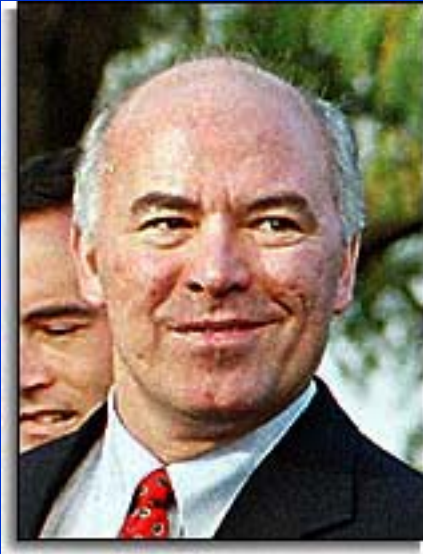


Closing Argument

Learning to Close Like the Pros



Larry Mackey, Oklahoma
Bombing Trial



Johnnie Cochran, OJ Trial

Purpose and Role of Closing

Weave a coherent story from the fragmented images created during the opening, the testimony, and the presentation of exhibits. The story must be consistent with the law and your case theory and theme.

Tell the fact finder what to do and make them want to do it.

Robbie Meripol Barr

S. Lubet, Modern Trial Advocacy: Analysis and Practice, (NITA 1997).

How do you do that?

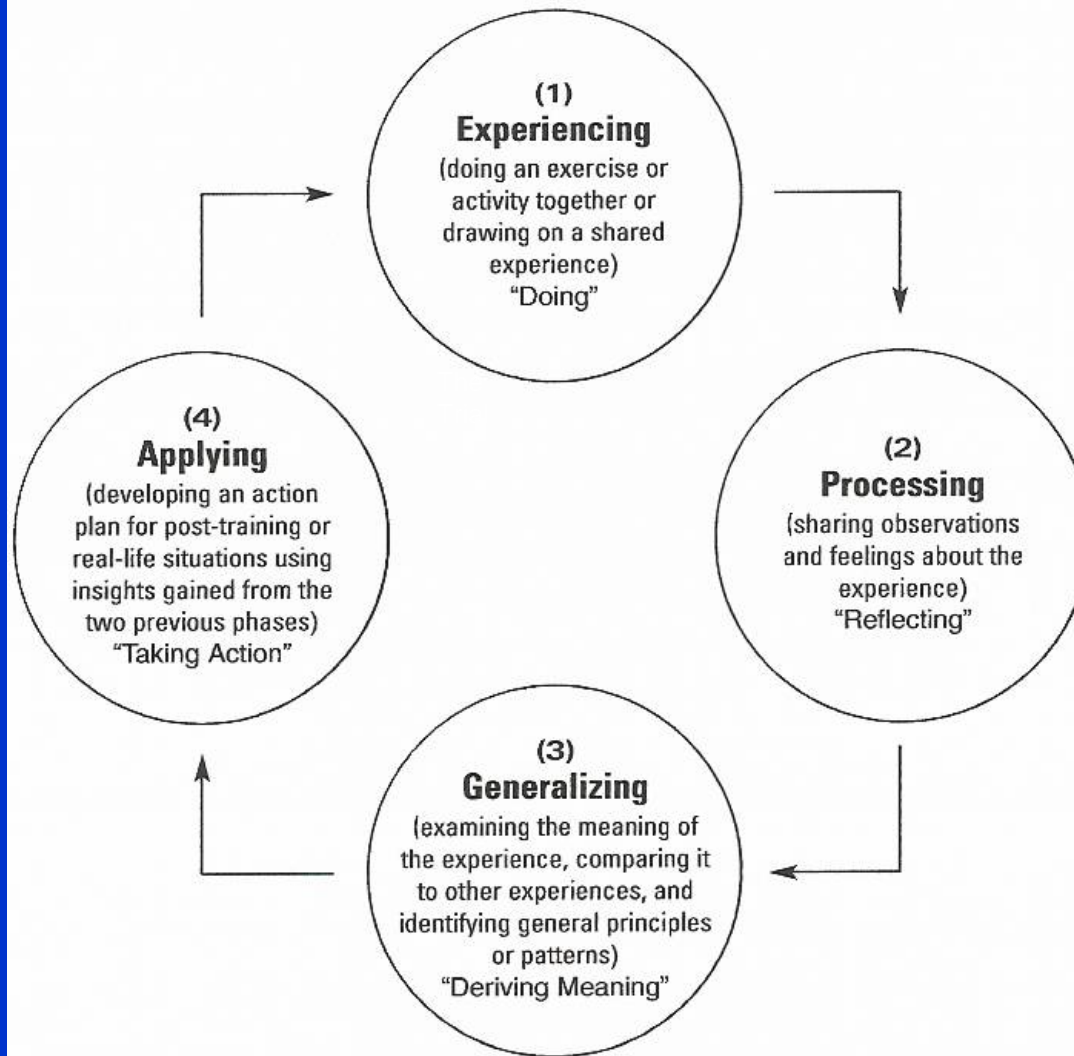
Be a Good Teacher

Be a Good Storyteller

THE TRIAL ATTORNEY'S ROLE AS THE TEACHER & STORYTELLER IN FINAL ARGUMENT

- Use adult learning principles for maximum persuasion in closing
- Incorporate rhetorical devices and organize your closing to increase your storytelling skills

Using the Adult Learning Cycle



Adult learners are practical and problem centered

Problem for Jurors: What do we do with all this evidence?

Solution: As teacher, you should:

- Use stories and examples to link (legal) theory to practice (following instructions, finding facts)
- Anticipate problems (conflicts in evidence) and offer solutions (draw inferences, reconcile conflicts)
- Discuss and help learners (jurors) to apply new information (e.g., review verdict form)

Themes

Themes must capture jury's heart *and* mind

Storytelling develops factual focus: status quo, change in status quo, consequence of change.

Acknowledging bad facts (spinning as needed) establishes credibility. Use charts, time-lines, or physical evidence to heighten impact or highlight relationships

Passion: don't ignore emotional impact; jury shouldn't be wondering "Why should I care?"

Use stories and examples to link case theory to evidence

Story-telling techniques:

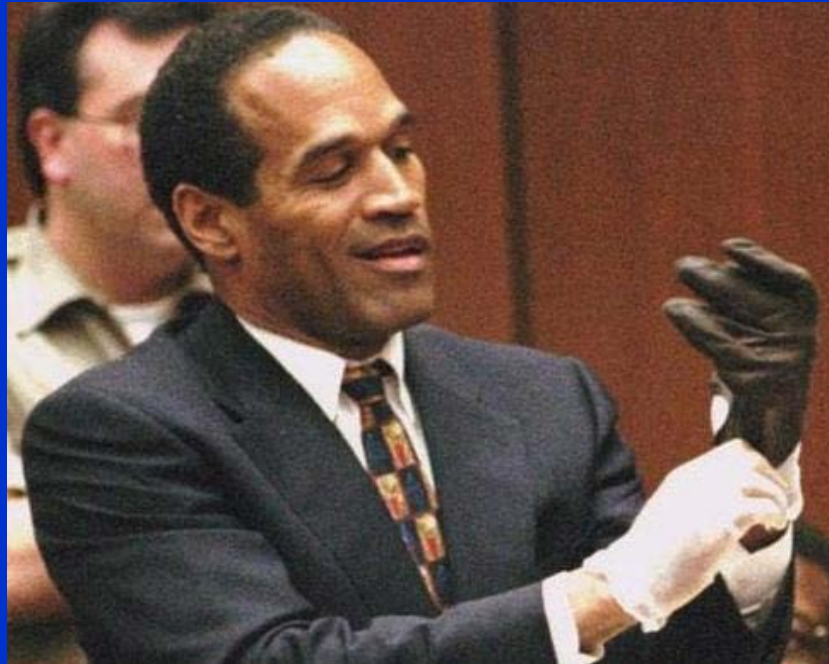
- Headnotes/Transitions
- Metaphors
- Analogies
- Allusions (literary, musical, cultural)
- Repetition (triads)
- Rhetorical questions

Example: Repetition



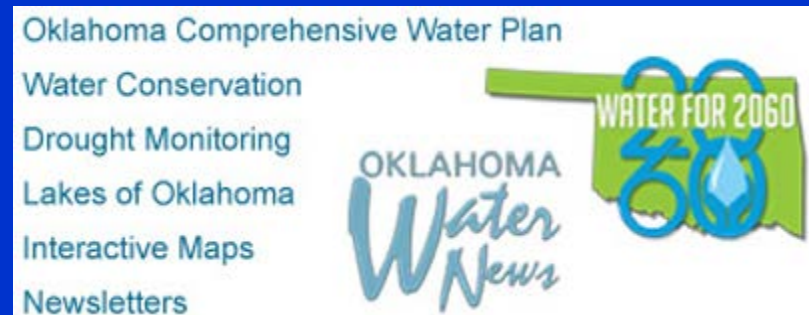
Repetition and Rhetorical Questions

* * * And so it doesn't make any sense. It just doesn't fit. If it doesn't fit, you must acquit.



Example: Headnotes/Transitions

We took you first to the bomb scene,
through sight and
sound, through Lou Klaver.



Example: Rhetorical questions, metaphor



Good teachers/storytellers anticipate problems and offer solutions

Use topic organization (by issue, legal elements, jury instruction or turning points, rather than chronological or witness listing)

Capitalize on shared experiences: to explain case, argue motive and intent, credibility, demeanor, weight of evidence

Example of topic organization: using jury instruction

Mcveigh Sentenced To Die

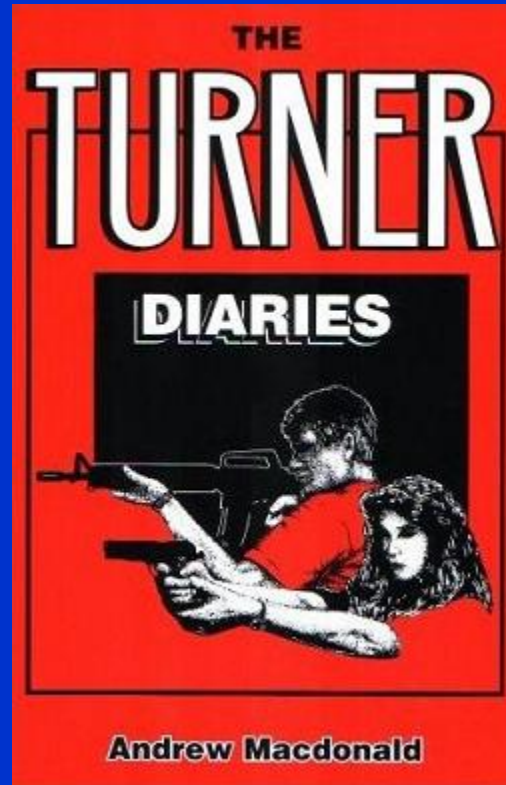
Judge Tells Jurors: You Do Not Have To Answer To Anyone

June 14, 1997 By Maurice Possley, Tribune Staff Writer

DENVER — Timothy McVeigh was sentenced to death Friday for detonating a truck bomb on April 19, 1995, that destroyed the Oklahoma City federal building and killed 168 people.

A nine-page verdict form listed 13 separate mitigating factors submitted by the defense that jurors could weigh in consideration of a lesser sentence.

Example: argue motive or intent



Elements of a persuasive story

- What happened? Use supporting details
- Why did it happen?
- Who can we believe?
- How can we be sure?
- What should be done?

Example: Using details



Example: What should be done?

Defending O.J. by
persuading the jury
acquittal is the right
thing to do



Discuss and help learners
(jurors) to apply new information

Good teachers:

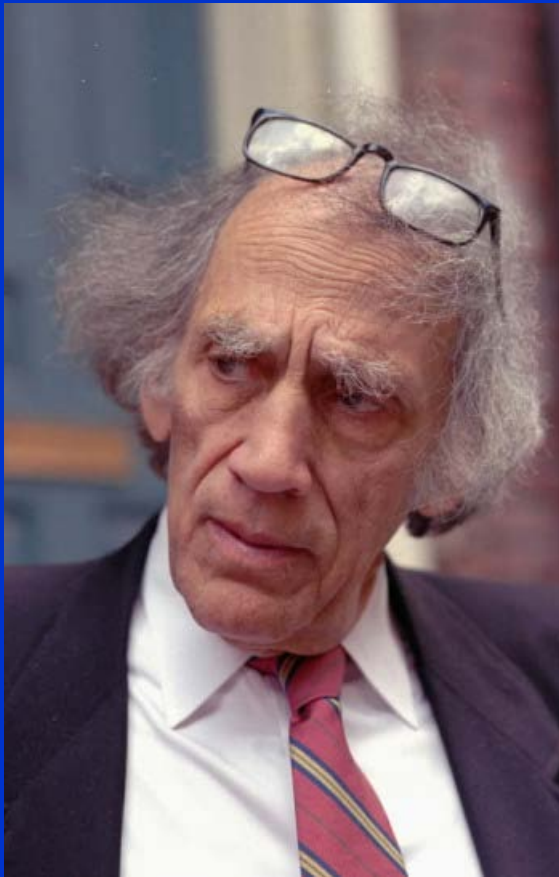
- Allow choice and self direction, lay out options with jury instructions and verdict form
- Help jurors recognize the need to unlearn old assumptions or confront inaccurate beliefs

Example: Helping jurors confront inaccurate beliefs

1976 trial of Patty Hearst



Example of giving jurors the tools they need: Closing Argument for the Defendants by William Kunstler



defense of the
"Chicago Seven" from
1969–1970

Using “the Biscuit” Technique

[T]he evidence shows, Mr. Hinckley admitted, and it is in writing in the record [that] during the period of time when the President was in the hotel he said, "Should I do it? Should I not?" He is thinking, deliberating, planning, if you will. What is the "it"? Buy a soda? Go to the bathroom?

No. Shoot the President.



Teach Learners to Teach Others (Help “your” jurors be more persuasive)

Adult learners retain:

- 20 % of what they hear
- 30 % of what they see
- 50 % of what they see and hear
- 70% of what they see, hear and say
- 90% of what they see, hear, say and do

Teaching (Closing) Style

Learners (jurors) want a teacher (lawyer) who:

- Is sincere, looks them in the eye
- Talks to them as equals, not down to them
- Observes common courtesy
- Gives them the tools to determine the right result