Intellectual Disability and Memory

Intellectual disability is a condition, beginning in the developmental period, marked by significant limitations in intellectual functioning (reasoning, problem-solving, learning) and in adaptive behavior. Older clinical and legal writing used the term "mental retardation," which appears in much of the research cited here; the current term is intellectual disability. A witness with an intellectual disability is neither inherently reliable nor inherently unreliable. The research paints a more useful and specific picture: such witnesses can give accurate testimony, the format and manner of questioning matter a great deal to whether they do, and the degree of disability is an important moderator.

This paper summarizes what is known about event memory and suggestibility in people with intellectual disabilities, and what that knowledge implies for interviewing them and for weighing their testimony.

Accurate but Less Complete

The central finding is encouraging and frequently misunderstood. When people with mild intellectual disabilities recount an event in their own words through open-ended free recall, the information they provide tends to be accurate, though less complete than that of typically developing peers of the same age (Kebbell & Hatton, 1999). In other words, they generally report less, but what they report is, on average, correct. Some studies find that under free-recall instructions, individuals with mild intellectual disabilities resist misleading questions about as well as same-age comparison participants, with the clearer differences emerging on follow-up and probing questions rather than on the spontaneous account (Henry & Gudjonsson, 1999, 2003). The practical implication is that the free narrative is the most trustworthy part of the testimony, and that completeness should not be mistaken for accuracy.

Vulnerability to Closed and Leading Questions

The risks rise as questioning shifts away from open-ended recall. As interviews become more closed-ended, specific, or repetitive, accuracy tends to fall. Two tendencies are of particular concern. The first is acquiescence, a disposition to answer "yes" to yes-or-no questions, including questions about events that did not occur. The second is a tendency to change an answer when a question is repeated or when the interviewer signals dissatisfaction, which people may read as pressure to revise their account (Clare & Gudjonsson, 1993). These tendencies make leading questions, forced-choice questions, and repeated questioning especially hazardous, because they can elicit confident but inaccurate answers that reflect the demands of the interaction rather than the witness's memory.

Severity Matters

Intellectual disability is not a single category, and the research consistently shows that the degree of impairment predicts memory performance. Individuals with mild intellectual disability provide more complete and accurate accounts than those with moderate or severe disability, and broadly, as measured intellectual ability decreases, so does the accuracy and completeness of reporting (Kebbell & Hatton, 1999; Ternes & Yuille, 2008). Evaluating the reliability of a particular witness's account therefore requires attention to the level of disability rather than the label alone.

Measuring Suggestibility, With Caution

Interrogative suggestibility, the tendency to yield to leading questions and to shift answers under interpersonal pressure, can be assessed with structured instruments such as the Gudjonsson Suggestibility Scales, and people with intellectual disabilities tend on average to score higher than

the general population (Clare & Gudjonsson, 1993). These tools can be informative, but they must be used carefully. Their validity with adults who have intellectual disabilities is not fully established, and a low score does not guarantee that a witness was not led, nor does a high score establish that a particular account is false. Standardized testing supplements, but does not replace, careful attention to how a given witness was actually questioned.

Interviewing and Competency

Because the same person can produce reliable or unreliable testimony depending on how they are questioned, sound interview practice is decisive. Open-ended, non-leading questions, delivered in plain language and without repetition or pressure, elicit the most accurate accounts; closed, complex, and repeated questions do the opposite (Milne & Bull, 1999). Separate questions concern competency, a witness's capacity to understand the obligation to tell the truth and to give evidence, which is assessed individually and should not be presumed absent from a diagnosis (Gudjonsson, Murphy, & Clare, 2000). Many jurisdictions provide accommodations, such as intermediaries and modified questioning, that allow witnesses with intellectual disabilities to give their best evidence.

Special Issues in Legal Practice

The principles described above apply with equal force to every party in a legal proceeding. Memory operates the same way regardless of who is asking the questions, and the science summarized here favors no side. What differs between the parties is not the science but the vantage point — the particular places where memory issues tend to surface, and the particular errors each party is best positioned to guard against. The two summaries below identify those recurring issues. They are offered for orientation, not as litigation strategy; in every case the controlling question is what the evidence in that case will, and will not, support, and the expert's role is to inform the trier of fact rather than to advocate for either side.

Special Issues for Prosecutors

For the State, a witness with an intellectual disability may be both a victim and the principal source of evidence, and the research supports taking such testimony seriously: an open-ended account given in the witness's own words tends to be accurate, if incomplete, and the disability does not by itself disqualify the witness or void their competency (Gudjonsson et al., 2000; Kebbell & Hatton, 1999). The prosecution is well positioned to ensure the evidence is gathered in the conditions that make it reliable, through early, open-ended, non-leading interviews and appropriate accommodations. The error to guard against is eliciting or relying on answers produced by closed, leading, or repeated questioning, which can draw out acquiescent or shifting responses that reflect the interview rather than the memory. The safeguard is to build the case on the free narrative and on independent corroboration, and to document how each detail was obtained.

Special Issues for Defense

For the defense, the same science cautions that an account elicited through suggestive, closed, or repeated questioning may be unreliable even when the witness is entirely sincere, because acquiescence and answer-shifting under pressure are well-documented tendencies in this population (Clare & Gudjonsson, 1993). The defense is well positioned to examine how the interview was conducted, whether questions were leading or repeated, whether the witness was pressed to elaborate beyond their free recall, and whether the degree of disability bears on the reliability of particular answers. The corresponding error to guard against is overclaiming. Intellectual disability does not render a witness incapable of accurate testimony; free-recall accounts are often accurate, and many witnesses resist misleading questions. Responsible cross-examination and expert testimony should distinguish the reliable free narrative from answers

shaped by the form of questioning, rather than treating the diagnosis as a blanket reason to disbelieve.

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