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“Communication challenges for children and adults with intellectual disabilities during cross-examination: a systematic review”

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Why do a systematic review

Intellectual disability = identified by the court as a vulnerable witness

Criticism of the cross-examination process with vulnerable witnesses from :

- Research

Can cause inaccuracies (Geddes, 2016; Gerry & Cooper, 2017; Henderson, 2014; Hoyano, 2015; Keane, 2012)

- English Court of Appeal:

Leading and 'tag' questions are inappropriate (R v W&M [2010])

The advocate should adjust to needs of the witness (R v Barker [2010])

No given right to 'put the case' to the witness (R v E [2011]; R v RK [2018])

Questions were unfair to the defendant with ID (R v Jones [2018])

Existing Reviews

- Witnesses with ID can provide accurate accounts but less information and accuracy impacted by question style (Kebbell & Hatton, 1999)
- Difficulties understanding the oath and legal rights, suggestibility, acquiescence, compliance and false confessions (Gudjonsson & Joyce, 2011)
- Need to find ways to enhance recall (Milne & Bull, 2001)
- Need to avoid leading questions when interviewing people with ID (Bowles & Sharman, 2014)
- But no systematic review

Why this subject

- Background in IDD
- Interest and experience in court
- Hearing the voices of vulnerable people

Search terms used (January 2018)

Intellectual disabilit* or Intellectual difficult*or
Learning disabilit*or Learning difficult*or
Developmental disabilit*or Cognitive impairment or
Mental retardation or Mental handicap

And

Communication or Acquiescence or Memory or
Recall or Leading questions or Accuracy or
Suggestibility or Expressive language or Reflective
language or Question styles or Question types or
Questioning

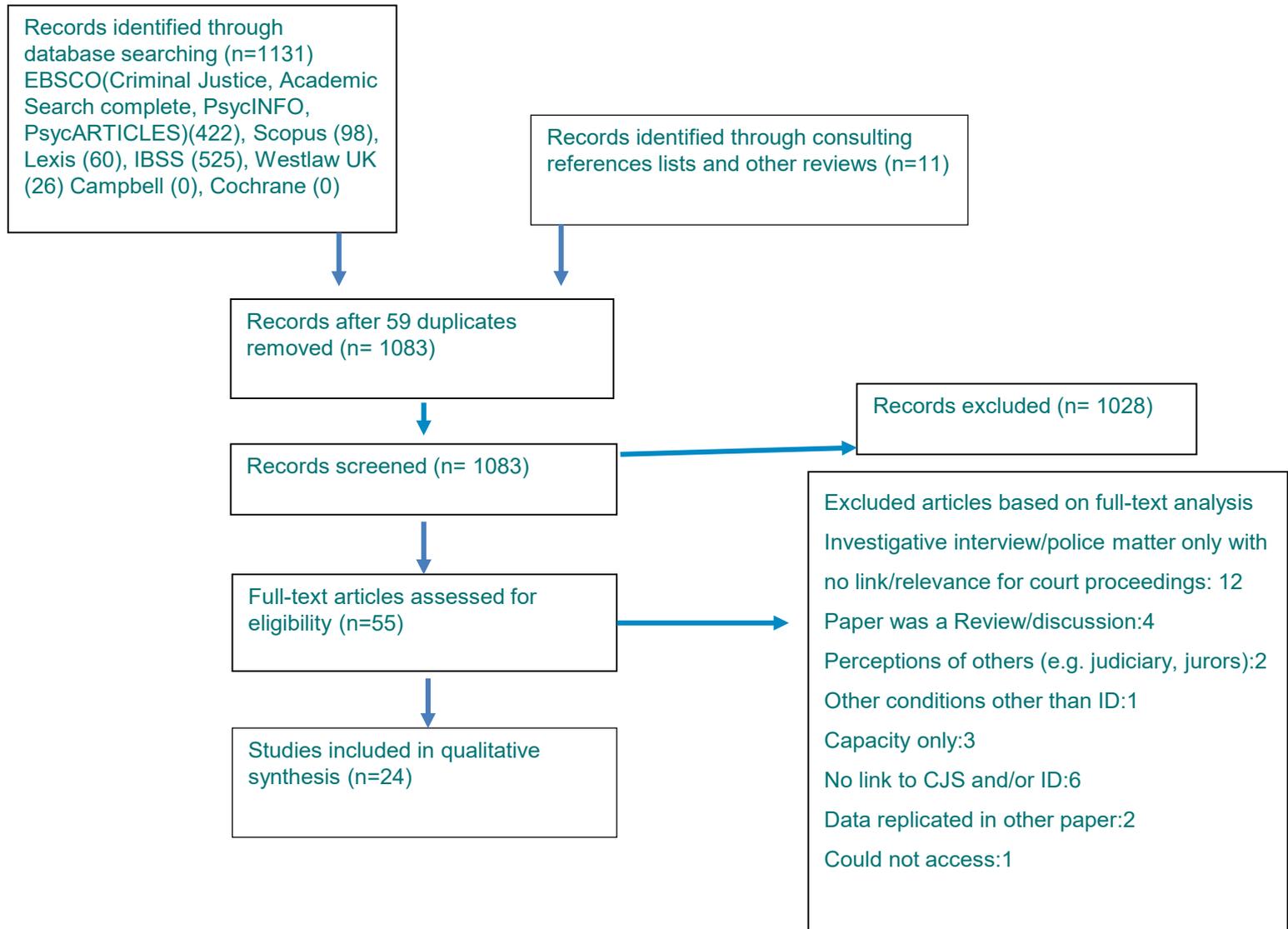
And

Cross-examination or Court or Courtroom or Witness
or Defendant or Eyewitness or Testimony

Inclusion and exclusion criteria

Parameters	Inclusion Criteria	Exclusion Criteria
Participants	Diagnosis of ID No diagnosis but lower IQ (borderline)	No cognitive impairment Not present from childhood
Methods used in studies	Assessment of communication using experimental methodology similar to witnessing/experiencing event, examination, cross-examination	Testing competency/capacity Others' perceptions Focus only on police interviews Only memory recall tested without follow up questions.
Study type	Empirical research Peer reviewed	Reviews, Book chapters Theses, Single case studies
Results	Report on specific communication challenges for ID Specifically address communication and cross-examination	Address communication but not through interview style questioning about an event

Prisma flow diagram for study selection



Data Synthesis

- Thematic analysis based on 6 phases outlined by Braun and Clarke (2006) to initialize codes and review themes.
- Mind mapping for 6 key themes and one stand alone (court language)
- Data analysed by 2 other authors for inclusion of papers and to guard against inclusion bias.

Participants

24 papers from UK, USA, Australia and Canada

1427 total with ID

- 652 adults
- 690 children (aged 6-17)
- 85 children and adults (no breakdown)

801 control participants(no ID)

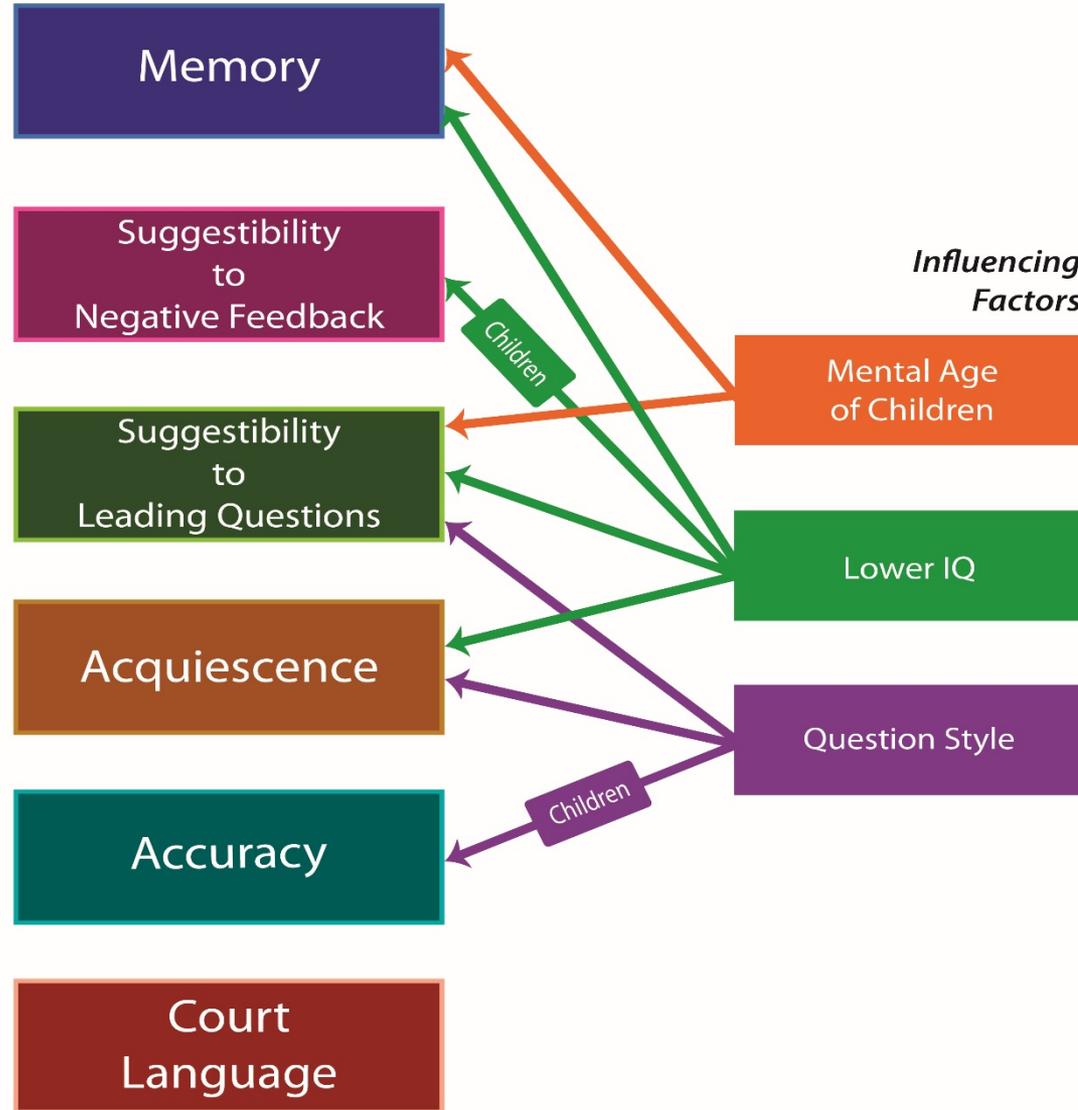
- 223 adults
- 578 children

Methods

- 19 studies - analogue design mimicking court procedures by questioning participants following: verbal stories e.g. Gudjonsson Suggestibility Scale (GSS), filmed events – e.g. mock crime, real or imagined events – e.g. magic show
- Only one followed up with a mock cross-examination
- 1 study used court transcripts and 1 court reports
- 1 assessed understanding of court language
- 2 assessed for acquiescence.

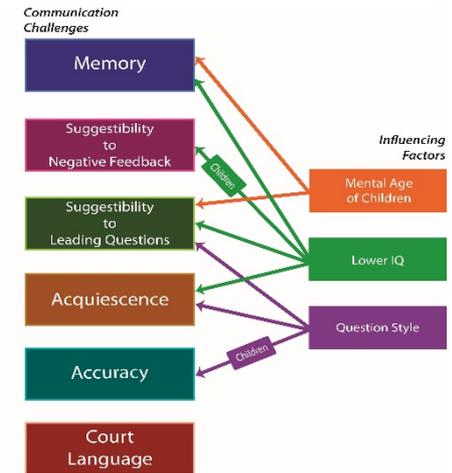
Results

Communication Challenges



Theme 1 - memory

- 12 papers
- People with ID recall less than no ID
- The lower the IQ the less recalled
- Delay between event and interview negatively impacts recall
- Children with ID recall as much as Mental Age (MA) matched control group
- 1 large study found children with ID(66) had greater recall skills than adults with ID (221) (Gudjonsson & Henry, 2003)



Theme 2 – Interrogative suggestibility

a) negative feedback

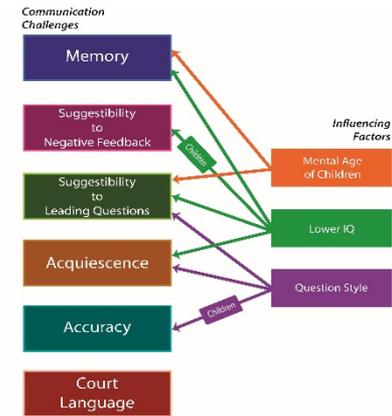
How willing and susceptible is a witness to changing their mind in response to negative feedback from the questioner (compared to no ID)?

Adults (mild ID only)

- 4 papers = adults are not more suggestible
- 1 paper = are suggestible for verbal story but significantly less suggestible when witnessing a live event

Children

- Mild/borderline ID = not more suggestible
- Moderate ID = are more suggestible
- Younger age = also factor especially in TD



b)Suggestible to leading questions

How willing and susceptible is a witness to changing their mind in response to leading questions(where the answer is suggested in the question)?

- Adults and children with moderate ID are more suggestible than no ID
- Mild ID = not more suggestible
- Adults with ID are more suggestible than children with ID
- Less recall means greater suggestibility
- Children with ID are not more suggestible than children matched for MA

Question style impacts suggestibility

- Open vs closed
- Tag questions “Eric helped himself to a pepsi, didn’t he?”
- Specific requiring yes/no answers “Was the stranger wearing a scarf?”
- Statements “The stranger knew where to find the key to the apartment. Yes or no?”
- Particularly problematic = misleading information (not in the story or event witnessed)

Theme 3 - Acquiescence

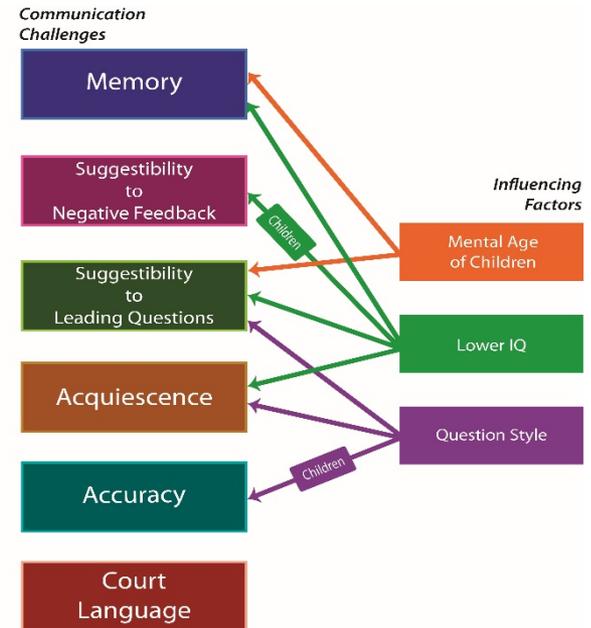
Saying 'yes'/agreeing, regardless of content of question

4 papers

Adults and children with ID are more prone to acquiescence than no ID

Lower IQ means greater likelihood of acquiescence

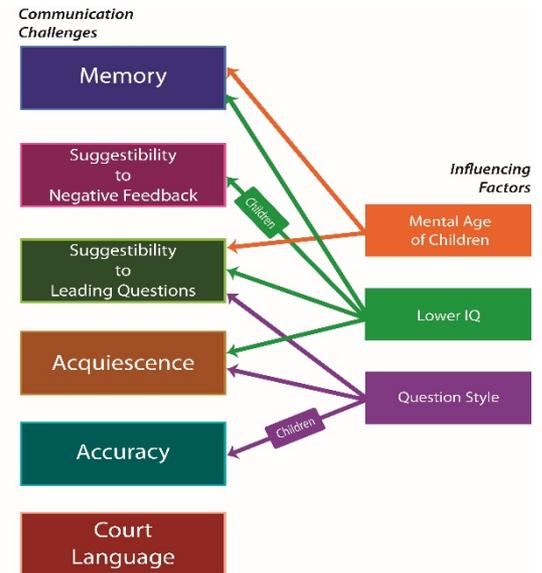
More susceptible to specific questions requiring Yes/No answers (but research by Wheatcroft et al., 2004)



Theme 4 - Accuracy

Children and adults with ID are not less accurate than those with no ID

Children are more accurate for activities they have done rather than imagined



But children impacted by question style:

- All children's responses (not just ID) impacted by leading, tag and negative questions in cross-examination (Bettenay et al., 2014)
- Free recall = greater accuracy than specific or option posing questions

- But with adults no impact of question type between free recall, general and specific (Perlman et al, 1994)
- Specific = greater accuracy than free recall (Cardone & Dent, 1996)
- Specific = less accuracy (Dent, 1986)
- Why difference? Questions used?

“What colour was the man’s hair?” (Dent, 1986)

“Was the stranger wearing a scarf?” (Perlman et al., 1994)

“Can you tell me if there was a woman in the story or not?”(Cardone & Dent, 1996)

- Multiple choice questions

High level of information and no negative impact on accuracy

Only 1 paper with children (Sigelman et al, 1982)

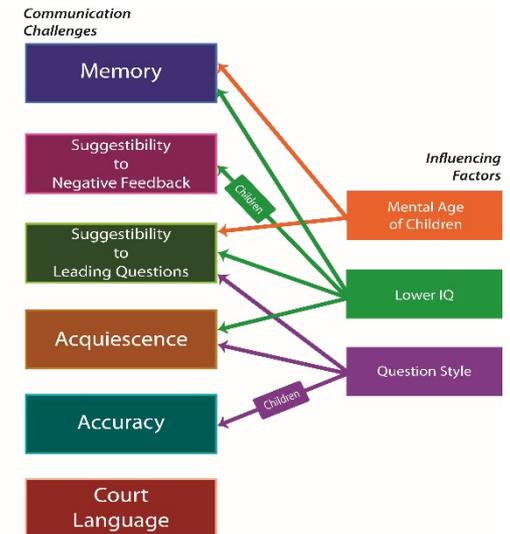
More research required.

Theme 5 - confabulation

Imagining and believing to be true

Results = uncertain

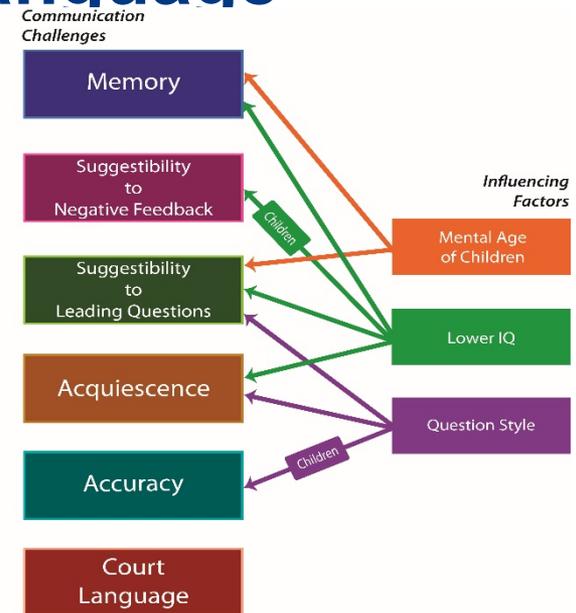
- 4 papers
- 2 papers found people with ID are prone to confabulation, 2 not
- Influenced by other factors? E.g. personality



Theme 6 – Understanding court language

1 paper only (Ericson & Perlman, 2001)

- 40 adults with mild to moderate ID
- Understood 8 out of 34 court terms
- No ID understood 33
- 40% with ID had been victim/witness or defendant (12.5% of no ID)
- Research shows witness general lack of understanding of fundamentals of court case (Jacobson et al, 2015)



Conclusion

During cross-examination children and adults with ID are more susceptible to:

- Agreeing with suggestions placed in a question by the advocate (leading questions)
- Answering 'yes' to a question regardless of the subject of the question (acquiescence)
- The lower the IQ and less remembered of an event the more susceptible
- Children with moderate ID are also more suggestible to negative feedback

The style of the question can cause greater suggestibility, acquiescence and inaccuracy.

- Specific questions requiring yes/no answers
- Tag questions
- Statements

Limitations of review

Exclusion of capacity/competency papers:

Different findings from Gudjonsson et al, 2000 and Everington and Fulero, 1999

- IQ does not impact acquiescence
- IQ and memory are not effective estimates of suggestibility
- Adults with ID are suggestible to negative feedback
- Differences = other factors relating to court process?

Other limitations

- Role of co-existing conditions: Autism, ADHD, mental health, medical conditions, etc..
- Impact of factors associated with cross-examination: delay on the day; time of day; length of cross-examination; complexity of sentence structures used; complexity of language used; pace of questioning; physical presence of advocate; characteristics and communication style of advocate.

Further research required

- Research using actual cross-examinations and live court experiences
- Confabulation
- Mental age of adults and performance indication
- Using multiple-choice questions with and without pictures
- Understanding of court language
- Research taking into account ID and other conditions, e.g. autism.

Significance for cross-examination of defendants

15 year old with moderate ID accused of a knife crime when out with a group of friends. Interviewed 3 times, 6 months after the alleged crime and cross-examined 2 years after interviews. Had opportunity to read through the interview transcripts prior to the hearing . Cross-examined in usual manner with regular use of leading questions, tag style questions, negatives, statements and short closed questions requiring yes/no answers. Accused a number of times of lying to the police and the court.

55 year old man with borderline learning disability (only diagnosed in recent years), accused of sexual offences against a family member when he was 25 years old. Interviewed by police 10 times over the period of 8 months. Final interview 1.5 years before hearing. Read over interviews prior to hearing. Cross-examined in usual manner using regular court language with regular use of leading questions, tag style questions, negatives, statements and short closed questions requiring yes/no answers. Accused a number of times of lying to the police and the court.