

Language Impairments

They matter. Really.

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The backstory



Which brought me to the world of linguistics and language disorders



Step one: humility

- We in the legal world believe we are communication experts
- We routinely make judgments based on language:
 - Credibility
 - Comprehension
 - How an individual uses language which in turn reveals
 - Human motivation
 - Intent
- For all that we depend on language and take it for granted, we don't know very much about it

Overview

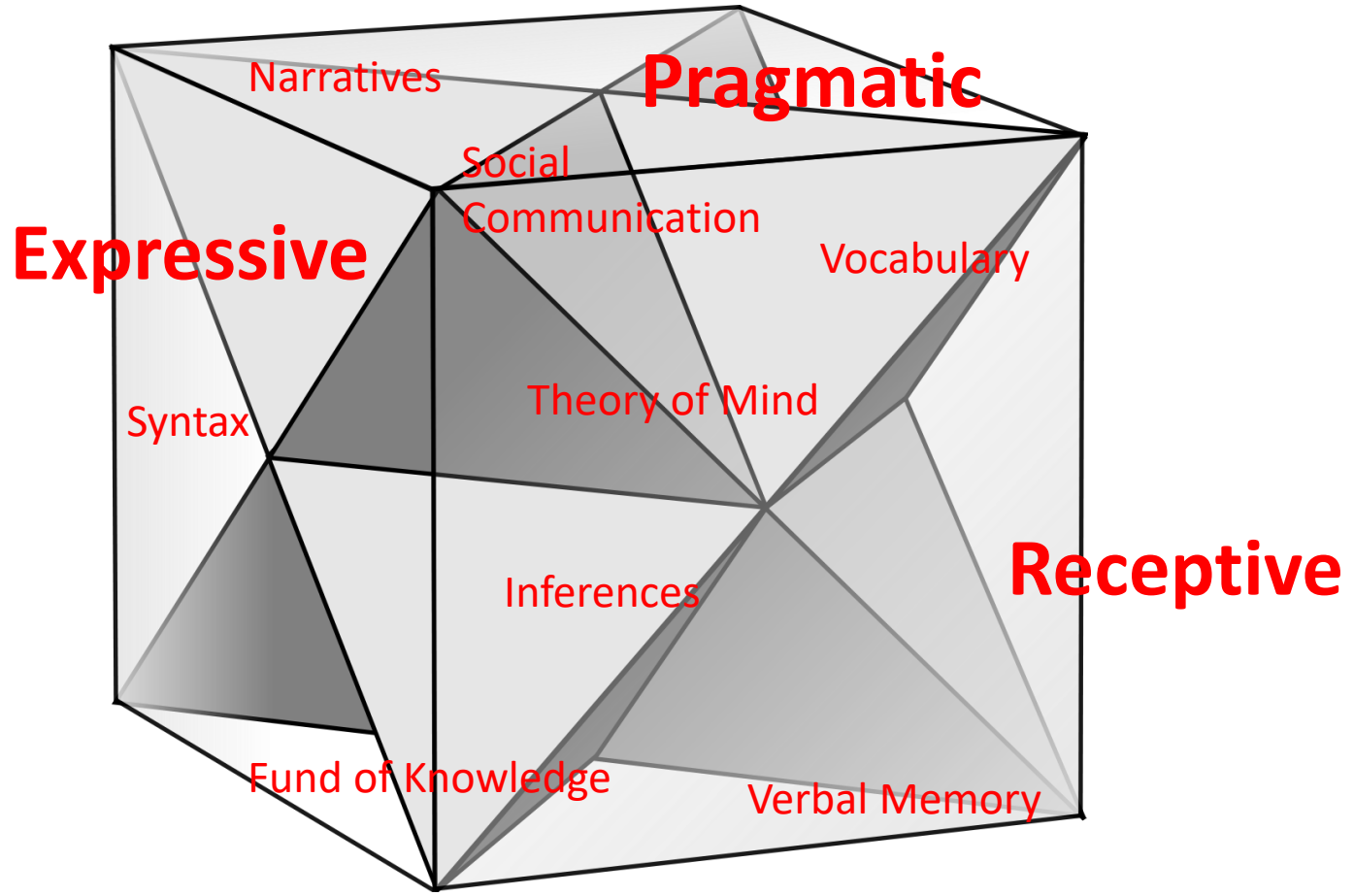
Language Impairments:

What they are and where they come from

Language Impairment/Disorder/Deficit/Difficulty/ Disadvantage

- Oral language competency
- *Developmental* Language Disorder
- Underdeveloped competency in one or more aspects of language and/or language use
- Result of processing, neurocognitive, physiological, and/or environmental factors

The many facets of language



Deficits in one or more

- Expressive ability
- Receptive ability (comprehension)
- Auditory Discrimination or Processing
- Auditory Memory
- Semantics- understanding word meanings (and inferences)
- Vocabulary
- Grammar or Syntax
- Narrative ability

Special Mention: Pragmatic Deficits

- Social communication
- Rules of Engagement
- What to say when
- Reading social cues
- Understanding perspectives of others
- Causes problems because of other party's interpretation

Where do we find developmental language disorders/deficits? (causation/co-morbidity/high rate/risk factors)

- ADHD – up to 90% overlap
- Learning disabilities
- Early hearing loss (even moderate)
- Auditory Processing deficits
- Autism Spectrum Disorder
- Cognitive deficits
- Behavior disorders
- Abuse or neglect

Special Mention: Childhood Trauma

- Childhood trauma affects neurocognitive functioning
- Language effects of trauma intertwined with executive functioning effects
- Language of emotions particularly hard hit
 - Difficulty with emotions & behavior
- Adult trauma will affect language ability but not at a developmental level

Special Mention: Poverty

- Not poverty itself but conditions that often accompany it
 - Low education level of caregivers
 - Chaos
 - Housing insecurity
 - Isolation
 - Quality of schools
 - Often intertwined with trauma (ACEs)
- Very poor (multi-generational)
- Not related to linguistic diversity or choice
- Race or ethnicity NOT a factor
 - Ex. Highest rate of high ACEs scores in WI counties is among poor white rural communities. High likelihood of LI, especially given the quality of the schools

The research: Developmental language disorder has been implicated in...

- Cognitive deficits
- Verbal memory deficits
- Long-term academic deficits
- Literacy deficits
- Anxiety disorders
- Psychiatric disturbances
- Behavior problems
- Lack of self control/ Impulsivity
- Difficulty understanding and following directions
- Inability to read social cues
- Anti-social behavior especially reactive aggression

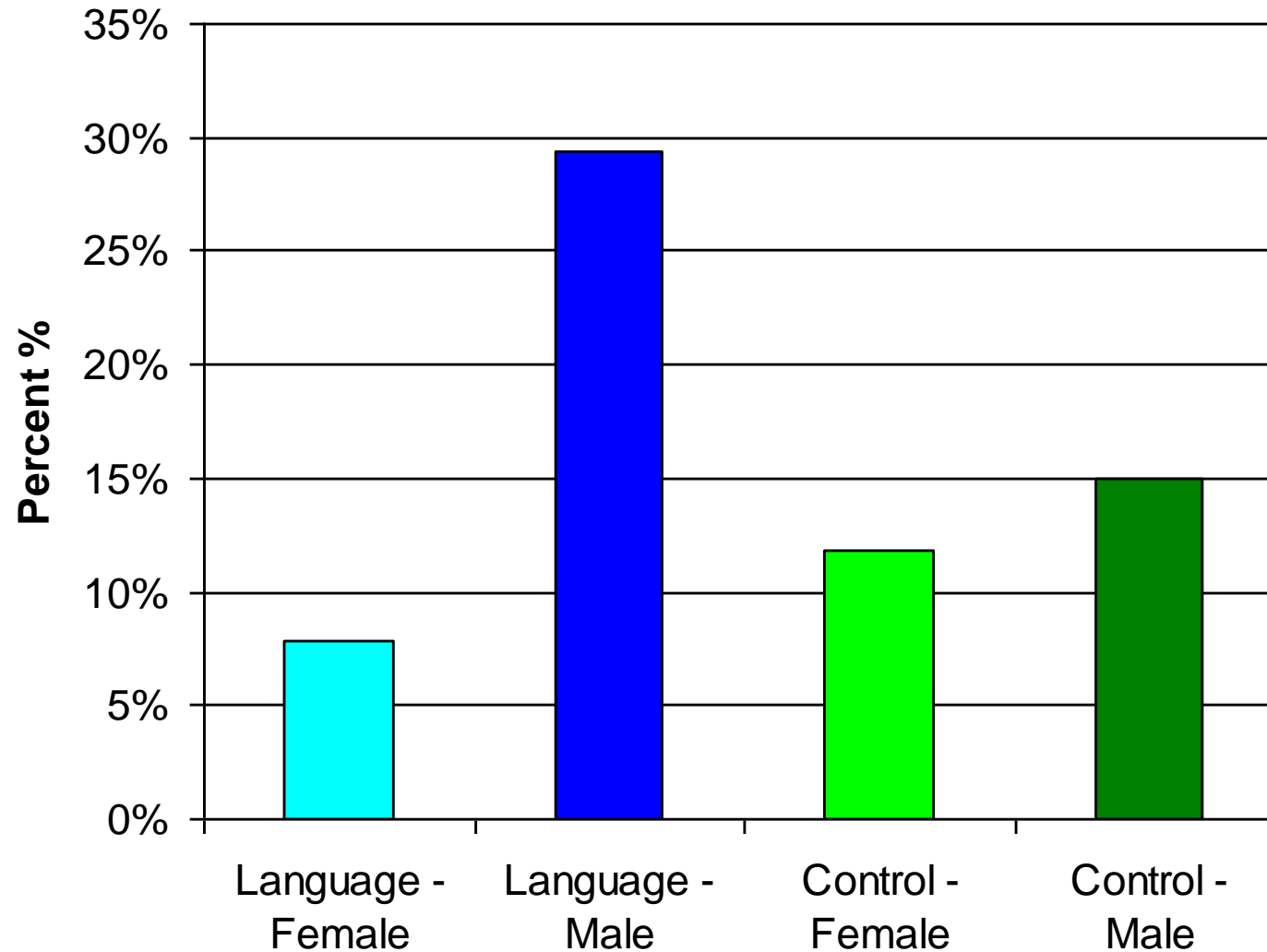
They don't grow out of it

- Language deficits continue into adulthood
 - Though often masked
- Behavioral, psychological, social, cognitive effects continue into late adolescence and adulthood
- Consistent results in prospective and retrospective studies throughout the world
- School as stressor??

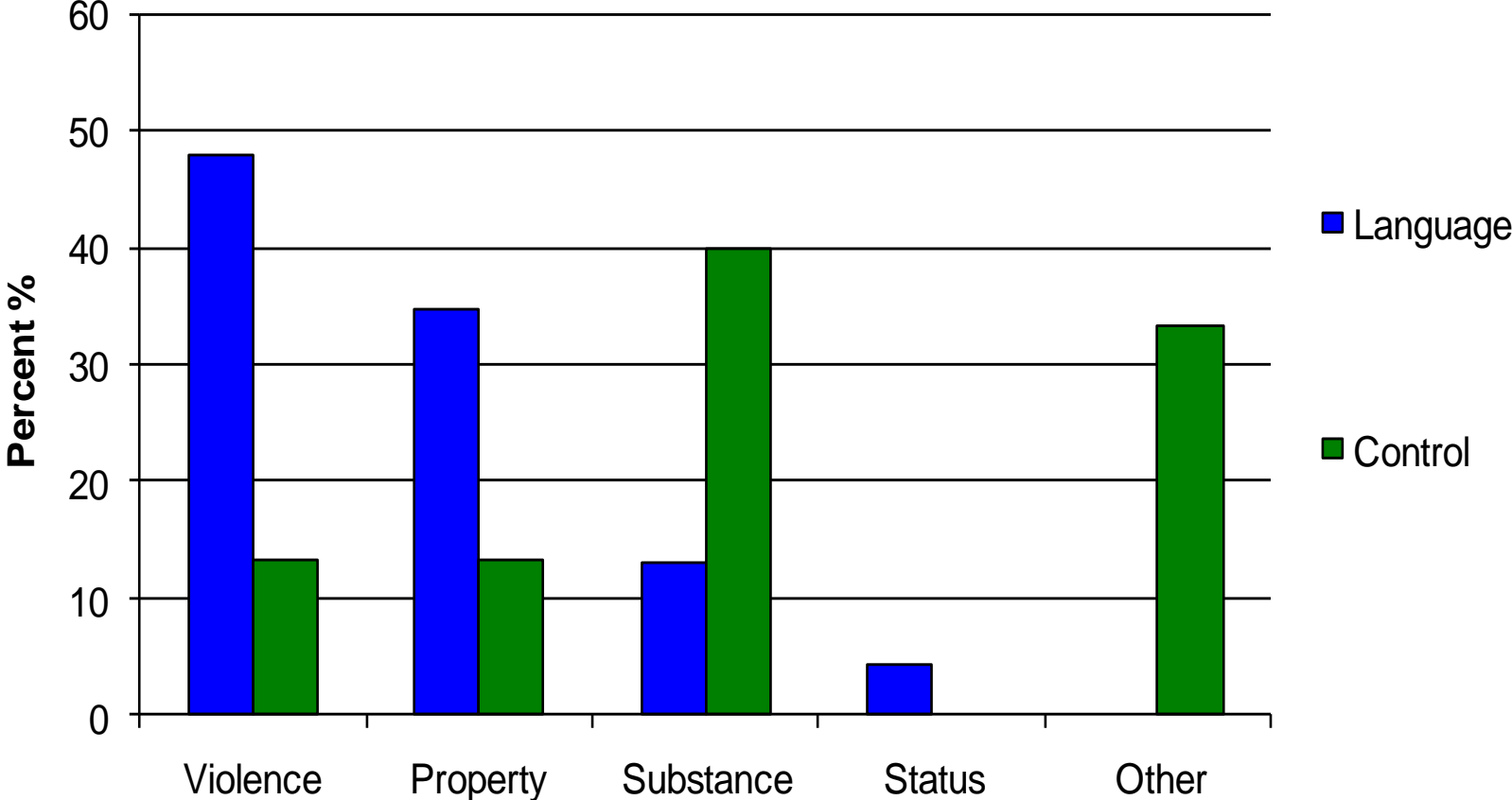
No surprise

- Increased rate of:
 - arrest
 - conviction
 - incarceration
 - revocation
- Rate in general population - 7%
- Juvenile correctional institutions – 50-80%
- Adult correctional institutions >35%
- Same in other countries
- Well-known in speech/language professions for decades

Percent of Participants with S/L disorder at 5, arrested by 19



Reason for First Time in Trouble with the Law



Not just “offenders”

- Girls and women with LI at higher risk for sexual assault
 - Beitchman*
- Victims and witnesses often come from same family or social group as defendant
 - Higher likelihood of LI

Testing

- Specialized tests administered by Speech-Language Pathologists (SLPs)
 - Normed for different ages
 - Score + Percentile in age group
 - Purpose?
 - With clinical assessment
- Array of communicative functions
 - Receptive skills (vocabulary, complex sentences)
 - Inferences
 - Recall
 - Follow directions
 - Pragmatic skills
 - Narrative skills
 - Processing ability

LI ≠ VIQ

- Related but...Conceptually distinct
- Language multi-dimensional. VIQ does not account for the layers of language.
- Full scale IQ score is meaningless in legal context; so is non-verbal score
- Language instruments “dissect” communicative competence.
- Tell us what an individual can and cannot do (including narrative skills & following directions)
- LI can be present with a person with average or even above average IQ
- IQ not understood by legal professionals

Unidentified/Untreated/Misinterpreted

- The most common disorder you've never heard of
- “The invisible disability”
 - “No sound”
 - Difficult to recognize if not familiar with LI
- “Have learned to pass”
 - Masking deficiencies
- Behavior issues favored
- LI misinterpreted as noncompliant, uncooperative, bad attitude, rude, disruptive, too shy, too talkative, weird

Why it matters:

When Language Impairments Meet the Law

Who wants to know

- Law enforcement
- Defense attorneys
- Prosecutors
- Jail/Detention staff
- Trial court judges
- Court personnel
- Probation & Parole
- Corrections personnel

Defense Attorneys: Where LI may be an issue

- Competency to stand trial
- Motions to suppress
 - Miranda
 - Voluntariness
 - False Confession
- Guilty pleas
- Lack of intent or knowledge as a defense
- Credibility
- Mitigation/Culpability
 - remorse
- Revocations
- Juvenile Waiver/Transfer
- Sexual Predator Commitments (failure to comply with treatment)

Narrative deficits concern all of us

- People with LI describe “significantly **fewer bits of information** about the context of the story and the events that initiated it.”
- “He got in my face so I shot him.” It’s a narrative but....
 - What does this mean?
 - Easy to misinterpret
- Will be able to describe event BUT frame by frame
- Context missing
- Cause and effect missing
- Missing emotional layer
- Doesn’t understand perspective of listener
 - What does listener need to know to make sense of the narrative

The pitfalls of narrative deficits for interviewers

- Substantial risk of inaccurate or incomplete narrative from suspect/witness
 - May also be completely false
- Easily led, even if interviewer isn't deliberately trying to plant content
- More vulnerable, suggestible & compliant
- Easily confused by inferences, compound questions, abstractions, jumping around, interruptions
- Beware of “how did that make you feel?” “what were you thinking?”
- Special techniques for interviewing individuals with LI to insure accurate and complete narratives
 - That's a whole other discussion
 - You will need an expert and special training
 - UK requires special procedures

Forensic assessments miss LI

- S/L assessments not included in forensic assessments even if risk factor conditions are present
- Many/most psychologists & psychiatrists are not familiar with language impairments or their effects
- S/L more nuanced and long range than standard assessment measures
 - Auditory memory (“ask me again in half an hour”)
 - Pragmatics
 - Narrative ability (beyond the basic facts)
 - Follow directions
- Beyond developmental issues
 - i.e. won’t just grow out of it
 - > 15 y.o.

Assessments miss the language point (cont)

- Ability to make rational decisions based upon understanding of other people's reactions is a communication function
- IQ insufficient measure
 - Includes verbal IQ
- Talking slowly doesn't fix it
- Neither does repetition nor simpler language
- Neither does competency school

Language Impairments Impair the Attorney-Client Relationship

- Working within the attorney-client relationship itself
 - Principal-agent relationship
- Narrative skills
- Understanding the legal process
 - Vocabulary, fund of knowledge, processing, memory, ability to draw inferences
- Decision Making
 - Understanding perspective of others
- Empathy & Trust
- Simply explaining won't make it better; neither will repetition; or 15 extra minutes

Miranda is a verbal minefield

- Vocabulary
- Ability to follow complex sentences & long passages
- Abstract concepts
 - You have the right.....
- Fund of Knowledge
 - To make sense of inferences
 - Even if they've seen it on TV (Grisso)
 - Even if they've been through the system (Grisso)
 - Even if it's part of our national culture (Rehnhquist)
 - Not easily understood even by college students w/o LI
- Auditory Processing
- Follow directions
- Likely to say they understand (they don't want to look stupid)

Forms & Magic Words:

Wisconsin Standard Rules of Supervision

- The following rules are governed by administrative code, court ordered conditions, and any goals or objectives set by the Department of Corrections. Failure to meet these expectations may result in progressive sanctions up to and including revocation.
- Avoid all conduct which is in violation of federal or state statute, municipal or county ordinances, tribal law or which is not in the best interest of the public welfare or your rehabilitation.
- Make every effort to accept the opportunities and cooperate with counseling offered during supervision to include addressing the identified case plan goals. This includes authorizing the exchange of information between the department and any court ordered or agent directed program for purposes of confirming treatment compliance; and subsequent disclosure to parties deemed necessary by the agent to achieve the purposes of Wisconsin Administrative Code [Chapter DOC 328](#) and [Chapter DOC 331](#). Refusal to authorize the exchange of information and subsequent disclosure shall be considered a violation of this rule.

Readability.....

The image shows a 'Readability Statistics' dialog box overlaid on a document editor. The dialog box contains the following data:

Category	Metric	Value
Counts	Words	502
	Characters	3,002
	Paragraphs	20
	Sentences	24
Averages	Sentences per Paragraph	1.3
	Words per Sentence	20.1
	Characters per Word	5.3
Readability	Flesch Reading Ease	32.1
	Flesch-Kincaid Grade Level	13.3
	Passive Sentences	16.6%

An 'OK' button is located at the bottom right of the dialog box. The background document text is partially visible, including phrases like 'law or v', 'or police', 't to accep', 'n to inclu', 'xchange', 'rogram fo', 'ies deem', 'ode [Chap](#)', 'mation a', 'st of the', 'n 72 ho', 'perate w', 'case pl', 'departm', 'atment', 'achieve', '[DOC 33](#)', and 'all be c'.

Readability?

- Words per sentence – 20.1
- Reading Grade Level – 13.3
 - Informed Consent Regs require 8th grade reading level, which is still way too high
- Reading Ease – 32.1

90-100

very easy to read, easily understood by an average 11-year-old student

80-90

easy to read

70-80

fairly easy to read

60-70

easily understood by 13- to 15-year-old students

Problems

- Kitchen sink
 - Overinclusive
- Vague
- Abstract
- So many words
- Reading aloud to individual will not make it more understandable
 - Neither will “explaining”
- Kitchen sink
- POs in Australia know clients don’t understand (Snow)

Other forms that don't inform

- Bail
- Guilty plea waiver forms
- Right to appeal
- Policies and Procedures Manuals
- Reading these forms aloud doesn't fix it
- Neither does simply explaining

Recognizing LI

- Previously unidentified
- Risk factors
- Behavior problems
- Social problems
- School records – IEP
- VIQ (a clue)
- Forgetting instructions
- Confusion with non-literal language including inferences
- Talking a lot but saying little
- Not asking questions/ not answering questions
- Missing non-verbal cues
- Seeming “difficult”
- Thin narratives - “He got in my face so I shot him”

The SLP is your friend

- Under the hood
- (Make sure correct specialty)
- Review records
- Testing
- Clinical observations
- Diagnose communication issues between interviewer and subject
- Assist communication
 - Interviewing as science and art
- Discourse analysis
 - Watching/listening to recordings
 - Formal analysis using special transcriptions and software

SLP in the courtroom - Trial

- As an expert witness
- Witness testimony
 - Questioning form is insane for anybody, but especially individual with communication issues
 - Credibility
 - Impeachment
 - SLP as expert witness on language of defendant vs. prosecutor
 - SLP as expert witness on language demands of testifying
 - Assisting counsel
 - SLP can address the credibility question for the jury
 - Protective order?
 - Jury instruction?

FAQ: Where do I find an SLP?

- Colleges/ Universities
 - Speech-language pathology department
 - Communication Sciences and Disorders Department
 - MS & PhD
- Local School District (special ed services)
- Private companies that contract for disability determinations

Other countries

- PEACE method of interrogation (UK and Canada)
 - Preparation
- Intermediaries
 - UK, Australia, NZ
 - Communication Specialists
 - For all stages of process for witnesses with LI including in the courtroom
 - NI – includes suspects in interrogations (in the works for rest of UK)
 - Increased use of communication specialists within correctional facilities

Current Events: Zoom & Masks

- Many individuals with LI depend on visual cues including facial expression and “lip reading.”
 - We all miss information on the phone
- Teleconferencing diminishes visual cues, especially when a number of people are on the screen
- Teleconferencing sound quality is imperfect
- Masks cover half the face
- And muffle the speaker’s voice
- Both Zoom and masks leave just the words

Treatment is available

- Can improve social skills
- Literacy can be improved with improved oral language skills
- Beware cookie cutter behavioral treatment
 - Cognitive behavioral therapy is a verbal-based treatment; so is sex offender treatment; so is AODA treatment
 - Standard treatments that are not tailored to individual's communication needs will not work.
 - Workbooks and scripts are a problem
 - Experts must be involved in making these treatments accessible and meaningful

A few rules

- I told you \neq you therefore understand
- More words from me \neq more understanding by you
 - Explaining everything isn't a fix
- Interviewing is an art and a science.
- Communicating with an individual with LI takes time, patience, skill, and training (and not just a one-hour or one-day presentation, even by me)
- There is often a connection between language and behavior
- We aren't experts

Questions???

Comments!!!!

Greetings.....

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- <https://law.wisc.edu/profiles/mlavigne@wisc.edu>
 - Scholarship
 - SSRN