

The challenge of assessing credibility when children with intellectual disabilities are alleged victims of abuse

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Assessing credibility is of importance when deciding the legal outcome of a case. Such an assessment can be especially challenging when the witness is a child with intellectual disabilities. If these children have difficulties making their voices heard in legal proceedings the principal of equal legal rights may be called in question. We openly interviewed 32 lawyers, prosecutors, and police officers about how they assess credibility of these children. The findings indicate that individual perceptions of credibility are filtered through a legal norm of how to understand reliable reports irrespective of the eyewitnesses' ability to reach that standard. Legal representatives are aware that such a procedure may exclude intellectual disabled children from being fairly assessed but they do not deviate from the rules they perceive as required by their legal role. If knowledge about intellectual competence and functional level of an individual child witness was perceived as necessary when putting an adapted legal norm into praxis, this may increase the chance that assessments of credibility are based on knowledge rather than on a simplified general legal classification. Such an assessment procedure may increase the chance that children with intellectual disabilities are not excluded from fair legal trials of their cases.

Keywords: intellectual disabilities; child witnesses; credibility assessments; interdisciplinary knowledge

Introduction

Children with intellectual disabilities are more likely than typically developed children to be maltreated or victimized by crime (Sedlack and Broadhurst 1996; Sobsey and Doe 1991; Sullivan and Knutson 2000; Westcott and Jones 1999; Vig and Kaminer 2002) and few cases involving intellectually disabled children are taken to court (Gudjonsson, Murphy, and Clare 2000; Green 2001; Williams 1995). Criminal cases involving alleged child witnesses in general are known to be a challenge to the legal system, given the high demands on the evidence and the sometimes limited ability of child witnesses to provide an expected standard of report (Diesen and Sutorius 1999). Assessing the credibility of a child witness is of importance when deciding the outcome of a case. The courts must distinguish between credible and non-credible reports. Such an assessment can be especially challenging when the witness is diagnosed with intellectual disabilities especially because it is not possible

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to assess these children's credibility from the same criteria as with people without such disabilities (Diesen 2005). Few researchers have examined the way different professionals in the legal systems respond to children with intellectual disabilities who are victims of crime (Agnew and Powell 2004; Milne 1999). Cederborg and Lamb (2006) found, however, that written or verbal testimony from experts was seldom available or adequate when cases involving children with intellectual disabilities were taken to court. It will be much harder to achieve justice for them if the legal system does not take these children's unique characteristics into account when assessing their credibility. In order to further understand how children with intellectual disabilities are treated when they are allegedly victimized this study wanted to find out how legal representatives perceive credibility when children with intellectual disabilities are alleged child witnesses.

In Sweden it is the report's reliability as evidence that should be valued when assessing the child's credibility, even if the Supreme Court's precedential cases do not always separate the difference between the reliability of a statement and the credibility of an individual (Gregow 1996; Schelin 2006). In order to assess both statement reliability as well as individual credibility, forensic professionals in Sweden have long relied upon the conceptual frameworks of Statement Reality Analysis (SRA) (Trankell 1972; Undeutsch 1982, 1989). The Swedish application of statement analysis has similarities with the quantitative Statement Validity Analysis developed in USA. The predetermined criteria for this assessment procedure are stipulated in the manual Criterion-Based Content Analysis (CBCA) (Raskin and Esplin 1991). However, in Sweden analysis of statements has been applied in a less structured and quantitative way (Holgerrsson 1990). Within the Statement Analysis tradition the basic premise is that accounts of actual experiences differ in quality and content from statements about events that were not experienced. This means that truthful statements should differ from fabricated statements in content and quality and that people who have actually experienced events should be able to produce statements characterized by such factors as richness of detail, contextual embedding, superfluous and unusual details, subjective experiences and reproduction of speech that took place during the proposed event. Most research on the applicability of these premises is based on the CBCA scores. It has been claimed that CBCA scores, used to distinguish between plausible and implausible accounts, are too poor to justify application in forensic contexts (Lamb et al. 1997; Ruby and Brigham 1998). Nevertheless, Trankell's (1972) work on statement analysis seems to have influenced the Swedish legal system, with the Swedish Supreme Court suggesting that reliable accounts should, for example, be long, coherent, clear and detailed as well as constant between different interviews (Supreme Court Judge NJA 1993s. 616). Other suggested factors that could indicate a report's reality base are that it is age adequate, given spontaneously, and does not contain information that is difficult to explain or gives rise to doubt that the alleged events really occurred unless there is other evidence that speaks to the child's believability. If a report involves incorrect or incongruous information, such factors may taint the reliability of the whole report (Gregow 1996; Sutorius and Kaldal 2003; Schelin 2006).

Research shows that legal professionals may form inaccurate notions about what can be understood as credible reports (Granhag and Strömwall 2003) and both analogue studies (Ceci et al. 1994; Horner, Guyer, and Kalter 1993a; Guyer and Kalter 1993b; Poole and Lindsey 1997) and studies of real forensic interviews (Finlayson and Koocher 1991; Jackson and Nuttal 1993) show that professionals

have difficulty determining whether statements are true or false. Legal representatives perceive young children as less accurate and less credible than older children (Goodman et al. 1987; Nightingale 1993; Bringham 1998) but young child victims can also be perceived as more credible than older victims when the young victims possess age inappropriate sexual knowledge (Bottoms and Goodman 1994). Jurors may also perceive an alleged child with intellectual disabilities as more credible than a defendant (Bottoms et al. 2003). Women may also be more likely than men to find child victims credible (Castelli and Goodman 2005). In addition, interviewers' use of option-posing and suggestive questions can not only negatively affect accuracy but also the perceived credibility of children (Tubb, Wood, and Hosch 1999). A recent study shows that child witnesses interviewed from a structured protocol that encourages open questions can facilitate the assessment of credibility, even if non-credible allegations were difficult to detect (Hershkowitz, Fisher, and Lamb 2007). Hence, the potential of misinterpretation may increase when scientific knowledge and common sense are excluded from evaluations of credibility (Ceci and Bruck 1995).

The aim of this study was to find out how legal representatives involved in the legal processing of a case assess reliability and credibility when children with intellectual disabilities and/or lowered level of functioning are alleged witnesses. We also wanted to explore what attitude they have about the Supreme Court's recommendations of how to assess credibility in relation to these children. The reason for focusing on this particular group of children was that they are on the one hand at higher risk of victimization, but on the other hand they may constitute the most difficult group to assess without information about their abilities from expert witnesses. A basic assumption was that, by focusing on cases involving children with hampered communicative ability, the informants would identify the most challenging aspects of assessing these child witnesses. The reason for focusing the implementation of the Supreme Court criteria was an interest in exploring what impact such guidelines have on perceptions of credibility when children with intellectual disabilities are assessed.

Method

We interviewed police officers, prosecutors, and judges about their individual thoughts and beliefs. Here intellectual disabilities are defined as developmental and/or autism spectrum disorder.

An interpretative phenomenological approach (IPA) was applied. The method is phenomenological in that it seeks to explore the experiences of the informants from their own perspective; yet, it allows moving from a descriptive level to interpretation (Dean et al. 2005). The aim of IPA is to explore how participants make sense of and apply meaning to their experiences (Chapman and Smith 2002). The method is based on the assumption that participants' accounts of a certain phenomenon can give an individual perspective on thoughts and beliefs in relation to previous experiences. By interpreting their accounts of certain phenomena, such an analysis unravels the meaning of participant's experiences (Smith 1997). The participants' attribution of meaning is seen as influenced by individual experiences but also bounded to social interactions shared with others (Willig 2006).

Three groups of legal representatives involved in criminal investigations were interviewed: police officers, who receive the information from the proposed child victim; prosecutors, who decide whether or not to take a case to court and finally

judges, whose position as decision-makers gives them a key role in the process. We used a semi structured interview guide involving open questions when interviewing 12 police officers, 10 prosecutors, and 10 judges from different parts of Sweden. In order to focus the participants' attention on the question asked, we first asked (1) about their understanding of six different cases involving alleged children with intellectual disabilities. We wanted to know their beliefs about how these disabilities can affect children's abilities to describe their experiences. Secondly, we asked (2) how they assess credibility when these children are alleged child witnesses and thirdly, (3) we wanted to know their reasoning when they do not involve experts before assessing credibility of children with intellectual disabilities. The interviews were selected from a larger project that also involves interviews with representatives from the behavioural sciences, i.e., psychologists/therapists and psychiatrists. These interviews are not included in the present study. The ethical committee at Karolinska Institutet in Stockholm approved this study on 8 March 2006 (number 30–31).

Data collection

The participants were selected from eight towns in Sweden. The sample includes legal practitioners from big cities (two) as well as from middle- to small-sized towns (six). We wanted to depict accounts from well-experienced representatives who in their everyday practice have to handle cases with children with intellectual disabilities. In addition, we also wanted to interview highly placed experts in law who could describe the current Swedish legal norm on how to carry out the legal handling of possible child crime victims. The first two authors have previously worked with legal data in Sweden and therefore knew who could be considered well-experienced representatives of the legal system. We started by identifying prosecutors in differently sized towns. Then we identified police officers and judges working in the same area as these prosecutors. The two highly positioned experts in law were both situated in the capital of Sweden. The first author (A-C.) first contacted the participants by phone. They were informed about the project and agreed to participate before meetings were booked for the interview. None of the selected representatives declined participation.

Interview procedures

The first author conducted all the interviews which took place in the participants' offices. The interviews were guided by a semi-structured interview guide that included open-ended questions about how the respondents perceived six different cases describing constructed cases involving alleged crime victims with intellectual disabilities. They were openly asked to develop their thought and beliefs about how they should manage each child's case. Depending on their answers the follow up questions were intended to obtain a deeper understanding of their expectations and judgements of children with intellectual disabilities as eye witnesses. The content of the vignettes was influenced from data in a previous project about real investigations of children with intellectual disabilities (Cederborg and Lamb 2006). The participants were given the vignettes one at the time and each vignette included brief information about the alleged crime (sexual and physical abuse), identified the perpetrator as either an immediate family member or a person familiar to the child, and provided diagnosis, name, gender, and age for each of the victims. Various family situations were described. The child's diagnosis was mentioned in each case, but the possible consequences of the

disabilities were described briefly in only two of the cases. No information was given about possible evidence in each case. The diagnoses represented in three of the cases were of developmental disability without specifying the grade. One case involved a mild developmental disability and one case a moderate developmental disability in combination with autism spectrum disorder. In another case the child was described as having three different diagnoses: developmental disability in combination with personality disorder and autism spectrum disorder. The chronological ages of the children in the vignettes varied from 6 to 20 years of age ($M = 11.5$). The victim who was described as being 20 years of age was described as mentally having an age of a 17 year-old child. The reason for that was to investigate how the informants reacted when the victim had reached the legal age of majority. The other children, who were under 14 years of age, were described by their chronological age.

In order to find out how the participants experienced the task of assessing intellectual disabled children's credibility, they were next shown a summary of the Swedish Supreme Court decision holding that credible accounts should be coherent, clear and detailed and should not contain information that is difficult to explain or gives rise to doubt that the alleged events really occurred (Supreme Court Judge NJA 1993s. 616). After that, they were shown one at a time three different excerpts from three court decisions in which the judge described credibility of children with intellectual disabilities in relation to the Supreme Court's expectations. One case was about a 7 years, 10 months-old girl who was assessed with a mild intellectual disability. This judge describes her as not being credible because she elicited details that were contradictory and not credible or reliable. The second case was about a girl, 10 years, 11 months-old. She was assessed with a moderate developmental disorder. The court assessed her as not being credible because she did not elicit a coherent and spontaneous report. The third excerpt was about a young woman (22 years-old) with no assessment that specified the grade of her intellectual disability. The judge's formulation of credibility involved a statement of the need to assess credibility from the fact that she had an intellectual disability. She was not able to describe how the abuse occurred and she reported uncertain answers. In addition, she had given an incoherent impression as well as poor answers. Respondents were then asked about their thoughts about the requirement from the Supreme Court and how the requirements may influence their management of cases where intellectually disabled children are witnesses.

Analysis

Inspired by scholars in the area of qualitative interviews (c.f. Gubrium and Holstein 2002; Kvale 1997; Silverman 1993; Smith 1997), the interviews were transcribed verbatim and exhaustively examined for references to similarities and differences. The two authors of this paper are well experienced in research about eyewitness psychology; the interpretation of the findings may therefore be influenced by our previous knowledge and conceptions of child witnesses and legal expectations. The first author identified sections of the text that involved responses to questions about how informants thought about intellectually disabled children's possibilities to present credible reports and how they manage the task of assessing their credibility. Thereafter the first author identified categories and sub-themes that illustrated the responses of these sections. The units found were structured with examples and then shown to the second author of this paper. She then analyzed each category and

sub-theme. There was a 95% agreement that the listed units captured the participants' thoughts and beliefs of the phenomenon studied. Remaining disagreement was resolved through discussion.

Results

The results are organized under four themes: legal position of children with intellectual disabilities; legal representations of credibility; competence within the legal system; and finally, competence outside the legal system.

Legal position of children with intellectual disabilities

The Supreme Court criteria were partly questioned, particularly when children with disabilities were involved. Children in general and children with disabilities in particular were perceived as having difficulties in reaching legal demands. The view that alleged child victims have a weak position in the legal system is illustrated in the following examples:

Judge Excerpt 1

Of course, from the disabled children's perspective this demand is sometimes impossible to fulfil when they cannot give a coherent, clear and detailed report.

Judge Excerpt 2

At the same time they are in a bit of trouble as they cannot verbalize and express themselves and this puts them at a disadvantage. There are losers concerning crime investigations of this category and they obviously belong to this group. If you cannot report you cannot.

Judge Excerpt 3

These children will never be protected as well by the legal system as those who are eloquent. And children, I would say generally, are therefore less protected by the legal system. Some of it concerns lack of knowledge where we could get an edge by knowing more, but some of it just concerns them not being able enough to distinguish, to be able to describe. In a case where the child's report is the basis for a conviction, that will not be enough.

The view that children with intellectual disabilities could end up in a disadvantaged position was also shared by this prosecutor:

Prosecutor Excerpt 4

In order to judge, they [the court] demand both a precise place and some kind of precision concerning time and this is difficult for children to give. They can report roughly what has happened to them, but when they say really long ago, is that three days or several years ago? Did it happen once or many times? They [children] cannot handle that, and disabled ones even less so.

Legal representations of credibility

When defining what it means to assess credibility of children with intellectual disabilities, a judge described the process in the following way:

Judge Excerpt 5

It means to find out that the child remembers correctly or does not make things up, that the child can put what has happened into words, so that what has really happened is made clear when you speak to the child. That is what is important.

Judges did not always differentiate between assessing the reliability of the report and the credibility of the child. For example, one judge expressed the opinion that his profession has accepted the view that a report involving many details is more credible because a witness cannot fabricate such details:

Judge Excerpt 6

We usually consider a report more credible if it is detailed. This, for example, cannot have been made up, we say. I do not know to what extent this is true scientifically or according to experience. I do not think that we judges know that.

One judge was especially critical about the criteria suggesting that contradictions and lack of a coherent detailed report are signs of defective credibility, especially when children with disabilities are child witnesses:

Judge Excerpt 7

To be able to say that it is contradictory and contains details, which cannot be credible or reliable, you have to understand how such a person functions. I think that you need to be humble enough when dealing with such a person to admit that you need special knowledge to be able to claim that it is contradictory, etc.

Another judge perceived that the first impression of a report is decisive for how credibility is assessed. If it does not fulfil expected standards it will not be deemed credible:

Judge Excerpt 8

People who cannot produce a coherent report and immediately be considered credible are disadvantaged in the courts concerning credibility and reliability.

Expressions of possible problems with the norm of credibility varied among the legally trained participants. One prosecutor claimed the norm to be the accepted point of reference when assessing cases both before and during the court proceedings:

Prosecutor Excerpt 9

Yes, we live with this. These Supreme Court rulings have had a large impact. I do not think they pay too much attention to it being coherent, because children can skip. Clear and detailed, yes. It must be detailed. If the child lies about something in the report, it is something which can cause uncertainty. I agree with the Supreme Court that there must be details in a report, it cannot be too vague, and if there are contradictory things in it, which give you reason to doubt, that of course makes it difficult.

Police officers were more critical towards the Supreme Court assessment criteria. For example, one police officer expressed the view that these children could be credible even if they are not able to accurately communicate irrelevant details:

Police officer Excerpt 10

You wonder what kind of details. Maybe she said that he lived in a blue house, but it was really red because she cannot tell colours properly. But that does not mean that the rest was not true, just because she does not know the colours.

Assessment of these children's statement was described as a complicated undertaking that was difficult to reproduce. Some participants described how they had to rely on their personal experiences and/or capabilities when analyzing reports:

Judge Excerpt 11

I assess this based on believing that I can listen, see the context, link circumstances and then make this assessment. But what I really do, I could not describe.

Judge Excerpt 12

It is unbelievably difficult. I do not know whether there is a way of approaching this issue other than with feelings. We judges most often write that this appears to be self-experienced, we listen to the person and assess whether it seems true or not; if it seems that the person has experienced it, if the person seems to be telling the truth. But I do not know if we can assess it. I think there is an over-confidence in legal scholars' ability to interpret credibility and reliability.

One of the prosecutors did not use the stipulated criteria of credibility when deciding if a case is to be taken to court. Instead, when she studied the interview with the child, she assessed whether the report was given in such a way that it gave her a feeling of how the event happened:

Prosecutor Excerpt 13

I am very sceptical about that type of knowledge; to know and be able to distinguish between who is credible and who is not. I base everything on feeling, and that is a dangerous instrument, but it is how I screen my cases. I think you need an ability to make yourself comprehensible to others. It really has nothing to do with credibility.

For police officers, the analysis of statements' credibility seemed to be secondary to the necessity of not influencing the report by using leading and suggestive questions:

Police officer Excerpt 14

Credibility is not something I think about. It is more important to remember whether you are asking leading questions or not.

Competence within the legal system

Several of the legal representatives declared that they did not have enough knowledge about what to expect from children with various intellectual disabilities:

Judge Excerpt 15

Judges, as well as others, probably have somewhat cloudy ideas of what it means in terms of motor skills or language development or such.

Judge Excerpt 16

Since credibility assessments are so incredibly difficult to make, it can in some cases be questioned by what right the court makes this credibility and reliability assessment. And then they judge solely based on the report of the party injured without further supporting evidence.

The belief that judges' were uninformed about children's capacities was common among the informants. One prosecutor, for example, accused judges of being too narrow-minded about what competence might be relevant in cases involving children:

Prosecutor Excerpt 17

According to many judges, the legal knowledge from the judge's education is enough. I actually think that we prosecutors have advanced further in admitting that this is not the case. My law degree does not help me when I am to assess a child.

Police officers also criticized how prosecutors work with child cases. One police officer perceived, for example, that prosecutors have impossible expectations of what children can accomplish in an interview:

Police officer Excerpt 18

The prosecutors call me and they tell me that I have to find this and that. You cannot always deliver what they ask for, regardless of whether the case involves a disabled child or not.

Competence outside the legal system

Despite the view that competence was lacking in the legal system, especially prosecutors and judges seemed ambivalent about consulting outside experts. If the prosecutor appointed an expert, for example, the evaluation could be used to discredit the child's credibility. A prosecutor expressed worries about involving experts in the assessment procedure in the following way:

Prosecutor Excerpt 19

You get another possibility to assess her and her statements generally. At the same time this could be to her disadvantage. A child who has great difficulty expressing herself, difficulty recollecting and low intellectual capacity would be assessed as a party injured among others, and this type of injured party is not credible.

The opinion that experts could strengthen the prosecutor's case was found both among prosecutors and judges. This prosecutor explained her view of what she expected from clinical experts:

Prosecutor Excerpt 20

They should be able to illustrate the reliability of a statement in a report. Is what this child is saying reasonable? Can we believe this? I have to be able to pinpoint what it is that has happened.

However, others were of the view that clinicians should not express their opinions about credibility:

Prosecutor Excerpt 21

I do not think that they [clinical psychologists] should have a say in matters such as credibility and reliability when giving an expert opinion.

We see that what expert knowledge could be of importance for the legal proceedings and what role of expert witnesses should be was perceived differently. The participants also had different opinions of who should appoint experts. One prosecutor suggested that a court appointed expert should be used as a means to avoid two different expert opinions, one from the prosecutor and one from the defence lawyer:

Prosecutor Excerpt 22

The good thing about the court appointing an expert is that you do not get parallel experts saying different things, because that is quite unfortunate for a case.

One police officer agreed with this prosecutor's opinion about the need to receive objective knowledge from experts before judges make decision in a case:

Police officer Excerpt 23

The courts should acquire knowledge about how children with various forms of intellectual disabilities express themselves. They are the ones who judge the statements. What is most important when disabled children's report constitute the base of prosecution is that the courts interpret this right.

The belief that objective knowledge about intellectual disabilities is necessary during court proceedings differed among the participants, however. A judge claimed, for example, that it was the prosecutor's responsibility to consult experts:

Judge Excerpt 24

We make an assessment based on the investigation presented by the prosecutor. We do not send such a child for an examination or investigation; that is up to the prosecutor.

When asked what happens if the prosecutor did not clarify such information this judge answered:

Then the prosecutor could be in trouble in the evaluation. It may be rejected.

This shows that judges were of the opinion that knowledge received from experts should be used by prosecutors as an argument for why the child witness with intellectual disabilities should be believed. One judge also expected that the defence lawyer should be able to question such an argument. When both sides argued for or against credibility, this judge believed he did not need more information about the unique child witness:

Judge Excerpt 25

I assume that that the prosecutor during the main hearing is knowledgeable and can back this report up, why to believe this person. And then the defence lawyer tries to tear it apart. I really do not know if the court needs that much more. You have to interpret and assess to the best of your judgement.

However, judges did not always agree as to who should be responsible for securing the relevant amount of information in a case. A high positioned judge had the belief that objective knowledge is a necessary base when courts are to decide in cases where children with disabilities are involved:

Judge Excerpt 26

The task of gathering information or knowledge in order to hold this trial is the task of the court. In the case of a disabled child it would be the task of the court to call an expert witness who, for example, can tell us what implications such a disability has on the child's ability to report. Also, to provide additional general information to the court in order to form a better base for evaluating the evidence put forward. That is the task of the court.

Discussion

When capturing how legal representatives attribute credibility when children with intellectual disabilities are alleged victims we found that they are not effectively and fairly assessed. The main finding is that the participants had little faith in these children's abilities to reach an acceptable standard when reporting about abuse experiences. Another finding is that the lack of structure of how to give justice to children with special needs may end up in a diverse management of these cases. Even if the Supreme Court criteria are not possible to use when assessing reliability of these children's reports (Diesen 2005) especially prosecutors and judges tried to adapt their assessment of credibility in relation to them. How they assessed credibility may be depending on their personal interpretation of how to verify the criteria. This may imply they emphasized aspects of credibility differently. With lacking knowledge and possibilities to interpret credibility criteria differently, children with intellectual

disabilities may be unfairly assessed in legal proceedings. When legal management of cases is based on subjective attributions and insufficient instruments there is an obvious risk that the legal rights of children with intellectual disabilities are threatened.

During their training prosecutors and lawyers are taught how to solve problems and conflicts in relation to legal rules and legal implications (Hyden 1977; Mathiesen 2005). These tools give instructions on how to solve legal issues but since jurisprudence does not consider social consequences of the legal rules, nor does this perspective discuss the basis of the rules (Hyden 1977) jurists are not trained to understand how their rules fit into the context of behavioural sciences. This means that jurists may screen out aspects that are not legally relevant from those aspects that are understood as legal matters when making legal analysis (Mathiesen 2005).

The Supreme Court's judgement of credibility serves as a precedent for how to apply Swedish law and as such it is a model for the assessment procedure. Schelin (2006) suggests, however, that the Supreme Court's discussion on how to analyze statements should be interpreted as a possible method and that judges can choose to use the criteria depending on how they fit into each case. In addition, Swedish court procedure is based on the principle of free testing of evidence. Thus, a Swedish court has the right to consider and judge the relevance of any circumstance related to the case (Diesen and Sutorius 1999; Nyström 1996). This means that if jurists believed that knowledge about capacities of the child witness was relevant information they have legal support for interpreting credibility with the aid of such knowledge.

It may also be possible to assess credibility and reliability from other bases than a literal reading of the Supreme Court's recommendation. This study indicates however, that jurists do not take the opportunity to consider knowledge about the children's competencies as a possible base for their legal assessment procedure. Instead they generally choose to represent credibility literally through the precedent stipulated by the Supreme Court. According to decision-making theory (Klein 1998), this may imply that jurists mentally represent reliability and credibility from the criteria and may compare evidence against them. This may lead them to select those variables that match their own understanding. Such a process can be due to their belief that it is the content of the law that is decisive for how to understand credibility rather than how this law fits into the reality that is to be assessed. It can also be interpreted from the theoretical perspective that knowledge relevant for certain practices is collectively constructed through specific traditions of argumentations (Shotter and Gergen 1994). Professionals learn how to 'read a scene' and what is to be seen as relevant in their particular practice; how to talk, act, and make sense (Shotter 2000; Suchman 2000). This means that judges, through their participation in legal proceedings, may learn that they should refrain from using their own beliefs of what is reasonable to assess and instead shape their understanding solely from the basis given by the Supreme Court. One possible consequence of contextual learning may be that those who question the criteria's applicability may be unsatisfied with their judgement. Such dissatisfaction was expressed in this study and may partly explain why children with intellectual disabilities were perceived as having questionable legal protection.

It was not just judges who built their social representation of reliability and credibility in relation to the higher courts recommendations. Prosecutors also expressed the view that they had to assess their cases literally in relation to the norm in order to expect possible success in court. An alternative strategy was to

avoid using the concepts altogether. Naturally, interpretation of these concepts may also influence the degree to which cases involving children with intellectual disabilities are taken to court. The police officers, on the other hand, did not necessarily associate their view on reliability and credibility to the Supreme Court's norm; some even expressed clear disapproval of it. They tried to follow inquiries from the prosecutors, even if demands about what type of information needed to be obtained could cause frustration. Sometimes police officers expressed that they, compared to judges and prosecutors, were the ones who really understood how to produce a reliable report and what could be expected from children with or without intellectual disabilities.

From a legal perspective children with intellectual disabilities are to be treated as equal to those who do not have a diagnosis but when their credibility is assessed from a formal and general legal norm there seems to be a risk that such a rule obscures actual differences and their equal legal rights may be diminished. Most of the informants pointed out the gap between perceived legal expectations of a reliable report and their belief of what children with intellectual disabilities may be able to accomplish. All participants thought that these children's position is jeopardized when their legal credibility is to be assessed. In spite of this perception few of them expressed the view that it was possible to understand the Supreme Court criteria of credibility other than literally. This means that they may have accepted that children with intellectual disabilities should not be assessed using their prerequisites to report reliably. All of them identified the process of analyzing and evaluating statements as a complicated procedure, however, and they had difficulties describing in words on what basis they attributed credibility. Their uncertainty of how to attribute credibility can explain why some of the judges and prosecutors had adopted the criteria as reliable signs of credibility irrespective of the type of witness. They may need to believe that the norm was objective in order to fulfil their obligation to assess credibility consistently. Few of the participants questioned whether there is scientific support for the suggested criteria; the Supreme Court's identification of such criteria seemed to be sufficient legitimizing.

Another finding was that judges and prosecutors seemed to believe that they do not have to distinguish between what could be expected from adults or normally developing children and what can be expected from children who may have communicative problems. This is a problem because, from the perspective of behavioural sciences, the current legal representation of credibility and reliability is based on uncertain criteria and therefore it is uncertain if it is possible to apply the norm on children in general and especially not on children with intellectual disabilities. This in turn indicates that legal rules that exclude considerations of capacities may cause the risk that children are not fairly assessed.

This study also indicates that the uncertainty of how to communicate and understand children with disabilities may result in individual legal practitioners relying on their own experiences, perceptions, and feelings when assessing reliability and credibility in light of their interpretations of the precedent from the Supreme Court. This means that the criteria may be used and interpreted differently, depending on professional background as well as individual factors. This in turn implies that decisions of reliability and credibility may depend on both the interpreters' values and attitudes towards child witnesses with intellectual disabilities as well as on how each of them comprehend how to act according to legal recommendations. A possible consequence is that what is measured is how

convincing rather than truthful evidence is, something that previously has been identified as a risk for an inaccurate legal decision (Berliner and Conte 1993).

Expert testimony is rare in cases where children with intellectual disabilities are tried in courts (Cederborg and Lamb 2006). Although many informants expressed the need for more knowledge in cases where children with intellectual disabilities are involved, their perceptions of what external knowledge was relevant seemed unclear. It appears as if there was no consensus regarding who should consult, appoint, and instruct experts, and what role the expert should have in relation to the court. Few considered the possibility that they could ask for general information about different disabilities or the communicative ability of an individual child. Judges and prosecutors also expressed fear that such information could be used to discredit the child's credibility because it may be used as proof that the child is not able to reach the expected standard of a reliable report. A notable observation was the paradox between the perceived shortcomings of the legal system on the one hand (e.g., the identified need of more knowledge) and the lack of constructive and creative suggestions on how to compensate for such flaws. Expert witnesses may have different roles in legal proceedings (Sverne et al. 1998). This means that experts can be consulted on issues other than those directly relating to the legal outcome of credibility and reliability assessments.

According to Diesen and Sutorius (1999), expert testimony is to be viewed as 'an additional source of information in the court's decision making process', and these authors recommend that expert witnesses are court appointed, based on the assumption that an official appointment will guarantee the expert's neutrality. The Supreme Court has also identified the possible need of consulting expert witnesses when the child's statement is presented in court through video recordings because with such a procedure it is not always possible for the alleged victim to further explain possible inconsistencies or unclear points (Schelin 2006). This means that it should be possible to consult experts on issues such as developmental level, maturity, level of understanding, and experiences of possibly traumatic events. Such knowledge would increase information about each child, as well as provide an assessment of the individual child's ability to understand and answer questions. An assessment of the interview technique used may also help legal professionals to understand why children respond the way they do. For example, if children are not openly interviewed about their experiences they are not given the opportunity to render a coherent report (Cederborg et al. 2000; Cederborg and Lamb 2008a, 2008b). Unfavourable question types may also cause contradictions in children's statements, especially when intellectually disabled children are interviewed (Cederborg et al. 2009).

In sum, it is a challenging task for prosecutors and judges to assess reliable reports and credible persons especially when they relate their judgements to unreliable criteria and do not consider the accuracy of their assessments procedure. With such a procedure decisions about credibility may be based on unrealistic prerequisites. Unfortunately, such proceedings may also imply an increased risk for unfair legal treatment of children with intellectual disabilities. This study therefore indicates the need for further legal discussions about how to attribute reliability and credibility, especially when children with intellectual disabilities are alleged child witnesses. If the Supreme Court discusses cases involving statement analysis again, there seems to be a need of an elucidation of how legal representatives could collect knowledge about the intellectual competence and functional level of an individual child witness. Such recommendations may encourage legal decision-makers to assign

experts who can help to provide information about the individual child's capacities to report about their experiences. If the Supreme Court also made clear the importance of collecting information about how the child was interviewed, such recommendations may also stimulate the judges and prosecutors to assess the quality of the interview. If an updated norm could also involve reasonable criteria that are based to a greater extent on current interdisciplinary knowledge of how to understand child witnesses with intellectual disabilities, the judicial system can develop indices of reliability and credibility that are consistent with science.

The limitation of this study is that we interviewed a small group of legal professionals about how they make sense when assessing intellectually disabled children's credibility. We have interpreted individual perspectives which mean that our findings cannot be generalized to a general group of representatives. On the other hand, the study gave us a deeper understanding of how a legal system depends on the perceptions legal professionals' make of the rulings stipulated by higher court. Our findings indicate that such dependence may cause the risk that credibility assessments of children with intellectual disabilities are based on preconceptions of normality rather than knowledge.

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