



Autism in the Courtroom

Prosecutors use knowledge of disorder
to help young victims and juries.

WRITTEN BY JANNA OSWALD

Calling a victim of sexual abuse to the stand to talk about their trauma is always challenging, especially when that victim is a child. Everyone reacts to trauma differently, and every child witness reacts differently to taking the stand. It is our duty as prosecutors to reduce any additional trauma that testifying might cause. Prosecutors must have a complete picture of every child witness, including any mental health or disability diagnoses, to help that child better navigate court testimony.

When it came time to call a traumatized 12-year-old girl to testify against the man who had sexually abused her for over a year, we had the usual challenges of such a case: How do we make sure this child is ready to explain what she endured? Would facing him re-traumatize her? We also had to consider another factor: how the girl's autism might affect her testimony and how a jury would perceive her.

The Centers for Disease Control and Prevention now puts the rate of autism at 1 in 44 children—a number that has doubled from 1 in 88 in 2008. In Houston, that number, along with any count of adults, is probably low, given a diverse population that includes refugees and immigrants who often go undiagnosed. The disorder causes varying degrees of difficulties with social interaction and communication. It also can include limited interests, repetitive behaviors, and sometimes debilitating sensitivity to sound, light, or textures.

While others debate causes and therapies, it is clear that institutions, including the criminal justice system, should be prepared to encounter more people with autism. Because the criteria for diagnosing children with autism spectrum disorder are more encompassing now and there is greater awareness of this disorder, we expect the number of child witnesses with the diagnosis to increase. Studies show autistic people aren't more likely to commit crimes, but like those with other disabilities, they can be more vulnerable to predators of various kinds.

Children with autism, like all children, can be victims of both physical and sexual abuse. However, as opposed to other children, their social deficits may more greatly affect their ability to outcry, how the investigation is handled, and ultimately how the case is prosecuted.

At the Harris County District Attorney's Office, we recognize the "spectrum" of autism spectrum disorder—some children are only mildly affected while others are severely impaired. We also know the symptoms of autism can get muddled with those of trauma. Many of our victims are dealing with various levels of trauma, so it is important for prosecutors handling child abuse cases to be trained in the dynamics of sexual abuse trauma, not only to convey those concepts to the jury but also so they can better interact with victims.

Prosecutors also rely on the expertise of our office's social workers, who often accompany us in our meetings with child victims. In the case of children with autism or other disabilities, they check whether the child has a formal diagnosis and a safety or behavioral plan in place, and they

identify the aids that the child may need for the prosecution interview and court settings.

Our social workers' practices may include:

- interviewing the child in a neutral location that is warm but not filled with toys and other distractions, such as a child-friendly room at the courthouse, and asking if the child wants a caregiver or support staff to be present;
- eliminating noise and other sensory input;
- keeping interviews short, avoiding abstract statements, and asking direct questions;
- minimizing interruptions as the child tells his or her story. Otherwise, he or she might get confused or upset, and it may be difficult to get back on track;
- speaking slowly and using simple language. If talking doesn't work, the prosecutor can write the question down or draw it; and
- paying attention to nonverbal signals for further information if the child cannot answer effectively verbally. These might include facial expressions, gesturing or other body language the child is using to answer. If the response remains unclear, decide whether to press on or come back to the question.

At this investigative stage, we rely on the forensic interview to evaluate the case and meet with the child only when absolutely necessary for further evaluation or trial preparation. Minimizing the number of people to whom a victim has to recount the abuse is almost always in the best interest of the child.

However, many of our cases go to trial, and that means the child will need to testify. Some people believe a prosecutor can play the child's forensic interview at trial in place of testimony, but the rules of hearsay dictate that the forensic interview rarely comes in as evidence in trial.

Therefore, in almost all instances the child must testify in open court before the jury, judge, and the defendant. As with cases involving any child, autistic children should become familiar with the prosecutor handling the case, as well as the courthouse, courtroom, and other officers of the court beforehand.

With every case, we want to educate jurors on the dynamics of sexual abuse and how trauma can affect a victim. We explain that all people react to trauma differently so that they understand that a child testifying may not respond exactly how they might expect. This is especially important in cases involving children with autism.

In the case that our office tried with the 12-year-old with autism as the victim, we spoke with the complainant's mother and therapist before meeting with the girl so that we knew

how to communicate with her most effectively. We asked what was going on with her in school and life to help better build a rapport and see for ourselves how to ask her questions in a way that she would respond best.

At trial, we not only educated the jurors on sexual abuse, but we also put experts in the autism spectrum on the stand to explain the dynamics involved with autistic children. Psychiatrists and behavioral therapists can serve as such witnesses; whoever diagnosed that particular child's autism would be an appropriate witness to testify specifically about how the disorder manifests in him or her. Another option would be a licensed clinician from one of the 70 Children's Advocacy Centers of Texas locations across the state. We also called the girl's mother and therapist to the stand to help the jury understand how autism affected her both at the time she was being abused and now, when she was going to testify.

By the time she took the stand, the jurors had a thorough understanding of autism—and more particularly of this girl. We wanted to allow them to listen to her and the truth about the abuse she suffered without being distracted by their unfamiliarity with her disability.

For our line of questioning, the cadence changed to be more rigid. We also asked far more direct and blunt questions, as opposed to a softer approach taken with most complaining witnesses. She understood and responded better, and was clearly more comfortable answering those types of questions.

The jury did listen to her, in her refreshingly matter-of-fact and sometimes monotone voice, and believed every word. Jurors found her abuser guilty of continuous sexual abuse of a child and sentenced him to 35 years in prison. The complainant is now a well-adjusted teenager with an amazing family and plenty of friends.

With the explosion in autism diagnoses, it's said that everyone knows someone who knows someone with autism. When handling a case with a victim or witness with autism, prosecutors should be ready to educate themselves and jurors about the disorder. With better education and compassion, we can handle these cases more effectively, allowing us to see justice done. **TBJ**



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