

## Interviewing and deposing survivors of sexual crimes who have intellectual disabilities

Daniel Pollack and Helene M. Weiss | November 29, 2021



Individuals with intellectual disabilities (ID) are the most likely victims of sexual assault. To be effective advocates, attorneys must be properly trained to interview and depose this survivor population.

Even before a sexual assault becomes a “case”, many reporting hurdles face these survivors:

- Even if these survivors are capable of making a report, their credibility may be questioned simply because of their disability.

- If the survivor is living exclusively with a community caregiver who may also be the perpetrator, there may be limited opportunities to make a report. Indeed, survivors may be putting themselves at risk by even attempting to report.
- The person taking the report may not have the necessary skills to conduct the interview correctly.

Clients with intellectual disabilities, like many survivors of sexual abuse, may be unsure of what to do following an assault. Sadly, oftentimes the abuser is either living in close proximity to the client, or has a certain level of psychological and physical control over the victim due to their particular vulnerability. This can create an uphill battle for survivors deciding to disclose their abuse, especially considering that clients with intellectual disabilities may not have received the same type of sexual education as a client without intellectual disabilities.

Even when speaking with their own attorneys, these survivors may hesitate revealing all of the details of their ordeal. They may not understand that the answers to their attorney's questions may or may not remain confidential. In fact, the attorney cannot always provide their clients with firm answers about how their revelations will be used. Moreover, the attorney cannot guarantee how an opposing attorney or the court will use the information. However, attorneys who are mindful of their ability to effectively communicate, gain trust, and practice empathically with these clients will improve their ability to successfully interview survivors with intellectual disabilities.

Once a matter is in pre-trial phase, interviews and depositions by attorneys can, at best, be healing; at worst, they can be traumatizing. Because the type of evidence collected by attorneys may be quantitatively more extensive and qualitatively different from the

evidence gathered by law enforcement, SANE nurses, or other mental health professionals, it may be necessary for attorneys to ask particularly sensitive and invasive questions in order to establish the exact circumstances of the incident(s). This is when genuine compassion, empathy and a toolkit of interviewing skills are imperative.

When interviewing a client with intellectual disabilities, it is important to remember that the interview process will likely require additional time and patience. Enough time must be set aside to have a meaningful conversation. Before beginning the interview phase, it may be beneficial for the client to engage in a conversation about general matters: hobbies, the weather, current events, sports, etc. This ice-breaker process will help establish a sufficient rapport and level of trust with the client. It may also be comforting to have the presence of a trusted friend or family member at the interview in order to ensure that the client is at ease. Providing the client with an environment that is non-threatening, neutral, and familiar, will yield a greater chance for a successful case.

An essential starting point is to clearly and plainly explain to the client the purpose of the interview, including everyone's role and the reason for their presence at the interview. Lawyers should not assume that clients with intellectual disabilities have the same understanding of the judicial system as a lay person without intellectual disabilities. Although attorneys should use simple, concrete and clear language, it is also important to treat all survivors in an age-appropriate manner, regardless of intellectual ability. Acknowledge that questions and instructions may need to be repeated. Encourage note taking if the client wishes to do so, and don't assume that the person can read well, if at all.

During the interviewing process, occasionally check to ensure that the client understands what you're saying. This may occur between topics or between each question and answer. If the client expresses a desire for you to rephrase your questioning, be mindful to use language that is appropriate for the client's particular vulnerabilities. As always, empathy and compassion are crucial tools to bring to the table while conducting this type of interview.

While the interviewing process is typically internal, the deposition process will expose the client to a much more intense environment. As with any client, preparation is key. The client should understand what the deposition process is, how the process of questioning will proceed, and that they will be asked questions by an opposing attorney. Attorneys must explain to their clients that there are no right or wrong answers. Alternatively, when cross-examining a client with intellectual disabilities, it is imperative to show as much empathy, understanding, and patience as possible. Despite the adversarial process of depositions, there is no legitimate reason for an attorney to harass, intimidate, or otherwise speak down to any representative or client.

Interviewing and deposing are both art and science. There is no ironclad rulebook on how to properly relate with, interview, and depose a client with intellectual disabilities. Attorneys are encouraged to seek out resources and educate themselves prior to conducting interviews and depositions of an intellectually disabled client.

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