National Association of Women Judges

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Improving the Courts' Responses to Neurodiverse Persons

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‘Neurodivergent’ is not a medical diagnosis

- Instead, it’s a way to describe people using words other than “normal” and “abnormal” or “suffers from”
- That’s important because there’s no single definition of “normal” for how the human brain works.
- The word for people who aren’t neurodivergent is *"neurotypical.”* That means their strengths and challenges aren't affected by any kind of difference that changes how their brains work.

What conditions can a neurodivergent person have?

- People who identify themselves as neurodivergent typically have one or more conditions or disorders.
- However, since there aren’t any medical criteria or definitions of what it means to be neurodivergent, other conditions can fall under this term as well.
- People with these conditions may also choose not to identify themselves as neurodivergent. It will be up to us to identify issues that may affect them in court.

Common Conditions Among the Neurodivergent: Neurodevelopmental Disorders

Neurodevelopmental Disorders onset during prenatal or early development. Some are based on known genetic factors influencing development. Some are due to medical or toxic factors influencing the unborn child.

- **Autistic Spectrum Disorder [ASD]:** Language/communication issues onset in first two years, impaired social interaction, impaired 'theory of mind,' misreading affect or intentions of others; obsessive interests with repetitive behaviors, stressed by new situations or changes.
- **Attention Deficit/Hyperactivity Disorder [ADHD]** may be separately diagnosed, but also seen along with many other disorders.

Common Conditions Among the Neurodivergent: Neurodevelopmental Disorders

- **Intellectual Disability [ID]:** IQ<70, with low level of independent/ adaptive functioning: high gullibility and credulity, easily victimized

- **Down Syndrome:** Genetic error, resulting in ID 50-70, friendly, affable, making them more prone to victimization

- **Fragile X Syndrome:** Genetic error, the most frequently known genetic origin of ID.
- **Fetal Alcohol Syndrome [FAS]:** *In utero* alcohol exposure. Often highly impulsive, may be associated with low IQ, poor executive functioning, learning from consequences, pan-sexual acting out

Common Conditions Among the Neurodivergent
Autism spectrum disorder [ASD]

- **Autism spectrum disorder [ASD]:** This includes what was once known as Asperger's syndrome [High end of spectrum with normal or above intellectual functioning]
- ASD is considered a neurodevelopmental disorder, most often influencing language development and social interactions. ID is found in about 38% of cases.
- Some are sensory-sensitive and sensation-avoiding, easily being overwhelmed environmentally, by lights, sounds, food textures, tactile experiences, crowded spaces, changes in environment (up to 90% comorbid with Sensory Processing Disorder [SPD])
- Some engage in sensation-seeking self-stimulating behaviors such as twirling, hand-flapping; OCD behaviors; some have intense specific interests such as calendars, trains, music. A few are *savants* in their area of interest.

Common Conditions Among the Neurodivergent
Attention-deficit hyperactivity disorder (ADHD)

Symptoms may be part of another disorder or a separate diagnosis:

Childhood onset: Often becomes more obvious in school-age kids; common along with Learning Disorders, Conduct Disorders, Oppositional Defiant Disorder [ODD], comorbid with ASD (20-50%); at higher risk for Substance Use Disorders, Intermittent Explosive Disorder, Personality Disorders

Adult: ADHD may dissipate after childhood while others continue into adulthood; ADHD sometimes precedes bipolar disorder or overlaps (20%); higher risk factor for later mild cognitive impairment and dementia, but attenuated if psychiatric disorders are also present

Adult Onset: With brain injuries, or medical or neurological conditions

Common Conditions Among the Neurodivergent Neurocognitive Disorders

Impairment onsets after normal early development. Classified as Major or Minor, depending on degree of impact on independent functioning

- **Reflecting decreased mental functioning due to a medical condition other than from a psychiatric illness (brain-based)**
- **A clear change from a person's baseline in memory, reasoning, visuospatial ability, language, personality, or behavior. Common examples include:**
- **CO poisoning:** Loss of short-term memory, executive functioning, often requiring supervisory care.
- **Brain Injury:** Vehicular accidents, assaults, gunshot, substance-induced etc.:

Common Conditions Among the Neurodivergent Degenerative Neurocognitive Disorders

- **Dementia Not Otherwise Specified [NOS]** 93% diagnosed at a more generic level in a large Medicare sample
- **Alzheimer [AD]** (44%) or Dementia with Lewy Body [DLB] (10-15%)
- **Vascular dementia [VaD]** (~15%, but often co-exists with AD) related to cardiac risk factors, high blood pressure, diabetes, stroke
- **Alcohol-induced Dementia** (.7%) Korsakoff's Syndrome, B1 deficiency, global memory loss, recovery possible; other substance-induced brain impairment due to solvents, methamphetamine
- **Frontotemporal degeneration [FTD]:** [1%] Loss of speech, executive control
- **Parkinson's Disease [PD]:** Impaired movement/balancing or speech clarity/volume problems with or without dementia

Common Conditions Among the Neurodivergent Low Academic Functioning

Learning Disorders are a subset of Neurodevelopmental Disorders where there is a large discrepancy between measured abilities and achievement levels. Those most commonly impacted within the legal system reflect diminished receptive/expressive language disabilities or academic achievement discrepancies such as Verbal LD or Dyslexia.

Juvenile Offenders: 85% in the juvenile court system are functionally low-literate. Academic failure increases risk of arrests. Keeping them in school is critical. Juvenile incarceration may affect rate of completing high school and increases risk of later incarceration. Various estimates place prison inmates' academic level as ranging from 3rd to 6th grade.

Common Conditions Among the Neurodivergent
Borderline Intellectual Range [>ID]

- **Borderline Intellectual Range:** IQs 70-79 with mostly age-appropriate level of independent/adaptive functioning. Most are functionally literate.
- Most are able to live independently with some support. Many hold jobs.
- Disproportionately represented in juvenile and adult criminal courts
- As adults they can become relatively sophisticated offenders as they 'practice' over time.
- In juvenile offender cases, they often are suggestible and easily influenced or used by older peers or adults.
- In Juvenile/Dependency cases, they can successfully parent if there is a supportive grandparent or spouse who is of normal level of functioning.
- Borderline is no longer listed as a disorder in DSM-V-TR: I call it the *Fall-In-The-Cracks Syndrome* because they will not qualify under DD and may not qualify under SSI.

Common Conditions Among the Neurodivergent

Speech and Language Disabilities [SLD]

- **Speech and language impairment:** Can occur as part of an overall developmental delay; or specific problems, such as low Fluency, Syntactic Disorder, Aphasia/dysphasia. Concrete reasoning; poor understanding others' intentions, non-verbal gestures, facial expressions, social meanings, humor, sarcasm
- **Articulation Disorder:** Speech sounds, stuttering; low volume in Parkinson's; Dysarthria due to stroke or injury, also commonly seen in Cerebral Palsy, which reflects brain injury at or shortly after birth.

Common Conditions Among the Neurodivergent

Speech and Language Disabilities [SLD]

- **Verbal abilities:** Significantly lower than Performance/Visual-Motor abilities [P>V pattern] commonly seen in lower academic achievement levels
- **Receptive/expressive language deficits:** Inability to recognize/understand words associated with names of objects or activities. Inability to express what one knows.
- **Verbal Memory impairment:** They have trouble with answering non-leading/open-ended probes, but recognition memory can be used by offering multiple choice options.

Common Conditions Among the Neurodivergent
Mental health conditions:
Affective/Mood Disorders

- **Disruptive Mood Dysregulation Disorder [DMDD]:** Not diagnosed after age 18: extremely high comorbidity with other psychiatric disorders, often with both an emotional component and ADHD or behavioral disorder; irritable mood chronic and severe, but not manic; very unlikely to occur without ODD; at least age 6 and enduring a year; high rates of social impairment, school suspension, and service utilization. Often IEP classified as students with Emotional Disability.
- **Depression:** Major Depression [MDD] with or without psychosis; Dysthymia (Persistent Mood Disorder, less debilitating than MDD); *Postpartum* Depression with or without psychosis
- **Bipolar I:** Depression with full-blown episodes of mania

  Bipolar II: Depression, alternating with hypomania
- **Schizoaffective Disorder:** Both features of affective disorder and schizophrenic spectrum; these individuals often very unstable, easily disrupted, and more dependent

Common Conditions Among the Neurodivergent
Mental health conditions:
Schizophrenic Spectrum

- **Acute psychosis:** (Within one month) related to depression, bipolar, exposure to stresses/trauma, or later realized to be symptomatic of onset of schizophreniform or schizophrenia; high risk transition rate to schizophrenia over six years = 28%; 6-year transition to Bipolar = 5%
- **Substance-induced Psychosis:** (during use, lasting throughout withdrawal, or up to a week after taking the drug) but marijuana-induced psychosis can persist and evolve into schizophrenia
- **Schizophreniform Disorder:** (One to six months) with onset of psychosis; *postpartum* psychosis may fall here;
- **Schizophrenia:** (Lifelong) where up to two-thirds will relapse after discontinuing treatment
- **Borderline Personality Disorder,** prone to brief psychotic episodes under stress;
- **Schizoid and Schizotypal PD:** Socially impaired, odd thinking

Common Conditions Among the Neurodivergent Mental health conditions: Obsessive-Compulsive Disorder

- Repetitive behaviors, rituals related to cleanliness, orderliness, hoarding, persistent unwanted thoughts, images, impulses, or obsessions, often desperately asking for reassurance; may be sexual, confused with paraphilias where thoughts are pleasurable
- OCD may be misdiagnosed as ASD, or *vice versa, or both* conditions may be present. While OCD can cause extreme distress, some ASD symptoms are experienced as relieving or with enjoyment or pleasure.

Common Conditions Among the Neurodivergent Mental health conditions:
Post-Traumatic Stress Disorder

Symptoms of PTSD that can be at issue in the courtroom:

- Panicking when reminded of the trauma, experiencing intrusive memories or flashbacks
- Becoming easily upset or angry, irritable, or aggressive
- Finding it hard to concentrate
- Being jumpy or scared in an unfamiliar environment, hyperalert, hypervigilant
- Not being able to feel emotions, appearing disconnected and feeling 'numb'
- Being avoidant of emotions, dissociating (involuntary) from intense emotions or intrusive memories

NAWJ Neurodiversity Survey: Participants

A total of 19 respondents included 18 jurists and one attorney.

This may seem small, but research indicates that as a group, jurists will respond to surveys perhaps 5% of the time. In this case, using a key informant method, we had a total of 30 court-related incidents reported, half of respondents offering a 2nd or 3rd incident.

Average number of years in practice and/or on the bench: 12-50+ years

Court specialties: Adult criminal; Juvenile; Family law; Civil litigation; Mental health/drug courts; Probate

50% marked 'Other,' and listed multiple areas, which may not reflect current assignments.

NAWJ Neurodiversity Survey: *How* do you find out…?

- In your courtroom (practice) how do you usually find out that a person in a proceeding suffers from a neurodiverse condition?
- **Courtroom staff**, notification by court personnel, social worker, probation officer or parental/family input, prior reports, pleadings, exhibits.
- **Most describe personal observations:** *'more stressed out...' 'inference, deduction, intuition...' 'physical manifestations (rocking, flapping hands)'…'person does not answer...or answers in a way that is not responsive'...'Recognize when called up as a witness and when put up for questioning...' 'speech pattern....'*

NAWJ Neurodiversity Survey: *When* do you find out…?

- In your courtroom (practice), when do you usually find out that a person in a proceeding suffers from a neurodiverse condition?
- Most say they rarely know before a hearing, but in some cases it becomes readily apparent within a few minutes.
- In some cases, jurists find out at a pre-trial conference, sometime during the first hearing, or their first interaction. Also mentioned were phone contacts, when dropping off paperwork or exhibits.

NAWJ Neurodiversity Survey:
Support persons or animals?

- In your courtroom (practice), how often does a person in a proceeding need a support person or companion animal?
- Respondents indicated an average of 42% of the time a support person or animal is needed, most often in child witness cases. But others said, practically speaking, this issue was never addressed. Locate police agency or other agencies where volunteers could bring support animals.

NAWJ Neurodiversity Survey:
Awareness of children's needs?

- In your courtroom (practice) how aware and knowledgeable are attorneys (judges) about needs for accommodation for children? (Put an X along the continuum.)
- Respondents indicated an average of 48% of the time jurists and attorneys are aware of children's needs for accommodation.

NAWJ Neurodiversity Survey: Awareness of needs of neurodiverse?

- In your courtroom, how aware and knowledgeable are attorneys about needs for accommodation for neurodiverse children or adults? (Put an X along the continuum.)
- Respondents indicated an average of 48% of the time jurists and attorneys are aware of needs for accommodation in either children or adults.

NAWJ Neurodiversity Survey:
Key Informant Incidents

- **A total of 30 critical incidents were reported by 19 survey respondents. Every respondent provided at least once incident, and when probed for more, half gave a 2nd or 3rd incident.**

- **What was your role?** The majority were judges reporting on incidents in their courtroom.

NAWJ Neurodiversity Survey:
Key Informant Incidents

- **What type of proceeding was involved?**

Calendar call, arraignment, traffic infractions, unemployment, truancy, bond, stalking injunction, custody/parent time trial, family law, juvenile dependency, plea/sentencing, criminal sentencing

NAWJ Neurodiversity Survey:
Key Informant Incidents

- **Gender and age of subject?**
- Preponderantly adult males [30's, 40's, 50’s] and a few elderly
- A few females, young adults or middle age
- Adolescents, male and female

NAWJ Neurodiversity Survey: Key Informant Incidents

- **First or primary language?**
- **Was an interpreter required?**

None required an interpreter and only 2 out of 30 incidents involved subjects where English was not primary language.

NAWJ Neurodiversity Survey:
Key Informant Incidents

- **What was the subject's role in court?**
- Predominantly defendants or respondents
- Plaintiff, claimant, or petitioner
- Others mentioned: Person who may be committed to mental institution; witness; seeking or defending against restraining orders

NAWJ Neurodiversity Survey:
Key Informant Incidents

Were you made aware of their neuro-diverse status a day or more in advance?

- Preponderantly, no [Only 10% had advance notice]
- Became apparent with case going on for months with numerous hearings
- Post-judgment input

NAWJ Neurodiversity Survey:
Key Informant Incidents

What were you told?

- **Almost half (47%) were told nothing.**
- *'Developmental delays'... 'intellectual disability*
- *'TBI...affecting abilities to communicate'*
- *'TBI...had affected his judgment and behavior'...*
- *'speech impediment'...*
- *'dementia and severe mental illness'...*
- *'schizophrenia and/or schizoaffective disorder' ...*
- *'history of addiction'...*
- *child with ASD refusing to go to school and father supported her decision to stay home'*

NAWJ Neurodiversity Survey:
Key Informant Incidents

What changes or accommodations were made?

- **In only 20% no changes were made.**
- **Judges become much more directive and interactive.**
- **Speed of hearing:** slowed, more explanation and feedback; creation of developmentally appropriate oath
- **Formality modified:** in verbal exchanges, seating, movement permitted, allowing a man to wear his sunglasses because he became agitated when asked to take them off
- **Several jurists made orders for:** DD screen, GAL, referral for a community advocate, extra security, competency assessment, follow-up therapy, social worker to obtain services, forensic examination

NAWJ Neurodiversity Survey: Key Informant Incidents

What changes or accommodations were made?

'...*explaining the law and process to him carefully throughout the two-day trial'*

'*...offered breaks'...*

'*...let him talk longer because he had difficulty getting to the point' ...*

'*...I repeated back to him what I thought he said, gave him a chance to correct me'*

'*...extra time taken to discuss with* **[attorneys, family member]' ...**

'...*allowed wife/caregiver to speak on his behalf with his consent' ...*

'*...asked him to be patient with me as he was yelling over the answers to his questions' ...*

'*...petitioner could not sit still...allowed her to walk around...asked her when she came to the podium to stop momentarily so I could ask a question...'*

NAWJ Neurodiversity Survey:
Key Informant Incidents

What problems were encountered?

- **Less than 15% said no problems occurred.**
- **Unstable or aggressive subject:** Several jurists mentioned verbal aggression, *'elevated behavior with opposing party,'* threatening, irritability, fidgeting, nervousness
- **Communication problems included:** receptive/understanding, expressive, memory issues; difficulty in focusing conversation; lack of eye contact [misunderstood], lack of executive functioning or organization, loss of interest, zoning out, inability to participate, probable use of substances prior to hearing

NAWJ Neurodiversity Survey:
Key Informant Incidents

What problems were encountered?

- **Vexatious Litigant:** *'No problems of note during initial case. But after* [it was] *resolved, he filed many meritless motions, sent hundreds of letters and emails. He also filed a meritless action in Federal Court.'*
- **Concern for balance:** Opposing counsel concerned their party receiving less attention
- **Misunderstanding jurist role:** *'...the child later reportedly felt betrayed that I did not do everything just the way she asked.'*
- **Close reading and review of paperwork** necessary in representing or dealing with illiterate parties

NAWJ Neurodiversity Survey:
Key Informant Incidents

How well were the problems resolved?

- A few jurists said there was a lack of resolution, problems resolved poorly or not very well, while most felt accommodations led to reasonable outcome. *'Defendant grateful…his wife/caregiver could speak for him.'*
- Attorney claimed witness '…*suffered from PTSD and that was likely reason for her behavior and mannerisms…first day…difficulty based on mannerisms, tics, method of speaking, …posturing in an aggressive manner. Second day…much better…didn't know if she was under the influence the first day. Attorney said it was because of PTSD.´* **Note:** sounds more like OCD or Tourette's, not PTSD

NAWJ Neurodiversity Survey:
Key Informant Incidents

What do you wish you had known?

- **Schizophrenia or bipolar** goes undiagnosed, subject self-medicates with substances, obscuring their underlying condition. **Note:** They often are in denial, and have been diagnosed, but are non-compliant with meds, preferring to use substances.
- **Fear and Intimidation:** People are afraid of court, intimidated by the process because of their inability to read or experience of inaccessibility due to language level.
- **Unknown diagnosis, unreliable reporting:** *I would have liked to know whether the signs and symptoms she displayed had more to do with PTSD or active substance use. She testified in a way that evolved, to make her story stronger, adding violent details never reported to police -- claimed bleeding, other party ripped off her clothes, and tried to rape her -- for which there was no evidence.*

NAWJ Neurodiversity Survey:
Key Informant Incidents

What advice would you have for your fellow jurists?

- *It is important to educate lawyers on a proper interview. I provide a 10-page booklet to lawyers on my expectations which includes mental health, medical and school record releases.*
- *Put them last on calendar, clear the courtroom for HIPAA, to discuss, if they are willing to disclose, their condition and what accommodations will help them best. Try your best to give them those accommodations or explain why you cannot but what alternatives you can offer.*
- *For attorneys, making screening for neurodiversity a part of your screening process, just ask. For judges, seek out training and individuate. People show emotion and understanding in different ways. Some lack the capacity to keep papers, answer questions, understanding what you are saying, not interrupt, maintain decorum. Exercise kindness and patience.*

NAWJ Neurodiversity Survey: Key Informant Incidents

What advice would you have for your fellow jurists?

- *Patience, preparation, bring in your county DD agency.*
- *Judges could always use more tools to help them identify issues and to help them make it easier for these persons to be in court. In probate proceedings, if we know in advance that the person is non-verbal and likely to act out, we may excuse their presence so long as an attorney is appointed to act on their behalf. More tools would be useful to both judges and lawyers.*
- *Not knowing is a problem, ignoring it exists is fatal to the administration of justice.*

NAWJ Neurodiversity Survey: Key Informant Incidents

What advice would you have for your fellow jurists?

- *I have seen little to no accommodation. Very few support people. Never a support animal. Very rarely see different seating arrangements. The whole goal of court is to get truthful and reliable information. But if we are unable or unwilling to find a way to identify issues and accommodate such, that affects our ability to provide meaningful access to neurodivergent individuals and may inhibit the goal of receiving reliable information* **[Attorney respondent]**

Needed Skill-Base in Neurodiversity Situations
Eliciting Reliable Information from Neurodiverse Individuals

In both legal and psychological practice, there is a common goal of attaining reliable and valid information from the individuals we serve.

There is an underlying cognitive science and methodology that can guide us in this endeavor.

We have to know something about cognitive capabilities at various stages of development.

Let us first look at levels of complexity in asking questions.

Needed Skill-Base in Neurodiversity Situations

Eliciting Reliable Information from Neurodiverse Individuals

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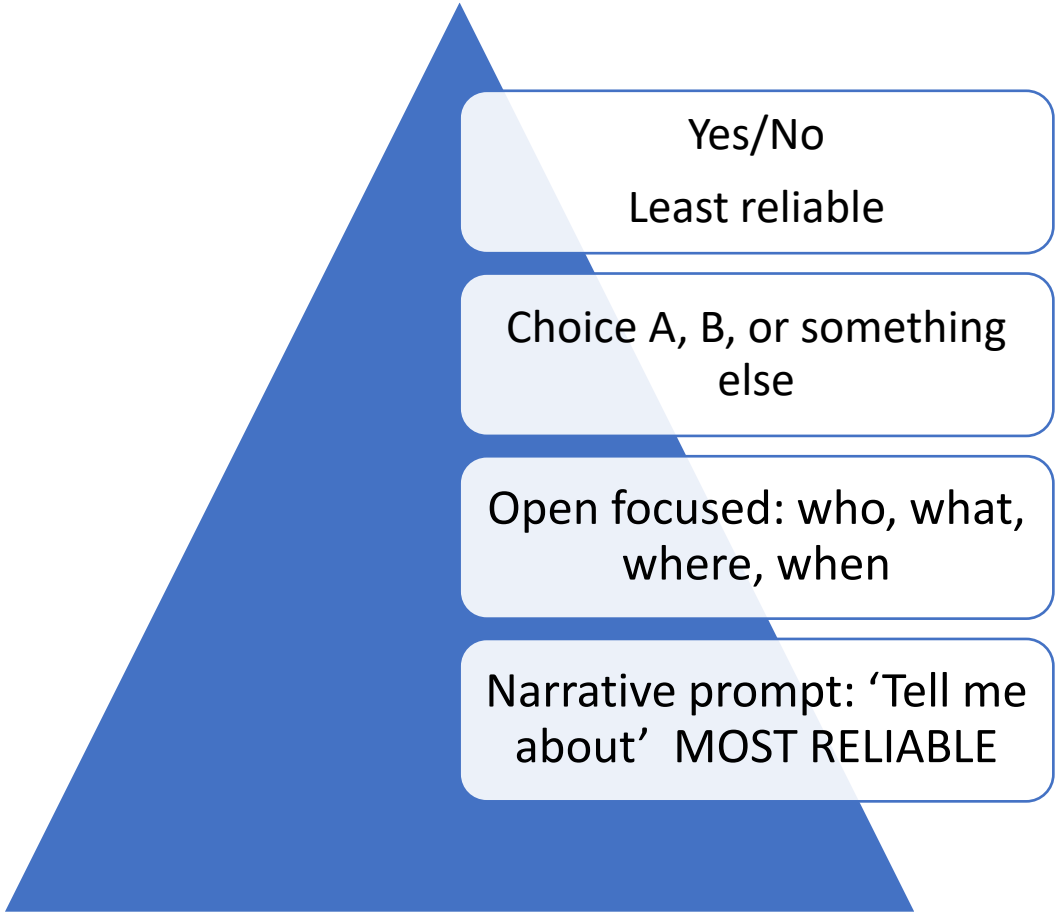

Needed Skill-Base in Neurodiversity Situations
Eliciting Reliable Information from Neurodiverse Individuals

- **Narrative Prompt** assumes a high level of cognitive functioning, where the subject can identify an event with a context of place, time, and other memorable details.
- **Open Focus** provides some direction as to where to search in one's memory for relevant information. There has to be some mastery of how to find memories of events across time. In young children, this may be more primitive: Was this before (after) [named event]?
- Choice is much less demanding, as it only requires recognition memory rather than well-developed searching capacity.
- Yes/No is also based on recognition, but can be very unreliable.

Needed Skill-Base in Neurodiversity Situations
Eliciting Reliable Information from Neurodiverse Individuals

- Ask open-ended questions on easy or interesting topics from their every-day lives and interests. Ask about non-controversial topics to see how well they can flow – or not.
- There is one more technique that can be used to elicit recall from an individual who cannot spontaneously generate a response. I call it the stripping the context method. When we give too much context, we may be leading too much.
- This requires knowledge of what transpired, or information provided by witnesses or by the subject himself/herself at another time:

Do you remember anything about a rubber ducky? …a broken phone? …

NAWJ Neurodiversity Survey

Eliciting Reliable Information from Neurodiverse Individuals

Learn developmental landmarks, capacities:

- **Recall in babies and pre-verbal children:** Specific events are recalled but not linguistically but there is rapid forgetting. Involuntary recognition memory occurs when original context is reinstated.
- **Examples:** 18-month-old boy who was physically abused by birth mom and removed from her care reacts by flailing about and hitting when placed on an adult female's lap.
- Adult male with age-equivalent capacity of a 5-year-old recognized photo of abuser vs. similar other men and cried, *'No, no!'*
- **Parental style** in conversation teaches child how to remember events with prompts, questions, review. **Example:** *And what did we do in the park today? Did we see anyone we know while we were there?*

NAWJ Neurodiversity Survey
Eliciting Reliable Information from Neurodiverse Individuals

- **Childhood 'amnesia':** Most children do not remember events occurring prior to age 3: more like 'snapshots' of a moment in time, not contextually rich. **Examples:** Finely constructed, contextually embedded and detailed account of sexual abuse prior to age 3 is highly unlikely to be reality-based. **Examples:** In a 'recovered memories' lawsuit, a young woman described very detailed and vivid accounts allegedly in preschool years, with time-markers not cognitively available to a child that age: *'It was on a Wednesday afternoon in August...I was wearing a pink-flowered dress over my shorts...'*
- During therapy, an adult female 'remembers' sexual torture in infancy when there is confirmed history that she suffered objective medical trauma over several surgeries as a very young pre-verbal child.
- **Reality testing: Reality testing is the ability to discriminate from various internal sources for an event, *e.g.* a dream, something imagined, something thought about, something that happened to one's self vs. somebody else.** At age 3-6, kids begin learning to discriminate what is real from what is imagined or thought about: they start to realize some things are 'stories' and other things 'real.' But what *parents say* is true *is* what is *true*.

NAWJ Neurodiversity Survey
Eliciting Reliable Information from Neurodiverse Individuals

- **Reality Testing continued**

Parental questioning of young children: suggestive and emotional questioning about possible abuse more likely to be adopted by the child due to fear and acquiescence. Age 2-6 when many mistaken allegations of abuse arise in family law cases. Children, especially under age 7, may not be able to differentiate what happened vs. what they were told by someone else. Or in separating out a dream from actual events.

- **Example:** Child, age 6 with divorcing parents. Mother delusional about women entering their house at night and having sex with her husband. Child recounts that a blond woman, a red-haired woman, and a black-haired woman came in and she herself saw them.
- **Example:** Child's father is murdered at home in her presence. Detective interviewed 4 year old several times. Her account went from *'A bad man came and hurt my daddy'* to *'Mommy took a knife from the kitchen and killed my daddy.'* [Mom was not at home at the time. Knife selected by child was inconsistent with the wounds. Mother was charged but found NG]

Common adult example: Did I turn the stove off before I left the house this morning or did I just *think about* turning it off? Think about the recall process that helps you to make that judgment. OCD individuals may have ongoing trouble making this differentiation, then become anxious and repetitively carry out an action.

NAWJ Neurodiversity Survey
Eliciting Reliable Information from Neurodiverse Individuals

- **Source memory depends on executive functioning ability in reinstating the context** of a situation where an event took place. Cognitive interview techniques ask for an account with as many details as the person can remember, even if they do not seem relevant. So-called 'irrelevant details' may be validating of recall.
  - Young children will describe scant details and cannot spontaneously contextualize.
  - Subjects with chronic depression, PTSD, or schizophrenia may present with generalized memories, with difficulties in recalling specifics or contextualizing.

  What helps you to remember that this happened to you?

- Similarly, if a subject cannot recall an event, one can ask a question to reinstate the context (if known) without leading:

  Do you remember something about a jump rope?

NAWJ Neurodiversity Survey

Eliciting Reliable Information from Neurodiverse Individuals

- **With young children, they may need help to reconstruct a context, and some adults may also require help.**

  Did this happen when you lived on Clover Lane or after you moved away?

  Where were you at home? What were you doing at that time?

  What was happening before anyone came home?

  What happened next? What happened after it was over?

  Were you in the yard or in the house?

  What room were you in? Were you in the kitchen or bathroom?

  Was school going on or was it a vacation time?

  Who was your teacher?

NAWJ Neurodiversity Survey: Eliciting Reliable Information from Neurodiverse Individuals

- **Source Memory:** Children show steady improvement to learn facts at age 4-6 and but must learn how to monitor for the source of those facts. 4-year-olds made many errors as to the memory source, while 6-8 year-olds made many fewer errors. Acquiring source memory is based on maturing executive functioning and learning continues through late childhood. ***Source memory may be impaired in clinical populations*** such as schizophrenia, PTSD, depression, confusing *self-generated vs. external* sources of information. In the extreme, they may experience hallucinations which they attribute to an outside source.
- **Examples:** Don't ask a child what they told a parent vs. Police or anyone else. S/he may not be able to accurately identify the source of their memories. If it was told to a parent or police, there is also an implicit demand that it must be correct. Or one is in trouble if one says something different now.
- **Adult psychotic example**: When are the voices the worst? Is there anything that helps to make them better? Are they better or worse at night? Are they better or worse when other people are around? Are they bothering you right now? Do you feel you can't talk with us today because of the voices being too bad? **Note:** Look for distraction, pauses, appearing to respond to internal stimuli if claiming right now. Claims that nothing helps, better at night, worse when others around suggest exaggeration or feigning.

NAWJ Neurodiversity Survey:
Recommendations by Jurists

- **Pre-hearing Form:** Develop a form surveying possible issues that the advocating attorney must complete 2 days in advance for your review. Don't be the last person to know what is going on!
- **Information Sharing:** Inform both (all) attorneys as well as courtroom personnel of the upcoming case.
- **Booklet for Attorneys:** One jurist advised doing this regarding court expectations, their preparation, and anticipating accommodations in advance.
- **Support personnel:** Encourage attorneys to identify possible witness support persons (even in adult cases) who can be specifically asked to attend.
- **Local Continuing Education:** Develop attorney continuing education locally that teaches appropriate interview/questioning procedures for children, as most of those methods will have applicability with adult/neurodiverse populations
- **Consultants:** Ask for help from DD or MH agencies to evaluate, follow the litigant, to advise the attorneys, or to sit in the hearing.

NAWJ Neurodiversity Survey:
Pre-hearing form for attorneys

Name of client_____ Age___ Gender/Preference___

Adults: Is s/he receiving any DD services? Yes_ No_ Don't know_

Is s/he living independently? Yes_ No_ Don't know_

Do you have any difficulty understanding what s/he is saying? Yes_ No_

Comment _____

Does s/he have any difficulty understanding what you are saying? Yes_ No_

Comment _____

Is s/he able to tell you their story? Yes_ No_ Comment _____

Are you aware of any suspected condition or diagnoses?

Intellectually disabled? _ Slow learner?_ Slow thinking _ ADHD/easily distracted_ Hard to keep on track_ Autistic Spectrum_ Brain injury_ PTSD_ Depression_ Bipolar_ Schizophrenia_ Speech/language disorder_ Low literacy level_ Easily agitated_ Dementia_ Current substance abuse_ Cerebral palsy articulation problems__

NAWJ Neurodiversity Survey: Pre-hearing form

- **Note:** Obtain HIPAA Release in order to answer these questions:
- Is s/he currently under psychiatric care? Yes _ No _ Deferred_
- Is s/he currently using street drugs or medical marijuana? Yes_ No_ Deferred_
- Is s/he currently experiencing hallucinations? Yes_No_ Deferred_
- Is s/he currently prescribed psychiatric meds? Yes_ No_ Deferred_
- Is s/he currently taking meds as prescribed? Yes_ No_ Deferred_
- Does s/he hold any unusual beliefs or delusions that may influence testimony or participation in this case? Yes_ No_ Deferred_
- What accommodations do you think will ease this person's participation in the court process?_____
  _____

NAWJ Neurodiversity Survey: Recommendations

Random Observations by forensic neuropsychologist: My 2 cents' worth!

- **Subjects in denial** of mental condition, prior diagnoses, prior hospitalizations, extent of previous problems especially with family. Often insist on representing themselves where case law vaguely allows until some incident happens. Only then can the Jurist justify removing *pro se* status. When medicated involuntarily, hallucinations may improve, but with delusional thought processes, improvement is modest at best. Determine if delusional thinking is pervasive or limited to one life domain or persons.
- **Minors with unrecognized**/unresolved cognitive/learning or mental health problems: Parents come from other countries, are intimidated because of their own lack of education, need to save face, and will either sign anything the school puts in front of them or are simply not responsive. Kids left unsupervised for many hours per day.
- **Limits of psychological testing:** We can readily identify the subject who is not trying or who is faking bad, exaggerating impairment, malingering, but there are no tests for faking good. We must rely on close reading of all records, collateral witnesses and observers, looking for differences seen in and outside of the court system, and extensive interviewing over multiple sessions for which the system is loath to fund. Often these individuals do NOT want to be found incompetent or NGRI. Often resist or don't cooperate with psych evals.

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- **Vexatious Litigants!** Please make sure that with court-appointed experts that such litigants become aware that we are working to obtain reliable information in a manner that seeks to be fair and objective, that both sides can count on. We are agents of the court, so we are answerable to the court, and you anticipate their cooperation. They do not have a doctor/patient relationship with your appointed experts.
- **Write me! Tell me what works or does not work! Answer the survey!**