you develop theme in your writing.

1. If you've read our earlier Law-Lit articles, then you know to expect our calling card: **character, conflict and arc**. These often induce theme. Famed playwright Lajos Egri promotes this structural approach, advising us to devise theme with the same three story ingredients in mind. For example, the theme "frugality leads to waste" implies a frugal character, suggests conflict through the verb phrase "leads to" and reveals a likely ending with "waste".<sup>1</sup> Not only does this theme contain the three story ingredients, but it also shares universality of appeal and applicability, making it far more likely that your readers will grasp its meaning. Aim for thematic approaches that echo cherished values or cultural norms about right and wrong. Novelty is rarely necessary to build theme. Your theme must also

hew closely to the facts and arguments you present. Logical and factual inconsistencies might not ruin your story, but they will almost surely kill your legal arguments.

2. Give your writing a **story title** at the very start to orient you to its essence, to drive your narrative or argument. Your title should aim for the emotional center and value conflict inherent in your case. This may seem like tepid advice, or even ill-suited at the outset of any writing project, but effective theme-driven titles can serve as the most useful early organizing principle. They demand an overarching sense of your intentions as a writer, along with your best wishes for your reader's interpretation. Keep in mind that your title/theme may change as your writing ensues. Be willing to change, again keeping in mind that your creativity and thinking will surely evolve through the act of writing.

3. Come up with a **theme statement**: one or two sentences that capture the core emotional meaning and value at stake. One helpful thought experiment is to imagine sitting around the kitchen table with family and friends enjoying coffee during an honest, open talk. They ask you what your legal writing is *really* about, what matters most in what you're working on. Now, give your answer in less than 10 seconds. Work to crystallize this answer into a universal value statement true to both the particulars of your writing and the nature of the world in which we live. A tall order, we know. But this is what makes themes so compelling – their jointly universal and personal appeal.

4. Similar to this last technique, but more focused still: find the one sentence that expresses your writing's irreducible meaning or **controlling idea**, a phrase made popular by

screen writing coach Robert McKee.<sup>2</sup> In searching for this irreducible meaning, concentrate on finding the right verb, preferably a transitive one with a direct object. This shows causality. And causality is crucial to theme because it shows your reader how the world works and what they can do to influence it. For instance, "Actions speak louder than words," demonstrates the potency of the one-sentence theme reduction with a crisp, simple verb.

5. **Collaborate** with someone on theme by asking another what your writing is all about, whether it's your colleague, friend or imaginary ideal legal audience.

Whether we write with theme in mind at the outset, or allow it to grow more organically out of our writing, or a little of both, these five techniques offer us meaningful *choices* as legal writers who care about our readers, who value the quality of our prose and who seek to move others through our written word.

<sup>1</sup> Egri, Lajos, *The Art of Dramatic Writing: Its Basis in Creative Interpretation of Human Motives* (Touchstone/Simon & Schuster, 1942), 8-9. Many of these examples and prompts draw also from *Storycraft: The Complete Guide to Writing Narrative Nonfiction*, Jack Hart (The University of Chicago Press, 2011), 143-45. Hart, too, relies on Egri's pioneering work in narrative structure.  
<sup>2</sup> *Story: Substance, Structure, Style, and The Principles of Screenwriting*, Robert McKee (ReganBooks, 1997), 114-17.

**Mark M. Kitrick, Esq.**  
*Kitrick, Lewis, & Harris, Co., LPA*  
mkitrick@klhlaw.com



**Mark D. Lewis, Esq.**  
*Kitrick, Lewis, & Harris, Co., LPA*  
mlewis@klhlaw.com



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