

# LANGUAGE DISORDERS IN JUVENILE OFFENDERS

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## A LITTLE BIT OF BACKGROUND

- If you've spent a little bit of time with me, you know this is an area of interest and passion for me.
- I originally found one of these articles via an SLP Facebook group and made my personal almost-lawyer (read: husband) read it with me to help me understand it better.
  - Also very relevant to him to as he just received a fellowship to work at the Moran Center for Youth Advocacy in Evanston, working with youth very much like those described here.

“The juvenile and criminal justice systems operate on an implicit assumption that, barring a severe mental defect or other extraordinary obvious condition, most human beings understand most of what they are told and are able (even if they are not willing) to use language as an effective tool for navigating through life. Research has consistently shown, however, that for a substantial number of juveniles and adults who have been charged, convicted, and incarcerated, that assumption is wrong.”

(LaVigne & Van Rybroek, 2011, p. 42-43)

# PREVALENCE

- In a comparison of language skills between juvenile offenders and non-offenders, Hopkins et al (2018) found that:
  - Juvenile offenders scored lower than the non-offender group across the board
    - Lower-performing individuals on each measure were 1 to 5 times more likely to be an offender.
  - 95% of the offenders scored 2 standard deviations or more below the norm on their expository language sample, compared with just 36% of the non-offenders.
  - Depending on how conservative a criterion you use to determine DLD, 44–81% of the offenders would meet it, compared to 13–37% of the non-offenders.
- A few more mind-blowing statistics and take-aways:
  - **Group comparison controlled for nonverbal IQ, SES, and amount of time spent in school**, so we're seeing a significant difference here that's not well explained by other social factors.
  - When they recruited their subjects, the researchers excluded anyone who was currently working with an SLP, in case it would skew test performance. But it turned out that **NONE** of the adolescents in the offender group had **EVER** had speech-language therapy. **NONE. OF. THEM.**
    - Possible explanations for this: it's "possible that the language needs of this group were hidden behind the emotional behavioural difficulties that were more overtly displayed and attended to by professional services" (Hopkins et al, 2018, p. 126).

## LEGAL IMPLICATIONS OF LANGUAGE DISORDERS IN JUVENILE OFFENDERS

- Competency to stand trial
- Ability to assist counsel & attorney-client relationship
- Waiver of rights
- The reliability and admissibility of confessions

## COMPETENCY TO STAND TRIAL

“As first defined in *Dusky v. United States*, competency to stand trial requires sufficient present ability to consult with counsel ‘with a reasonable degree of rational understanding’ and possession of a ‘rational as well as factual understanding of the proceedings.’ By its very terms, the *Dusky* standard links language competence and competency to stand trial. In *Cooper v. Oklahoma*, the Supreme Court reinforced the language/competency connection by further defining the ability to consult with counsel standard as the ability to ‘communicate effectively with counsel.’” (LeVigne & Van Rybroek, 2011, p. 66-67).

- By that definition, language impairments are as relevant to a client’s competency to stand trial as mental illness or intellectual disability. (LeVigne & Van Rybroek, 2013).
- Youth (especially under 14) are already substantially less likely to be able to possess capacities involved in competency
  - Impaired language skills exacerbate, extend developmental deficits

# COMPETENCY TO STAND TRIAL

## BUT...

“Most defendants with language impairments will be found or presumed competent, not because they are able to competently assist counsel, but because of the nature of the entire competency enterprise.”

(LeVigne & Van Rybroek, 2013, p. 81)

- The constitutional threshold for a finding of competency is low and inconsistently applied. Lawyers rarely raise the issue of competency, even when they have doubts about a client's ability to adequately communicate.
- As my husband said when he read this, “that all makes perfect sense theoretically, but it will never be used in a practical sense.”

## ABILITY TO ASSIST COUNSEL & ATTORNEY-CLIENT RELATIONSHIP

“While every client has a right to effective assistance of counsel, counsel’s ability to provide effective assistance is inextricably interconnected with the client’s reciprocal ability to effectively assist counsel. And the client’s ability to effectively assist counsel is inextricably interconnected with language. Or to put it more simply, in the attorney-client relationship, communication matters. In fact, communication is all there is.”

(LeVigne & Van Rybroek 2013, p. 73).

# ABILITY TO ASSIST COUNSEL & ATTORNEY-CLIENT RELATIONSHIP

## Language deficits that may impede the ability to assist counsel:

- Poor vocabulary
- Difficulty processing complex sentences
- Difficulty following directions
- Deficient auditory memory
- Staying on topic
- Poor reading skills
- Deficient narrative skills (both expressive and receptive)\*\*
- Inability to grasp inferences
- Lack of background knowledge
- Difficulty learning new material
- Limited ability to seek clarification
- Limited ability to recognize and articulate emotional states
- Difficulty reading social cues
- Insensitivity to cause and effect
- Inability to recognize and control inappropriate behavior
- Inability to interpret the motivations and thoughts of others
- Deficits in higher-order skills such as self-monitoring, planning, and appreciation of consequences

# ABILITY TO ASSIST COUNSEL & ATTORNEY-CLIENT RELATIONSHIP

## Narrative language skills

- Narratives are “stories that adhere to a broad temporal template so that an account can be provided that follows a logical, coherent order, taking into consideration the listener’s presumed knowledge” and are “complicated linguistic, cognitive, and psychological structures that require setting or context, characters, temporal sequence, action, internal and external response, and cause and effect” (LeVigne & Van Rybroek, 2013, p. 88-89).
- As we well know, narrative skills are often weak in individuals with language impairments as they are extremely linguistically complex
  - Narratives from individuals with language impairments are likely to have fewer details, including about context and initiating events
  - Individuals who lack story grammar skills will have difficulty with reconstructing their own experiences and sharing them with others
- When compared to non-offenders of the same age or younger, offenders’ narratives are noticeably poorer (LeVigne & Van Rybroek, 2013)
  - How do they fare when attempting to tell their story in a context like an interrogation, conversation with counsel, or on the witness stand?

# ABILITY TO ASSIST COUNSEL & ATTORNEY-CLIENT RELATIONSHIP

## Narrative language skills, continued



"He got in my face,  
so I shot him"

- What is the client really saying?
  - That may seem like a callous response, but what if "got in my face" really means he experienced threatening, assaultive behavior? What if the client feared for his life but lacks the language to describe it? Could there be an argument for self-defense?
- Narrative is too thin, lacks details and context needed to come up with a defense
  - Attorneys operate from a distinct disadvantage when a comprehensive client narrative is unavailable

# WAIVER OF RIGHTS

“As the Supreme Court observed in *Padilla v. Kentucky*, ‘it is quintessentially the duty of counsel to provide her client with available advice about an issue.’ Where problems arise, however, are in those many instances in which an ostensibly ‘competent’ client lacks the linguistic ability to process and apply even the best advice and the clearest explanation from counsel.”

(LeVigne & Van Rybroek 2013, p. 92-93)

- Many important decisions about waiving and asserting rights in the legal process involve navigating through language and concepts that are sophisticated and abstract
  - The right to remain silent, the right to go to trial or to plead guilty, the right to testify, or the right to contest a transfer to adult court

# WAIVER OF RIGHTS

## “Knowing, intelligent, and voluntary” standard

- Usually found to be met if a defendant states they were told the requisite information, but conflates being told with comprehension and ignores the real constitutional question – did the defendant actually understand?
- One study looked at adolescents who pled guilty in juvenile court to determine how well they understood the rights they had just waived and the consequences of their pleas (LeVigne & Van Rybroek, 2011)
  - Startled to find that 17-year-olds were confused and mistaken about key legal words and concepts, only slightly more likely to understand than 13-year-olds
    - True even after the words and concepts had been explained and among those who had previous experience in juvenile court
- Conclusion?
  - This standard often not met with individuals with language disorders

“It is the due process equivalent of finding that a Spanish-speaking defendant understood his rights because they were read and explained to him in English.”  
(LeVigne & Van Rybroek, 2011, p. 74)

# WAIVER OF RIGHTS

“...Comprehension, especially in the legal context, takes a large quiver of sophisticated linguistic tools. First, the listener must have the receptive skills, including vocabulary and the ability to decipher a series of sentences, many of which will be complex or at least compound. The listener must also possess a fund of knowledge upon which to build his understanding of the new information. Similarly, the listener needs the knowledge base, in combination with the appropriate pragmatic skill, to grasp the inferences in the speaker’s language—i.e. the listener must be able to read between the lines. Physiologically, the listener must possess sufficient auditory processing capacity to enable him to make auditory sense of what the lawyer is saying. Finally, the listener must have auditory memory so that he can remember what he is told and incorporate it into his decision-making.”

(LeVigne & Van Rybroek 2013, 93)

**Think of our students and their skill deficits. See the problem?**

# RELIABILITY AND ADMISSIBILITY OF CONFESSIONS

“Depending on the nature and severity of the impairment, an individual’s language deficit may undermine the validity of a *Miranda* waiver or the voluntariness of a confession, and may even place an individual at increased risk for making a false confession.” (LeVigne & Van Rybroek, 2011, p. 74).

## Miranda rights

- Right against self-incrimination during police interrogation
- What’s needed to understand your Miranda rights?
  - Reading level of 6<sup>th</sup>-10<sup>th</sup> grade or higher, which is above the reading level of many defendants, especially indigent defendants
  - Ability to understand long and syntactically complex sentences
  - Ability to understand abstract concepts
  - Ability to follow it being stated all at once
- Need to ask whether a defendant knew and understood rights, appreciated the consequences of giving up the rights, and voluntarily relinquished their rights

## Voluntariness of confession

- May be at increased susceptibility to techniques used by police during interrogation specifically designed to obtain a confession
  - More likely to confess to crimes that they did not commit

# OTHER LEGAL ISSUES RELATED TO LANGUAGE DISORDERS

- **Compliance**

- People charged with or convicted of a crime are required to comply with rules imposed by governing authority, such as the court, probation officer, etc.
  - Rules can be long, dense, verbose, and generally inaccessible for a person with impaired language skills
  - High percentage of prison admissions is due to parole or probation violations, and a high proportion are due to rule violations rather than new crimes
    - How many incarcerated people could have successfully functioned in the community had the rules been linguistically accessible?

- **Character**

- For sentencing or decisions, a judge will consider a defendant's character – attitude, personality, social traits
  - Verbal and pragmatic aspects of language deficits could negatively influence character assessment

- **Credibility**

- Judgment that hinges on communication skills – ability to construct a narrative, describe in a consistent and meaningful way

- **Remorse**

- Judges and juries gauge quality/credibility of remorse and consider it to reveal rehabilitative potential – adequate expression of remorse is rewarded, while inadequate expression may lead to harsher treatment
- May be verbally or pragmatically unable to fulfill the requirements for an “adequate” expression of remorse

# BIG PICTURE IMPLICATIONS

- “It is... important that all children and young people who are either in contact with the [youth justice system] or are considered at risk of doing so are screened for DLD and provided with the appropriate support from [SLP]s.” (Hopkins et al, 2018, p. 126).
- “In a perfect world, every attorney would have ready access to the services of an SLP who could assess clients’ communicative abilities and facilitate communication with any client. Of course, the world of indigent defense is far from perfect, and access to an SLP for even a small percentage of impaired clients is wishful thinking. This means that counsel will be forced to address clients with language impairments on a case-by-case basis and to develop an assortment of strategies for dealing with communication issues.” (LeVigne & Van Rybroek, 2013, p. 102).
- “The human, financial, and societal costs of deficient language skills among large segments of our population are astronomical; and, if language dysfunction were a disease, the public would be clamoring for a cure. Instead, language dysfunction is one of many conditions that have been relegated to that overflowing catch basin we call public policy. If we wish to combat widespread language deficits, we need more and better early childhood education, including birth-to-three programs; more and better parenting support services and training; access to assessment; consistent, meaningful intervention; and, increased funding for special education and treatment. Barring those developments, however, the juvenile and criminal justice systems will be left to contend with the fallout, just as they contend with the fallout from many other inadequate public policies.” (LeVigne & Van Rybroek, 2011, p. 100).

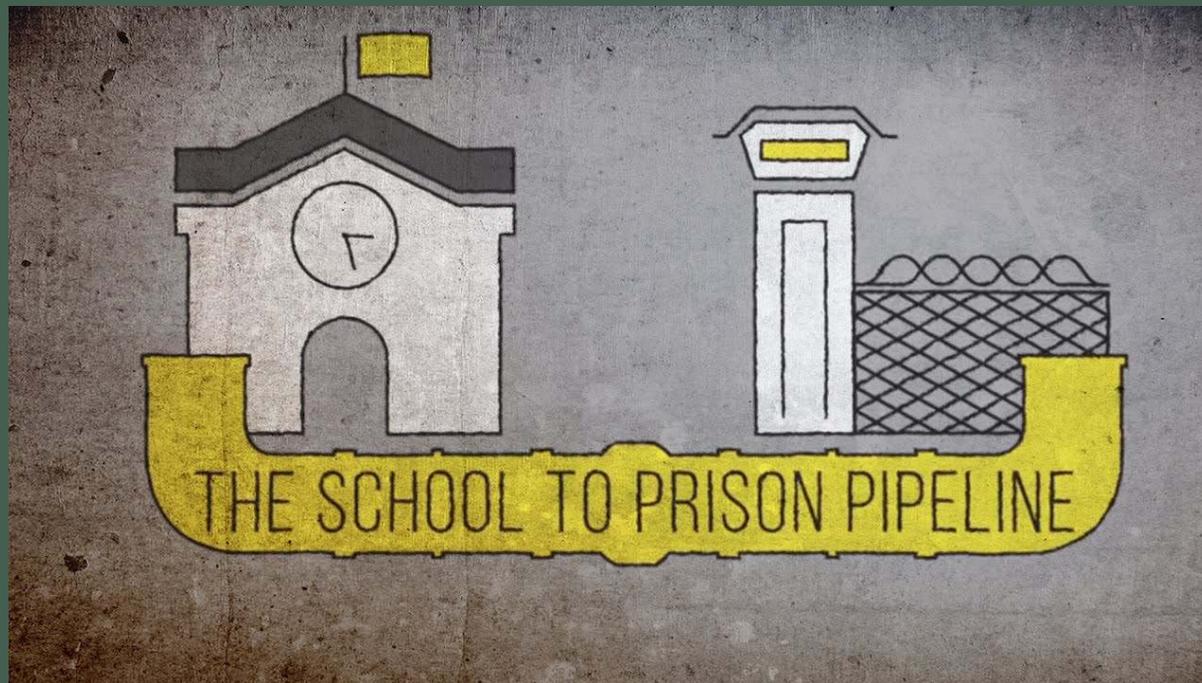
# IMPLICATIONS FOR CSLD

- Opportunities for partnering with defenders' offices as consultants or intermediaries
  - Assessing client's communication needs
  - Advising attorneys on communication methods to ensure maximum comprehension
  - Helping client provide a complete and meaningful narrative
  - Serving as intermediary between client and attorney by rephrasing questions/comments from counsel and actively participating in teasing out a client narrative
- Opportunities for providing training to lawyers, legal professionals, law students
  - Recognizing potential language disorders, especially those previously unrecognized
  - Accommodations/modifications: providing information in small chunks, using visuals
  - Strategies for eliciting narratives (revisiting, refocusing attention to missing details, combination of open-ended and closed-ended questions)
- Need for advocacy
  - Despite longstanding clear evidence of high prevalence of language disorders in juvenile offenders, not enough is being done to address this issue
  - Need to use our status as experts in language and communication to push for needed changes (early intervention, early childhood education, widespread access to assessment and consistent/meaningful treatment, increased funding for special education)

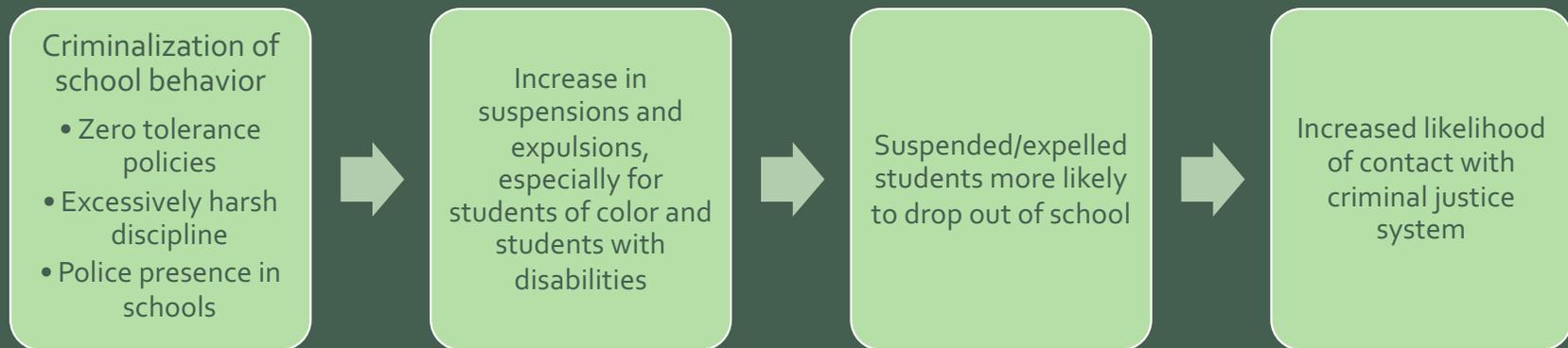
# IMPLICATIONS FOR SCHOOLS & SCHOOL-BASED SLPS

- In reality, this knowledge probably doesn't change much for us as professionals in the schools
  - It doesn't change eligibility criteria
  - Presumably, we were all already agreed on the need for early intervention and identification of students with speech and language needs
- So what does this mean for us as school-based SLPs?
  - We can advocate for screenings, as we already do at some schools, and for increased funding for special education and related services to make sure we're reaching more students
  - These findings are yet another good reason to include a language sample in our testing for students, and to work directly on skills like story grammar with our students
- The school-to-prison pipeline should be of particular concern to us
  - Need for restorative/transformational justice practices

# THE SCHOOL-TO-PRISON PIPELINE



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Students from two groups—racial minorities and children with disabilities—are disproportionately represented in the school-to-prison pipeline. **African-American students, for instance, are 3.5 times more likely than their white classmates to be suspended or expelled**, according to a nationwide study by the U.S. Department of Education Office for Civil Rights.

**Black children constitute 18 percent of students, but they account for 46 percent of those suspended more than once.**

For students with disabilities, the numbers are equally troubling. **One report found that while 8.6 percent of public school children have been identified as having disabilities that affect their ability to learn, these students make up 32 percent of youth in juvenile detention centers.**

The racial disparities are even starker for students with disabilities. **About 1 in 4 black children with disabilities were suspended at least once, versus 1 in 11 white students**, according to an analysis of the government report by Daniel J. Losen, director of the Center for Civil Rights Remedies of the Civil Rights Project at UCLA.

“Armed with this knowledge, we can all begin to effectively incorporate changes concerning language impairments and disorders into our practices and procedures.

While the criminal and juvenile justice systems may not be able to change the circumstances and conditions that give rise to widespread language disorders, we can at least ensure that the system is fair, transparent, and responsive to those many juvenile and adult defendants whose communication deficits may impair their ability to adequately participate in the legal process, benefit from services, and function in the community. This just makes sense: as a matter of due process, as a matter of ethical and effective practice, as a matter of sound policy and public safety, and, to borrow a phrase from the United States Court of Appeals for the Second Circuit, as a ‘matter of simple humaneness.’”

(LeVigne and Van Rybroek, 2011, p. 122-123)

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