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The Role of the Autism Response Team in Interrogation, Prosecution, and Defense

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Part Two of a Three-part Series

Introduction

In the first installment in this series, we introduced the concept of the *Autism Response Team*, or ART, as a vehicle to ensure that cases involving a person with an autism spectrum disorder (ASD), either as a defendant, victim, or witness are handled with sensitivity and fairness. Only then can there be a just result for everyone involved.

In this article we shall explore the challenges involved in interrogating persons with ASD, as well as issues that both the prosecutor and defense counsel should consider when involved with ASD cases. We will also present a scenario and illustrate how it would most likely play out both with and without an ART involved in the process.

An All-Too-Common Criminal Justice System Scenario

This case focuses upon a person with ASD who has been accused of a serious criminal offense. In this case, which is loosely based on a real-life situation, a 17-year-old male (we'll call him Max) with Asperger's Syndrome has been arrested for assault with intent to rape.

The parents of a 15-year-old female who rides on the same school bus as Max does, report to the police that their daughter has told them that Max followed her off the bus and closed in behind her as she walked to her home. According to the girl, he then grabbed and tried to molest her.

What the parents do not know is that Max has a desperate crush on their

daughter, but is clueless about how to approach her and talk with her. He's seen other boys kissing girls, and he's upset that he doesn't have a girlfriend, too. He just wants her to notice him and like him. In desperation, he grabs her arm as they are walking home, and he tries to hug her. She yells for him to leave her alone, then runs home, crying. What the parents also don't know is that Max has Asperger's Syndrome.

After interviewing the victim, a police officer responds to the complaint by going to Max's home. The officer asks permission

from his mother to speak to Max. The officer begins to question him about the incident. During the interrogation, the officer notices, with interest, that Max does not look him in the eye. He considers this to be significant because he was trained in his Interrogation Techniques Class that when people are being deceitful, they generally cannot maintain eye contact.

The officer also notes that Max rocks in his chair continuously and that he appears to be very nervous. In addition, Max has trouble answering very simple questions. Even when he does come up with an answer to a question, it takes him quite a while to do so. To make matters worse, when asked about the incident with the girl, Max consistently changes the subject to talk about sharks (his preferred interest).

All of these observations lead the officer to believe that Max is guilty.

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Ultimately, the officer asks Max, "What were you trying to do to that girl, rape her?"

"Rape," Max echoes, nodding, "Rape her."

The officer is excited to have a confession, and quickly gets Max to write down a statement, in which he admits that he followed the girl, grabbed her, and that he intended to "rape" her.

The officer is dismissive to Max's mom when she tries to explain that her son has Asperger's Syndrome. He advises Max and his mother that the report will be submitted to the district attorney who will get back to them.

Max is now facing a felony charge that could put him in an adult prison for more than a year.

The Prosecution and Defense Scenario without an ART

We now look at how the defense and prosecution teams might proceed in this case without the assistance of an ART.

A public defender is assigned to the case. She explains to Max's mom that with the "confession", a conviction is a "lock". She also tells her that Max should plead guilty to try to minimize his exposure to jail time.

The mother again tries to explain that Max has Asperger's Syndrome, but the over-worked public defender has no knowledge of what she is talking about. Her main objective is to get this case into court for a plea. She does not explore the issue further. While parents can go along with the counsel of their attorney regarding a guilty plea, in this case, Max and his mother decide that he should take his chances at trial.

The case is heard before a jury. Neither the presiding judge nor the jurors have any knowledge about ASD, and defense

counsel (also lacking in knowledge regarding ASD) presents no information that might have promoted understanding of some of Max's unusual courtroom behavior. For example, when the victim is on the stand describing the incident, jurors notice Max at the defense table, laughing. Without benefit of basic ASD information regarding displays of, and difficulty regulating emotions (not to mention information regarding Max's problems with language comprehension), the jurors can only assume that Max has no remorse or concern for the victim, and that he thinks the whole trial is a joke. It is important to note, that absent specific information on ASD, Max is at the mercy of the jurors' uninformed judgments.

Max is convicted. And, since there was no mitigating evidence presented about Asperger's Syndrome during his sentencing hearing, he is sentenced to one year in prison, without accommodations for his disability.

Enter: The Autism Response Team

We now take a look at the above-noted criminal justice scenario to see how Max might fare if the situation were different—that is, if he had the benefit of a well-trained ART in place.

In this situation, when the responding officer learns about Max's Asperger's Syndrome, he immediately contacts an ART duty officer to assist with the interview. Max's mom is interviewed first so that the duty officer can obtain information from her on how best to create a calm environment in which to conduct the interview with Max. This

would also enable the officer and ART member to learn about Max's special interests—in this case, sharks. The team

would also learn that Max's lack of eye contact, self-stimulatory behavior, and processing delays are common features of ASD. As such, they would be unlikely to associate Max's display of these behaviors during the interview with evidence of guilt or deceit.

Armed with this important information, the officer opens the conversation with Max by making small talk about sharks. This has an immediate calming effect on him, and rapport is established between Max and the interviewing officer. Based upon information received from Max's mother, the officer knows to ask Max open-ended, rather than leading questions. For example, instead of asking, "What were you trying to do, rape that girl?" the officer asks, "Max, what were you trying to do with the girl?" "Oh," Max replies, "I just wanted her to talk to me and like me."

Further ART-assisted and ASD-informed questioning by the officer reveals that Max does not even know what *rape* means. It is now apparent that, although he did certainly grab the victim, he did not do so with the intention of sexually assaulting her.

The Prosecution and Defense Scenario with an ART

A public defender and prosecutor from the ART are assigned to the case. Based on their training, they take a close look at the interview of Max, his background, and the nature and extent of his disability. They review Max's ART-assisted interview transcript and conclude that Max had no intent to harm or sexually assault the victim.

ART involvement during the trial would ensure that Max receives the protections and accommodations that he deserves.

At this point the ART prosecutor meets with the victim and her family to explain the situation. With permission from Max's mom, it is revealed that Max has Asperger's Syndrome. The prosecutor explains Max's behavior within the context of the characteristics of the disorder discussed earlier in this article. While careful not to excuse the fact that Max did grab the girl, the ART prosecutor clarifies for the victim and her family that his intentions were not to cause her any harm.

Now fully informed, the victim and her family agree that the charges of assault with intent to rape are inappropriate. They also agree with the prosecutor's decision to place Max on inactive probation for six months. As long as he stays out of trouble during that time period, and agrees to have no contact with the victim, the charges will eventually be removed from his record.¹

With an ART in place, the presiding judge would not only be familiar with ASD, but would also provide the jurors with critical background information about it, so that they would not make uninformed assumptions about their observations of Max's courtroom behavior. Defense counsel would also be prepared to present ASD information to the jury. While no one can ever predict what a jury will do, ART involvement during the trial would ensure that Max receives the protections and accommodations that he deserves.

As the reader can see, when an ART is involved in a criminal justice case, the outcome can be vastly different and justice can be served.

¹ It is important to note that if the victim and her family had insisted that the prosecutor proceed with the charges, the case would then have gone to trial.

Conclusion

Our criminal justice system is critically overburdened. There is, it seems, always a rush to get a case resolved in an expedient fashion. Unfortunately, expedience does not serve defendants or victims with ASD well. Furthermore, lack of knowledge of the characteristics of ASD often results in unjust treatment of individuals with the disorder, for jurors are heavily influenced by the actions and demeanor of the defendant during the course of a trial. Hence, negative emotions, and feelings of

anger or disdain toward the defendant can override the facts and evidence presented in the case and can lead to an ill-informed and utterly unjust decision. An ART would go a long way toward ensuring that the case involving someone with ASD would be taken off the "fast track" and examined more carefully by well-trained personnel at every step of the process, from arrest to final disposition.

In our final installment, we will look at the "nuts and bolts" of assembling an ART, and putting it into action. 

Bio

Dennis Debbaudt is the proud father of Brad, a young man who has autism. In the 1980s, Dennis wrote for the Detroit News and worked with network television current affairs programs in the U.S., Canada, and United Kingdom. A professional investigator and journalist for 28 years, Dennis turned his attention to autism spectrum disorders in 1987 after his son was diagnosed. He wrote *Family-School Liaison: Safety and Risk Support* with Walter Coles for ASQ's Summer 2004 inaugural issue.

Since 1993, he's authored numerous articles and books including *Autism, Advocates and Law Enforcement Professionals: Recognizing and Reducing Risk Situations for People with Autism Spectrum Disorders* for Jessica Kingsley Publishers, London UK (2002) and *Contact with Individuals with Autism: Effective Resolutions* with Darla Rothman for the FBI Law Enforcement Bulletin (2001). Dennis was instrumental in the development of the state of Maryland's Police and Correctional Training Commissions curriculum *Why Law Enforcement Needs to Recognize Autism*. He has consulted to ABC News 20/20 for a segment about false confession and autism, and has presented his training session for Department of Homeland Security instructors at the Federal Law Enforcement Training Center (FLETC) at Glynco, Georgia.

Dennis will present frequently this year for law enforcement, criminal justice and spectrum audiences. He can be contacted through his web site www.autismriskmanagement.com Dennis resides with his family in Port St. Lucie, Florida.

Matt Brown has been in the law enforcement field for 18 years, and currently serves as a U.S. Probation Officer in Portland, Maine. He and his wife Nancy have three children, Elizabeth, Matthew Jr, and Grace. Their middle child, Matthew, Jr., has been diagnosed with high functioning autism. Approximately three years ago, after meeting Dennis Debbaudt and attending one of his "train the trainer" seminars, Matt developed a program in Maine to train law enforcement, fire/rescue/EMS and other first responders about autism. Since then, he has traveled all over the state (and in Canada) as a volunteer for the Autism Society of Maine, providing this training. He is currently working with the Autism Society of Maine to get legislation passed this spring, to require police and prosecutors to receive autism training. The Autism Society of Maine is currently trying to secure a grant to pursue the idea of establishing an ART (as described in the Debbaudt / Brown article) in Maine.

