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Attorneys' perceptions of child witnesses with mental retardation

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Children with mental retardation are more likely to be abused than the general population, yet are often denied access to the justice system. Research on children without mental retardation has revealed skepticism as to their reliability as witnesses in the court of law. Even more so, children with mental retardation face the issue of credibility because of their age and disability. This study assesses attorneys' perceptions of child witnesses with mental retardation. Thirty-nine criminal attorneys completed a 33-item questionnaire designed to assess their opinions of the abilities of adults and of children with and without mental retardation to recall and communicate information in the forensic context. Results revealed that attorneys perceived child witnesses as less credible and more suggestible than adult witnesses. Moreover, analyses indicated that child witnesses with mental retardation were also perceived as less credible and more suggestible than child witnesses without mental retardation.

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Annually, almost one million children are victims of maltreatment. Moreover, children with mental retardation are estimated to be as much as ten times more likely to be abused than their non-disabled peers.¹ In deciding whether to file charges in such cases, of great importance are the strength of the evidence and the likelihood of successful prosecution.² The child's ability to accurately recall and communicate information, since s/he is often the only source of critical information, is crucial in this decision. Notwithstanding the seriousness of these crimes, very few child abuse cases actually reach the courts of our judicial system due to concern as to the credibility of child witnesses in court.³ Even more concern has been voiced regarding the veracity of the testimony of children with mental retardation.⁴ Despite their vulnerability to abuse, children with mental retardation "may well be those most at risk of sexual abuse, yet those most denied access to the justice system."⁵

Memory capabilities of child witnesses with mental retardation

Historically, child witnesses with mental retardation have been viewed as unreliable witnesses because many have believed that their memory systems are defective.⁶ Unfortunately, research has been lacking in this area, providing little insight into the memory capabilities of those with mental retardation.

Research during the 1960s and 1970s focused on the deficits in memory of those with mental retardation, such as iconic memory, short-term memory, rehearsal processes, attentional processes, and strategy use.⁷ However, more recent research has focused on the memory capabilities of those with mental retardation, such as the encoding of location and frequency information, long-term memory, and information retrieval.⁸

Short-term memory (recalling information that has been stored for a few seconds to a few hours) appears weak for those with mental retardation; however, the long-term

memory of those with mental retardation is strong.⁹ Short-term memory difficulties faced by those with mental retardation may be attributed to their inability to use memory strategies when presented with new information¹⁰ and a lack of selective attention.¹¹ However, in a study performed by Turner, Hale, and Borkowski, students with mental retardation did adopt strategies similar to those subjects without mental retardation, increasing their ability to recall information.¹² Research pertaining to long-term memory has shown that individuals with mental retardation can retain information over the long term just as well as those without mental retardation,¹³ especially if the information is meaningful to them.¹⁴

In the area of recall, research shows that external prompts and cues may aid in recalling information from memory storage in those with mental retardation.¹⁵ Glidden and Mar found that providing external semantic cues facilitated recall, because those with mental retardation fail to spontaneously use organizational cues.¹⁶ However, Dent pointed out that while those with mental retardation need prompts to access their memory, their recall may be tainted by the kinds of prompts used.¹⁷

Much of the literature addressing memory and mental retardation has actually examined intentional memory rather than incidental memory, which involves witnessed events.¹⁸ Nevertheless, a few researchers have reported that children with mental retardation perform as well as children without mental retardation on tests of incidental memory,¹⁹ a type of memory that does not require conceptual knowledge.²⁰ These findings substantiate the proposition that children with mental retardation can encode, store, and retrieve accurate information as ably as children without mental retardation, if the need for it is not presented as a specific recall task; this proposition then suggests that memory strategies may be eliminated²¹ and that those with mental retardation are capable of being valuable witnesses.

Another factor influencing the recall ability of persons with mental retardation in court is the type of questions that such individuals are asked. Dent²² performed a study on a group of individuals with mild mental retardation to compare their recall in three different interviewing conditions: unprompted free recall, general questions, and specific questions. Study results indicated that specific questions produced the greatest amount of points for event and descriptive details, whereas questions involving free recall gave the least amount of complete responses. However, in terms of the percentage of correct information given, general questions produced the most accurate reports. These results reveal that witnesses with mental retardation are not poor witnesses but may need certain question formats for optimal recall.

Suggestibility of child witnesses with mental retardation

A companion inquiry to the question of the memory capability of child witnesses is whether or not they are highly suggestible and susceptible to the influence of others in court. A child must be able to withstand the real or perceived psychological stress and pressure that may come from adult authority figures attempting to influence the child's responses to questions.²³

A plethora of studies have researched the suggestibility of child witnesses without mental retardation.²⁴ Very little has been done on the suggestibility of child witnesses with mental retardation, however. Nonetheless, from the research that has been conducted, much has been learned as to the capabilities and limitations of these witnesses.

Milne & Bull²⁵ interviewed children with mental retardation, ages 7–11, and children from mainstream schools, ages 8–9, about a video clip of a magic show they had seen the previous day. Overall, the accuracy rates of responses to questions were very similar between the two groups.

However, the children with mental retardation were more suggestible in their responses to misleading questions.

In a study reported by Gordon, Jens, Hollings, and Watson,²⁶ children with mild mental retardation were matched with control groups of comparable mental age (MA) in order to compare their ability to recall. The study's results showed that the two groups recalled specific questions differently; however, there were no differences reported between the two groups across open-ended questions, errors, or misleading questions.

Dent's²⁷ research also supports these findings: In comparing the recall of children with mild mental retardation, ages 8 through 12 years, and of children without mental retardation, ages 9 and 10 years, findings showed that children with mental retardation give less accurate answers in responding to specific questions. However, the accuracy of responses to general questions was the same between the two groups. The difference between Dent's study and that of Gordon, Jens, Hollings, and Watson²⁸ is that Dent did not include misleading questions.

Looking further into the issue of specific versus general questions in interviews with individuals with mental retardation, Perlman et al.²⁹ used participants with mental retardation between the ages of 17 and 26. They were asked free-recall questions concerning a film they were shown, such as "What happened in the film?" and general questions such as "What can you tell me about the stranger who goes into the apartment?" The individuals were then asked short-answer, specific, and statement questions that consisted of both nonleading and misleading questions. Results showed that they did not provide as much information as the control group, but the information they did provide was accurate. Regarding false leading, specific-statement questions and misleading short-answer questions (e.g., "What was blocking the doorway of the apartment?"), results showed that these

individuals with mental retardation were more prone to errors and fabrication of answers to both types of questions than were control group individuals without mental retardation.

Further research on children with mental retardation was performed in an attempt to determine children's suggestibility with relation to their chronological age (CA) and mental age (MA). Henry and Gudjonsson³⁰ used three groups of children to compare the recall and suggestibility of children with and without mental retardation. The study used children with mental retardation ages 11–12 years, children without mental retardation ages 11–12 to serve as the chronological-age comparison group, and children without mental retardation ages 7–8 to serve as the mental-age comparison group. Children with mental retardation performed on par with children of the same chronological age in free recall, general questions, open-ended questions (both misleading and nonleading), and correctly leading yes-no questions. The difference was found on closed yes-no misleading questions (e.g., "The lady jumped up and down a few times, didn't she?"); children with mental retardation were found to be significantly more suggestible.³¹ Nevertheless, children with mental retardation performed as well as children without mental retardation of a comparable mental age (e.g., 11-year-old children with mental retardation were as suggestible on closed misleading questions as 7-year-olds without mental retardation).

The results of these findings imply that children with mental retardation can be as accurate and complete in their recall as children without mental retardation when responding to certain types of questions.³² In addition, these studies indicate that children with mental retardation are more suggestible to certain types of questions than peers of their same chronological age³³ but not those of an equivalent mental age.³⁴

As found by Goodman and Helgeson³⁵ and by Gobbo,³⁶ both children and adults are more suggestible when asked questions about peripheral information surrounding an event.

This was also found to be true of individuals with mental retardation, ages 17–26, in a study performed by Perlman et al.³⁷ The individuals with mental retardation were able to best perform when asked questions regarding the central action of the event—they gave accurate and pertinent information pertaining to the key elements of the event. Such individuals were more likely to fabricate answers to misleading short-answer questions but were less likely to fabricate answers to misleading questions pertaining to central actions in the event.

From their research, Henry and Gudjonsson³⁸ and Perlman et al.³⁹ suggest that there are a few key factors to note in the suggestibility of individuals with mental retardation. For example, suggestibility may vary in more stressful situations (such as when events are more dramatic) and when questions are repeated; children with mental retardation may exhibit a greater inability to deal with expectations and the pressure of a stressful and traumatic interview.⁴⁰

Another possible reason for the suggestibility of individuals with mental retardation pertains to the relationships they have with adults who take care of them—numerous therapists, teachers, and other professionals.⁴¹ Those with mental retardation may be afraid to disagree with an adult, attempting to please the interviewer by agreeing with him, or they may lack confidence in their memory to recall an event.⁴² Suggestive questions such as “The lady jumped up and down a few times, didn’t she?” will most likely make the child with mental retardation feel pressured to agree with the interviewer.⁴³ Communication can be a problem for children with mental retardation;⁴⁴ as a result, authority figures who ask leading questions only increase the susceptibility of children with mental retardation to suggestion.⁴⁵

As discussed, there are many factors that impact the suggestibility of children with mental retardation. Even though they may have weaknesses in certain situations or conditions, results show that children with mental retardation

can be valuable witnesses who provide pertinent, accurate information in the forensic context.

The purpose of this study was to assess attorneys' perceptions of child witnesses with and without mental retardation. A 33-item questionnaire was utilized to assess the frequency of cases that attorneys encounter involving adults, children with mental retardation, and children without mental retardation as key witnesses; their opinions concerning the abilities of witnesses to recall and communicate information; and their beliefs about jurors' reactions to child witnesses with and without mental retardation. Attorneys' use of alternative methods of obtaining and presenting testimonies of children with and without mental retardation, as well as specific strategies they have used when dealing with children with mental retardation in court, were also assessed.

Methods

Participants Thirty-nine attorneys recruited from the Clark County (Las Vegas) Public Defenders' Office, Clark County District Attorney's Office, Las Vegas U.S. Attorney's Office, Las Vegas Federal Public Defenders' Office, and individual private practices in Las Vegas participated in this study. Twenty-eight males and 11 females agreed to participate in the study. Participants ranged in age from 30 to 63 years ($M=44.55$). Ninety percent of the participants identified themselves as Caucasian; 3% as Hispanic; 3% as African-American; 0% as Asian; and 5% as other.

Out of the 39 total attorneys, 30 were defense attorneys and nine were prosecuting attorneys. The participants had a mean number of 12.21 years' experience as defense attorneys, with a range of 0–26 years. Participants had a mean number of 5.80 years' experience as prosecuting attorneys, with a range of 0–19. The participants devoted 99% of their practices to criminal law.

Instrument A 33-item questionnaire adapted from the “Survey of Criminal Attorneys’ Impressions of Children’s Testimony”⁴⁶ was developed to assess attorneys’ perceptions of child witnesses with and without mental retardation. Child witnesses were described to participants as being nine years or younger, while child witnesses with mental retardation were of the same age range with an IQ of 70 or less.

Seven questions were utilized to assess the frequency of those cases participating attorneys encountered involving adults, children with mental retardation, and children without mental retardation as key witnesses. Fourteen questions assessed the participants’ opinions concerning the abilities of adults and of children with and without mental retardation to recall and communicate information. Nine questions assessed participants’ beliefs about jurors’ reactions to child witnesses with and without mental retardation, followed by a question inquiring into participants’ use of alternative methods of obtaining and presenting the testimonies of children with mental retardation. The concluding two questions asked what specific strategies the attorneys have used when dealing with children with mental retardation in court. Questions were presented in several formats, including frequency estimates, multiple-choice, and Likert scale formats. Demographic information, such as age, gender, ethnicity, and amount and type of legal experience, was asked in the conclusion of the survey.

Procedure

Ethical approval for the study was obtained from the Institutional Review Board (IRB) at the institution where the study was conducted. Packets were compiled that contained an information sheet describing the purpose of the study and the procedure for returning the survey, a consent form, and the survey itself. The packets were distributed to participants through the Public Defenders’ Office, the District Attorney’s Office, and students at the law school of a major university.

Managing attorneys at the Public Defenders' Office and the District Attorney's Office distributed the questionnaires through office mailboxes to all attorneys, followed by an e-mail from the managing attorney encouraging staff attorneys to complete the survey. Upon completion, participating attorneys were instructed to return the questionnaire in a sealed envelope to the managing attorney within two weeks; the envelopes would subsequently be collected.

Surveys given to the U.S. Attorney's Office, Federal Public Defenders' Office, and attorneys in private practice were distributed through students from the law school, interning at these offices. These questionnaires were accompanied by a self-addressed, stamped envelope, with instructions to mail the surveys in upon completion. A total of 206 surveys were distributed, with a return of 39 surveys. All questionnaires were coded with an identification number to protect confidentiality.

Data analysis

Descriptive analyses were conducted on the demographic information of the participants, the frequency of cases they encountered involving adults, children with mental retardation, and children without mental retardation as key witnesses, their use of alternative methods of obtaining and presenting testimony of children with mental retardation, and strategies they use when dealing with children with mental retardation.

Descriptive statistics were also utilized to describe the perceived credibility of adult witnesses and of child witnesses with and without mental retardation. Beliefs about jurors' perceptions of witness credibility were also analyzed. From a sample size of 39 attorneys, 18–39 participants responded to each question, with an average of 31 attorneys responding to each question. The fact that not all participants responded to all questions may reflect their lack of

experience with child witnesses with mental retardation, as noted by some participants on their questionnaires.

Results

Attorney caseloads In a general overview of the nature of the participants' caseloads and experience, participants reported trying an average of three cases per year in jury trials and settling an average of 660 cases before trial. The average percentage of cases involving adult witnesses that are typically pleaded was reported to be 86%, compared with 11% of cases taken before a jury and 4% of cases taken before a judge. For cases involving a child witness without mental retardation, a mean percentage of 81% of all cases are pleaded, with 10% of cases being taken before a jury and 6% of cases being taken before a judge. Last, of cases involving child witnesses with mental retardation, it was reported that 77% are typically pleaded, while 22% are taken before a jury and 1% are taken before a judge.

To further explore the nature of the participants' caseloads, attorneys were asked to estimate the number of cases that they have defended or prosecuted involving three witness types: adult witnesses, child witnesses age nine and younger without mental retardation, and child witnesses with mental retardation. Attorneys reported working most frequently with adult witnesses over the last five years ($M = 711.38$, $SD = 1282.71$) and during their career ($M = 2080.91$, $SD = 2753.00$). The next most frequent witnesses with whom the attorneys worked were child witnesses without mental retardation ($M = 29.62$ in the last five years, $SD = 51.03$; $M = 56.37$ during their career, $SD = 79.38$). The witness type with which the participants had the least contact were child witnesses with mental retardation in cases either prosecuted or defended by the attorneys participating ($M = 1.62$, $SD = 5.45$ in the past five years and $M = 2.64$, $SD = 6.33$ during their career).

Attorneys also reported that most of their cases over the last five years that involved a disputed eyewitness identification of a suspect entailed an adult witness providing a pivotal piece of evidence ($M = 36.67$, $SD = 36.74$). A mean of only 3.90 cases ($SD = 6.44$) involved child witnesses without mental retardation providing a pivotal piece of evidence in a disputed eyewitness identification, and a mean of 2.99 ($SD = 16.14$) involved child witnesses with mental retardation providing similar information. In contemplating disputed eyewitness identifications, attorneys reported their perception that adult witnesses were “probably correct” in their identifications 72% of the time. These perceptions were less deferential to child witnesses, however; participants estimated that children were “probably correct” in 58% of cases and indicated that children with mental retardation were “probably correct” in 33% of cases.

On the basis of their personal trial experience, participants reported that when a child with mental retardation is the pivotal or only eyewitness to the crime, the child is the alleged victim in about 84% of the cases and a bystander in about 16% of the cases. A follow-up question asked participants to estimate the specific number of criminal cases they had handled within the past two years where children with and children without mental retardation had been important eyewitnesses (as either a victim or a bystander) to an alleged crime. For child witnesses without mental retardation, the highest number of cases handled involved family violence ($M = 37.48$, $SD = 90.87$), followed by assault ($M = 17.24$, $SD = 70.43$), sexual abuse by a non-parent ($M = 14.17$, $SD = 22.54$), robbery/shoplifting ($M = 14.06$, $SD = 54.57$), sexual abuse by a parent ($M = 14.02$, $SD = 28.67$), and physical abuse by a parent ($M = 11.53$, $SD = 17.85$). The three areas with the lowest number of cases involving child witnesses without mental retardation involved murder or attempted murder of family member(s) ($M = 1.69$, $SD = 4.19$), vehicular homicide or injury ($M = 0.91$, $SD = 3.57$), and murder or attempted murder of non-family member(s) ($M = 0.53$, $SD = 1.32$).

For cases involving child witnesses with mental retardation, the highest number of cases handled involved robbery/shoplifting ($M = 9.68$, $SD = 0.30$) and vehicular homicide or injury ($M = 3.13$, $SD = 0.18$), followed by family violence ($M = 0.94$, $SD = 2.6$), sexual abuse by a non-parent ($M = 0.33$, $SD = 0.74$), assault ($M = 0.19$, $SD = 0.59$), sexual abuse by a parent ($M = 0.19$, $SD = 0.90$), and physical abuse by a parent ($M = 0.16$, $SD = 0.51$). The participants reported no instances of cases involving murder or attempted murder of family member(s) or non-family member(s) involving child witnesses with mental retardation.

Overall, the caseloads of participating attorneys have involved more adults than children. The results of this study clearly show that the attorneys had the least contact with child witnesses with mental retardation.

Attorneys' perceptions of witness credibility

Do attorneys perceive child witnesses as being less credible and more suggestible than adult witnesses?

Table 1 presents the mean percentages given by attorneys when they were asked to compare child witnesses without mental retardation with adult witnesses in five areas. First, participating attorneys were given two questions relating to a postulated situation in which a child witnesses the assault of an acquaintance by a stranger. The imagined episode lasts 15 seconds, with the stranger fleeing the scene and the acquaintance left robbed and distraught. Using a five-point Likert scale (much less to much more), 74% of attorneys thought that in recalling the event and the assailant, a child witness would recall less or much less than an adult. In specifically identifying the assailant, 59% of attorneys assumed that a child witness was less likely or much less likely than an adult to accurately identify the assailant from a photo spread if the assailant was present in the array.

Next, attorneys were questioned concerning their perceptions of the suggestibility of child witnesses. Eighty-eight percent of attorneys perceived child witnesses as being more or much more suggestible than adults. In considering child witness communication, 49% of attorneys perceived a child witness

TABLE 1

Percentage of ratings for characteristics of child witnesses without mental retardation compared with adult witnesses

<i>Question</i>	<i>n^a</i>	<i>Option</i>	<i>%</i>
Accurately recall information	36	Much less	28.2
		Less	46.2
		About the same	23.1
		More	2.6
		Much more	0.0
Accurately identify assailant from photo array	39	Much less likely	10.3
		Less likely	48.7
		About equally likely	38.5
		More likely	2.6
		Much more likely	0.0
Suggestibility	39	Much less suggestible	0.0
		Less suggestible	0.0
		About as suggestible	12.5
		More suggestible	45.0
		Much more suggestible	42.5
Sincerity	35	Much less sincere	2.6
		Less sincere	12.8
		Just as sincere	48.7
		More sincere	33.3
		Much more sincere	0.0
Inconsistencies	39	Many fewer inconsistencies	2.6
		Somewhat fewer inconsistencies	5.1
		About the same inconsistencies	35.9
		Somewhat more inconsistencies	41.0
		Many more inconsistencies	15.4

^a Number of participants who responded to each question.

as being just as sincere as an adult witness, with 33% of attorneys perceiving a child witness to be more sincere than an adult. Thus only 18% of the attorneys perceived a child witness to be less sincere than an adult witness.

In the opinion of 56% of the participants, a child's account of a witnessed criminal event tends to include somewhat more or many more inconsistencies than accounts of adults; 36% of participants believed that child witnesses tend to include about the same number of inconsistencies in their account of a witnessed criminal event. When a child without mental retardation reports that he/she was sexually abused, attorneys believe that the child gives an accurate description of what occurred 61% of the time. In 29% of instances where abuse was reported, attorneys believe that the child's report was significantly distorted or exaggerated, although sexual abuse did occur. Last, attorneys believe that in 16% of instances where a child reports abuse, the report is completely inaccurate or is fabricated (sexual abuse did not take place).

In general, attorneys participating in this study perceive child witnesses without mental retardation as being inferior to adults in their ability to recall and accurately identify an assailant, and as more suggestible than adult witnesses. Attorneys also believe that when giving an account of a witnessed criminal event, children without mental retardation are more inconsistent than adult witnesses. Finally, most attorneys perceive child witnesses without mental retardation as being equally sincere as adults.

Do attorneys perceive child witnesses with mental retardation as being less credible and more suggestible than child witnesses without mental retardation?

Table 2 presents the mean percentages of attorneys' perceptions of child witnesses with mental retardation as compared with child witnesses without mental retardation. When asked to imagine an episode in which a child with mental retardation witnessed an assault, 92% of participating attorneys assumed that a child witness with mental retardation would recall less or much less than a child witness without mental retardation when recalling the postulated crime event and assailant. In identifying the assailant, 85% of attorneys perceived a child witness with mental retardation as being less or much less likely than a child without mental retardation to accurately identify the assailant from a photo lineup if the assailant was present in the array.

TABLE 2

Percentage of ratings for characteristics of child witnesses with mental retardation compared with child witnesses without mental retardation

<i>Question</i>	<i>n^a</i>	<i>Option</i>	<i>%</i>
Accurately recall information	36	Much less	50.0
		Less	41.7
		About the same	8.3
		More	0.0
		Much more	0.0
Accurately identify assailant from photo array	34	Much less likely	29.4
		Less likely	55.9
		About equally likely	14.7
		More likely	0.0
		Much more likely	0.0
Suggestibility	35	Much less suggestible	0.0
		Less suggestible	2.9
		About as suggestible	8.6
		More suggestible	42.9
		Much more suggestible	45.7
Sincerity	34	Much less sincere	8.8
		Less sincere	70.6
		Just as sincere	20.6
		More sincere	0.0
		Much more sincere	0.0
Inconsistencies	34	Many fewer inconsistencies	0.0
		Somewhat fewer inconsistencies	5.9
		About the same inconsistencies	26.5
		Somewhat more inconsistencies	58.8
		Many more inconsistencies	8.8

^a Number of participants who responded to each question.

In response to questions regarding attorneys' perceptions of the suggestibility of child witnesses with mental retardation, 89% of attorneys perceived child witnesses with mental retardation as being more or much more suggestible than children without

mental retardation. Regarding the sincerity of a child witness in communicating an experience, 79% of attorneys thought that child witnesses with mental retardation were less or much less sincere than a child without mental retardation.

In the opinion of 68% of attorneys participating, the testimony of a child with mental retardation concerning a witnessed criminal event tends to include somewhat more or many more inconsistencies than that of a child witness without mental retardation. When a child with mental retardation reports that he/she was sexually abused, attorneys believe that the child gives an accurate description of what occurred 51% of the time. In 41% of instances where abuse was reported, attorneys believe that the child's report was significantly distorted or exaggerated, although sexual abuse did occur. Last, attorneys believe that in 17% of instances where a child with mental retardation reports abuse, the report is completely inaccurate or is fabricated (sexual abuse did not take place).

In summary, participating attorneys perceive child witnesses with mental retardation as inferior to child witnesses without mental retardation in recall ability and accurately identifying an assailant. Attorneys also perceive that children with mental retardation are more suggestible than child witnesses without mental retardation, and they believe that child witnesses with mental retardation include more inconsistencies when giving an account of a criminal event. Results also show that participating attorneys perceive child witnesses with mental retardation as being less sincere than child witnesses without mental retardation.

Do attorneys believe that jurors perceive child witnesses as being less credible and more suggestible than adult witnesses?

Table 3 presents the mean percentages of attorneys' beliefs of jurors' perceptions regarding child witnesses without mental retardation as compared with adult witnesses. Attorneys were first asked how likely they thought a jury would be to convict a defendant if the sole witness in a case is a child versus an adult. Forty-six percent of attorneys believed that a jury would be less or much less likely to convict if the sole witness is a child as opposed to an adult, while 49% of

TABLE 3

Attorneys' beliefs of jurors' perceptions of child witnesses without mental retardation compared with adult witnesses

<i>Question</i>	<i>n^a</i>	<i>Option</i>	<i>%</i>
Likely to convict if sole witness	37	Much less likely	18.9
		Less likely	27.0
		About equally likely	48.6
		More likely	5.5
		Much more likely	0.0
Ability to remember events	37	Much superior	0.0
		Superior	8.1
		Equal	24.3
		Inferior	64.9
		Much inferior	2.7
Suggestibility	37	Much more suggestible	16.2
		More suggestible	67.6
		Equally suggestible	10.8
		Less suggestible	5.4
		Much less suggestible	0.0
Effect of inconsistencies on credibility	38	Lower credibility more	13.2
		Lower credibility equally	23.7
		Lower credibility less	63.2

^a Number of participants who responded to each question.

attorneys believed that a jury would be about equally likely to convict on the testimony of a child or of an adult. In the area of recall, 68% of participating attorneys believed that jurors perceive a child's ability to remember events as inferior or greatly inferior to that of adults.

In response to a question regarding the participants' beliefs as to jurors' perceptions of the suggestibility of children, 84% of participating attorneys believed that jurors perceive child witnesses as being more or much more suggestible than adults. Last, attorneys were asked how they thought inconsistencies in the testimony of a child witness in court

would affect the child's credibility in the eyes of jurors; 63% of the participants responded that inconsistencies in testimony tend to be ignored or overlooked if the witness is a child, thereby making such discrepancies less damaging to a child witness's credibility than such discrepancies would be for an adult witness's credibility.

In summary, results showed that attorneys were split almost equally in their views that jurors would be less likely and equally likely to convict a defendant if the sole witness was a child. Attorneys also believe that jurors perceive child witnesses without mental retardation as inferior to adults in their ability to recall information and identify an assailant accurately, and are more suggestible. Participating attorneys also believe that inconsistencies in a child's testimony tend to be overlooked by a jury.

Do attorneys believe that jurors perceive child witnesses with mental retardation as being less credible and more suggestible than children without mental retardation?

Table 4 presents the mean percentages of participants' opinions of jurors' perceptions concerning child witnesses with mental retardation as compared with child witnesses without mental retardation. First, in response to how likely a jury is to convict on the testimony of a sole witness who is either a child with mental retardation or a child without mental retardation, 53% of the attorneys responded that a jury would be less likely to convict if the witness is a child with mental retardation. Further, 94% of attorneys believed that jurors perceive child witnesses with mental retardation to be inferior or much inferior in their ability to remember events when juxtaposed with child witnesses without mental retardation.

Concerning the subject of suggestibility of children with mental retardation, 67% of attorneys responded that jurors see children with mental retardation as being equally as suggestible as children without mental retardation. In addition, 47% of attorneys indicated their opinion that inconsistencies in the testimony of a child witness with mental retardation lower the child witness's credibility with

TABLE 4 **Attorneys' beliefs of jurors' perceptions of child witnesses with mental retardation compared with child witnesses without mental retardation**

<i>Question</i>	<i>n^a</i>	<i>Option</i>	<i>%</i>
Likely to convict if sole witness	32	Much less likely	6.3
		Less likely	46.9
		About equally likely	18.8
		More likely	18.8
		Much more likely	9.4
Ability to remember events	33	Much superior	0.0
		Superior	0.0
		Equal	6.1
		Inferior	66.7
		Much inferior	27.3
Suggestibility	33	Much more suggestible	27.3
		More suggestible	3.0
		Equally suggestible	66.7
		Less suggestible	3.0
		Much less suggestible	0.0
Effect of inconsistencies on credibility	32	Lower credibility more	46.9
		Lower credibility equally	21.9
		Lower credibility less	31.3

^a Number of participants who responded to each question.

jurors more significantly than similar inconsistencies in the testimony of a child without mental retardation. Finally, in the opinion of 74% of attorneys, child witnesses with mental retardation will *never* become as believable as adult eyewitnesses to the average juror.

In general, participating attorneys believe that a jury would be less likely to convict a defendant if the sole witness was a child with mental retardation. Attorneys also believe that jurors perceive child witnesses with mental retardation as inferior to child witnesses without mental retardation in their

ability to recall information and identify an assailant accurately. They did, however, believe that jurors perceive child witnesses with mental retardation as being equally suggestible as child witnesses without mental retardation. Last, participating attorneys believe that inconsistencies in the testimony of a child with mental retardation lower their credibility more than if a child without mental retardation showed the same inconsistencies.

Summary of attorneys' perceptions of witness credibility

Results from the questionnaire showed that attorneys perceive child witnesses as less likely to recall accurate information and more suggestible than adult witnesses. They also believe that jurors perceive children as being incapable of recalling accurate information and as more suggestible than adult witnesses. Attorneys perceive that child witnesses with mental retardation are less likely to recall accurate information and are more suggestible than child witnesses without mental retardation. Results also showed that attorneys believe jurors perceive children with mental retardation as being inferior in recall ability compared with children without mental retardation. However, attorneys believe that jurors perceive children with mental retardation as equally suggestible as children without mental retardation.

Attorneys' methods and strategies for obtaining and presenting testimony of child witnesses with mental retardation

In this section of the questionnaire, participating attorneys were asked to quantify, in terms of percentages, their use of alternative methods of obtaining and presenting testimony of child witnesses with mental retardation (see Table 5). The four most frequent methods currently used by the participants are hearsay evidence offered by a medical doctor (54%), hearsay evidence offered by parents (48%), anatomically correct dolls and other props that aid a child in giving testimony (41%), and hearsay evidence given by a psychologist (37%). Methods reportedly used less frequently are hearsay evidence given by a teacher (24%), written testimony of a child's account of a crime (18%), hearsay evidence given by other children (17%), and videotaped testimony (15%). Alternative forms of communication (e.g.,

interpreter, communication board) is reportedly the least frequent method currently in use (6%).

TABLE 5

Alternative methods of obtaining and presenting testimony of child sexual abuse victims with mental retardation

<i>Method</i>	<i>n^a</i>	<i>Mean estimate of how often (% of time this method is currently used)</i>	<i>n^a</i>	<i>How acceptable the method is (completely unacceptable to completely acceptable using rating scale 1-5)</i>
Hearsay evidence of medical doctors	23	54.57	33	2.73
Hearsay evidence of parents	24	48.04	33	2.30
Testimony with aid of anatomically correct dolls and other props	25	41.08	30	3.58
Hearsay evidence of a psychologist	23	37.09	32	2.31
Hearsay evidence of a teacher	23	24.48	32	2.13
Written testimony	24	17.79	31	2.06
Hearsay evidence of other children	24	16.54	33	1.88
Videotaped testimony	24	15.17	31	2.26
Alternative forms of communication	22	5.59	30	2.90

^a Number of participants who responded to each question.

Looking at these methods of obtaining and presenting testimony of child victims with mental retardation, attorneys were instructed to use a five-point rating scale (completely unacceptable to completely acceptable) indicating their acceptability of each method. In rating the choices, none of the participants found the nine methods offered to be completely acceptable or even somewhat acceptable. Testimony given by a child with the aid of anatomically correct dolls and props was the only method found between the undecided and somewhat acceptable range ($M = 3.58$, $SD = 1.20$). In considering alternative forms of communication ($M = 2.90$, $SD = 1.40$) and hearsay evidence given by a medical doctor ($M = 2.73$, $SD = 1.48$), most attorneys participating in the study were undecided in their views of acceptability.

Methods found to be somewhat unacceptable to attorneys included hearsay evidence given by a psychologist ($M = 2.31$, $SD = 1.35$), hearsay evidence given by parents ($M = 2.30$, $SD = 1.31$), courtroom presentation of videotaped testimony ($M = 2.26$, $SD = 1.57$), hearsay evidence given by a teacher ($M = 2.13$, $SD = 1.26$), and written testimony of a child's account of a crime ($M = 2.06$, $SD = 1.44$). The only method rated within the range of completely unacceptable and somewhat unacceptable was the use of hearsay evidence given by children ($M = 1.88$, $SD = 1.14$).

In the last section of the questionnaire, attorneys were asked to use a five-point rating scale (never to always) to indicate the extent to which they employ certain strategies at trial. First, participants were to examine the use of strategies in a trial where a child with mental retardation is an important component of their opponent's case (see Table 6). Ninety-five percent of attorneys reported that they often to always bring to the jury's attention all instances of the child's inconsistency, memory lapses, apparent compliance with his or her parents' expectations, etc. Eighty-six percent reported that they often to always emphasize the disability of the

TABLE 6

Strategies employed by attorneys in a trial where eyewitness testimony of a child with mental retardation is an important component of their opponent's case

<i>Strategy</i>	<i>n</i> ^a	<i>Option</i>	<i>%</i>
Opening arguments—emphasize disability of child with mental retardation	36	Never	16.7
		Seldom	5.6
		Occasionally	16.7
		Often	30.6
		Always	30.6
Closing arguments—emphasize disability of child with mental retardation	36	Never	2.8
		Seldom	2.8
		Occasionally	8.3
		Often	36.1
		Always	50.0
Make jury aware of inconsistencies, memory lapses, etc.	36	Never	0.0
		Seldom	0.0
		Occasionally	5.6
		Often	30.6
		Always	63.9
Use to advantage child's vulnerabilities in cross-examination, leading child into inaccurate statements	36	Never	8.3
		Seldom	5.6
		Occasionally	22.2
		Often	33.3
		Always	30.6
Use expert witness to inform jury of memory abilities	36	Never	5.6
		Seldom	5.6
		Occasionally	25.0
		Often	41.7
		Always	22.2
Cite psycho-legal research evidence about memory abilities of children with mental retardation	36	Never	27.8
		Seldom	11.1
		Occasionally	19.4
		Often	19.4
		Always	22.2

^a Number of participants who responded to each question.

witness with mental retardation in closing arguments, as well as highlight reasons to distrust his/her testimony.

Participating attorneys reported utilizing other strategies often to always. Sixty-four percent of participants use to their advantage a child witness's vulnerabilities in cross-examination by directly challenging his/her statements and leading the child into inconsistent or inaccurate statements; 64% reported employing an expert witness (such as a psychologist) to inform jurors about the memory abilities of children with mental retardation; and 61% of responding attorneys emphasize the disability of a child witness in opening arguments. Finally, 39% of attorneys reported that they never to seldom use the strategy of citing psycho-legal research evidence indicating that children with mental retardation are highly suggestible and prone to memory failure, while 42% reported often to always using this strategy.

The second part of the strategy section asked participants to use the same rating scale to indicate the extent to which they would engage in certain strategies if a child with mental retardation was an important component of their *own* case (see Table 7). Eighty-two percent reported that they often to always attempt to elicit the sympathy of the jury toward a child with mental retardation. Seventy-four percent reported that they often to always implore the jury to excuse mistakes made by the child with mental retardation, noting that they are understandable given the child's disability. Sixty-six percent stated that they often to always cite evidence from psycho-legal research indicating that children with mental retardation are reliable eyewitnesses. Last, 65% of attorneys often to always bring in an expert witness such as a psychologist to inform jurors about the memory abilities of children with mental retardation.

As for the strategy of extensively coaching the testimony of a child with mental retardation before trial, 47% of attorneys

TABLE 7

Strategies employed by attorneys in a trial where eyewitness testimony of a child with mental retardation is an important component of their own case

<i>Strategy</i>	<i>n</i> ^a	<i>Option</i>	<i>%</i>
Attempt to elicit sympathy of jury toward the child with mental retardation	34	Never	5.9
		Seldom	2.9
		Occasionally	8.8
		Often	35.3
		Always	47.1
Cite psycho-legal research indicating that children with mental retardation are reliable witnesses	32	Never	21.9
		Seldom	3.1
		Occasionally	9.4
		Often	31.3
		Always	34.4
Extensively coach testimony of child with mental retardation	34	Never	23.5
		Seldom	11.8
		Occasionally	17.6
		Often	20.6
		Always	26.5
Implore jury to excuse mistakes made by child with mental retardation given the child's disability	34	Never	8.8
		Seldom	2.9
		Occasionally	14.7
		Often	38.2
		Always	35.3
Argue that children with mental retardation are ordinarily more sincere than children without mental retardation	34	Never	20.6
		Seldom	8.8
		Occasionally	23.5
		Often	23.5
		Always	23.5
Bring in expert witness to inform jurors about memory abilities of children with mental retardation	34	Never	8.8
		Seldom	5.9
		Occasionally	20.6
		Often	38.2
		Always	26.5

^a Number of participants who responded to each question.

reported often to always using the strategy, while 35% reported never to seldom using it. Finally, as to arguing that children with mental retardation are ordinarily more sincere than children without mental retardation, some attorneys reported never or occasionally using this strategy, while most (47%) reported often to always using this strategy.

Discussion

The purpose of this study was to assess attorneys' perceptions of child witnesses with mental retardation, as well as attorneys' beliefs of jurors' perceptions of child witnesses with mental retardation. In replicating a portion of a study by Leippe et al.,⁴⁷ attorneys' perceptions and attorneys' beliefs of jurors' perceptions toward child witnesses without mental retardation were also assessed.

Results for children both with and without mental retardation showed that when judged against their comparison group, attorneys perceived that they perform more poorly in recall and suggestibility; attorneys perceived child witnesses as inferior to adults in their ability to recall information and as more suggestible than adult witnesses. Attorneys also perceived child witnesses with mental retardation as having an inferior ability to recall events and as more suggestible than child witnesses without mental retardation. Attorney participants were largely agreed as to how they believed jurors perceive child witnesses without mental retardation as compared with adults—inferior in recall and more suggestible. Results also showed that attorneys view the recall ability of children with mental retardation as being inferior to that of children without mental retardation, yet most attorneys think that jurors view children with mental retardation as equally suggestible as child witnesses without mental retardation.

The results of this research study concur with those of a study performed by Leippe et al.⁴⁸ that examined attorneys'

perceptions of child witnesses without mental retardation. Both studies indicate that attorneys believe children to be inferior in their memory abilities and more suggestible than adult witnesses. In expanding on Leippe's study to measure attorneys' perceptions of children with mental retardation, the results of this study survey indicated that 64% of attorneys often to always bring in an expert witness (such as a psychologist) to inform jurors about the memory abilities of children with mental retardation. The results of this expanded inquiry accord with the findings of Perry and Wrightsman,⁴⁹ wherein it was found that defense attorneys try to convince the jury of the unreliability of a child witness due to weaknesses in memory. Of note, 77% of attorneys participating in the present study were defense attorneys (a more in-depth inquiry into the differences between defense and prosecuting attorneys is beyond the scope of this study).

While the present study's results accord with those of other studies indicating that children in general are viewed as less reliable witnesses, there are important differences worth noting when comparing the results of attorneys' beliefs of jurors' perceptions of child witnesses without mental retardation with attorneys' beliefs of jurors' perceptions of child witnesses with mental retardation. First, in the area of recall, 68% of participating attorneys thought that jurors would view the recall ability of a child witness without mental retardation as inferior to that of adults, while almost all attorneys (94%) thought that jurors would view the recall ability of a child with mental retardation as being inferior to that of children without mental retardation.

Similar results were found when examining attorneys' perceptions themselves. The differences in the percentage of attorneys who perceived children with mental retardation as likely to recall less or much less than children without mental retardation and the percentage of attorneys who perceived children without mental retardation as likely to recall less or much less than adult witnesses is fairly significant. Attorneys

(74%) also said that a child witness recalls less or much less than an adult, while almost all (92%) said that children with mental retardation would recall less or much less than children without mental retardation. Such opinions indicate that the recall abilities of child witnesses as a class are perceived poorly, but that the recall abilities of children with mental retardation are especially viewed as not credible within the judicial forum.

These negative perceptions of the recall abilities of child witnesses both with and without mental retardation may be unfounded. Child witnesses as young as two years of age have been found to accurately recall facts and details of past experiences and to be able to retain them for more than one to two years.⁵⁰ When struggling to recall an experience in the past, child witnesses may employ the use of memory strategies to help organize their thoughts, just as might be done by older children and adults.⁵¹ Research has shown that children with mental retardation perform as well with incidental memory (memory involving witnessed events) as children without mental retardation.⁵² Although the short-term memory of children with mental retardation appears to be weak, research pertaining to long-term memory has shown that children with mental retardation can retain information as well as those without mental retardation.⁵³ An important factor that can influence the ability of a child with mental retardation to recall information involves the types of questions asked. Dent⁵⁴ found that the use of general questions helped children with mental retardation recall the most accurate information. Prompts and cues may also facilitate recall of those with mental retardation.⁵⁵

In addition to concerns involving recall, it is interesting to note the results of attorneys' perceptions concerning the suggestibility of child witnesses with and without mental retardation. Attorneys perceived child witnesses without mental retardation as being more or much more suggestible than adults (88%), and children with mental retardation as

more or much more suggestible than children without mental retardation (89%). However, when asked about jurors' perceptions of the suggestibility of child witnesses, the disparities between the attorneys' perceived suggestibility of children with and without mental retardation was insignificant. While most attorneys believed that jurors would view children as being more or much more suggestible than adults, attorneys believed that jurors view children with mental retardation as *equally* suggestible as children without mental retardation.

In relating the findings of recall and suggestibility, it is interesting to note that attorneys believe jurors see children with mental retardation as inferior in their ability to recall but equal in suggestibility to children without mental retardation. One would think that the attorneys' negative perceptions with relation to recall would color their opinion of jurors' perceptions relating to suggestibility.

In addressing the attorneys' perceptions of suggestibility, it is important to note that studies indicate that children with mental retardation may be as reliable as children without mental retardation, within certain parameters. For example, the susceptibility of suggestion is reduced when child witnesses with mental retardation are asked general, open-ended questions⁵⁶ and questions pertaining to central actions in an event.⁵⁷ Suggestibility may also vary in more stressful situations and when questions are repeated.⁵⁸

Another point that compares to the study of Leippe et al.⁵⁹ is the fact that even though attorneys believe jurors perceive child witnesses without mental retardation as being less credible and more suggestible, almost half of participating attorneys thought a jury was about equally likely to convict whether the sole witness was a child or an adult. This did not hold true for witnesses with mental retardation, however, as almost half of the attorneys believed a jury would be less likely to convict if the sole witness was a child with mental

retardation. It is important to note that attorneys believe inconsistencies in the reports of a child without mental retardation tend to be ignored or overlooked by a jury, having less impact on the child witness's credibility than on that of an inconsistent adult witness. However, attorneys believe that inconsistencies in the testimony of a child with mental retardation lower the child witness's credibility with jurors more than they would lower the credibility of a child without mental retardation.

Another point worthy of discussion involves the negative perceptions of child witnesses with mental retardation. Out of the 39 participating attorneys, 54% had no experience with child witnesses with mental retardation; those participants who did have some experience, had very little. Tharinger, Horton & Millea⁶⁰ report that only 3% of cases involving individuals with mental retardation are reported to authorities, which may explain why less than half of participating attorneys have had actual experience with child witnesses with mental retardation. In spite of this dearth of interaction and experience with child witnesses with mental retardation, participating attorneys had preconceived assumptions as to the capabilities or limitations of these witnesses. This might possibly be attributed to the high number of defense attorneys who participated, as compared with a lower number of participating prosecutors.

Participants' negative perceptions concerning the suggestibility of child witnesses with and without mental retardation are personified in their litigious actions, as reported by participants in this study. Almost 64% said that they would often to always use to advantage a child's vulnerabilities (e.g., confusion, inarticulateness, fear, suggestibility) in cross-examination by directly challenging the child's statements, leading the child into inconsistent or inaccurate statements. This result comports with research conducted by Schmidt & Brigham (1996).⁶¹ They found that during opening and closing statements, a defense attorney

may capitalize on the jury's biases by using leading questions and pointing out the inconsistencies of a child's testimony. They also found that a prosecuting attorney may unknowingly destroy the accuracy of a child's testimony by asking leading questions, which would only confirm the jury's biases. By comparison, if the child with mental retardation was an important component of their own case, 74% of attorneys in this study stated that they would implore the jury to excuse mistakes made by the child in order to counter the effects of their opponent's examination.

The results of this study indicate that participating attorneys are not using videotaped or written testimony as often as they might. For child witnesses whose more severe retardation would require giving testimony in a less conventional manner, these methods could be employed by attorneys generally, to their benefit.⁶² It is interesting to note that the use of anatomically correct dolls and other props is the method most currently used to assist child witnesses with mental retardation to recall and communicate their testimony, and this method is also rated as being the most acceptable by participating attorneys. The use of such props assists the child witness with mental retardation who lacks command of sexual or anatomical knowledge or terminology to describe events and persons to the court.⁶³ If other methods mentioned in the survey were utilized more frequently, attorneys for whom the child is testifying might be able to more efficiently "liberate" the testimony of a child witness with mental retardation. While attorneys participating in the present study viewed these alternative methods as somewhat unacceptable, with education and training in such methods a child's testimony and ability to communicate might be strengthened, and the attorneys' doubts as to the jury's perceptions of such witnesses alleviated thereby.

Implications

Although the sample size of this study is limited and the results must therefore be interpreted with caution, several implications present themselves. First, even though over half

of the attorneys participating in this study lacked any experience working with children with mental retardation, these attorneys made strong assumptions as to the credibility and suggestibility of these witnesses. This suggests a need for more in-depth training that addresses the capabilities and limitations of child witnesses with mental retardation for attorneys who work or may work with these witnesses. Specifically, attorneys could receive training in narrative elaboration, communication facilitation, developmentally appropriate questioning, and courtroom education to aid child witnesses in contributing to the judicial process.⁶⁴

Child witnesses with and without mental retardation could also receive appropriate training specific to the forensic context. For example, Nathanson and Crank⁶⁵ increased the completeness and accuracy of reports of children with disabilities concerning a past event by utilizing narrative elaboration training. In other studies, children with and without learning disabilities were able to enhance their interview performance after receiving training in the use of a comprehension monitoring strategy.⁶⁶ Such strategies could also provide child witnesses with mental retardation the tools to weather the developmentally inappropriate questions often posed to them by attorneys in the courtroom.

Alternatives to courtroom testimony should also be considered. Nathanson and Saywitz⁶⁷ found, for example, that children provide more complete and accurate reports when questioned in a small private room than in a courtroom setting. Moreover, children had significantly more erratic heart rate patterns, indicative of a stress response, when interviewed in the courtroom. Although a number of states have passed legislation permitting children to testify outside of the courtroom via other methods of testimony (e.g., videotaped testimony, written testimony, alternative forms of communication), this is rarely done. For example, only 6% of participants in this study reported using alternative forms of communication. Such methods of testifying may in fact

strengthen the perceived validity of the testimony of child witnesses with mental retardation.

Conclusion

This study represents an initial foray into an as yet unexplored subject that can provide unique insight into the current perceptions of children with mental retardation. These initial findings, in conjunction with the results of studies to come, may shed light on the current perceptions held by various persons within the judicial system and on the causes perpetuating those perceptions, and suggest meaningful and effective approaches to better educate the legal system on the special needs and contributions of child witnesses with mental retardation.

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