Autism in the Criminal Justice System

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Autism Spectrum Disorder (ASD) diagnoses are increasing at an alarming rate in North Carolina, across the country, and around the world. This increase in the incidence of ASD suggests that the criminal justice system (CJS) will certainly see increased contact with individuals with autism as victims, witnesses, and/or offenders. All criminal justice professionals who have contact with individuals who have ASD need to establish clear and consistent communication methods, verify facts, make appropriate accommodations, and insure fair justice and consequences for all concerned. Communications, behaviors, intent, and ability levels of people with autism vary greatly and present challenges for even the most experienced criminal justice professionals. Attorneys and judges must avoid misinterpretation of behaviors and characteristics typical of those with autism since these behaviors and characteristics could be misinterpreted as evidence of guilt, indifference, or lack of remorse (1).

What Is Autism?

Autism is defined as a neuro-developmental disability, meaning that it involves the brain and starts very early in life when the brain is still forming, still plastic, and still changeable. Autism involves differences and difficulties in several areas: social interaction; communication; the presence of narrow, repetitive behaviors; and difficulty adjusting to change. ASD occurs more frequently in males than females—usually a four-to-one ratio. Additionally, there is a wide range in intellectual ability for individuals with ASD where IQ's range from below 25 to above 150.

Low functioning individuals

The term low functioning may be used to describe persons with lower IQs. These persons have difficulty with basic life skills such as safely crossing a street, negotiating a financial transaction, and making sense of social interactions. They typically have a caregiver with them at all times. Oftentimes, these low functioning individuals are also non verbal. Those who are non verbal may use alternative communication such as American or other Sign Language, Picture Exchange Communications Systems (PECS) or computers that can speak for them.

Although individuals with ASD could commit a criminal offense, their intent to do so could be difficult to determine, questionable in court, and their competency may not reach the level of responsibility for an offense. Also, in most circumstances, individuals would be greatly compromised in their ability to assist in their own defense.

As crime victims rather than criminal offenders, individuals with ASD present the perfect victim. People with ASD reveal great difficulty in communicating details and experiences of their victimization thus resulting in a lack of credibility in interview and court room situations. This reality creates major issues regarding time and resource considerations for investigators and attorneys.

Investigators and attorneys should consider the following accommodations and guidelines in preparation for the victim-witness interview of a person with ASD:

- Interview care provider, parent, or person who first heard the disclosure of victimization.
- Investigate possibility of multiple victims by interviewing all persons with whom the perpetrator had contact.
- Review all records of assessment.
- Discover person's communication strengths and deficits.
- Interview care providers and persons who know the individual with ASD to discover how he or she best receives and provides information.
- Consider videotaping of all interviews.
- Plan questioning based on the person's ability level.
- Use person's first name.
- Speak to adults as adults; children as children.
- Use simple, direct language.
- Deal with one issue at a time.
- Have the individual re-create events in his or her own words—a narrative interview.
- Make sure both your word choice and the individual's word choice have the same meaning to each person.
- Make sure all individuals understand to whom a pronoun refers when using pronouns.
- Insure question length is short, direct, and concise.
- Utilize maximum patience as formulating answers takes longer for individuals with ASD.
- Ask for and get permission before repeating questions.
- Become convinced of the person's ability to tell the truth.
- Person may have short attention span; take frequent breaks
- Be alert to non-verbal cues indicating the person is confused or does not agree to your statements or questions. Get confirmation through direct questions. (2)

High Functioning Individuals

"High-functioning autism" or "Asperger syndrome" are terms describing persons who are verbal, may hold jobs, and live semi- or fully independent lives. Currently, no statistics have been developed about the rate of contacts young people on the autism spectrum will have with the criminal justice system, although research indicates that people with autism spectrum disorders and other developmental disabilities will have

up to seven times more contacts with law enforcement during their lifetimes, than members of the general population (3). While there is no evidence to suggest that they will commit crime at a higher rate than the general population, those that do and can be held responsible for their acts will typically be the more independent, so-called higher functioning person with autism or Asperger syndrome (4).

Persons with ASD often get into trouble without even realizing they have committed an offense. Offenses such as making threatening statements; personal, telephone, or internet stalking; inappropriate sexual advances; downloading child pornography; accomplice crime with false friends; and making physical outbursts at school or in the community, would certainly strike most of society as offenses which demand some sort of punishment. This assumption, though valid at face value, may not take into account the particular issues that challenge the ASD individual. Problems with sensory overload, poor social awareness, semantic misunderstandings, inability to deal with changes in routine or structure, and little to no understanding of non-verbal communications, are the very kinds of things that make more appropriate responses to society very difficult for someone with ASD. For example, what appears as anti-social behavior to the "regular" world is often simply the manifestation of the ASD person's social misunderstandings. While most would see too many phone calls in the middle of the night as aberrant phone stalking, the ASD person might well view the situation as one friend wanting to talk to another, no matter the time or frequency of calls. And a physical outburst at school might well be related to the ASD person's sensory dysfunction, inability to deal with interruptions in the daily routine or emotional lability. Emotional lability means to be susceptible to change, error, or instability and stems from its Latin roots meaning prone to slip. This often presents itself in individuals with ASD; their emotions can change very quickly. They can become upset, scared, or anxious very quickly. They may also be very anxious one minute and then calm the next or vice versa. So, while the individual with ASD might have committed the offense in question, the intent might well have been anything other than to do harm (5).

The offender may appear as normal, be more able academically and more independent than a person with classic or low-functioning autism. Yet, these strengths can mask social and communication deficits that go unseen or misunderstood by those with whom they have contact.

Their communication difficulties include hardships in making sense of the verbal and body language of others. Their difficulty in maintaining eye contact or insistence on changing the subject of conversation to a topic of their choice—all typical diagnostic behaviors of a person with autism—can mislead an investigator, attorney, or judge. They may see someone who seems to lack respect and observe a "rude, fidgety and belligerent" person who, by nature of his lack of eye contact and evasive conversation, appears to have something to hide. Standard interrogation techniques that utilize trickery and deceit can confuse the concrete thinking person who has autism or Asperger syndrome into producing a misleading statement or false confession. They can become overly influenced by the friendly interrogator. Isolated and in a never-

ending search for friends, the person can easily be led into saying whatever his new friend wants to hear (6).

What are ASD dilemmas for prosecutors, defense attorneys, probation officers and judges? Left unexplained, the person's courtroom displays of laughing or giggling, their loud vocal tone, and aloof body language—also inherent to the condition of ASD—could lead many judges to conclude that this is, indeed, a guilty and remorseless person. Everything in the suspect's demeanor says so. The person may very well have no idea of the effect their behavior is having on a judge, jury, or even his or her own defense attorney. Even the best defense attorney might see guilt in his client's display of behaviors.

During questioning, initial contact, or in a courtroom setting, a person with ASD might display these additional behaviors and characteristics:

• An inability to quickly process and respond to requests, commands and questions.
• Be a poor listener, may not seem to care about what you have to say.
• Be unable to deduce what others are thinking and why they are thinking it.
• Repeat the words, statements, body language and mannerisms of the investigator.
• Make statements that seem tactless or be brutally honest. If you are overweight, bald or smell of smoke or perfume, they may bluntly remind you.
• Have difficulty recognizing slang terms, innuendo, colloquialisms, figures of speech or jokes. Ask "What's up your sleeve?" The concrete answer will be: "My arm"
• The ASD person will have difficulty in understanding communications such as rolling of eyes, raised eyebrows and other non-verbal signs of your frustration and disbelief. (7)

Situations can arise for autistic individuals where their logic does not work or where their ability to integrate different sources of information is more limited. Even when it may seem to you that your question is clear, misinterpretations can occur.

What they have trouble doing, is conceptualizing, putting together information in complicated situations. They are a little bit narrower—narrow, perseverative behaviors. So they have trouble with context and figuring out how things get connected and what they mean. It is just not what they are good at. They are more narrow. They look at one situation; they look at it concretely and don't always look at it in the context of trying to figure out what would be the different connections in that situation.

This can impact legal situations with which you may be involved. One criteria is what would a normal person do in this situation? A person with autism is not necessarily normal in the way that they process the information and put together the different parts. Thus that standard may need to be modified a bit in order to understand them. And what is a person who thinks like this person expected to do? And what might they not be expected to be able to do? All of this is something that needs to be considered.

Criminal justice professionals should be aware that a person with autism has less ability to understand verbal communication and is more limited than their overall skills. The simplest thing professionals can do to be helpful is to speak slowly. Individuals with ASD process information much more slowly than typical people who have their same intelligence level and skills.

Another helpful tool is to always have a pen and paper available. If in doubt, write it down. If they are in doubt, let them write it down. Their visual skills are much stronger than their auditory skills.

Individuals with ASD are a concrete group; therefore, criminal justice professionals must not mistake their concreteness for making a wise-crack. One child with autism was given an intelligence test in which he had to take felt pieces and put them together to make a another child's face. The child made a face with a big smile. The child with autism was then asked, "How's the child feel?" And he said, "Soft." A teenager with autism was asked by a questioner who knew he had recently turned fifteen, "How old are you? The teen replied "Fifteen". The questioner then asked, "When was that?" "On my birthday", he replied. Somebody could take this type of response as a wise-crack because most people would understand what the questioner meant. However, very often people with autism have trouble with the context, connotation, and/or the meaning of the sentence. For this reason, professionals must be very direct and very concrete in their language choice when interacting with autistic individuals, and they must never rush to judgment concerning the responses of people with autism. Frequently, their responses seem to be disrespectful, "smart aleck" and off topic, but this behavior is normal for the autism spectrum.

Weak verbal abilities often mask much higher intelligence levels in people with autism. A lot of times when they go through life, particularly in school, they don't understand what the teacher is saying. That gets them in trouble because the teacher thinks they're not listening and they're not obeying. Very often to get out of this situation, they'll just agree. As a result the teacher keeps saying, "Do you hear me; do you understand me?" They don't understand but they can tell the teacher is getting annoyed. Finally they just say "yes". They have learned that an affirmative answer gets them out of the situation. Thus in interview settings the effects of pushing too hard or too intensely for answers will generate affirmative answers from individuals with autism which do not necessarily reflect any truth.

People with autism have reported that it is really hard for them to concentrate and understand what they are saying when they are looking directly at somebody. Many people in society see this as rude behavior. A judge or attorney who asks questions and then observes that the person with autism is looking off into the distance may assume this reflects a lack of respect. In reality, this is normal behavior for the individual. When interviewed, one young man with autism made the point. "I keep telling people 'I'm looking at you. I'm looking at you. I'm looking at you. I'm looking at you. I don't understand a word that you're saying, but I'm looking at you. I'm looking at you". And some people with autism have actually said, "You can have your choice

with me. You can have me look at you or you can have me understand what you're saying. I can't do both."

Interview/Interrogation Techniques

So, what can the criminal justice professional do to prepare for interactions with persons with ASD? Try to avoid jumping to conclusions or making attributions based on unusual or "inappropriate behaviors". Remember that autism is a social impairment. A component of the social impairment is that many of the things individuals with autism do appear impolite or disrespectful.

Criminal justice professionals who interact with and question people with autism or Asperger syndrome will enjoy the best opportunity for success by incorporating the following strategies:

- Approach in a quiet, non-threatening manner.
- Talk calmly in a moderate voice.
- Do not interpret limited eye contact as deceit or disrespect.
- Avoid metaphorical questions that cause confusion when taken literally, i.e. "a hard time", "Are you pulling my leg?", "Cat got your tongue?", "What's up your sleeve?", "spread eagle" or "You think you are cool?"
- Avoid body language that can cause confusion. Be alert to a person modeling your body language.
- Understand the need to repeat and rephrase questions.
- Understand that communications will take longer to establish.
- Use simple and direct instructions and allow for delayed responses to questions, directions, and commands.
- Seek assistance from objective professionals who are familiar with ASD (8)

The interviewer should develop a plan of action that incorporates patience and persistence on his or her part. The interviewer is interacting with somebody who might not always get the message, question, or concept straight. Much patience is necessary because impatience will make them very anxious. They really do want to please; they just don't know how to do that all the time. But they can sometimes tell if they're doing it successfully or not. Therefore, practice patience in all situations when dealing with individuals with autism or Asperger syndrome. Interviewers must understand they will not get the answer necessarily the first time or necessarily during one modality of questioning because of the person's understanding of the context, and your speed and pacing is going to affect it. They are inconsistent processors sometimes. So, they might understand one question perfectly well and then understand the next question not at all. Sometimes interviewers may have to write something down or draw it out and let them look at it. The key is being patient so you don't get them emotionally aroused and upset. Being supportive and continuing to try different

methods of communication will help the person with autism to answer in a way that can be understood and make sense to all involved parties.

Environmental Accommodations

People with autism may have more difficulty in that they are over stimulated by the sensory environment—the sights and sounds that will distress them. Noises are louder for them. Normal background noise that may seem negligible to the average person can be completely overwhelming or overpowering to this population. When this occurs, not only can they not hear what people are asking them, but they can sometimes become very anxious and even terrorized by the situation or by the noise.

Additionally, lights are often brighter for those with ASD. For example, when a person with autism is outside on a sunny day—which in North Carolina most of us love—the light may be very over stimulating causing the person to become upset. For the person with ASD, it would be like somebody shining a very, very bright flashlight right in the eye. Therefore, in many environments, the lighting itself causes distress.

Intense sensitivity can extend to any of the senses and really interrupt functioning on many levels. Many very, very capable people with autism will score high on an IQ test but can have horrible school records. The common noise, disruption, and movement in a typical classroom in a typical school can be so disruptive, annoying, upsetting, distracting that they cannot focus on that one thing in the classroom on which they are supposed to focusing—which is the teacher or maybe an assignment. The same situation may exist in a courtroom or interview room.

As a result, adjustments in the environment can be crucial to a successful interview. Consider making accommodations to the sensory environment when interacting with victim, witness, or offender who has autism or Asperger syndrome. Keep lighting low; use subdued colors; limit distracting images or pictures; eliminate the presence of non-essential personnel; avoid using perfume, aftershave, or scented soaps; and avoid touching the person with autism.

Sentencing Considerations

In those cases where it has become clear that the person has committed the crime and qualifies for a diversion or probation program, the offender may be further stymied by his autism. Traditional options might include group therapy with other offenders. Meeting with strangers, group discussions about personal feelings, sharing personal information or contributing comments about others will be difficult conditions for the person ASD to meet (9).

Corrections professionals can find success with the ASD population when they create diversion or probation programs that:

- Use language and terms the person will understand.

• Avoid the use of technical terms.
• Involve persons that the individual knows and trusts.
• Describe (use photographs) beforehand of the persons the individual will work with and venues in which they will meet.
• Assure the individual that the new persons are safe.
• Utilize the individual's strong rote memory skills.
• Teach rules of program with visual aids.
• Use pictures to describe actions and situations.
• Create a chronological list of the program, develop a poster with bullet points.
• Discover what is important to the person with ASD. Avoid trying to make them fit into what is important to you (10)

If an individual with autism is taken into custody, alert jail authorities. This person may be at risk in the general jail population. For short term custody, consider segregation, monitoring and a professional medical and development evaluation.

Incarceration will be fraught with risk for the person and anyone in contact with him or her. Their direct manner, offbeat behaviors and characteristics may be read by other inmates as an invitation to exploit and control. Corrections professionals may see a rude, incorrigible person. Good behavior privileges will be hard to earn. Correctional professionals who work with the incarcerated ASD population will benefit greatly from a comprehensive training, at the least a good briefing, and access to ongoing assistance from a professional who is familiar with autism (11).

Conclusion

Some people have described autism as a culture. Consider the need for a translator when dealing with a person who speaks little or no English. Working with someone with autism is analogous to that situation in that successful communication is blocked, but not as easily overcome. Autism, as a culture, is an analogy that emphasizes the very different ways the affected person processes information and understands things—very much as people from different cultures view things differently.

We are obligated by profession to understand that those cultural differences may loom larger in a person with autism than most cultural differences stemming from language, tradition, or history. The cultural differences of autism come from the way the brain actually works. It is a total difference in understanding and perception. Our role becomes the role of translator. The quality of our translation is dependent upon our resourcefulness, knowledge of autism, patience, and understanding. We can and must meet the challenges of this growing population by embracing our roles in the process.

Consider utilizing as a resource an objective autism professional who can act as a 'friend of the court''. This person can help interpret the behaviors and communications of persons with autism. This expert can help people understand what the person with autism understands. He or she can also advise about the impact of some of the

language the questioner is using. Each case will be different, each fact pattern is different, and the ability of people with ASD to form intent and to control actions certainly differs from one individual to the next. All concerned parties should consider choosing an expert who can both interpret and testify in court if needed . There are so many things in life that the person with autism can misunderstand even though they are trying hard and doing their best. The world is just complicated for them.

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Support Agencies:

TEACCH teacch.com 919-966-2174

Autism Society of North Carolina autismsociety-nc.org 800-442-2762