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Attorneys' perceptions of child witnesses with mental retardation

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ATTORNEYS' PERCEPTIONS OF CHILD WITNESSES
WITH MENTAL RETARDATION

by

Michelle D. Platt

Bachelor of Science
Brigham Young University
1999

A thesis submitted in partial fulfillment
of the requirements for the

**Master of Science Degree
Special Education Department
College of Education**

**Graduate College
University of Nevada, Las Vegas
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ABSTRACT

Attorneys' Perceptions of Child Witnesses With Mental Retardation

by

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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. The purpose of this study is to assess 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 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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CHAPTER 1

INTRODUCTION

Many children are forced to participate in the criminal justice system as they become innocent victims of abuse. Notwithstanding the seriousness of these crimes, very few child abuse cases actually reach the courts of our judicial system—the same judicial system that has for its motto “equality under the law.” Concern as to the credibility of child witnesses in court has been voiced by judges, lawyers, jurors, and even psychologists, for many years (Meyers, Saywitz, & Goodman, 1996). Found in early 20th century history are statements made by European writers, such as the German physician A. Baginsky: “Children are the most dangerous of all witnesses” (Meyers et al., 1996, p. 19). In 1911, Belgian psychologist J. Varendonck asked, “When are we going to give up in all civilized nations, listening to children in courts of law?” (Meyers et al., 1996, p. 19).

It was upon assertions like these that early 20th century scholars founded their research (Berliner, 1985). They considered the developmental differences between children and adults, and inquired whether these differences affected the competency of children as witnesses (Berliner, 1985). Yet it was not until the mid-1980s, when large numbers of children actually entered the criminal justice system, that researchers again questioned the reliability of their testimonies (Ceci & Bruck, 1995). According to Ceci and Bruck (1995), the impetus responsible for the rebirth of research in this area, was the

dramatic increase in child abuse, and society's reaction to the ineffective prosecution of such.

In prosecuting alleged child abusers, children face many of the same problems encountered by adult rape victims. For example, children may be accused of lying about their abuse, enabling their own victimization, asserting a sexual assault fantasy, or being unable to differentiate between innocent behavior and sexual abuse (Berliner, 1985). However, the manner of child abuse is distinguishable from adult rape. Unlike adults who usually become victims after a violent attack, children become victims through persuasion or adult fraudulence—usually perpetrated by those whom they know or in whom they have placed confidence (Berliner, 1985). This physical or sexual abuse may also occur over extended periods of time (Berliner, 1985).

Unfortunately, there is one important similarity between these adult and child victims: They are the only witnesses to their victimization (Berliner, 1985). Most cases involve only the child and the offender, without medical or physical findings nor witnesses to the crime (Berliner, 1985). Being the only witness to their victimization, in addition to being perceived as incredible, makes it difficult for a child witness to secure effective representation.

In abuse cases, judges and juries have often questioned the suggestibility of children as well as their credibility (Myers, 1992). Research regarding attorneys' attitudes toward child witnesses has also revealed existing doubts as to a child witness's competence and ability to recall information. It was found that both prosecuting and defense attorneys typically perceive children as having poorer memories and greater suggestibility than adults (Leippe, Brigham, Cousins, & Romanczyk, 1989). Research also shows that

prosecutors are often hesitant to seek jury trials in child sex abuse cases because such a proceeding would rest primarily on the child's testimony (Leippe et al., 1989).

Particularly unfortunate given the previous discussion, children with mental retardation are victimized 4 to 10 times more than the general population (Baladerian, 1991; Denno, 1997). More specifically, they are two times more likely to be abused physically and sexually than other victims (Sargeant, 1994). However, 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" (Bull, 1995, p. 189). These children face the issue of credibility not only because of their age, but also because of their disability. Victims with mental retardation may have communication difficulties, which exacerbate the possibility that they will be misunderstood or blamed for their victimization when trying to persuade others of the actuality of their abuse (Sargeant, 1994). It is important then, to assess attorneys' perceptions of child witnesses with mental retardation. Children with mental retardation must receive adequate representation if their tormentors are to be brought to justice.

Statement of Purpose

This study will 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. A 33-item questionnaire will be utilized to assess the frequency of cases that attorneys encounter involving adults, and children with and without mental retardation as key witnesses, their opinions concerning the abilities of the aforementioned

witness types to recall and communicate information, and their beliefs about jurors' reactions to child witnesses with and without mental retardation. Questions will also assess their use of alternative methods of obtaining and presenting testimonies of children with and without mental retardation, as well as specific strategies the attorneys have used when dealing with children with mental retardation in court.

Research Questions

The questions addressed in this study are:

1. Do attorneys perceive child witnesses as being less credible than adult witnesses?
2. Do attorneys perceive child witnesses as being more suggestible than adult witnesses?
3. Do attorneys believe that jurors perceive child witnesses as being less credible than adult witnesses?
4. Do attorneys believe that jurors perceive child witnesses as being more suggestible than adult witnesses?
5. Do attorneys perceive child witnesses with mental retardation as being less credible than child witnesses without mental retardation?
6. Do attorneys perceive child witnesses with mental retardation as being more suggestible than child witnesses without mental retardation?
7. Do attorneys believe that jurors perceive child witnesses with mental retardation as being less credible than child witnesses without mental retardation?
8. Do attorneys believe that jurors perceive child witnesses with mental retardation as being more suggestible than children without mental retardation?

CHAPTER 2

REVIEW OF RELATED LITERATURE:

MEMORY AND SUGGESTIBILITY OF CHILD WITNESSES

The review of related literature is divided into four sections. The first two sections will examine the memory abilities of child witnesses with and without mental retardation. The last two sections will address the suggestibility of these witness types.

Memory Capabilities of Child Witnesses

Without Mental Retardation

There have been numerous models and theories attempting to explain memory and how it functions. Memory is most commonly explained as involving the acquisition (or encoding), storage, retrieval, and communication of information (Ceci & Bruck, 1995; Perry & Wrightsman, 1991). It is the ability to process and retain images and sounds, as well as recall and communicate them to others (Ceci & Bruck, 1995). According to Perry and Wrightsman (1991), encoding is the process of putting information into long-term storage. After being stored away, this information can then be retrieved a few hours or days later when it is needed (Milne & Bull, 1999).

Research studies have shown that the ability to store information does not change significantly with age—once information is stored into memory, it can be remembered equally by a preschooler or an adult (Perry & Wrightsman, 1991). Therefore, it is in the areas of encoding and retrieval of information that differences may be observed between

children and adults. When children struggle with recalling a past experience, it generally stems from the difficulty they have in encoding information, or putting working memory into long-term storage (Perry & Wrightsman, 1991). The development of memory strategies used by older children and adults to utilize and recall information (Myers et al., 1996), is an effective determinant of memory capability (Turner, Hale, & Borkowski, 1996). Studies suggest that by the third grade (8-9 years), children are able to generate retrieval strategies spontaneously (Myers et al., 1996).

In the courtroom, many defense attorneys try to convince the jury that child witnesses are unreliable because of their weak memory, and will often call upon an expert witness to testify as to such unreliability (Perry & Wrightsman, 1991). However, years of research and studies have revealed more positive results with regard to abilities of child witnesses in the courtroom. Child witnesses as young as two years of age can remember accurate facts and details of past experiences, and can retain them for more than 1-2 years (Ceci & Bruck, 1995; Fivush & Schwarzmüller, 1995).

The amount of information child witnesses share in court may be very little (Pipe, Gee, & Wilson, 1993). However, with further questions or cues to stimulate their memory, children can share additional pieces of important information (Myers et al., 1996; Saywitz, 1995). This information may appear unorganized and inconsistent if the children are not yet capable of giving narrative accounts as witnesses in court (Fivush & Shukat, 1995). Nevertheless, as their knowledge of an event develops, children can employ memory strategies without necessitating prompts or cues to aide in organizing their thoughts (Myers et al., 1996). They can learn how to communicate what they know—setting, participants, actions and conversations, what questions to ask themselves,

how much detail to give and when, and how narrative accounts are organized (Saywitz, 1995).

Children learn these narrative skills in the preschool years, and by five years of age, are able to give a coherent narrative as a witness of a past personal experience (Hudson & Shapiro, 1991). An example of this is presented in a case from 1983 (Perry & Wrightsman, 1991). A three-year-old girl was kidnapped from the street in front of her home, was sexually abused, and taken to an outhouse in a mountain and dropped into the cesspit. She was found 70 hours later and, 10 days after her abduction, she identified her kidnapper from a lineup of suspects. Fifteen months after the abduction, the suspect finally admitted to kidnapping and sexually abusing her in the exact manner described by the three-year-old.

In a study performed by Fivush and Shukat (1995), 19 preschool children were interviewed to assess their memory capabilities of personal experiences. The children were interviewed at four different ages: 3 years and 4 months, 3 years and 10 months, 4 years and 10 months, and 5 years and 10 months. The preschoolers were asked to tell about three specific, one-time occurrences or events they had experienced (e.g., going to the zoo, on a vacation). The results showed that the types of information and amount of spontaneous information children recall, do not change over time. The results also demonstrated that memory for highly salient personal experiences remains stable through the preschool years and that, even at a very young age, children can recount their past in meaningful and effective ways.

In addition to age and developmental limitations, other factors have been shown to affect memory retrieval. Children may fail to share everything they know because of

embarrassment or fear (Batterman-Faunce & Goodman, 1993). Information they have stored in memory may also be affected by things that occurred in between the event in question and the interview (Brainerd & Ornstein, 1991). In addition, part of an event may go unnoticed, something may be forgotten, or one may confuse the order of events that occurred regardless of a person's age (Goodman & Helgeson, 1985). A testimony's accuracy also tends to increase if the child witness participated in the event (Murachver, Pipe, Gordon, Owens, & Fivush, 1996; Rudy & Goodman, 1991), if the event extended over time, the child victim knew the assailant, and/or if the event was repeated (Goodman & Helgeson, 1985). Studies also suggest that a child's ability to recall past events is affected by how familiar he/she is with the person interviewing and whether or not they participated in the event with the child (Fivush, Hammond, Harsch, Singer, & Wolf, 1991).

Memory Capabilities of Child Witnesses

With Mental Retardation

Historically, a child witness with mental retardation has been viewed as an unreliable witness because many have believed that their memory systems are defective (Perlman, Ericson, Esses, & Isaacs, 1994). 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 for those with mental retardation, such as iconic memory, short-term memory, rehearsal processes, attentional processes, and strategy use (Wyatt & Conners, 1998). 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 (Wyatt & Conners, 1998).

Wyatt & Conners (1998) described a typical study for testing the encoding of location and frequency information—participating subjects perform a task, such as picture identification, that takes their attention away from item locations and frequencies. Later, these participants are tested on location and frequency information. Dulaney & Ellis (1991) found little to no difference between those with and without *mental retardation* in this area of memory, as long as the level of retardation was mild.

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 (Beirne-Smith, Ittenbac, & Patton, 2002). Short-term memory difficulties faced by those with mental retardation may be attributed to their inability to use memory strategies when presented with new information (Turnbull, Turnbull III, Shank, Leal, 1995) and a lack of selective attention (Westling & Fox, 2000). However, in a study performed by Turner, Hale, and Borkowski (1996), students with mental retardation did adopt strategies similar to those subjects without mental retardation, increasing their ability to recall information. 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 (Beirne-Smith et al., 2002), especially if the information is meaningful to the individual with mental retardation (Smith, Polloway, Patton, & Dowdy, 1998).

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 (Perlman et

al., 1994). Glidden and Mar (1978) found that providing external semantic cues facilitated recall because those with mental retardation fail to spontaneously use organizational cues. However, Dent (1986) 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.

Much of the literature addressing memory and mental retardation has actually examined intentional memory rather than incidental memory, which involves witnessed events (Henry & Gudjonsson, 1999). Nevertheless, a few researchers have reported that children with mental retardation perform as well as children without mental retardation on tests of incidental memory (Burack & Zigler, 1990; Ellis, Katz, & Williams, 1987), a type of memory that does not require conceptual knowledge (Carlesimo, Marotta, & Vicari, 1997). These findings substantiate the proposition that children with mental retardation can encode, store, and retrieve accurate information as ably as children without mental retardation, so the need for it is not presented as a specific recall task; this proposition then suggests that memory strategies may be eliminated (Henry & Gudjonsson, 1999), 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. Dent (1986) 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 Without Mental Retardation

A companion enquiry 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 (Cashmore & Bussey, 1996).

The suggestibility of children has caused apprehension for some time, since it appears that a child's ability to recall information becomes less consistent when interviewed with leading or suggestive questions (Poole & White, 1995). Leading questions are "worded so that the respondent is more aware of one answer than another, or contains information that may bias the response" (McMillan & Schumacher, 2001, p. 269). Consequently, many legal and mental health professionals are concerned that false allegations by children and the subsequent prosecution and conviction of innocent adults, may result from leading questions (Goodman & Clarke-Stewart, 1991).

Many surveys indicate that adults typically view children as being less credible and competent because of their susceptibility to suggestion (Brigham, 1995; Brigham & Spier, 1992; Goodman, Bottoms, Herscovici, & Shaver, 1989). A study performed by

Tobey, Goodman, Betterman-Faunce, Orcutt, and Sachsenmaier (1995) showed that mock jurors perceived older children as being less suggestible than younger children. These jurors voted a defendant guilty more often when an 8-year-old testified than when a 6-year-old testified. Also, 6-year-olds were viewed as being more suggestible in guilty rather than in not-guilty pleadings at these mock trials, while jurors' perceptions as to the 8-year-olds' suggestibility did not change with the plea of the defendant.

Schmidt and Brigham (1996) reported that attorneys may influence a jury's perception of children. A prosecuting attorney may unknowingly emasculate the accuracy of a child's testimony by asking leading questions; as a result, the jury's biases toward children's competency are confirmed (Schmidt & Brigham, 1996). Likewise, in the 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 (Schmidt & Brigham, 1996). Judges and magistrates have also expressed concern with a child's propensity to be influenced by suggestive questioning, coaching, and threats (Cashmore & Bussey, 1996).

Contrasting the suggestibility of children and adults, Goodman & Reed (1986) found that adults answer suggestive questions more correctly than 6-year-old children; and 6-year-old children perform better with suggestive questions than 3-year-old children. However, these differences between adults and children do not hold true for questions about central information surrounding the event; children are no more suggestible than adults. On the other hand, both children and adults are more open to suggestions about peripheral information (Goodman & Helgeson, 1985; Gobbo, 2000). Peripheral details

about an event are not remembered as well as aspects that are central to an event, and thus fade more quickly, thereby increasing the risk of suggestibility (Meyers, 1992). Children also tend to remember details about actions and are not likely to be suggestible when questioned about such details (Meyers, 1992).

Goodman & Clarke-Stewart (1991) report that much of the research concerning children's suggestibility in child abuse cases done thus far, has relied on situations very different from the abuse and trauma that children are asked to testify about. For example, researchers have used videotapes, brief stories, films, or slides to simulate a witnessed event that the children are questioned about. The children are usually bystanders to the event in the simulation, one which may hold little interest for them. Rudy and Goodman (1991) questioned the validity of this research, and found that children who actively participated in an event, rather than simply observing it, were less suggestible.

A study performed by Goodman and Clarke-Stewart (1991) actually used doctor visits as the setting in which children were interviewed, attempting to mimic more of the important features of child abuse investigations without crossing the line of ethics. Results from the study emphasized the importance of considering the conditions in which a child is interviewed when examining suggestibility. The study showed that children *can* be resistant to suggestibility if they are interviewed in a relatively mild, kind environment.

Ceci and Bruck (1995) suggest that there are three things that immunize children from suggestive questions and improve the accuracy of their testimony: Unbiased, neutral interviewers that use few leading questions, a limited number of interviews, and the absence of threats, bribes, and peer pressure. Warren and Lane (1995) also suggest

that the timing of the interviews, after the event in question occurs, affects the accuracy of testimony. These will be discussed in greater detail in the subsequent section.

Unbiased, Neutral Interviewers and Leading Questions

Research has shown that children will appear more suggestible when asked leading questions as compared to open-ended, non-leading questions (Schmidt & Brigham, 1996). In looking at the effects of leading questions, Warren & Lane (1995) found that initial neutral questioning about an incident does, in fact, reduce vulnerability to subsequent suggestion in both children and adults. They also found that neutral questioning following suggestive questioning also reduces ultimate suggestibility. Another study supporting this finding was performed by Warren, Hagood, and Snider (1993). Their findings indicated that children who were asked neutral questions immediately following an event answered more accurately and with less susceptibility to suggestion one week later than children who were asked misleading questions immediately following the event. The former children also showed more subsequent resistance to misleading questions.

There is evidence that suggests that the perceived authority of the interviewer providing the suggestions influences a child's suggestibility (Ceci, Ross, & Toglia, 1987). Children become more suggestible when credible and authoritative figures present misinformation in the form of suggestible questions (Ceci et al., 1989; Toglia, Ross, Ceci, & Hembrooke, 1992). In accord with this research, Greenstock and Pipe (1996) suggest that age differences between adult and child witnesses impact a child witness's responses to misleading questions because the child may be reticent to disagree with the adult's leading question, not because the child is particularly susceptible to

misleading questions. Goodman, Bottoms, Schwartz-Kenney, and Rudy (1991) also found that children interviewed with encouragement and frequent smiles from the interviewer made half the errors of children questioned in a neutral condition—the former children were better able to resist adult suggestions.

Limited Number of Interviews

Multiple interviews, suggestive questions, and repeated questions within interviews, are typical in criminal investigations, sharing the apparent goal of discovering contradictions or inconsistencies in testimony (Poole & White, 1995). Moston (1990) believes that repeated interviews will indeed produce less accurate answers than what were originally given if the witness reacts to the social pressure. Ceci and Bruck (1995) give an example of such in the interview process of an 11-year-old boy named Andy Meyers. Andy was removed from his home and placed in an emergency foster placement because his father was suspected of abusing him. When interviewed, he firmly denied that his parents or anyone else had abused him, and maintained his denial for three months. Finally, after weeks of almost daily interrogations, he told investigators that he had indeed been abused. He made outrageous accusations, such as asserting that his parents had orgies in the woods and killed and dumped babies into nearby rivers. The charges against his parents were finally dropped because the suggestive manner in which Andy was interviewed was brought to light. Nine years later, Andy was questioned by a journalist as to why he told investigators that his parents had abused him. His response was, “I finally just said ‘fine, yeah that happened...’ Probably cause I was just sick of being badgered” (Ceci & Bruck, 1995, p. 237).

Regarding suggestive questions, Gobbo (2000) found that misinformation presented

to children in repeated interviews through suggestive questions or narrative contexts is likely to impact children's responses to questions. If the misinformation is repeated continually over a period of a month following the event, accuracy further decreases, particularly with younger children (Leichtman & Ceci, 1995; Mitchell & Zaragoza, 1996; Poole & White, 1995).

Absence of Threats, Bribes, and Peer Pressure

Studies have shown that children have misconceptions and very little knowledge of the legal system when entering the courtroom (Flin, Stevenson, & Davies, 1989; Melton, Limber, Jacobs, & Oberlander, 1992; Saywitz, 1989; Warren-Leubecker, Tate, Hinton, & Ozbek, 1989). Saywitz (1989) found that children do not understand the role of the judge or attorneys and often think that the jury is made up of friends of the defendant. Saywitz also discovered that some children view the courtroom as simply a room that a person passes by on their way to jail; some children even believed that child witnesses went to jail if they made a mistake on the stand. The consequences of these misconceptions could include an increased anxiety to recall details perfectly, and as a result, increased suggestibility (Saywitz, 1989). Additionally, the presence of the defendant in the courtroom may lead to increased anxiety and suggestibility on the part of a child witness (Perry & Wrightsman, 1991).

Timing of Interviews

Months and even years often pass before abuse is ever reported. Researchers have found that a time delay of a week or more between an event and interview increases suggestibility in both adults and children (Ackil & Zaragoza, 1995; Warren & Lane, 1995; Brainerd & Ornstein, 1991). Warren and Lane (1995) report that if there is a

lengthy delay (weeks, months, and years) between an event and interview, there is a risk of increasingly inaccurate responses; such delayed interviews may be even more damaging to the veracity of child witnesses' testimonies than early repeated suggestive interviews.

A study by Flin, Boon, Knox, and Bull (1992) found that inaccurate recall for 6- and 9-year-old children doubled from 9% one day after the event in question, to 18% five months after the event. In contrast, adults maintained a constant rate of error of 10% after one day, and 8% after five months. Thus, the risk of suggestibility increases with decreased ability to recall details of an event—the subject may begin to lose confidence in his/her memory and possibly be more open to the viewpoints and suggestions of others (Warren & Lane, 1995; Belli, Windschitl, McCarthy, & Winfrey, 1992).

Suggestibility of Child Witnesses With Mental Retardation

Compared to the plethora of studies that have researched the suggestibility of child witnesses without mental retardation, very little has been done on the suggestibility of child witnesses with mental retardation. However, from the research that has been completed, much has been learned as to the capabilities and limitations of these witnesses.

Milne & Bull (1998) 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 (1994), 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's (1992) research also supports these findings: in comparing the recall of children with mild mental retardation, ages 8 through 12 years, and 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 Watson (1994), 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. (1994) 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 provided 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 a child's chronological age (CA) and mental age (MA). Henry and Gudjonsson (1999) 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 to 12 years, children without mental retardation ages 11 to 12 to serve as the chronological age comparison group, and children without mental retardation ages 7 to 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 (see also Heal & Sigelman, 1995). 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 (Henry & Gudjonsson, 1999). In addition, these studies indicate that children with mental retardation are more suggestible to certain types

of questions than peers of their same chronological age (Milne & Bull, 1998; Henry & Gudjonsson, 1999), but not those of an equivalent mental age (Gordon et al., 1994; Henry & Gudjonsson, 1999).

As found by Goodman and Helgeson (1985) and Gobbo (2000), 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. (1994). 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 Gudjonsson (1999) and Perlman et al. (1994) suggest that there are a few key factors to note in the suggestibility of individuals with mental retardation. For instance, 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 (Henry & Gudjonsson, 1999).

Another possible reason for the suggestibility of individuals with mental retardation, pertains to the relationships they have with adults that take care of them—numerous therapists, teachers, and other professionals (Tempkin, 1994). Those with mental retardation may be afraid to disagree with an adult, attempting to please the interviewer by agreeing with them, or they may lack confidence in their memory to recall an event

(Henry & Gudjonsson, 1999). 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 (Henry & Gudjonsson, 1999; Perlman et al., 1994). Communication can be a problem for children with mental retardation (Temkin, 1994); as a result, authority figures who ask leading questions only increase the susceptibility of children with mental retardation to suggestion (Henry & Gudjonsson, 1999; Perlman et al., 1994).

As discussed, there are many factors that impact the suggestibility of children with and without mental retardation. Even though they may have weaknesses in certain situations or conditions, results show that children with mental retardation can be valuable witnesses that provide pertinent, accurate information in the forensic context.

CHAPTER 3

METHODOLOGY AND DATA DESCRIPTION

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 9 were prosecuting attorneys. The participants had a mean number of 12.21 years experience as defense attorneys, with a range of 0 to 26 years. Participants had a mean number of 5.80 years experience as prosecuting attorneys, with a range of 0 to 19. The participants' devoted 99% of their practices to criminal law.

Survey

The 33-item questionnaire was adapted from the "Survey of Criminal Attorneys' Impressions of Children's Testimony" (Leippe et al., 1989; see Appendix I). Seven questions were utilized to assess the frequency of those cases participating attorneys

encounter involving adults, and children with and without mental retardation as key witnesses. Fourteen questions assessed the participants' opinions concerning the abilities of adults, and 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 queried 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, District Attorney's Office, and through students at the law school of a major university.

Managing attorneys at the Public Defenders' Office and 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, and 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.

Analyses

SPSS (version 3) was utilized to conduct descriptive analyses on the demographic information of the participants, the frequency of cases they encountered involving adults, and children with and 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 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 be due to their lack of experience with child witnesses with mental retardation, as noted by some participants on their surveys.

CHAPTER 4

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 plead was reported to be 86% compared to 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 plead, with 10% of cases being taken before a jury, and 6% of cases being taken before a judge. Lastly, of cases involving child witnesses with mental retardation, it was reported that 77% are typically plead, 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 9 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 which 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 5 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 have handled within the past two years where children with and without mental retardation had been an important eyewitness (either as a victim or 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

Do Attorneys Perceive Child Witnesses as Being Less Credible and More Suggestible Than Adult Witnesses?

Table 1 (see Appendix II) presents the mean percentages given by attorneys when

they were asked to compare child witnesses without mental retardation to 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 5-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 were 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 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 those 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. Lastly, 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. Lastly, attorneys believe that in 16% of instances where a child reports abuse, the abuse is completely inaccurate or fabricated (sexual abuse did not take place). These statistics are actually surprising when considering that most of the participants were defense attorneys.

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 are 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 (see Appendix II) presents the mean percentages of attorneys' perceptions of child witnesses with mental retardation as compared to 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.

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. Lastly, 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. Lastly, attorneys believe that in 17% of instances where a child with mental retardation reports abuse, the abuse is completely inaccurate or 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 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 (see Appendix II) presents the mean percentages of attorneys' beliefs of jurors' perceptions regarding child witnesses without mental retardation as compared to 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 attorneys believed that a jury would be about equally likely to convict on the testimony of a child or 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 much more 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. Lastly, 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 almost split 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 (see Appendix II) presents the mean percentages of participants' opinions of jurors' perceptions concerning child witnesses with mental retardation as compared to child witnesses without mental retardation. First, in response to how likely a jury is to convict on the testimony of a sole witness that 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 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 to child witnesses without mental retardation. Lastly, 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 made the same inconsistencies.

Summary of Attorneys' Perceptions

Results from the survey 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 when compared to children without mental retardation, attorneys believe that jurors' perceive children with mental retardation as being inferior in recall ability. 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 survey, 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 in Appendix II). 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, etc.) is reportedly the least frequent method currently in use (6%).

Looking at these methods of obtaining and presenting testimony of child victims with mental retardation, attorneys were instructed to use a 5-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 survey, attorneys were asked to use a 5-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 in Appendix II). 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 parent's expectations, etc. Eighty-six percent reported that they often to always emphasize the disability of the 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 that indicates 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 in Appendix II). 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. Lastly, 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 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.

CHAPTER 5

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 the study by Leippe et al.(1989), attorneys' perceptions and attorneys' beliefs of jurors' perceptions toward child witnesses without mental retardation were also assessed.

Results for both children 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 to 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 children without mental retardation, yet most attorneys think that jurors view children with mental retardation as equally suggestible to child witnesses without mental retardation.

Discussion of Attorneys' Perceptions

The results of this research study concur with those of the study performed by Leippe et al. (1989) 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, survey results indicate 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 (1991), wherein it was found that defense attorneys try to convince the jury of the unreliability of a child witness due to their 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, as noted in the limitations section hereafter).

While the present study's results accord with those of other studies that indicate 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 to 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 that perceived children with mental retardation as likely to recall less or much less than children without mental retardation and the percentage of attorneys that perceived children without mental retardation as less or much less likely to recall 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 incredible 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 are able to retain them for more than 1-2 years (Ceci & Bruck, 1995; Fivush & Schwarzmueeller, 1995). 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 (Saywitz, 1995). Research has shown that children with mental retardation perform as well with incidental memory (memory involving witnessed events) as children without mental retardation (Burack & Zigler, 1990; Ellis, Katz, & Williams, 1987; Henry & Gudjonsson, 1999). 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 (Beirne-Smith et al., 2002). An

important factor that can influence the ability of a child with mental retardation to recall information involves the types of questions they are asked. Dent (1986) 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 (Perlman et al., 1994; Dent, 1986).

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 that 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 questions (Henry & Gudjonsson, 1999), and questions pertaining to central actions in an event (Goodman & Helgeson, 1985; Gobbo, 2000). Suggestibility may also vary in more stressful situations and when questions are repeated (Henry & Gudjonsson, 1999; Perlman et al., 1994).

Another point which compares to the study of Leippe et al. (1989) is the fact that, even though attorneys believe that jurors perceive child witnesses without mental retardation as being less credible and more suggestible, almost half of participating attorneys thought that a jury was about equally likely to convict if the sole witness was a child or adult. This did not hold true for witnesses with mental retardation however, as almost half of the attorneys believed that 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 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 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, while those participants that did have some experience, had very little. Tharinger, Horton, & Millea (1990) report that only 3% of cases that involve 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 that 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 his or her statements, leading the child into inconsistent or inaccurate statements. This result comports with research conducted by Schmidt & Brigham (1996). 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 with mental retardation 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 (Pillay & Sargent, 2000). 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 (Pillay & Sargent, 2000). 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 child witnesses 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 may be strengthened, and the attorneys’ doubts as to the jury’s perceptions of such witnesses alleviated thereby.

Limitations of the Study

There are a number of possible limitations in the current study, the first being the sample size. Out of 206 surveys distributed, only 39 attorneys responded by returning the questionnaire. The study’s results may differ with a larger return of surveys; with such an expanded sample, more surveys would be available to distinguish between prosecuting and defense attorney perspectives, providing a more balanced representation of the two bodies of attorneys. In addition, a larger sample may include a larger number of attorneys with actual experience interacting with child witnesses with mental retardation.

Another possible limitation is that most completed surveys came from attorneys at the county level. Federal, state, and private attorneys may bring varied perceptions and experiences to a future study, providing a broader, more complete perspective on attorneys' perceptions of child witnesses with mental retardation.

Another possible limitation on the study is that the term "child with mental retardation" is too broad. The survey defined a 'child' as being nine years or younger, and 'mental retardation' as an IQ of 70 or lower. Participants may have needed the survey to be separated into age groups, such as 4-6-year-olds and 7-9-year-olds, as their perceptions of each age group may differ significantly. This may also be true in addressing mental retardation -- participants may have needed a clearer range division between degrees of mental retardation in order to more accurately communicate their perceptions. For instance, participants' perceptions may have differed substantially between children with mild to severe mental retardation.

Directions for Future Research

The literature shows that research has examined jurors' perceptions of child witnesses and judges' perceptions of child witnesses. However, there is little to no research that addresses jurors' or judges' perceptions of child witnesses with mental retardation. The present study examined attorneys' perceptions of child witnesses with mental retardation and attorneys' beliefs regarding jurors' perceptions of child witnesses with mental retardation. Future research should expand this study's inquiry in an attempt to compare attorneys' beliefs of jurors' perceptions to what jurors actually believe. Given that an attorney's overriding interest in the litigation proceeding is to influence the opinion of the

fact finder, be it a judge or jury, any disparity between the fact finder's actual opinion and the attorney's belief as to that opinion would be invaluable to attorneys, especially where the truth is at odds with the attorney's opinion.

Future research that examines attorneys', jurors', or judges' perceptions of children with mental retardation might consider employing vignettes within the survey to help the participant conceptualize a child (or more than one child) with mental retardation. The children in the vignette might serve as more personal models for which to relate the questions throughout the survey. This would further the goal that all attorneys approach survey questions from the same foundation of understanding (e.g., age, IQ, adaptability skills, etc.).

As noted previously in the section concerning the limitations of this study, it would be helpful for future research to examine the differences between attorneys' perceptions of child witnesses with mental retardation across federal, state, local, and private practice. In addition, the differences between plaintiff and defense counsel might shed a brighter light on more subtle aspects of attorney perceptions.

Practical Implications

This study could be the launching point for many more studies to address children with mental retardation, and other disabilities, in a forensic context. This study's results indicate that, even though over half of the attorneys participating lacked any experience working with children with mental retardation, these attorneys made—and will make—strong assumptions as to the credibility and suggestibility of these witnesses. One practical implication that this study suggests is the need for more in-depth training for

attorneys that work or may work with children with mental retardation that addresses the abilities and limitations of these witnesses. As actors in an adversarial process, attorneys are only able to control what they ask of and direct their witness to say; neither attorney has control over what an opponent's strategy may be. However, by pursuing insight into the abilities and limitations of child witnesses with mental retardation, counsel is able to control their half, at the least, of the problem, and perhaps influence the perceptions of jurors and judges in the process. Specifically, attorneys could receive training in memory enhancement, communication facilitation, developmentally-appropriate questions, and courtroom education to aid their child witness in contributing to the judicial process (Saywitz, Nathanson, Synder, & Lamphear, 1993). Child witnesses with and without mental retardation could also receive appropriate training specific to the forensic context. For example, a study performed by Nathanson, Saywitz, & Ruegg (1999) showed that with a comprehension-monitoring training program, students with learning disabilities were able to enhance their interview performance. Such strategies could also provide child witnesses with mental retardation the tools to weather developmentally-inappropriate questions usually posed to them by attorneys in the courtroom.

Attorneys should also consider training in the various strategies mentioned in the survey to strengthen the perceived validity of a child witness's testimony (e.g., videotaped testimony, written testimony, alternative forms of communication, and anatomically correct dolls). For instance, in only an average of 6% of cases is an alternative form of communication used. If more attorneys were to attempt this type of communication, a child's ability to decode and the perceived integrity of the child witness's testimony, would be strengthened.

Conclusion

This study represents an initial foray into an as-yet unexplored subject matter 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, the causes continuing the perpetuation of those perceptions, and suggest meaningful and effective approaches to better educate the legal system on the special needs and contributions of those with mental retardation.

APPENDIX I

CONSENT FORM, SURVEY, & DEMOGRAPHIC INFORMATION

University of Nevada, Las Vegas

Department of Special Education

Informed Consent

I am Michelle Platt, a student in the graduate program in the Department of Special Education at the University of Nevada, Las Vegas. I would like to invite you to participate in my thesis. This study is aimed at examining attorneys' experiences with adult witnesses and child witnesses with and without mental retardation.

It will take approximately 30 minutes of time to complete the survey.

The risks involved in this research are minimal, although you will not be compensated for your participation in this study, your input could potentially contribute to the limited, yet essential knowledge base concerning children with mental retardation in the judicial system. Ultimately, this could enable the judicial system to more effectively serve these children.

This questionnaire is anonymous. Your answers will be kept completely confidential. Results will be compiled in a statistical report format.

If you have any questions regarding this research, please contact Michelle Platt or Dr. Rebecca Nathanson at the Department of Special Education at 895-1101. For questions involving the rights of research subjects, please contact the UNLV Office for the Protection of Research Subjects at 895-2794.

Your participation is strictly voluntary and you may withdraw from participation at any time.

By completing the attached questionnaire, you acknowledge and agree to participate in this study.

Note. The survey used in the current study was adapted from Leippe et al., (1989).

Survey of Criminal Attorneys' Perceptions of Children's Testimony

For questions 1 through 7, include in your estimates both cases in which the eyewitness is your witness and cases in which the eyewitness is your opponent's witness.

1. Approximately how many of your cases have involved:

In the past 5 yrs. During your career

a. an adult witness?	_____	_____
b. a child witness (age 9 or younger)?	_____	_____
c. a child witness with mental retardation?	_____	_____

2. Approximately what percentage of your cases during the past 5 years involved a disputed eyewitness identification of a suspect in which a pivotal piece of evidence is given by:

a. an adult witness?	_____ %
b. a child witness (age 9 or younger)?	_____ %
c. a child witness with mental retardation?	_____ %

3. What percentage of your cases typically go to trial in which the pivotal evidence is provided by:

a. an adult witness?	_____ %
b. a child witness (age 9 or younger)?	_____ %
c. a child witness with mental retardation?	_____ %

4. What percentage of cases do you typically decide to plea, take before a jury, or take before a judge when the witness is:

	<u>Plea</u>	<u>Jury</u>	<u>Judge</u>
a. an adult witness?	_____ %	_____ %	_____ %
b. a child witness (age 9 or younger)?	_____ %	_____ %	_____ %
c. a child witness with mental retardation?	_____ %	_____ %	_____ %

5. In your personal trial experience, when a child with mental retardation is the pivotal or only eyewitness to the crime, that child is:

a victim of the crime in about _____ % of the cases.

a bystander in about _____ % of the cases.

(Please make sure that these two percentages add up to 100%)

6. In cases you are familiar with, about what percent of the disputed eyewitness identifications were *probably correct* when made by:

a. an adult witness? _____ %

b. a child witness (age 9 or younger)? _____ %

c. a child witness with mental retardation? _____ %

7. Please estimate the number of the following types of cases you have handled within the past two years in which a child with and without mental retardation has been an important eyewitness (either as a victim or a bystander) to the alleged crime:

Child without mental retardation

Child with mental retardation

a. _____ Sexual Abuse (by Parent) _____ Sexual Abuse (by Parent)

b. _____ Sexual Abuse (by Non-Parent) _____ Sexual Abuse (by Non-Parent)

c. _____ Physical Abuse by Parent _____ Physical Abuse by Parent

d. _____ Family Violence _____ Family Violence

e. _____ Murder or Attempted Murder
(of family members) _____ Murder or Attempted Murder
(of family members)

f. _____ Murder or Attempted Murder
(of Non-family members) _____ Murder or Attempted Murder
(of Non-family members)

g. _____ Assault _____ Assault

h. _____ Robbery / Shoplifting _____ Robbery / Shoplifting

i. _____ Vehicular Homicide or Injury _____ Vehicular Homicide or Injury

Questions 8 to 11 refer to the following scenario. For these and the following questions, please circle the appropriate letter.

IMAGINE A SITUATION IN WHICH A CHILD, A CHILD WITH MENTAL RETARDATION, OR AN ADULT IS A WITNESS TO AN ASSAULT OF AN ACQUAINTANCE BY A STRANGER. THE ENTIRE EPISODE LASTS 15 SECONDS, AFTER WHICH THE STRANGER FLEES THE SCENE, LEAVING THE ACQUAINTANCE UNHARMED BUT ROBBED AND SHAKEN UP. THE NEXT DAY, THE WITNESS IS ASKED TO:

- A) RECALL AS MUCH AS HE/SHE CAN ABOUT THE EVENT AND THE ASSAILANT, AND
- B) TRY TO IDENTIFY THE ASSAILANT FROM A SIX PERSON PHOTO ARRAY.

8. Compared to an **adult witness**, a **child witness** is, on the average, likely to accurately recall:
 - a. much less
 - b. less
 - c. about the same
 - d. more
 - e. much more
9. Compared to a **child witness**, a **child witness with mental retardation** is, on the average, likely to accurately recall:
 - a. much less
 - b. less
 - c. about the same
 - d. more
 - e. much more
10. Compared to an **adult witness**, a **child witness** is _____ to accurately identify the assailant from the photo array if the assailant is present in the array.
 - a. much less likely
 - b. less likely
 - c. about equally likely
 - d. more likely
 - e. much more likely
11. Compared to a **child witness**, a **child witness with mental retardation** is _____ to accurately identify the assailant from the photo array if the assailant is present in the array.
 - a. much less likely
 - b. less likely
 - c. about equally likely
 - d. more likely
 - e. much more likely

12. Significant figures in a criminal case, such as police officers, lawyers, relatives, and other witnesses, potentially influence what a witness believes and says. In other words, a witness is sometimes *suggestible*. In your opinion, **child witnesses** are generally:
- a. much less suggestible than adults
 - b. less suggestible than adults
 - c. about as suggestible as adults
 - d. more suggestible than adults
 - e. much more suggestible than adults
13. In your opinion, **child witnesses with mental retardation** are generally:
- a. much less suggestible than children without mental retardation
 - b. less suggestible than children without mental retardation
 - c. about as suggestible as children without mental retardation
 - d. more suggestible than children without mental retardation
 - e. much more suggestible than children without mental retardation
14. Based on your experience, when communicating his or her story to a police officer, attorney, or jury, a **child** would ordinarily be:
- a. much less sincere than an adult
 - b. less sincere than an adult
 - c. just as sincere as an adult
 - d. more sincere than an adult
 - e. much more sincere than an adult
15. Based on your experience, when communicating his or her story to a police officer, attorney, or jury, a **child with mental retardation** would ordinarily be:
- a. much less sincere than a child without mental retardation
 - b. less sincere than a child without mental retardation
 - c. just as sincere as a child without mental retardation
 - d. more sincere than a child without mental retardation
 - e. much more sincere than a child without mental retardation
16. In your opinion, a **child's** accounts of a witnessed criminal event tend to include:
- a. many fewer inconsistencies than those of adults
 - b. somewhat fewer inconsistencies than those of adults
 - c. about the same number of inconsistencies as those of adults
 - d. somewhat more inconsistencies than those of adults
 - e. many more inconsistencies than those of adults
17. In your opinion, accounts from a **child with mental retardation**, of a witnessed criminal event tend to include:
- a. many fewer inconsistencies than those of children without mental retardation
 - b. somewhat fewer inconsistencies than children without mental retardation
 - c. about the same number of inconsistencies as children without mental retardation
 - d. somewhat more inconsistencies than children without mental retardation
 - e. many more inconsistencies than children without mental retardation

18. This next question refers to instances in which a child reports to an adult that she or he was sexually abused and the situation comes to the attention of law enforcement personnel and/or an attorney. In what percentage of such instances, in your best estimate, is the child's description likely to be:

Child without mental retardation

Child with mental retardation

a. Quite an accurate description of what happened _____ %

Quite an accurate description of what happened _____ %

b. Significantly distorted or exaggerated, although sexual abuse did take place _____ %

Significantly distorted or exaggerated, although sexual abuse did take place _____ %

c. Completely inaccurate or fabricated-- sexual abuse did not really take place _____ %

Completely inaccurate or fabricated-- sexual abuse did not really take place _____ %

19. In your experience or judgment, what percentage of the time does a **child** who reported sexual abuse later retract her or his statement? _____ %

20. In your experience or judgment, what percentage of the time does a **child with mental retardation** who reported sexual abuse later retract her or his statement? _____ %

21. For this question, use the following rating scale:

Very often
1

Often
2

Occasionally
3

Seldom
4

Never
5

In your best estimate, in situations where a **child with mental retardation** reports sexual abuse but then retracts her or his statements, how often is this due to:

a. Fear of being on the witness stand in front of many people _____

b. Pressure from a parent or family member _____

c. Embarrassment about the incident(s) _____

d. Feeling responsible for, or guilty about, what happened _____

e. Knowledge that her/his previous testimony was false _____

f. Other (please describe) _____

For questions 22-29, please select the response option that most accurately completes the sentence based on your experience. Circle the appropriate letter.

22. Other factors (e.g. corroborating evidence) being equal, compared to when the sole prosecution eyewitness is an adult, a jury is _____ to convict if the sole eyewitness is a **child**.
- a. much less likely
 - b. less likely
 - c. about equally likely
 - d. more likely
 - e. much more likely
23. Other factors (e.g. corroborating evidence) being equal, compared to when the sole prosecution eyewitness is an child, a jury is _____ to convict if the sole eyewitness is a **child with mental retardation**.
- a. much less likely
 - b. less likely
 - c. about equally likely
 - d. more likely
 - e. much more likely
24. Generally speaking, jurors believe a **child's** ability to remember events is _____ to that of adults.
- a. much superior
 - b. superior
 - c. equal
 - d. inferior
 - e. much inferior
25. Generally speaking, jurors believe the ability of a **child with mental retardation** ability to remember events is _____ to that of children.
- a. much superior
 - b. superior
 - c. equal
 - d. inferior
 - e. much inferior

26. Generally speaking, jurors see **children** as _____ suggestible than adults.
- much more
 - more
 - equally
 - less
 - much less
27. Generally speaking, jurors see **children with mental retardation** as _____ suggestible than children.
- much more
 - more
 - equally
 - less
 - much less
28. Inconsistencies in the courtroom testimony of a **child** _____.
- lower a child witness's credibility to jurors more than an adult witness's credibility
 - lower a child witness's and an adult witness's credibility equally
 - tend to be ignored or overlooked if the witness is a child, and therefore lower the child witness's credibility less than an adult witness's
29. Inconsistencies in the courtroom testimony of a **child with mental retardation** _____.
- lower the child witness's credibility to jurors more than the credibility of a child without mental retardation
 - lower the credibility of the child witness and a child without mental retardation equally
 - tend to be ignored or overlooked if the witness is a child with mental retardation, and therefore lower the child witness's credibility less than a child without mental retardation
30. In your opinion, at what age does a **child with mental retardation** become as believable an eyewitness as an adult to the average juror?

(Please circle the year-of-age corresponding to your belief).

AGE: never 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

31. The courts have allowed alternative methods of obtaining and presenting the testimony of children who are victims or witnesses in alleged crimes of sexual abuse. Regarding **children with mental retardation**, which of the methods listed below, do you find used or acceptable? Please answer both questions to the right of the method.

Completely Unacceptable 1	Somewhat Unacceptable 2	Undecided 3	Somewhat Acceptable 4	Completely Acceptable 5
Method:		In what percent of relevant cases is this method used currently? (use percentages)	In principle, how acceptable is this method to you? (use rating scale)	
a. Courtroom presentation of videotaped testimony		_____ %	_____	
b. Written testimony of child's account of crime		_____ %	_____	
c. Testimony by child with aid anatomically correct dolls and other props		_____ %	_____	
d. Alternative forms of communication (i.e. interpreter, communication board)		_____ %	_____	
Hearsay Evidence of:				
1. Medical Doctor		_____ %	_____	
2. Teacher		_____ %	_____	
3. Psychologist		_____ %	_____	
4. Parents		_____ %	_____	
5. Other children		_____ %	_____	

32. Consider a trial in which an eyewitness testimony of a **child with mental retardation** is an important component of your OPPONENT'S case. Please indicate the extent to which you employ the following strategies, using the following rating scale for each strategy:

Never = 1 Seldom = 2 Occasionally = 3 Often = 4 Always = 5

- _____ a. In Opening Arguments, emphasize the disability of the witness with mental retardation and point out reasons to distrust a child's testimony.
- _____ b. In Closing Arguments, emphasize the disability of the witness with mental retardation and reasons to distrust his or her testimony.
- _____ c. Bring to the jury's attention all instances of the child's (with mental retardation), inconsistency, memory lapses, apparent compliance with his or her parent's expectations, etc.
- _____ d. Use to advantage the child's vulnerabilities (e.g., confusion, inarticulateness, fear, suggestibility) in your cross-examination of him or her, by directly challenging his or her statements, leading the child into inconsistent or inaccurate statements, and so on.
- _____ e. Bring in an expert witness such as a psychologist to inform jurors about the memory abilities of children with mental retardation.
- _____ f. In opening or closing arguments, cite psycho-legal research evidence that children with mental retardation are highly suggestible and prone to memory failure.

33. In a case in which an eyewitness testimony of a **child with mental retardation** is an important component of YOUR CASE, how often do you engage in the following strategies? Please continue to use the same rating scale described in the proceeding question.

- _____ a. Attempt to elicit the sympathy of the jury toward the child with mental retardation?
- _____ b. Cite evidence from psycho-legal research indicating that children with mental retardation are reliable eyewitnesses?
- _____ c. Extensively coach the testimony of a child with mental retardation before trial?
- _____ d. Implore the jury to excuse mistakes made by the child with mental retardation, noting that they are understandable given the child's disability?
- _____ e. Argue that children with mental retardation are ordinarily more sincere than children without mental retardation?
- _____ f. Bring in an expert witness such as a psychologist to inform jurors about the memory abilities of children with mental retardation.

Demographic Information

Are you currently a _____ Defense or _____ Prosecution Attorney?

How many years of experience do you have as a Defense Attorney? _____ yrs.

as a Prosecuting Attorney? _____ yrs.

What percentage of your practice is devoted to criminal law? _____ %

How many cases on the average, do you try each year in a jury trial? _____ (#)

How many cases do you handle that are settled without a jury trial? _____ (#)

What is your gender? _____ Male _____ Female

Your race? _____ Caucasian _____ African-American
 _____ Hispanic _____ Asian _____ Other

Your age? _____ years old

Please feel free to use the space below to comment. We welcome any further thoughts and insights you may have about child witnesses with mental retardation, jurors, the current methods of dealing with children with mental retardation in the criminal justice system, etc.

Again, THANK YOU for taking the time to participate in this very important study!

APPENDIX II

TABLES OF SURVEY ITEMS

Table 1

Percentage of Ratings for Characteristics of Child Witnesses Without Mental Retardation Compared to Adult Witnesses

Question	n ^a	Option	%
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
Number of 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.

Table 2

Percentage of Ratings for Characteristics of Child Witnesses With Mental Retardation Compared to Child Witnesses Without Mental Retardation

Question	n ^a	Option	%
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.

Table 3

Attorneys' Beliefs of Jurors' Perceptions of Child Witnesses Without Mental Retardation Compared to Adult Witnesses

Question	n ^a	Option	%
Likely to convict if sole witness	37	Much less likely	18.9
		Less likely	27.0
		About equally likely	48.6
		More likely	5.4
		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 as 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.

Table 4

Attorneys' Beliefs of Jurors' Perceptions of Child Witnesses With Mental Retardation Compared to Child Witnesses Without Mental Retardation

Question	n ^a	Option	%
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 as 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.

Table 5

Alternative Methods of Obtaining and Presenting Testimony of Child Sexual Abuse Victims With Mental Retardation

Method	n ^a	Mean estimate of how often (% of time this method is currently used)	n ^a	How acceptable the method is (completely unacceptable to completely acceptable using rating scale 1-5)
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.

Table 6

Strategies Employed by Attorneys in a Trial Which an Eyewitness Testimony of a Child With Mental Retardation is an Important Component of Their Opponent's Case

Strategy	n ^a	Option	%
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	0.00
		Seldom	0.00
		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 MR	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.

Table 7

Strategies Employed by Attorneys in a Trial Which an Eyewitness Testimony of a Child With Mental Retardation is an Important Component of Their Own Case

Strategy	n ^a	Option	%
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 before trial	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 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.

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