Performance of Children with Intellectual Disabilities under Cross-examination.

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'The ….. rules (of cross-examination) are designed to keep the lawyer's confidence high and her anxiety low, while keeping the anxiety of the witness high and his confidence low' (Pozner & Dodd, 2005, p.8).

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From The Times
May 2, 2009

Cross-examination of rape victim, 4, prompts call for reform

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Cross-Examination

- According to the publication No Witness:No Justice (Criminal Justice System, 2004), in the UK in 2003:
  - 21% of witnesses felt intimidated by the court environment and process when giving evidence.
  - At least 22,000 cases were abandoned due to issues raised by prosecution witnesses.
  - 15% of ineffective trials were due to witness problems.
  - 19% of witnesses felt they were informed adequately about case progress, and 13% received enough support.

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Rationale for study

- The NSPCC (Plontnikoff & Woolfson, 2004) & Burton, Evan & Sanders (2006) found that the treatment of child witnesses in court is variable, and that cross-examination is stressful.
- Very little psychological research available on child cross-examination performance and none on children with Intellectual Disabilities (ID).

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Cross-examination Research

- Zajac, Gross & Hayne, (2003a) - court transcripts of typically developing children indicated 75% of them changed at least one aspect of their testimony during cross-examination.
- Zajac & Hayne, (2003b) - typically developing children aged 5 and 6 years, changed answers regardless of how correct their first response was, with 85% making at least one change to their previous statements, and one third changing all their responses.
- 9-10 year olds showed a tendency to change responses regardless of initial accuracy (Zajac & Hayne, 2006), although the authors noted they were less likely to do so than the 5 and 6 year olds.
- Kebbell, Hatton and Johnson, (2004) - adults with and without ID matched for court location and type of crime. Type of questioning used for witnesses with intellectual disabilities was the same as that for witnesses with no such disability.

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Children with Intellectual Disabilities (ID)

- Children and adults with ID represent around one in ten of the population.
- Are at increased risk of abuse as well as often being the only witnesses to the victimisation of others in care settings (Henry & Gudjonsson, 2004).
- Increased severity of ID seems to correlate with increased severity of abuse (Wilson & Brewer, 1992).

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Fuzzy-Trace Theory

Gist to Verbatim Continua (Brainerd & Reyna, 1990)

•Encoding is separate but parallel
•Retrieval independent

Gist recall – memory for meaning of events; more robust over time

Verbatim recall – detailed and specific but decays more rapidly

Free recall questions
'tell me all about x'

General questions
'what did he do then?

Closed questions
'he was tall, wasn't he?

Specific recall
'what colour was the man's hat?'

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Aims of the study

- To extend previous research showing that primary school age children will change their answers to earlier testimony under cross-examination despite the veracity of their original testimony.
- To examine whether children with Intellectual Disabilities (IQ 40-79, placement in a specialist school) will also change their answers, and to what degree in comparison to both their mental age and chronological aged peers.
- To assess the difference in performance if any to gist and verbatim challenges.

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Predictions

- That children will respond to increasing levels of pressure during cross-examinations by changing their responses to earlier testimony.
- That the mean number of changes will decrease with an increase in chronological age.
- That the mean number of changes will increase with a decrease in mental age.
- That children with an intellectual disability may perform differently when challenged on gist than verbatim details.

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Study

- PhD
  - 2 phases, Evidence gathering and Cross-examination with realistic 9-11 month gap between interviews (M = 10.3 months).
  - Children with and without Intellectual Disabilities (N=198) aged between 4 years 7 months and 11 years 4 months.
  - Standardised measures of IQ, anxiety and suggestibility.
- Preliminary findings
  - Findings presented here are on a subset of the total group (N=67).
  - 31 Male, 36 Female. Two schools – one fully inclusive primary in South West London, one special school in Hertfordshire.

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The procedure

- Live scripted magic show at school
- Day 3-6 post-event, video and audio-taped evidence gathering interview to ABE guidelines
- 10 months later cross-examined:
  - Taken from classroom, anxiety measure taken
  - Introduced to a real Barrister (in training)
  - Viewed video of evidence gathering interview ("evidence")
  - Cross-examination
  - Anxiety measure repeated
- Thanked, de-briefed, certificate and token
- Returned to classroom

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The Cross-Examination

- Child advised to tell the truth and to say if they do not remember
- 23 questions; approximately 15 minute session
- 12 were 4-part structured cross-examination questions, increasing in pressure
  - *You told Caroline there was a magician doing tricks, do you still believe that to be true?*
  - *Are you sure the magician did tricks?*
  - *I don't think the magician did tricks. I think maybe you are mistaken and the magician did not do tricks?*
  - *If someone in your class told me the magician didn't do tricks they would be right wouldn't they?*
- 11 short questions repeated from the Direct interview.
  - *Where were you sitting during the show?*

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Assessing Responses

- Cross-examination questions
  - Scored according to their **resilience** to cross-examination. A score was awarded according to which point they ceded to the challenge (1, 2, 3 or 4). If they did not yield, a score of 5 was given.
  - Higher the score, higher their resistance to cross-examination
- Repeat questions from evidence gathering
  - 1 point for each correct answer
  - Higher the score, higher the ability to recall

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Overall Sample

Table 1. Overall Sample Means

N = 67	Minimum	Maximum	Mean	Std Dev.
Chron.Age	4yrs 9m	11yrs 1m	9yrs 0m	23m
Mental Age	3yrs 4m	16yrs 0m	7yrs 4m	28m
IQ	47	118	85.2	19.14
Overall changed	1	12	7.13	3.35
Gist Changed	0	4	2.39	1.10
Verbatim Changed	0	8	4.75	2.46
Repeat Correct	2	11	6.81	2.05

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Group Characteristics

Table 2. Means and Standard Deviations by Group

	ID N=22		MA Match N=16		CA Match N=29	
	Mean	SD	Mean	SD	Mean	SD
CA (months)	**118**	10.06	72	11.83	**120**	10.42
MA (months)	**70**	15.67	**73**	14.26	113	24.80
Gist Changed	2.36	1.00	3.19	.98	1.97	1.02
Verbatim Changed	5.00	2.58	6.31	1.79	3.69	2.22
Repeat Correct	5.77	1.45	5.69	1.66	8.21	1.80

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Resilience to Cross-Examination

4 part cross-examination questions, increasing in pressure; at what point were answers most likely to change?

Table 3. Means and Standard Deviations by Group

	ID N=22		MA Match N=16		CA Match N=29	
	Mean	SD	Mean	SD	Mean	SD
Gist	3.51	1.3	3.80	1.17	3.46	1.03
Verbatim	3.41	1.35	3.54	1.18	3.21	1.56

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Results

- A MANOVA revealed a significant effect of Group on the number of changes made to both

Gist ($F_{2,64} = 7.65$, $p = 0.001$, $r^2 = .19$),

and

Verbatim questions, ($F_{2,64} = 7.18$, $p = 0.002$, $r^2 = .18$).

A large effect was also seen ($F_{2,64} = 18.25$, $p < 0.001$, $r^2 = .36$) on the number of correct answers to the short **repeat questions** from the direct interview.

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Post-hoc

- Post hoc analysis (Scheffe) found that there were significant developmental differences on all the measures ($p < 0.001$), i.e. the typically developing younger (MA) children performed less well than typically developing (CA) children.
- The older group (CA) of typically developing children differed from the younger group (MA) on gist ($p = 0.001$) and on verbatim ($p = 0.002$) with younger children yielding more to the cross-examination.
- Children with ID did not differ significantly from their CA peers on verbatim changes ($p = 0.130$) and approached significance to their MA peers on gist changes to testimony ($p = .051$) indicating perhaps a developmental, rather than intellectual difference in performance

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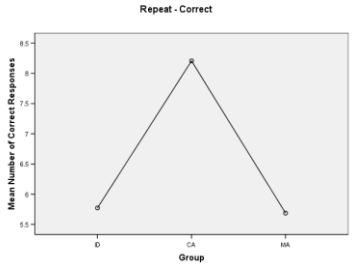
Children with ID matched their MA peers for performance on repeat questions, but did not reach CA levels of performance ($p < 0.001$) .



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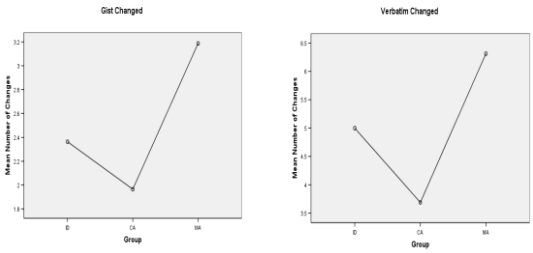
Children with ID did not differ significantly from their CA peers in performance on either gist or verbatim challenges ($p < 0.001$) .



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Implications

- Cross-examination of children does not necessarily get at the truth – much evidence of changing responses in all of our children.
- Children with ID are as able as their chronological age-matched peers to resist cross-examination; but developmentally younger children are more vulnerable.
- Repeat questions may be more problematic for children with ID than their CA peers.

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What this doesn't tell you……

- Why the children changed their answers
  - To make the barrister stop asking?
  - Because they really believe the change?
- Whether juries will find them convincing despite the number of changes, due to their non-verbal and facial communication?
- Children may remember more than they can clearly articulate, i.e. there is a high incidence on the tapes of non-verbal communication from the children which needs to be explored.

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Advantages & Limitations

- Advantages
  - Applied research
  - Unique longitudinal study
  - Use of experts
- Limitations
  - Sample size/power which will improve
  - Possible confounding effects of children's language.
  - Nature of event not crime-related

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Way Forward

- Compare direct and cross-examination data to see if any correlation in performance.
- Assess individual differences in Suggestibility and Anxiety.
- Outline developmental trajectories for direct and cross-examination aged 4-11 years for those with and without ID.

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And the last word goes to the children…..

- Well, she was wearing a wig – at least it should be a wig because my mother would never go out with her hair looking like that, (girl, 8 years).
- And she was wearing these trousers – they were SO last season, (boy, 9 years).
- Is this, like, your *job* ?? (incredulous girl, 6 years).

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