

Victims & Witnesses with Disabilities in the Legal System



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Disclosure

I have no financial relationship
to disclose

How Common?

How Common?

- People with Intellectual Disabilities More Likely to be Victims of Sexual Assaults
 - More than 90% of people with developmental disabilities will experience sexual abuse at some point in their lives
 - Valenti-Hein Schwartz 1995
 - 49% of people with intellectual disability will experience 10 or more instances of sexual assault
 - Sobsey, D. & Doe, T. (1991). Patterns of sexual abuse and assault. Sexuality and Disability, 9 (3), 243-259

Type of Disability

- Any type of disability increases risk factor
- High Levels of Risk:
 - Intellectual disabilities
 - Communication disorders
 - Behavioral disorders
- Multiple Disabilities = Even Higher Risk Levels
 - Sullivan, P.M. & Knutson, J.F. (1994). The relationship between child abuse and neglect and disabilities: Implications for research and practice. Omaha, NE: Boys Town National Research Hospital

Children with Disabilities

- One Study in Nebraska:
 - 55,000 children in study
 - Children with intellectual disabilities 4.0 times as likely to be sexually abused
 - (Sullivan & Knutson, 2000).
- Another Study:
 - Males with disabilities twice as likely to become a victim of sexual violence
 - The Roehar Institute (1995). Harm's way: The many faces of violence and abuse against persons with disabilities in Canada

Why So Prevalent?

- Logically that makes sense
- Perfect Victims
 - Unable to understand what is being done is wrong
 - Unable to communicate what is happening
 - No one will believe this poorly behaved child
- Especially if multiple disabilities

Why So Prevalent?

- 97 to 99 % of abusers known & trusted
 - 32 % of abusers family members or acquaintances
 - 44 % had a relationship with the victim related to the victim's disability
 - Residential care staff, transportation providers & personal care attendants
- * Balderian, N. (1991). Sexual abuse of people with developmental disabilities. Sexuality and Disability, 9(4), 323-335.

Why So Prevalent?

- Victims trust the offenders
 - Persons providing them care
 - Don't realize actions are inappropriate
- Offenders may threaten victim
 - Many children take these threats seriously
 - Children w/ disabilities more likely to take seriously
- Fear of getting in trouble

*Stats & Statistics thanks to The Arc's "People with Intellectual Disabilities and Sexual Violence" by Leigh Ann Davis, M.S.S.W., M.P.A. www.thearc.org

Alexis

13 years old with "moderate" intellectual disabilities

- 1st Time – D told her to come into kitchen. He pushed her down to knees and "pulled out his thing." "Humped" her
- 2nd time – Alexis watching TV. D came into room, closed door, pulled out his "thing" & told her to suck it. Said no twice; forced her mouth onto his "private part." He "squeezed his penis" and she saw and tasted "white stuff" in her mouth
- 3rd Time - D "sucked" on her breasts underneath her shirt and licked on her neck and ear.

Fear of Getting in Trouble

Victim 13 years old during first incident

5	Q.	Now, did you tell anyone what Mr. Sturgis did that
6		night?
7	A.	No.
8	Q.	And why didn't you tell anyone what Mr. Sturgis did?
9	A.	Because I thought my mom was going to be mad at me
10		about it.

Consequences of Abuse

- Psychological consequences:
 - Depression
 - Anxiety
 - Panic Attacks
 - Low Self-Esteem
 - Shame and Guilt
 - Irrational Fear
 - Loss of Trust

Consequences of Abuse

- Psychosomatic symptoms:
 - stomachaches, headaches, seizures and difficulty sleeping
- Behavioral difficulties include withdrawal, aggressiveness, self-injurious and sexually inappropriate behavior
 - Sobsey, D. (1994).

Challenges to Prosecution

- All of these factors interacting before you ever enter the picture
- Remember: victim or witness is still a child
 - Perhaps on a different developmental level than chronological age

Building Rapport

- Must Understand Disability
 - Intellectual Disability
 - Learning Disability
 - Communication Disorder
 - Behavioral Disability
 - Physical Disability
- Combination of Several

Essential Elements of Intellectual Disabilities

- 1) IQ of approximately 70 or below
- 2) Ability to be independent in the activities of daily living is not commensurate with chronological age;
- 3) Onset of disability is before age 18

Intellectual Disabilities

MILD: IQ level 50-55 to approx. 70
(mental age: 8.3 – 10.9)

MODERATE: IQ level 35-45 to 50-55
(mental age: 5.7 – 8.2)

SEVERE: IQ level 20-25 to 35-40
(mental age: 3.2 – 5.6)

PROFOUND: IQ level below 20-25
(mental age: 3.1 or less)

* DSM-V term

Clinical Assessment

- Stanford-Binet Intelligence Scale
- Wechsler Intelligence Scales for Children – Revised
- Kaufman Assessment Battery for Children
- Peabody Picture Vocabulary IQ Test

Social Development

- ◆ Short-term memory impairment
 - ◆ Lower language ability
- ◆ Problems with abstract thinking
 - ◆ Social isolation
- ◆ Inappropriate coping strategies
- ◆ Over-Accommodation/obedience
 - ◆ Desire for social acceptance

Intellectual Disability

- Intellectual Disability
 - Must understand the disability
 - Is child moderately delayed? Severely delayed?
 - Are there model practices for communicating with someone with this disability
- Partner with CAC or other local mental health professionals for help!

Intellectual Disability

- Understand how disability affects [this child](#)
- Speak with Family:
 - Get sense of where the child is at
 - How is family successful at communicating?
 - Any Triggers?
 - If non-verbal, does child communicate in other ways?
 - Safe environment for communicating?
 - Environmental Sensitives?

Understanding Disability

- Does the Family Understand Nature of Disability?
 - Alexis’ mom described her as having “ADD Real Bad”
- Sometimes family members suffer from disabilities themselves
 - Example: defendant with two mentally challenged parents

Behavioral Disability

- Again, before meeting child, understand best way to communicate
 - In general
 - With this child
- If no cognitive disability as well, tone and environment will be very important
- Perhaps meet along with therapist? Comforting Person?
 - Caution against family because of defense

Building Rapport

- Meet child where they are at:
 - May not be willing or able to discuss facts first time
 - That is OK!
 - More important child begins to trust you
- Every time you speak with child, don’t make it about the case

Building Rapport

- Be flexible
 - More communicative at home?
 - Is office conducive?
- Inability to Focus
 - Several short meetings

Talking About Case

- Let child lead conversation
 - Open ended questions
 - Like forensic interview
 - You can still guide to keep on track
- Ask for more details
 - You will need more details in court
 - Allows child to become more comfortable talking about it

Understand that child may have difficulty with:

- Timelines
- Dates
- Places
- Addresses
- Nicknames
- Colloquialisms
- Figurative Language
- Complex Sentences

6	Q.	How long do you think you lived in Atlanta?
7	A.	I say two weeks.
8	Q.	You have only been in Atlanta two weeks. Where did you live before that?
9	A.	In Waycross. Before we came up here, we was in Waycross.
10	Q.	Now, Alexis, you and I have met a couple of times already, right?
11	A.	Right.
12	Q.	And we met more than two weeks ago, didn't we?
13	A.	Yes.
14	Q.	Were you living in Atlanta when we met?
15	A.	Uh-huh.
16	Q.	So you've been in Atlanta longer than two weeks, haven't you?
17	A.	Yes.
18	Q.	You have been in Atlanta a few years?
19	A.	I think so.

Use Their Language

17 A. He started going behind me and I started -- being in
 18 the front of him. He had me in the front of him and then he
 19 started trying to hump me on the floor and stuff.

Use child's language, but use it to get more information:

3 Q. You said that he was trying to hump you?
 4 A. Yes.
 5 Q. So tell me about that. How -- what was he trying to
 6 do?
 7 A. He was like trying to stop me from getting up and
 8 stuff because I was trying to get up and try to stop it and
 9 stuff, but he was still already on top of me until Shaquita
 10 came in there.

Use Their Language

"White Stuff"

8 Q. Now, where did the white stuff go?
 9 A. It was all in my mouth.
 10 Q. Do you remember what it tasted like?
 11 A. It had like a strong taste. It was like strong
 12 looking. It was like sour or something.
 13 Q. Do you remember what it looked like?
 14 A. It was kind of clear-ish a little bit.
 15 Q. Did he say anything to you?
 16 A. No.
 17 Q. Did he say anything before the white stuff came --
 18 went into your mouth?
 19 A. When it got in there, he just kept saying "Hurry up
 20 and catch it before it comes out some more." But the stuff was
 21 still in my mouth then.

Use Their Language

- Their language may be non-verbal
 - Drawings
 - Anatomical Drawing
 - Anatomical Dolls
 - Emotional Outbursts
 - Other Non-Verbal Communication

Always Listen to the Answer!

7 Q. Well, let's talk about that. Do you remember what
 8 you were wearing that day?
 9 A. I think I was wearing a shirt that you can see, like
 10 you can see the breasts through it. You can kind of see the
 11 breasts through it.
 12 Q. Do you remember what color the shirt was?
 13 A. No.
 14 Q. And what do you mean you can kind of see your breasts
 15 through it?
 16 A. It had like a line, like a little line going through
 17 it like that.
 18 Q. So it was kind of cut kind of low?
 19 A. Yes.

Use of Exhibits

11 A. I turned around and I seen him pulling out his thing.
 12 Q. And do you -- you say his "thing," do you know
 13 another name for that?
 14 A. Like his private area.
 15 MR. CHASE: Your Honor, may I approach? For the
 16 record I'm showing the witness State's Exhibit 2 for
 17 identification purposes.
 18 BY MR. CHASE:
 19 Q. Alexis, if you were to look at this, would this help
 20 you to identify what you mean by "private"?
 21 A. This.
 22 Q. And is this picture going to help you identify --
 23 help you identify it?
 24 A. Yes.
 25 MR. CHASE: Your Honor, at this time I move to admit

Victim Reactions

- Must understand & explain victim reactions
 - Victims / Witnesses may not react in logical ways
 - Is this associated with their disability?
 - Consider expert to explain
- Don't hide from victim reactions – use them to highlight inability to make this up!
 - “Wouldn't the lie be better??”

Victim Reactions

15 Q. What did you do after you washed your mouth out?
16 A. I think I went back into the room and got on the
17 floor again.
18 Q. And what did you do when you got on the floor?
19 A. I start watching a movie again.
20 Q. And do you remember if Mr. Sturgis was in the room?
21 A. He was still in there.
22 Q. Where was he at?
23 A. He was still on the bed.
24 Q. And did he say anything to you?
25 A. No.

Additional Evidence to Obtain

- Medical Records
- School Records
 - Talk to teachers
- Mental Health Records
 - Are they protected in your state??
 - What are discovery rules??
- Do you have the child assessed?

Present Therapist / Expert?

- Case by Case Decision
 - Does it help or hurt your case?
 - Are you going to get much from it?
 - Worth putting private records in public courtroom?
 - Will defense attempt to put evidence in?
 - Will therapist hold up under cross examination?

Closing Arguments

Child's disability can be your strongest argument

For Closing

Contextual Details

21	What did she tell you? That the white stuff came
22	out of his "thing" and went into her mouth. What else
23	did she do? She told you that it had a strong taste
24	and it was sour. You're right, those are contextual
25	details because that's what she experienced. There was
1	no one suggesting to her that it looked kind of
2	clear-ish and that he told her hurry up and catch it
3	before it comes out more. That's disgusting. That's
4	disgusting to do to a child and it's especially
5	disgusting to do to a child who has disabilities.

For Closing

Wouldn't the Lie be Better??

12	room. And, once again, I ask you, if this was all a
13	lie, if they were all plotting, don't you think they
14	would have come up with a better fact than I went back
15	into the room and I sat down and watched TV and the
16	defendant was still there? It's not a lie. It's what
17	happened. It's what she experienced. Because in her
18	mind she wanted to finish watching her show. She
19	wanted to finish watching her show. And where was she
20	watching her show? In the room with the defendant.

For Closing

Inability to Maintain Lie

16 We talked a little bit about Alexis and her
 17 ability to lie. But also, would she have the ability
 18 to maintain that lie consistently for a year, telling
 19 everyone the same story? Especially when I asked her a
 20 simple question of how long have you lived in Atlanta
 21 and she said two weeks. If she didn't experience that,
 22 do you think that she'd be able to repeat over and over
 23 again the same consistent facts of what happened? And

For Closing

- Behavioral Disabilities can be trickier
 - “Disturbed Child”
 - Go Back to Basics
 - Contextual Details
 - What Motive to Lie?
- Psychiatric Disabilities the toughest
 - Whole different set of issues
 - “Photo at Airport”

Closing

- Always remind jury these are Most Vulnerable members of our society
- We all have a duty to protect them
- The defendant took advantage of their vulnerability
- And most of all, you need to.....

Get Angry!



Never Forget...
Your Witness is Still a Child

Kids Perceptions of Legal Process

34 Third-Grade Children Asked to
"Help Figure Out" What Some Words
Meant...

What Happens in a Courthouse?

- You are in trouble
- You play ball there
- You go to jail for a day
- I think Michael Jordan lives there
- You get yelled at in court
- You are to do things for the judge

What is a Prosecutor?

- I'm not sure, but I think it's naughty or bad
- A person who does not like anybody
- A person that did something wrong
- A drug dealer
- Does paperwork
- Someone who did something with drugs

What is a Defendant?

- A person that is a nut
- Someone that defends you
- Gives you gifts
- Someone that says "Order in the Court"
- When someone chases you

What is a Jury?

- People that disagree with people
- When court is done, the judge yells "Jury!"
- You swallow it
- You wear it, like earrings and stuff

What do Children Think About Court?

- Courtroom is full of people staring at them
- When you testify, you're on TV
- Court process moves quickly
- Court is exciting
- If you go to court, you're in trouble
- When kids go to court, they end up in foster care
- If you talk, you're a snitch

Important to be Honest with Child

Explain the Court Procedures

Court Prep

- One-on-One
- Court School
- Activity Books / Coloring Books

- Who Should Be Present:
 - Prosecutor / Investigator
 - Victim Advocate
 - Support Person (Family Member / Therapist)

Court Prep

- Courtroom
 - Empty Courtroom?
 - Working Courtroom?
- Have child take perspective of all personnel
- Practice answering questions into microphone (non-case related)
- Answer any questions child may have

What Child Needs to Know

- WHO will be in the courtroom
- What is their role
- Use Their Language:
 - Jury = these ladies and gentlemen sitting right here
 - Judge = the lady/man in the robe
 - Defense Attorney = lady/man sitting at that table
 - Defendant = name they know him/her by
 - Court Reporter = lady/man typing over there

What Child Needs to Know

- Introduce child to as many people as possible
- How is child feeling about process?
- Does child have any fears?
 - Possible to address those fears?
- Go over courtroom technology

What Child Needs to Know

- Legal terms they may hear
 - Objection!
 - They didn't do anything wrong
- Oath
 - Talk about what it means to take the oath
- OK if they don't know answer
 - OK to ask lawyers to repeat

What Child Needs to Know

- Be Honest!
 - Don't try to hide things that are likely to happen
 - Ex – tell child defendant will be present
 - Timeline of Case
 - Realistic timeline
 - Delays possible
 - If delays, communicate to child/family

Preparing the Court

- ### Preparing the Court
- First evaluate your Judge and Defense Attorney
 - Kid friendly judge?
 - New judge?
 - Judge who errs on side of defendant?

 - Defense attorney has reputation for reasonableness?
 - Defense attorney has reputation for shadiness?

- ### Pre-Trial Motions
- Always file in advance and seek pre-trial ruling
 - May affect trial strategy
 - Appellate remedies?

 - Don't be afraid to ask!
 - No chance of getting request if you don't even ask

Trial Brief

- Consider filing a trial brief
 - Common issues that may come up in child abuse cases
 - Anticipated issues in this particular case
 - Relevant case law
 - Including support for accommodations for your victim / witness
- Most judges appreciate this!

Arranging Courtroom

- Can you arrange the courtroom to make more child friendly?
 - Turning witness chair toward jury
 - No constitutional right to force victim to look at defendant
 - Podium placement
 - Screens*
 - CCTV / Video Conferencing*
- Don't Close the Courtroom*

Appellate Issues

- Beware of Appellate Issues
 - Screens have caused appellate issues
- CCTV / Video Conferencing held constitutional
 - But certain factors must be met
 - Jurors sometimes don't like it
 - Does your state have a statute allowing?
- Closing courtroom always asking for major appellate issues

Arranging Courtrooms

“Nothing in the law or in the constitution preordains that courtrooms be configured in a particular way. And, so long as the defendant’s rights are protected, minor alterations to accommodate children are proper.”

Hicks-Bey v. U.S., 649 A.2d 569 (D.C. 1994)

Making Child Comfortable

- Support Witness
- Comfort Item
 - Teddy bear
 - Trained dog
- Periodic Recesses
- Questioning by Court
 - FRE 614(b); Support in states as well
- Scheduling Testimony
 - Child better in the morning or afternoon?

The Goal

Goal is to balance the scales of justice for the child victim



Questions / Comments?

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