

00:00:06.600 Hi, my name is Lori Conroy. I'm an assistant
00:00:08.760 United States Attorney. I work for the Department of Justice.
00:00:12.160 Today, I'm here to offer some suggestions and what I think are
00:00:15.800 best practices for the prosecution of cases involving child abuse.
00:00:20.240 In preparation for a closing argument, just as you did in voir dire, you need to know your
00:00:26.680 jurisdiction's rules on closing arguments. Start with the rules of criminal procedure,
00:00:31.840 any trial memos issued by your court, any standing orders, and ask other attorneys
00:00:37.800 about their experiences in front of this particular judge. Ask the court itself what
00:00:43.920 the practice is as far as timing, location in the courtroom, and use of technology.
00:00:50.800 I once had a judge who did not want the attorneys to get within a certain distance of
the jurors,
00:00:57.720 and he put white athletic tape on the floor as a barrier. I got home after closing one
00:01:05.040 night and realized that I had been walking around with the white tape on my shoe.
So,
00:01:10.480 I got as close to the boundary, and then some, as is possible. But the last thing you
want,
00:01:17.120 in all seriousness, is for a judge to interrupt your closing because you've
00:01:22.360 done something that they're not comfortable with. So, you should know that going
in.
00:01:27.640 You should also know your jurisdiction's
00:01:30.480 case law and rules about things you can say and cannot say in a closing argument.
00:01:36.600 In some jurisdictions, there is a lot of litigation on particular things that are
00:01:42.080 said by prosecutors. And the last thing you want is to say something in your closing
argument
00:01:47.520 that will create post-conviction action and potentially reverse a guilty verdict from
trial.
00:01:55.880 Preparation for a closing argument should begin when you begin preparing for trial.
00:02:02.360 Because before you begin preparing for trial, you should know the theme and the
theory of your
00:02:07.720 case. You should start developing your theme and theory as early as jury selection.
It should be

00:02:14.400 weaved through all of your examinations, and it should come full circle in the closing argument.

00:02:20.640 When you're thinking about your theme and your theory,

00:02:24.040 think about how you want to begin your case in jury selection and opening statement, and come

00:02:30.080 back to it in the closing argument. Throughout the trial, keep a separate notebook and highlight

00:02:37.520 particular quotes from witness statements or particularly compelling pieces of evidence that

00:02:44.160 you want to use in closing. It might seem painstaking, but leave nothing to chance.

00:02:52.280 You want to focus on each of the elements that you

00:02:55.920 are required to prove, and you want to show the jury

00:03:00.960 how you introduced evidence and testimony that prove each of those elements beyond a reasonable

00:03:07.120 doubt. I don't advise that you go through a trial witness by witness in chronological order.

00:03:14.880 There are certain things that you need to cover in a closing argument. Accept the burden of proof,

00:03:20.680 accept the elements of the offense, but do so in a way that tells the whole story. Go from

00:03:28.200 the micro to the macro. Some people like to use a PowerPoint presentation to display the elements

00:03:36.360 and the evidence, and I think in a longer trial that can be very helpful to the jury because you

00:03:42.280 can show the elements and then you can show particular photographs. You can highlight

00:03:47.120 things that a child says that prove each of those elements. But every case is different.

00:03:52.680 There may be a more narrow case with fewer counts that you feel you don't need a closing argument

00:03:58.840 to do. You can start your closing argument at the beginning of your trial preparation,

00:04:05.040 and you can include the burden of proof and the elements of the offense. But don't write

00:04:10.440 a closing argument and then not change it based upon what happened in trial.

00:04:16.120 As we've already talked about, a child may be different on the stand. Evidence

00:04:21.560 may come in differently. And you want to be sure that your closing reflects

00:04:26.720 the trial that took place in that courtroom and that the jury heard.

00:04:31.160 In a case of child abuse or child sexual abuse, much of the evidence is going to

00:04:37.160 come from that witness themselves, and their credibility is going to be heavily

00:04:43.160 weighed by the jury. You can remind the jury that they are the sole judges of the

00:04:49.280 weight and credibility of the testimony, but that they don't do that in a vacuum.

00:04:55.800 Use the jury instructions given by the court to show them what

00:04:59.840 they should be considering and remind the jurors that there is a difference

00:05:04.640 between judging a person's credibility, as in the credibility of their testimony,

00:05:09.800 and judging a person. It is not a jury's role, and I will often remind them of this,

00:05:15.800 to judge a person, to judge their actions, or to impose on a child or the mother or

00:05:23.000 father or other caregiver of a child what you think they should have done in a situation.

00:05:29.040 Their role in judging the evidence presented as against the facts and trying to determine if the

00:05:36.360 government has proved beyond a reasonable doubt what the defendant did, is to judge

00:05:40.840 the credibility of what they're saying, not their conduct or who they are as a person.

00:05:46.040 Explain how each jury instruction applies to the case. And this is where you need

00:05:51.000 to know whether the judge is going to be instructing the jury before or after closing,

00:05:56.240 so that you can anticipate. You may even want to get the court's permission

00:06:00.360 to highlight particular instructions that you know that the court is going to give.

00:06:05.560 As you go through those instructions, apply them to your particular case. One example might be

00:06:13.840 how you consider certain types of evidence. And you'll want to explore with the jury what those

00:06:19.200 types were and what they heard that fit into each of those categories in this particular trial.

00:06:24.360 Address defenses. Don't spend your entire closing argument going down the rabbit hole that may have

00:06:32.840 been created by the defense. But be sure that you do address it in some fashion. It is an important

00:06:39.640 part of the jury's consideration what each of the parties put forth in a closing argument.

00:06:45.200 So, whether it's in your affirmative closing or if you have the opportunity to rebut,

00:06:50.240 address what the defense is putting out there for the jury to consider. And if it is something

00:06:57.240 that strays from their consideration of the elements and the jury instructions,

00:07:02.400 bring them back to the considerations that they need to be focusing on.

00:07:06.800 Criminal prosecution can take time. So, be sure as part of your investigation you ask

00:07:13.800 the law enforcement officers to gather evidence of what a child looked like

00:07:19.360 at the time of their offense and introduce that at the appropriate time during trial,

00:07:25.960 so that you can remind the jury that the person who was in front of them describing the conduct

00:07:31.040 isn't the same person in some respects as the person who disclosed the conduct.

00:07:36.400 Because it may be years later when you introduce that photograph, and you talk about the child or

00:07:44.360 the adolescent or the young adult's testimony, remind the jurors how difficult it was for them

00:07:50.560 to talk about sensitive things that had been experienced by them in their lives.

00:07:56.320 Bring them back to that individual on the stand

00:07:59.880 and have them look at their credibility through that lens. Remind the jury that

00:08:05.880 children are not adults, and the way that they give information is not the same. And

00:08:13.240 remind the jury that things may not be exactly the same as when they first disclosed them.

00:08:19.400 Often times, the defense will want to challenge a witness's credibility by using a statement that

00:08:25.200 they made some time ago versus what they're saying in the trial on the stand. And you may want,

00:08:32.120 in closing argument if it's appropriate, to remind the jury that even in our own

00:08:37.600 lives we don't relay things in the same way every time. And in fact, if we did that,
00:08:42.840 might be more suspect than starting at a different point, remembering things differently.

00:08:49.280 And this is where having an expert may be very helpful to your case,

00:08:54.280 to talk during the trial and explain what might be otherwise counterintuitive responses to

00:09:00.360 trauma and how memory, sensory memory, may be different than remembering what someone said.

00:09:08.480 Be sure that you bring all of that around to the jury when they are

00:09:12.080 considering the child witness, the child survivor, and their testimony.

00:09:17.240 In cases of child abuse and child sexual abuse, you likely have medical professionals who engaged

00:09:25.120 in some sort of examination with a child. And you may not, depending on the historical nature

00:09:31.920 of the disclosure, but in cases where a child was subject to a sexual assault examination,

00:09:39.280 I call that nurse to testify at trial even if there weren't any findings.

00:09:45.240 Because it's important for the jury to see what a child went through even

00:09:49.640 after they disclosed something very traumatic. That even that experience,

00:09:55.720 sometimes by medical professionals of an opposite sex through something that

00:10:00.920 is embarrassing and invasive, and why it's important to think about that when they're

00:10:07.120 thinking about the credibility of what they disclosed and what they're testifying about.

00:10:12.120 A closing argument is really your last opportunity to talk to the jury about

00:10:19.280 the case itself. Think about if you were to sit across from a friend at a coffee shop

00:10:27.760 and you were going to tell them what a case was. That's the time to be having this conversation.

00:10:33.680 It's not the time to be formulaic. It's not the time to use a lot of legalese.

00:10:40.080 You were talking to lay people about a situation that a child was put in that

00:10:47.320 was a traumatic and difficult experience for them. And you have done your best by

00:10:54.280 the point of closing argument to support and corroborate the disclosures made by that child.

00:11:00.680 You've determined that you can prove this case beyond a reasonable doubt or you would

00:11:05.480 not have charged it. So, put that effort into your closing argument and make sure that when

00:11:11.880 you sit down at the end of the trial that you have put this case together in a way that no juror is

00:11:19.120 questioning what it is about, what the evidence was, and how you've met your burden of proof.