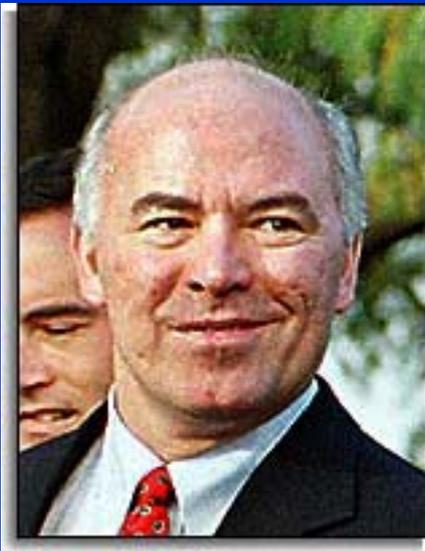


# Closing Argument

## 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?

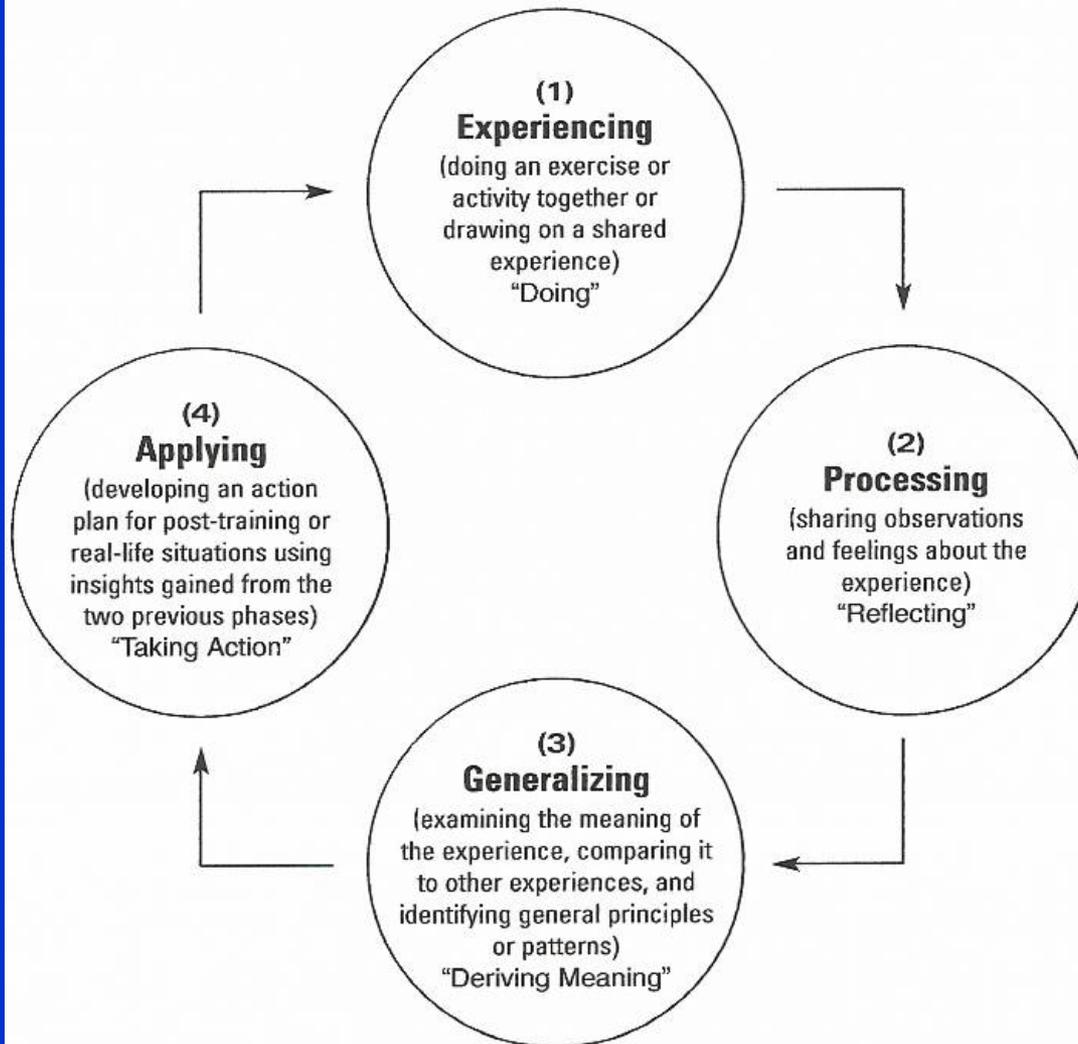
*Be a Good Teacher*

*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

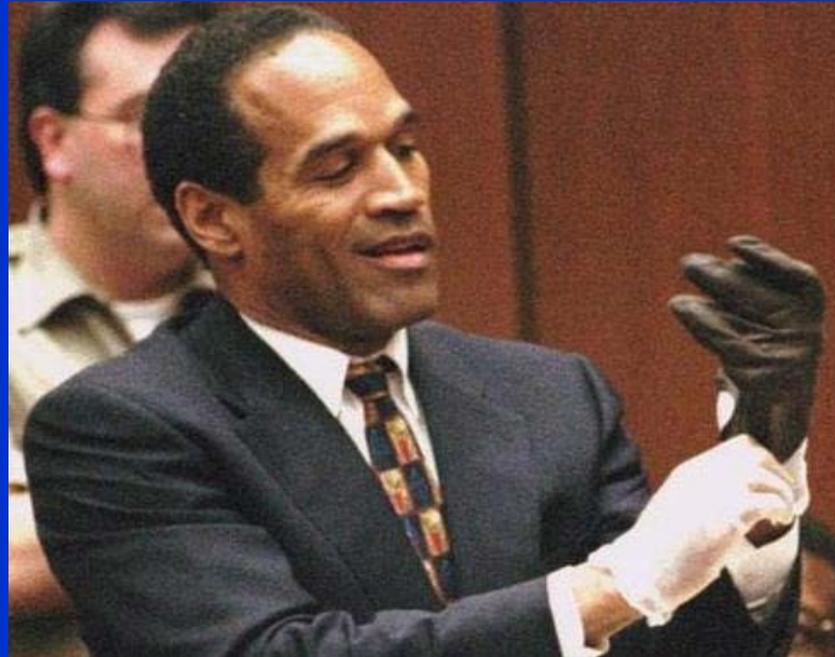
Passion: don't ignore emotional impact; jury shouldn't be wondering "Why should I care?"

# Use stories and examples to link case theory to evidence

## Story-telling techniques:

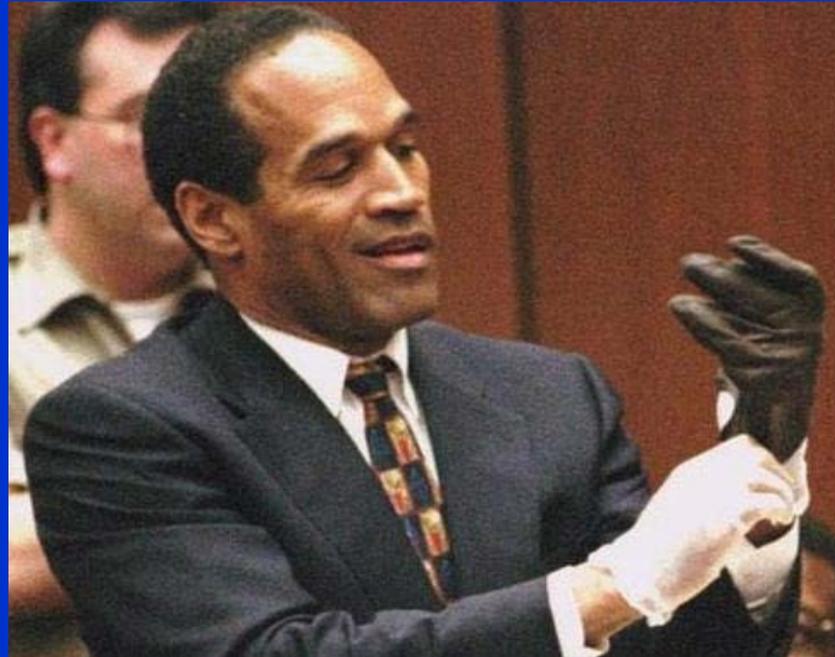
- Headnotes/Transitions
- Metaphors
- Analogies
- Allusions (literary, musical, cultural)
- Repetition (triads)
- Rhetorical questions

# Example: Repetition



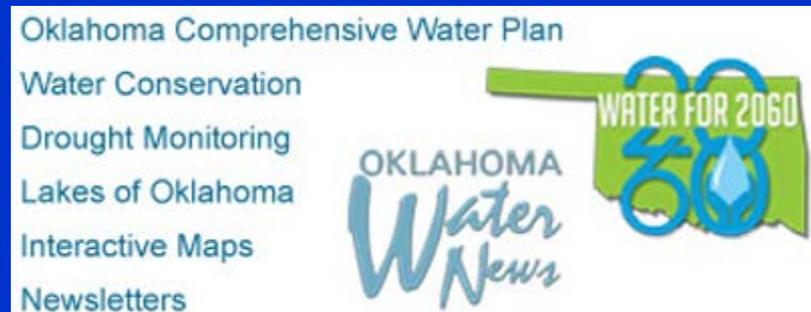
# Repetition and Rhetorical Questions

\* \* \* 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**

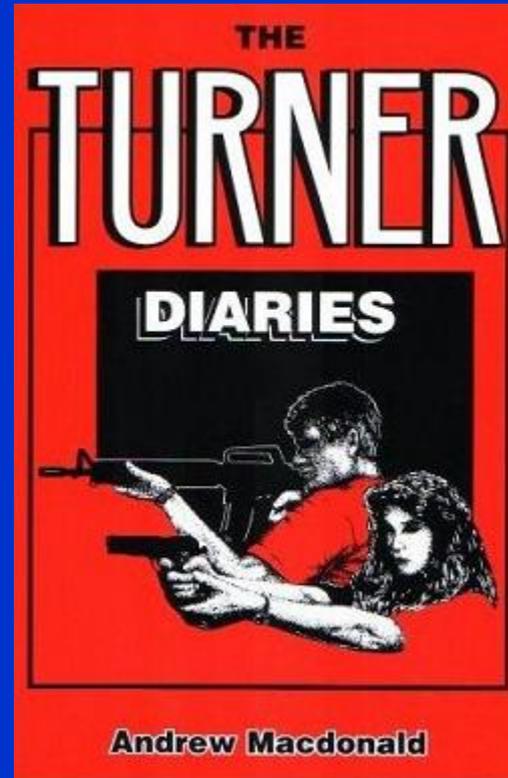
### **Judge Tells Jurors: You Do Not Have To Answer To Anyone**

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:

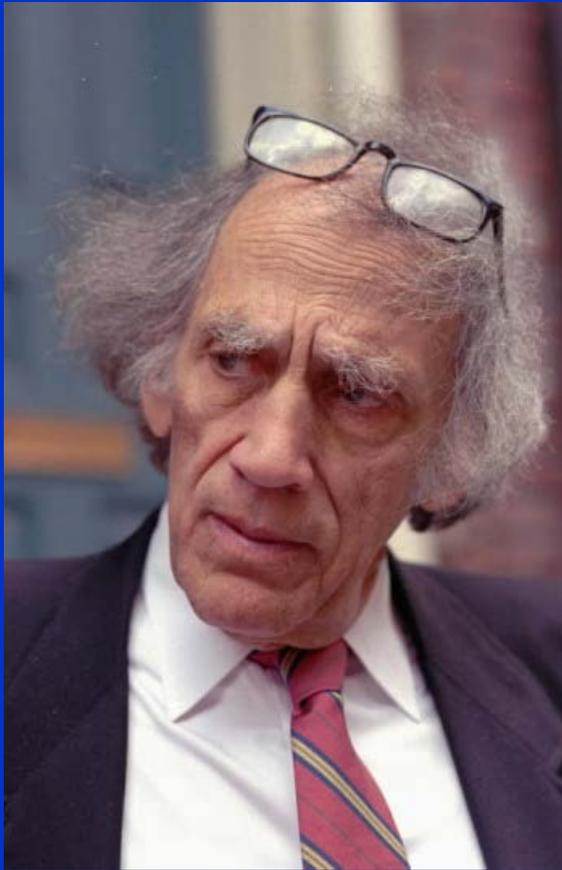
- Allow choice and self direction, lay out options with jury instructions and verdict form
- Help jurors recognize the need to unlearn old assumptions or confront inaccurate beliefs

# 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