

EFFECTIVE PROSECUTION OF CASES INVOLVING  
VICTIMS WITH DEVELOPMENTAL DISABILITIES  
A Protocol for Investigators and Prosecutors



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A Publication of the USC UCEDD  
*A University Center for Excellence in DD Research, Education and Service*

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## INTRODUCTION

California’s diverse population requires prosecutors to be skilled in building successful cases involving victims and witnesses from many cultures, speaking hundreds of languages, who may lack familiarity with our judicial system. Similarly challenging but less frequently seen are victims with developmental disabilities (DD), who are often subject to persistent stereotypical notions by those who lack training and experience with this population. Victims that communicate in alternative ways, have difficulty expressing themselves, or even fail to communicate at all, present special challenges to prosecutors, requiring unique approaches to successfully prosecute these cases.

This protocol is designed as a guide for prosecutors in California to prepare for a successful victim-sensitive investigation and prosecution of those cases involving a victim or witness with cognitive<sup>1</sup> or intellectual disabilities. For new prosecutors, this guide may help you plan your case. For those with experience and knowledge of this population, these guidelines can serve as a useful reference tool, highlighting the numerous issues a prosecutor should be aware of and anticipate from investigation through trial.

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<sup>1</sup> Throughout this manuscript, the term “cognitive disability” is used interchangeably with “intellectual disabilities” and with “mental retardation.” While the terms “cognitive” and “intellectual” disability have different meanings within the scientific community, because language in statute or regulations does not change as quickly as in policy, the reader should be aware of how the authors are using these terms in this manuscript.

## WHO ARE WE TALKING ABOUT?

Consider the following true incident.

id: Patty R

Patty R.

In 1968, Patty R. was born with a chromosomal disorder. She has mild mental retardation, a mental age of approximately 8 years and the adaptive or life skills of a 7 year old. Because of Patty's disability and her prior history of victimization, her family felt she could not live independently. She received services from a northern California regional center since her early years in life. In fact, Patty had psychological evaluations beginning when she was 4 years old. By the age of 14, she was placed into programs for the severely handicapped.

Over the years, Patty was sexually assaulted by several individuals including a relative, neighbor and a bus driver. Some of these incidents were reported but others were not. The case results were mixed in the true administration of justice.

In 1997, 29-year-old Patty had an argument with her mother over doing some chores at her house. In a moment of anger, Patty blurted out "Willie raped me. Willie raped me." Willie was her bus driver. That exclamation began an investigation and prosecution that would take years to finalize.

Patty R's case contains many elements of victimization, which place individuals with disabilities at significant risk for victimization, which have been described in a report entitled *Abuse and Neglect of Adults with Developmental Disabilities: A Public Health Priority for the State of California*<sup>2</sup> (2003) by California's DD Act Partner Network (Protection and Advocacy Inc., State Council on Developmental Disabilities, USC UCEDD, Tarjan Center at UCLA). The report concluded that individuals with developmental disabilities are likely to: (1) be victimized and re-victimized at a much higher rate (4-10 times more frequently) than other citizens; (2) experience more severe abuse and over longer periods of time; (3) be victimized by persons they know and who may be responsible for their services and supports; and (4) be inadequately educated and

<sup>2</sup> <http://www.pai-ca.org/pubs/701901.htm>

supported to recognize, resist, and seek solutions to abusive situations. Moreover, the report also states that incidents of abuse, neglect, and victimization of people with developmental disabilities (DD) are under-reported, personnel within the criminal justice system are unevenly trained in working with this population, and attempts to prosecute cases are not always successful.

The following guidelines provide a framework for addressing some of these barriers to justice for victims with developmental disabilities, which prosecutors can utilize to increase the success rate for the prosecution of cases. As noted in the findings of the report cited above, crimes committed against individuals with developmental disabilities have some factors in common which are especially relevant to investigators and prosecutors. First, people with disabilities are frequently victimized by people they know (family members, caregivers, service providers, etc.). Second, incidents are routinely under-reported for a variety of reasons. Third, frequently the only witness to the crime is the victim—hence getting information from the victim is crucial to inform the investigation, and where possible, to build a case for prosecution. Using basic investigative and prosecutorial techniques, investigators and prosecutors can properly prepare these challenging cases for charging and trial.

## Part I --INVESTIGATION AND PRE-TRIAL PREPARATION (in the field)

The investigation and prosecution of cases involving victims with developmental disabilities present unique and interesting challenges for both investigators and prosecutors. There are issues which are universal to the prosecution of any case, as well as issues that are held in common with other special populations (*e.g.*, child abuse, elder abuse, immigrant populations). However, some issues that never arise in other criminal cases must be addressed both in the investigation and the prosecution process, in order to effectively present this type of case to a jury. Several modifications or enhancements that are necessary to promote an effective investigation and prosecution include the following practices.

### **A. THE POLICE INVESTIGATION-- Investigative Interviews**

#### **1. The Victim**

A thorough understanding of the nature of the Victim's disability is the keystone to the investigative process.

The investigative team should focus on how the disability expresses itself in functional terms, including:

(a) how the victim's disability may make them vulnerable to victimization [*e.g.*, impairments in judgment, ability to understand the consequences of what is being proposed, ability to get away from the

dangerous situation (physically or through problem solving)]; (b) how the disability will affect the victim's ability to provide reliable information related to the investigation and testify in a court; and, (c) what accommodations may be needed in the interview process to maximize the quality of information provided by the victim. It is suggested that a forensic

*In the majority of cases, the victim may be the only witness to the crime. Moreover, if there are witnesses, they also may be people with disabilities. Hence the ability of the investigative team to interview the victim is critical. Understanding the nature of the disability and how it will affect the victim's ability to cooperate with the investigative process and testify in court is essential.*

interview specialist<sup>3</sup> be enlisted to conduct this interview. Details related to interviewing the victim are addressed below.

## 2. Lay Witnesses

Numerous individuals should be interviewed when investigating a case involving a victim with developmental disabilities. Topics that should be covered include the following:

*When interviewing witnesses, it is important to remember that due to isolation and vulnerability, people with more severe disabilities are victimized by people they know. It is critical to interview the victim, who may be the only witness to the crime.*

### ► General Topics

- Understanding the Victim's typical routine; likes, dislikes, and fears; friends/relationships; how the victim communicates best (with a support person, communication device, writing or computer, etc.)
- The who/what/when/where of disclosure of the crime
- Establishing the suspect's access to the victim
- Establishing the suspect's knowledge of the victim's disability
- Addressing the Victim's ability to consent (in sexual assault cases)
- The facts specific to the case

### ► Physical signs and/or symptoms observed by the witness that may corroborate the crime

### ► Behavioral signs or changes observed by the witness. The witnesses to be interviewed include the following:

- √ Parents
- √ Guardians
- √ Siblings
- √ Friends
- √ Neighbors

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<sup>3</sup> Not all forensic interview specialists have training with individuals with significant disabilities.

- √ Service Coordinators, Social Workers and Counselors
- √ Service Providers
  - ☑ Personal Care Providers
  - ☑ Supported Living providers
  - ☑ Job coaches
  - ☑ Drivers/transportation personnel
- √ Educators
- √ Employers/Supervisors
- √ Anyone who had frequent contact with the Victim
- √ First Responders
- √ “Fresh Complaint” or Spontaneous Statement witnesses: those who the Victim disclosed to first or made a spontaneous statement regarding the crime.

*Many frontline workers (also called “direct support workers”) have minimal education and training in disability. These are typically minimum wage jobs with or without benefits; hence there is high turnover in this workforce. What they know about the victim’s disability is learned “on the job,” and may not be fully accurate. However, if the individual has worked with the victim for a reasonable period of time, s/he is likely to have good information about the victim’s routine, preferences, and how to best communicate with him/her.*

Critically assess any information you receive from witnesses, bearing in mind that individuals with disabilities are often victimized by persons they know and who have control over their services and supports.

Patty R.

In Patty’s case, numerous witnesses were interviewed, including her mother and teachers. The consistency and details of Patty’s description of her assault over several years provided significant corroboration of the crime. Additionally, these witnesses provided great insight into Patty’s disability, allowing for the jury to have a full understanding of Patty’s cognitive and adaptive skills before Patty testified. When Patty did testify, it was clear the jury showed both sympathy and respect for Patty.

Additionally, these individuals also gave critical information establishing the Defendant’s access to Patty. In particular, these witnesses testified as to the dates and times the Defendant drove the bus route, thereby showing he had access to Patty during the time of the assault.

### 3. The Defendant

A statement by the Defendant may prove very useful in prosecuting cases involving victims with disabilities. In some instances, the Defendant may make admissions that corroborate

the Victim's account. In other instances, the Defendant may lock him/herself into a certain defense that can later be challenged or refuted. A full investigation of the Defendant's background should be conducted, if possible, prior to the interview of the Defendant. This includes the Defendant's prior criminal record (whether reported or not), as well as the Defendant's access to the Victim and the extent of his or her contact with the Victim.

Additionally, alternate methods of securing a statement from the Defendant should be considered. These include:

- ▶ Use of pretext phone call
- ▶ Computer records
- ▶ Letters, notes or other writings by the Defendant

Patty R.

In Patty's case, when interviewed by law enforcement, the Defendant denied the allegations. The investigation of the Defendant's background revealed that he had a history of allegations of sexual assaults against children. Additionally, while out on bail on Patty's case, he sexually assaulted another child. This evidence was critical to the successful prosecution of Patty's case as it demonstrated a clear pattern of sexual abuse of vulnerable victims.

**B. CRIME SCENE INVESTIGATION**

In many cases involving victims with disabilities, there may be a delayed disclosure of the criminal conduct.

As a result, there may not be a crime scene to be processed. However, because victims with disabilities often provide statements involving concrete facts, physical evidence supporting those facts can be very

*Many individuals providing support to individuals with disabilities (including family members, residential care providers, and service providers) may not believe or recognize that a crime has been committed, nor understand their mandated reporting requirements. In addition, there may be a tendency for facilities to "administratively" handle the incident by firing the suspect.*

effective for the prosecution. As such, even if there is delayed disclosure, the scene of the crime should be fully documented. The processing of the scene should include the following:

- ▶ Collection of any potential forensic evidence
- ▶ Photographs
- ▶ Diagrams

Patty R.

In Patty's case, she provided a detailed account of the circumstances of her assault. This included specific facts as to the route driven by the Defendant, the exact location where the assault took place and what he did after the assault. Patty's details included facts such as, "he pulled over by the 'stinky trees'" and "he threw the rubber out by the railroad tracks". The investigation revealed that the route described by Patty was in fact the route driven by the Defendant during the time alleged. The location of "stinky trees" proved to be a row of eucalyptus trees on the side of the road. And, indeed, there were railroad tracks along the route supporting her claim that he discarded evidence. Photographs and diagrams of all these locations supported Patty's assertions.

### **1. Medical Examinations**

In appropriate cases, a medical examination of both the Victim and Defendant should be conducted. In some instances, even if a victim is incapable of testifying, a case may be prosecuted successfully if medical and forensic evidence are obtained that proves the guilt of the Defendant. Medical examinations should include the following:

- ▶ Statement by the Victim of the circumstances of the crime
- ▶ Documentation of any injuries
- ▶ Collection of forensic evidence

## **2. Forensic Evidence Analysis**

A thorough review of all available forensic evidence should be conducted. This includes items collected from the crime scene as well as from any medical examinations. This evidence (or lack thereof) may play a significant role in the prosecution of the Defendant. For instance, where it is clear a woman with a disability is incapable of consenting to sexual intercourse, the discovery of semen in her sexual assault kit will provide very damning evidence against the Defendant.

## **3. The Forensic Interview**

The successful prosecution of a case involving a victim with disabilities rests on an effective interview. It is highly recommended that this interview be conducted by a forensic interview specialist who has been specifically trained in interviewing individuals with disabilities. It is suggested that the interview be conducted in an appropriate environment, i.e., (1) accessible to individuals with physical and sensory disabilities, (2) with accommodations for individuals with a variety of disabilities, including high distractibility, and (3) to ensure for privacy. Utilizing a child advocacy center may provide this environment; but be sensitive to the fact that adults with disabilities are not “children” regardless of their mental age and should be interviewed with consideration to both their chronological age and their intellectual capacity. Many counties have advocacy centers wherein law enforcement officers work closely with social workers trained specifically in interviewing victims of crimes (but again, be aware that not all of these individuals will have experience interviewing victims with more severe disabilities). If there is no advocacy center in the county, enlisting the use of a neighboring county’s center is recommended.

The forensic interview should address the following topics:

- ▶ Competence to testify: A witness is competent to testify if she: 1) is capable of expressing herself so she can be understood; and, 2) understands the duty to tell the truth.
- ▶ Competence to give consent (*in sexual assault cases*): In California, consent is defined as “positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.” Penal Code section 261.6. With this definition in mind, the forensic interview should explore the following areas:
  - Questions directed at basic knowledge. Depending on the disability, the interviewer may obtain more information if concrete questions are asked rather than abstract ones.
  - Questions directed at sexual knowledge. The interviewer may want to ask both concrete and abstract questions, since consent involves a true understanding of the act involved.
- ▶ Specifics of the Case: This includes obtaining detailed and concrete information regarding the circumstances of the crime, the acts involved, and any statements made by the Defendant.

### **C. THE PSYCHOLOGICAL INVESTIGATION**

It is imperative in any case involving a victim with disabilities that a psychological investigation be conducted. In many crimes, the prosecution must specifically prove that the Victim has a disability. As such, the jury must be presented with evidence not only establishing the disability, but demonstrating the significance of that disability.

This psychological investigation should encompass the following:

**1. A complete and current assessment of the Victim, to include:**

- Adaptive functioning level
- IQ level
- Mental age or educational grade level equivalent
- Cognitive reasoning ability (including such factors as judgment and insight)
- Relevant expert opinion (Victim's ability to consent)

*School records can provide a wealth of information. Children who are classified for special education services will have had a psychological assessment performed to discern their individualized needs.*

**2. Production of Records Related to the Disability**

- Regional Center records
- School records
- IEP (Individualized Educational Plan) records
- Records in possession of other agencies
  - Child Protective Services
  - Adult Protective Services
  - Other governmental agencies

**3. Production of Records Regarding Prior Victimization**

- Police reports
- Mandated reporter reports

Patty R.

In Patty's case, she had been victimized on numerous occasions, including by a prior bus driver. This individual was prosecuted and convicted. Despite years of education for Patty to assist her in preventing abuse, she still suffered at the hands of others put in a position of trust. These acts of victimization demonstrated her inability to protect herself.

Additionally, even though Patty had numerous prior psychological evaluations conducted by the Regional Center, a current assessment was conducted for purposes of trial. This assessment not only addressed her disabilities, but specifically addressed whether Patty had the capacity to consent to sexual relations.

The psychological investigation played a critical role in Patty's case. Armed with this information, the jury had substantial evidence establishing both her disability and her inability to consent.

## Part II -- PRE-TRIAL MOTIONS (at your desk)

Under California law, there are several protections afforded individuals with disabilities in a courtroom. It is the responsibility of the prosecutor to assure these protections are secured. The following are “Reasonable Accommodation” motions that can be made for Victims with disabilities:

- ▶ Videotape of preliminary hearing: Penal Code section 1346 allows for the videotaping of a victim’s testimony at preliminary hearings in sexual assault or child abuse cases. At the time of trial, if the court finds that further testimony by the Victim would be too traumatic, the videotape can be admitted at trial without the Victim testifying.
- ▶ Closed Circuit TV: Penal Code section 1347.5 allows for the use of closed circuit TV in sexual assault or child abuse cases, if the court finds that the impact on the Victim would be so substantial as to render the Victim unavailable if he/she testifies. Certain factors must exist for this section to apply.
- ▶ Use of Support Person: In sexual assault and child abuse cases, a person with a disability is entitled to utilize a person necessary to facilitate the communication or support the physical needs of the person with the disability.
- ▶ Courtroom accommodations: In order to accommodate victims with disabilities in sexual assault and child abuse cases, the court can:
  - take more frequent reasonable breaks
  - have the judge remove his/her robe
  - relocate the parties in the courtroom to make the environment more comfortable for the Victim.
- ▶ Testimonial accommodations: Evidence Code section 765 permits the court to take special care to protect a witness with a substantial cognitive impairment from undue harassment or embarrassment. This includes ensuring that questions are stated in a form that is appropriate to the age or cognitive level of the witness. Evidence Code section 767 further allows the court to permit leading questions of an individual with a severe cognitive impairment in specified cases of abuse.

### Part III --CASE PRESENTATION (in the Courtroom)

After a thorough investigation and pre-trial motion practice, it's time to take the case into court. Assuming the defendant was not covered into a plea by the strength of your case and the evidence against him (or her), you now have to make your case understood by twelve people who likely have had limited or no contact with persons with disabilities. This limited contact is not by chance – unfortunately, many people you encounter as potential jurors may have consciously avoided dealing with people different from themselves. Our society does not embrace those who look, move, speak, hear, sense, or process information in an unorthodox manner.

#### **A. PREPARING THE PROSECUTOR—RECOGNIZING YOUR OWN BIASES**

This may seem to be self-evident, but you need to take a moment to address your own preconceptions, and ideas about your case and victim. You will need to ask yourself if you are prepared to work with someone who communicates or moves differently. Ask yourself what your own reactions to this disability may be. Are you unsettled or nervous about speaking with a person with mental retardation or who is hearing impaired? Are you concerned about your own reactions being telegraphed to the jury in court? What can you do to prepare yourself to model for the jury and the court the proper manner of interacting with your victim?

Begin your preparation by taking time to learn about the disability and about your victim or witness. Learn how to interact with them by finding out beforehand their individual needs and preferences. For example, if your victim relies on a wheelchair, is it appropriate to assist them with that chair as they navigate the courtroom? Will they be able to sit for 1-2 hrs without taking a break? How will they motion to you that they are uncomfortable? What about the court process are they most worried about? This preparation can go a great distance in putting your

client at ease. Moreover, knowing this information in advance will help you to anticipate needs and interpret your client's communication so you can advocate on his/her behalf during court proceedings. Avoiding surprises and being prepared for some deviations in courtroom process will help the jury and the court to also be at ease. In addition, being aware, yet considerate, of your victim's needs related to his/her disability) can assist the jury to appreciate the seriousness of your case.

#### **B. PREPARING AND PRESENTING THE EVIDENCE**

In the prosecution of financial crimes, physical evidence (*e.g.*, cancelled checks, business records, ATM videotapes) is key to winning the case. However, in cases of interpersonal violence, there is too often a tendency by prosecutors to rely solely on testimony of the victim. They downplay the importance of corroborative evidence and overvalue the importance of witness testimony. When the witness is someone with a developmental disability, the individual may be incorrectly perceived as lacking credibility.

In cases with victims with disabilities, it is important not to underestimate the importance of the physical evidence in the case. This includes being prepared to rely on the evidence of your victim and not merely the testimony of the victim. For instance, where a defense to rape is consent, merely showing the jury a non-communicative victim can be enough evidence to counter the defense and lead to a conviction.

In the artificial world of the criminal trial, detached from reality by rules of evidence and procedure, the prosecutor needs to be comfortable presenting the victim as evidence. Towards this end, be prepared to present the following:

- ▶ Testimonial evidence from experts on the victim's disability and functional abilities

- ▶ Testimonial evidence from those who know the victim best, including friends, family members, educators, social service professionals, etc., on the victim's level of adaptation, and the victim's struggle to overcome obstacles.
- ▶ Photographic, documentary, or testimonial evidence of the readily apparent nature of the victim's disability (keep in mind, under Penal Code section 368, the prosecution is required to show as an element of the offense that the defendant knew or reasonably should have known of the victim's status as a dependent adult).

The prosecutor should also be prepared for any eventuality:

- ▶ Anticipate calling the victim to the stand, and be prepared for delays, obstacles, and difficulties since the courtroom setting may often be overwhelming to persons with disabilities. Attempt to limit distractions, such as courtroom movement and noise, so as to keep the witness focused on the questions being asked.
- ▶ Anticipate the possibility of the court denying your victim the ability to testify as lacking in capacity to testify (see Part II, above). Be prepared to call your victim as evidence for the jury to observe and understand how the victim acts and reacts to questions and the environment of the courtroom (regardless of what his/her IQ might be).
- ▶ Anticipate that your witness will be subjected to leading questions by defense counsel. Individuals with developmental disabilities will often answer questions in the affirmative to please the questioner, and so as not to appear that they do not understand what is being asked. It is therefore incumbent upon the prosecutor to be prepared to engage in re-direct examination, asking open ended questions so that the witness can explain the previous "yes" answer given on cross.

- ▶ In financial abuse cases, be prepared to call experts – bankers, tellers, accountants, lawyers - to explain the nature of financial instruments, while also presenting evidence of how the victim was not capable of understanding the abstract concepts involved.

### **C. PREPARING THE VICTIM/WITNESS**

Not to be overlooked is preparing your victim for court. Individuals with developmental disabilities run the spectrum from individuals who are barely verbal to those who are quite engaging and expressive, and from those who need constant attention and care to those who are fairly independent. By now it seems axiomatic that prosecutors need to take time to meet with the victim and introduce them to the court process. It is imperative, however, that you do not forget to walk the victim through the process, including:

- ▶ Getting to your office, the courtroom, and the location where they be waiting to be called for testimony. Be prepared to make accommodations for transportation, since many individuals with developmental disabilities are unable to travel independently.
- ▶ Going through the steps for finding parking (often an issue for those requiring special transportation).
- ▶ Reviewing the actual questions you will be asking them, and reviewing potential evidentiary items they will be asked to identify while on the witness stand. Be careful, however, not to over-prepare the witness, so that the answers appear rote or rehearsed during the actual courtroom testimony.
- ▶ Showing the witness the layout of the courtroom, including where the jury will be located, and how they can make themselves heard or observed by the jury. Also show the

witness where the judge, counsel, and defendant will be seated and explain what each person does in the court process.

- ▶ Discussing and answering concerns they may have about their own safety, and about having to confront their abuser. Reassure your victim that they will be protected at all times.
- ▶ Finding out what special accommodations your witness will need (microphone, assistance, support person, interpreter, power outlet, etc.)

A witness who is at ease with the surroundings will be better able to focus on the questions and answers involved in testifying, and provide better testimony. Your meetings with the victim or witness will also give you insight into what motions you will need to address with the court pre-trial.

#### **D. PREPARING THE COURT**

A well prepared prosecutor gives advanced notice to the court and defense counsel that the victim may need special accommodations. Motions addressing the simple need for wheelchair access, a hearing device, or assisted testimony are quick to draft. They also serve two important purposes. First, they assure that the victim or witness will be provided with the accommodation. Second, and more importantly, these motions put the entire court staff on notice that this case will be both serious and challenging. There may be delays for getting the victim into the courtroom and in a position to testify; testimony may tax the ear of the court reporter if the witness speaks very, very quietly or unintelligibly; or unexpected events may occur on the stand due to a witness' spastic muscle activity. The simple act of giving notice allows all of the parties involved to be prepared.

When dealing with victims and witnesses with developmental disabilities, often the court and defense counsel are under the misperception that having an intellectual disability renders one incompetent to testify. This is far from true. Evidence Code section 700 provides that “...*every* person, irrespective of age, is qualified to be a witness and no person is disqualified to testify to any matter.” Disqualification only occurs when the witness is incapable of expressing one’s self so as to be understood, or incapable of understanding the duty to tell the truth (Evidence Code section 701). In the case of a dependent person with a substantial cognitive impairment, the individual may merely be required to tell the truth (Evidence Code section 710). Individuals with developmental disabilities are often able to meet these standards. It is incumbent upon the prosecutor to educate the court as to the appropriate evidentiary standards to be applied.

#### **E. PREPARING THE JURY**

Along with the pre-trial motions discussed in Part II (*e.g.*, motions for victim support persons or videotaped testimony), a thorough prosecutor prepares a set of jury selection, or voir dire, questions tailored specifically to expose and weed out those potential jurors with biases or prejudices towards individuals with disabilities.

- ▶ Be direct and ask jury panelists about how they use such terms as handicapped, disabled, those with disabilities, crippled deaf, hearing impaired, or retarded, and what they think of the terms and the people to whom they are applied.
- ▶ Ask about juror’s individual experiences with those with disabilities – relatives, family members, co-workers, friends, neighbors, and even strangers.
- ▶ Ask panelists if they can be patient in listening to testimony that comes from a voice box, translator, or assisted speech device.

- ▶ Discuss the actual victim's and witness's disabilities, and how it may slow the pace of trial, requiring extra attention being paid to understand the testimony. Ask the potential jurors whether they would be able to judge that testimony fairly as they would any other witness.

Just as prosecutors in gang violence cases prepare juries to hear testimony from less than perfect witnesses, prosecutors working cases with victims with disabilities must make sure the jury understands that the victim or witness may also have special considerations. While these considerations may appear to be detrimental to the case, prosecutors need to show the jury that these are actual strengths to the case.

#### **F. PREPARING FOR OPENING AND CLOSING ARGUMENT**

A common tactic in problematic cases, *e.g.*, your victim has a prior felony record, is to address the problem straight on before the defense can exploit the weakness. In cases with people with disabilities, address the issue of the disability early and upfront. Make the jury more comfortable with the status of your victim. In your opening statement, humanize your victim by explaining what the victim's condition entails. Emphasize the victim's vulnerability, and focus on the defendant's predatory behavior. In closing argument, describe in powerful, emotional, and resonating language how the victim has survived what we view as challenges in their lives, only to be further victimized by the defendant. Take the perceived liability of the disability and turn it into a strength for your case. Be positive in your approach. Remember, there are never bad facts in a case – only challenging ones!

## CONCLUSION

The investigation and prosecution of cases involving victims with disabilities can be challenging. However, many of these challenges may be readily overcome. Individuals with developmental disabilities often prove to be extremely effective and sympathetic witnesses. As in the case of child abuse prosecutions, the simplicity of the testimony often bespeaks an innate credibility of the witness. The trial of such cases can be extremely gratifying for prosecutors, knowing that you are able to make a meaningful impact in the life of a vulnerable individual who was callously abused. As Francois De La Rochefoucauld once said, “Those who are incapable of committing great crimes do not readily suspect them in others.”

### Patty R.

Patty thought she could trust those who were charged with caring for her. Unfortunately, those put in a position of trust violated that trust by abusing her. With a dedicated law enforcement and prosecution team, the fair administration of justice was achieved. Her abuser was convicted and sentenced to life in prison. For Patty and her mother, knowing this man would never harm again provided great relief and satisfaction.

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