We're Just Going to Talk: Presenting Your Case in Opening Statement and Closing Argument

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1. The importance of opening statements

- Jurors make up their minds early
- Jurors often justify verdicts by adopting the words of the prevailing attorney

Source: U.S. Air Force (clip)

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Persuading in your opening statement

- Tell a story
- Develop a theme and weave it throughout your opening

Possible themes

- Family secret
- Vulnerability
- Other themes
  - The words of a child
  - “My mommy hurt my head”

Building blocks of strong opening statement

- Powerful, descriptive language (word picture, perspective of victim)
- Avoid legal terms and crime elements
- Use negative facts positively
- Show sincerity
- Create sense of rhythm
- Use exhibits
- Personalize victim
- Prepare jury for victim demeanor
- Don’t overstate case
- End with confidence
The very first thing

- Draft closing argument before trial begins

Vincent Bugliosi, Outrage

“In my opinion, a summation must either be written out or set down in a comprehensive outline. The problem with even an outline is that although all the points the lawyer wants to make are there, he does not have the all important articulations; that is, he does not have his points expressed in the most effective way.”
Bugliosi (cont.)

“...and it’s simply not possible to powerfully articulate a great number of points, one immediately following another, extemporaneously. There is a best way to make a point, and to find it takes time and sweat on the yellow pad...”

How about Churchill?

Practice, practice, practice
Organization

- Reference theme/Expression of gratitude ("It goes w/out saying.")
- Recite the elements of the crime in the context of victim’s testimony
- The dramatic question

Why should jury believe the child?

- Testified under oath
- No incentive to lie
- Medical evidence
- Physical evidence
- Victim lacks sophistication to pull off a big lie
- Other witnesses
- The defendant corroborates victim
- The lie is not exaggerated
- Interviewers are skilled
- Expert witnesses
Putting it all together

- Summarize the reasons to believe the victim in a way that highlights the absurdity of any claim the child is lying.

Address defendant’s arguments

- The statements are not inconsistent.
- The statements are inconsistent but understandable.

Inconsistent statements
**Attack the forensic interviewer**

- Concede there is no perfect interview
- Examine the interview as a whole
- Absence of threats or encouragement to lie
- Encouragements to tell the truth
- Numerous appropriate questions
- Points on which the child disagreed
- Some direct questions are necessary

**“It’s Mom’s fault”**

- Point out the illogical nature of the argument
- Use the divorce as a factor supporting the child’s credibility
- Investigate the divorce and the facts surrounding the child’s first disclosure
- Look for sensory details

**When appropriate, mock outrageous statement**
Other points

• Look at the jury
• Point at the defendant
• Ask for a guilty verdict
• Use analogies to explain legal concepts
• Use powerful quotes at least once

Erik Erickson

“Someday, maybe, there will exist a well reasoned, well informed, and yet fervent public conviction that the most deadly of all possible sins is the mutilation of a child’s spirit.”

“Child abuse leaves a footprint on the heart.”

—Anna Salter
Nanci Griffith

"If wishes were changes, we'd all live in roses, and there wouldn't be children who cry in their sleep."

Keep your spirits up

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