

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.
00:00:20.160 In my experience, attorneys either love, hate, or overlook jury selection. But it
00:00:27.160 really is one of the most important pieces of trial. And it is something that should
00:00:32.240 be carefully prepared for, just as you do every other aspect of trial.
00:00:37.160 Your preparation should begin by knowing what your court expects in jury
selection. You
00:00:43.480 should know the rules of criminal procedure, you should know the local standing
orders,
00:00:49.280 and any trial memos that your judge has put out for attorneys to follow.
00:00:55.600 You can also ask other attorneys who've had trial experience in front of the
particular
00:01:00.160 judge, and you can ask the court herself. When you have a status conference, ask
what
00:01:05.280 the expectations are, what the boundaries are for jury selection. Specifically ask
how prospective
00:01:12.920 jurors will answer sensitive questions in cases of child abuse and child sexual abuse.
00:01:19.240 Often times, jurors will have personal experiences, and they
00:01:22.640 may not feel comfortable in the courtroom setting discussing those things.
However,
00:01:27.320 there has been some recent case law on courtroom closure that may prevent that,
00:01:32.200 may create a post-conviction issue if you don't adequately address courtroom
closure.
00:01:39.880 It is suggested that you have jurors answer sensitive questions in open court. If
they're
00:01:45.960 uncomfortable doing so, you could ask that the rest of the potential jurors leave the
courtroom,
00:01:51.120 but the courtroom remain open. Or you could ask that that juror answer the
questions at sidebar,
00:01:57.440 where the courtroom is still open and people can at least observe the juror.

00:02:02.400 Alternatively, you can ask for the defense to waive the Sixth Amendment concerns that

00:02:09.240 might come with a closed courtroom. Also, find out the order of the questioning and

00:02:15.520 the manner of the questioning. Some judges say that because the prosecution has the burden,

00:02:20.600 they go first. Others say because the prosecution has the burden, they go last. If you have this

00:02:27.560 basic information, that will help you time and create the content of your questioning.

00:02:34.760 You should also carefully review the information about prospective jurors. Each jurisdiction is

00:02:41.000 a little different. You may just get the first initial and last name of the prospective juror.

00:02:46.600 You may get some brief biographical information such as year of birth and employment, if any.

00:02:54.040 Whatever information you take, use open sources to find out a little bit more about the jurors.

00:02:59.840 Run them through the publicly available information on ND courts. You're looking

00:03:04.320 for interactions with the criminal justice system. Also, be aware of the really small

00:03:09.920 communities that we operate in. You may have jurors who are related to court staff,

00:03:15.560 judiciary staff, the parties in the case, the attorneys, or they may know other jurors.

00:03:21.800 You're going to want to know this information going in. Think about the theme of your case

00:03:28.480 and how you can explore that in jury selection, again within the confines of the rules that the

00:03:34.640 judge gives you. But really, your theme should start in jury selection and should carry on

00:03:40.440 throughout the questioning of each of the jurors, and then come full circle in the closing argument.

00:03:47.280 Now, child abuse and child sexual abuse is a topic that many people have strong feelings about,

00:03:53.400 and many people have personal experience with it. You should explain, unless someone already has

00:04:00.000 by the time you stand up to do your questioning, that jury selection is also called voir dire,

00:04:06.160 which means "to speak the truth." And that what you're really looking for in jury selection is

00:04:11.480 honest answers so you can determine whether or not you have fair jurors who can listen

00:04:17.040 to the evidence, listen to the law, and fairly determine what the defendant did.

00:04:22.800 You can explain to jurors that bias is not a pejorative. We all come into

00:04:28.200 a courtroom with bias. Bias is based upon how we were raised,

00:04:32.560 the experiences we have. But there may be something about their particular experience

00:04:37.080 that might not make them the right juror in this case. And that's what you're trying to determine.

00:04:43.880 Explore the general themes that exist in child abuse and child sexual abuse cases.

00:04:49.520 One example is forensic evidence or lack thereof. Many of these cases are historical

00:04:55.400 disclosures. The average age of disclosure of child sexual abuse is in the 50s. So, you may

00:05:01.640 not have corroborating forensic evidence. That's something to be explored through questioning.

00:05:07.920 Children, as historians, commonly people have experience with children, either their own,

00:05:13.960 their grandchildren, working with children. And you may want to ask some questions about

00:05:19.240 how children remember things, how children relay things that have happened to them.

00:05:24.600 One topic that is a must, in my experience in child sex abuse cases, is speaking about intimate

00:05:32.840 things like sex, hurtful or embarrassing things in public. I like to set up a theme in jury selection

00:05:40.760 about how difficult it is to talk about those things in a public setting such as a courtroom.

00:05:45.680 So, when you later have a child or even an adult who's relaying experiences that

00:05:50.040 happened to them as a child, you can go back to that in closing argument and have

00:05:54.600 the jurors recall how they felt when they were asked about those things and
00:05:59.880 use that when they're judging credibility of the child or the adult who's testifying.

00:06:05.480 Think about whether your case involves use of controlled substances or
intoxication.

00:06:11.040 Explore with jurors whether their feeling is that a controlled substance or use of
alcohol

00:06:16.800 creates an excuse for behavior or if it's a reason for behavior, and judge accordingly

00:06:22.360 whether that person can listen to the facts in this case and be a fair and unbiased
juror.

00:06:28.320 One of the themes I always explore in child sex abuse cases is where it

00:06:32.960 happens and why jurors should begin to understand, in jury selection,

00:06:38.320 that these things often happen behind closed doors, away from other eyes,

00:06:42.680 away from surveillance footage and other things that might be recorded. And the

00:06:46.480 reasons for that. You want to begin exploring that theme so then a juror isn't
questioning

00:06:53.120 why wasn't there more evidence beyond what a child and other corroborating
evidence says.

00:06:59.680 Physical abuse, think about what parenting tools may or may not have been used for
those

00:07:06.200 potential jurors. Corporal punishment, spankings, other kinds of discipline,

00:07:11.560 being sent to bed without a meal. And if your case involves physical abuse or
neglect, explore with

00:07:19.240 the jury when that flips from discipline and good parenting into criminal conduct.

00:07:25.920 Get a sense for their feelings on these important themes. Ask about when is a ripe
age for a child

00:07:34.000 to be left alone or in the care of other children. And be sure when you're asking
these questions,

00:07:39.840 you're asking about both a juror's personal and their professional experience.

00:07:45.640 You may have jurors who are mandated reporters such as nurses, teachers,

00:07:50.080 social workers. And be sure that you explore these themes with them in both their
personal and their

00:07:55.840 professional setting. It's very important to keep track of hands that are raised,

00:08:01.400 nods that are given when you're looking at the jury and asking them about these questions.

00:08:07.560 Be sure that you make a record of each juror who spoke and come back to them and ask them,

00:08:14.440 if time allows, that will help you if there are later challenges following conviction

00:08:19.920 to not exploring a possible bias or other things about a potential juror.

00:08:26.920 And once you've had the full opportunity to listen to the answers to questions asked by the court,

00:08:32.520 by the other attorney, and to your questions, know and understand the law

00:08:37.039 of preemptory challenges and your other strikes, and exercise them effectively.