



Effective Ways to deal with Autistic Witnesses in the Courtroom

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Aggressive Criminal Enforcement



IREDELL COUNTY SHERIFF OFFICE
A.C.E. TEAM

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Sidney Templeton



STATESVILLE

Investigation into death of man in police custody


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Autism in the Criminal Justice System Video

- Movie—Autism in the Criminal Justice System—Made in North Carolina. Find it at the N.C. School of Government website at the autism link.

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What do we know about ASD?



HOFFMAN CRUISE

RAIN MAN


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The difficulties faced by Law Enforcement on a daily basis



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Jarrett as a witness?



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Communication with Autistic Individuals


- Do not rely on facial expression or body language
- Do not expect normal eye contact
- Be aware of potential for self stimulating behaviors which may help calm the individual
- Self stimulating behaviors may include hand flapping, finger flicking, eye blinking, rocking, pacing, repetitive noises, or echolalia
- Be aware of special communication devices the individual may require.



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Why is an autistic witness different


- 50% are nonverbal or become nonverbal when under stress
- Many autistic individuals can't be identified by appearance
- Often autism may only be identified by behavior characteristics
- Autistic people may become extremely stressed in unusual or crowded situations
- People with autism may engage in unusual behavior or self stimulation



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What to Avoid

- Do not speak in complicated ways—use simple language
- Avoid sudden surprises. Explain what you plan to do in advance
- Do not use a loud voice or extreme body language. Be calm and speak quietly
- Do not be impatient. Give time to respond!!



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ASD as a broad spectrum diagnosis

- Remember people diagnosed with ASD may have very different I.Q. scores—savant skills may or may not be present
- Individuals with ASD may be completely verbal or completely non-verbal
- Individuals with ASD may have dual-diagnoses such as mental retardation, epilepsy and tourette's syndrome
- BE SURE you have adequate medical and psychological information to present to the court and jury

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Courtroom techniques

- Advise the judge and jury in advance that the witness is autistic and what this means with regard to that individual
- The court must make a determination of competency
- Prepare the witness in advance by exposing the individual to the courtroom setting
- Be sure you can prove a diagnosis of autism through expert testimony
- Consider support persons in courtroom.
- ADA argument. 42 U.S.C. 12132; 28C.F.R.35



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What if the Witness Can't Testify in open court?

- Consider use of closed circuit television—This is allowed when necessary to protect a witness from trauma that would be caused by testifying in the physical presence of the defendant, AND that trauma would impair the ability of the witness to communicate.
- Maryland v. Craig, 497 U.S. 836—The holding seems to apply to the child witness but should be extended to a disabled witness under the ADA.

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Preparation resources


- Individualized educational plans from the school system
- Hospitalization records
- Mental Health records
- Family, friends, anyone in the community who may have had an opportunity to interact with the individual
- Be aware of HIPPA requirements!



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Closed Circuit Television

- Procedure must comply with Confrontation Clause
- Under oath
- Subject to full cross-examination
- Judge, jury and defendant must be able to observe the victim while testifying.



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Website kimberlystaylor.com includes a video on autism and the criminal justice system
Dennis Debbaudt provided much of the material in this presentation. His website is www.autismriskmanagement.com

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Exclusion of bystanders and witnesses

- If the witness is bothered by crowds you may ask the court to exclude bystanders.
- You may also move for sequestration of witnesses
- In general state law allows sequestration if the trial judge makes appropriate findings of fact.
- Special orders regarding witnesses are in the Court's discretion.

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