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Research in Action

James K. Stewart, Director

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Using dolls to interview child victims: Legal concerns and interview procedures

NCJRS

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ACQUISITIONS

by Kenneth R. Freeman and Terry Estrada-Mullaney

Prosecutors everywhere were stunned. The court affirmed a civil rights lawsuit judgment of \$200,000 in punitive damages assessed personally against two deputy district attorneys. Did the Colorado Supreme Court case foreshadow things to come?

The case was *Higgs v. District Court (Douglas County)* 713 P.2d 840 (Colo. 1985). In its opinion, the court warned prosecutors that if they perform functions normally done by police officers (such as witness interviews), those functions must be done correctly, or prosecutors could face financial consequences.

In Fairfax County, Virginia, a father who previously had been arrested and accused of abuse was awarded \$55,000 in a lawsuit against the Fairfax police officer who arrested him and interviewed his 10-year-old daughter. The daughter claimed that the police officer coerced her into saying that her father had photographed and molested her.

Both the *Higgs* case and the Fairfax, Virginia, case underscore the fact that even if you are the most conscientious front line law enforcement officer or prosecutor, you must be aware of the trial consequences of your investigative activities.

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In child abuse cases, the victim interview is a particularly important area. When you use anatomical dolls, additional sensitive areas arise. Both prosecutors and police have been the subject of civil rights lawsuits that claimed in part that anatomical dolls were misused during victim interviews and, that as a result of this misuse, criminal charges were improperly initiated.

This article examines the possible advantages and disadvantages of using anatomical dolls, discusses when and where they may best be used, and looks at techniques to help you avoid the charge that dolls were misused during your interview.

The article is for those who work in law enforcement and prosecution, not therapy. It examines victim interviews as they will be seen at the trial under the scrutiny of defense attorneys and defense experts.

Court rulings send a warning

In the *Higgs* case, the court held that prosecutors have absolute immunity from civil damages *only* when performing an "advocatory" function. When they perform an "investigative" function or an "administrative" function, they are only qualifiedly immune and could thus be *successfully sued* for damages.

Before *Higgs*, prosecutors argued that they have the duty to investigate and to discover new material the police may have missed. *Higgs*, however, said that if an activity is normally performed by

police, it is investigative, and prosecutors can lose immunity if they do a police officer's job. Unfortunately, the court did not decide the issue of where to draw the line between investigation and prosecution.

Dolls are one of the many tools law enforcement teams can use to investigate an allegation of child sexual abuse. Obviously, you must use the dolls carefully and conduct the interview properly.

Defining anatomical dolls

Anatomical dolls differ from ordinary dolls; they have certain parts that are supposed to represent genitalia and resemble some orifices of the human body. Mental health professionals have referred to anatomical dolls in various ways—anatomically correct dolls, sexually anatomically correct dolls, or simply SAC dolls.

These past definitions have now been discarded, and professionals currently refer to the dolls as anatomically detailed or simply anatomical dolls. It is best not to call the dolls anatomically correct dolls because they are *not* anatomically complete and are *not* anatomical to scale.

For years, police and mental health and other professionals have used dolls in dealing with child abuse. Before the advent of anatomical dolls, they used ordinary dolls such as Ken and Barbie. Today, anatomical doll manufacturing has become a thriving industry, and many books and articles have been published on how best to use the dolls. Available as male, female, adult, and child, dolls come in various skin tones.

Using dolls to interview child victims: Legal concerns and interview procedures

Using dolls in interviews

Increasingly, police and prosecutors are using dolls as an aid to interviewing children. You can use dolls at investigative interviews, case evaluation interviews, and during courtroom testimony. Indeed, some States have statutes that give a prosecutor the right to allow child witnesses to use the dolls in court to show what happened to them.

Anatomical dolls are not a crutch. They cannot be substituted for sound interviewing techniques. Indeed, trial attorneys have found that using dolls during interviews creates new issues not contemplated by those outside the criminal justice system.

Both research and the experience of criminal justice practitioners suggest that proper use of anatomical dolls can help you achieve several goals:

Establishing rapport and reducing stress. The more stressed and nervous a child is during an interview, the more difficult the interview becomes, and the higher the anxiety level. Most children relate well to dolls, which can have a calming effect on them. Dolls can help the atmosphere become more relaxed for everyone. Also, because it is easier for the child to use dolls to show what happened than to tell what happened, dolls help you gather more information in less time and with fewer tears. This reduces the pressure on you, the interviewer, to ask the right questions. If dolls are visible as the child enters the room, they can create a softening effect, giving the area a child-oriented appearance.

Establishing competency. During the get-acquainted period, you can show the dolls and ask the child about his or her dolls at home. Ask questions regarding colors, nonsexual body parts, and so forth. In this way, the dolls function as a bridge, permitting you to ask questions about something the child feels comfortable with as opposed to something as dry and routine as the standard competency questions. This introduction to the dolls has the further advantage of appearing more natural to both the child and to anyone who later scrutinizes the interview by cross-examination. Competency is thus integrated into the entire interview and is a less fruitful subject for cross-examination.

Reducing vocabulary problems. Using dolls can help you avoid the errors that sometimes occur when you and the child have different vocabularies and different understanding of the questions. Dolls give you a way to discuss sexual matters with children when you do not know their sexual vocabulary. They permit children who have their own vocabulary to show what certain words mean to them.

Showing what may be difficult to say. An interview can be overwhelming for young children. Even when they know the words, they may be too embarrassed to say them out loud to a stranger. With dolls, these children can point out and show things that are either difficult or even impossible for them to say. Dolls work because children find it easier to tell what happened by using something that is age-appropriate and familiar to them.

Common criticisms of interviews using dolls

Police, prosecutors, and others have been accused of not following accepted techniques for using dolls and of interviewing in a manner that encourages suggestion. Critics have said that anatomical dolls have no place in child sexual abuse interviews; dolls suggest fantasy to children, and exaggerated doll genitalia suggest sexual impropriety.

Dolls suggest abuse. Because most children's dolls normally do not have sexual parts, some commentators have complained that by showing anatomical dolls to children, a suggestion of sexual impropriety occurs. In addition, critics may say that children testifying in court are not testifying from their experience but rather from what they saw demonstrated with dolls during early interviews.



Photo by Ann Gardner, NCJRS

Dolls can create a more relaxed interview atmosphere, making it easier for the child to tell what happened. Once the interview turns to a discussion of the facts, the interviewer must be careful not to touch or position the dolls. Even if the purpose of the pointing or touching is to confirm what the child said, critics may claim that the interviewer coached the child. The interviewer should also avoid using terminology that suggests fantasy to the child.

Dolls can be used in ways contrary to accepted protocol. Another common criticism is that the interviewer did not use the dolls according to the manufacturer's intentions. Anatomical dolls often are shipped with complete instruction manuals. Enterprising critics might try to introduce these manuals into evidence and claim that since you did not follow the instructions, the results are invalid. As an alternative attack, an expert might testify that standard techniques for the use of dolls exist and you did not follow them.

Dolls can appear bizarre. Dolls from different manufacturers may look quite different from each other. Some dolls have a look children find friendly, while others may appear menacing. Some dolls are completely out of scale, with disproportionately large sexual parts. The same is true in the child-adult size ratio. Some dolls are so bizarre looking that their use may unintentionally add humor to the case.

Planning the interview

Interviewers have many techniques in addition to dolls when working with children. Often other methods will work better with a given child—crayons, pencils, coloring books, and drawings have been used. Sometimes nothing more than talking to the child is appropriate.

To decide what is best, plan the interview in advance, taking into account such things as the age of the child, whether or not there have been earlier interviews, and if so, the results of those interviews. If you decide to use dolls, inspect them before the interview, read any accompanying manuals, and be certain that the dolls are appropriate in looks and scale.

Age of child. There is no set age range for using dolls in interviews. Usually, children 3½ to 10 years old feel most comfortable with them. Teenagers, although embarrassed to talk about what happened to them, will say they don't want to show what happened to them by using dolls, especially if they hear that little children like using dolls.

Always determine whether any earlier interviews have been conducted using dolls. If so, it may be necessary to conduct the interview differently.

Gathering the facts. A good guideline is to introduce young children to the dolls during the get-acquainted part of the interview, then to use the dolls to aid in competency questions and to identify body parts. Later, when you are ready to discuss the facts, you should give the child the choice of describing things in the most comfortable way.

Earlier interviews. If dolls have been used earlier in the case by others, there is a risk that things were done that may give rise to allegations that the earlier interview was done improperly.

If you discover that a child has had a previous interview, look, if possible, at the dolls that were used to determine if there is anything peculiar or suggestive about them. Talk to the previous interviewer to determine the techniques used and the manner in which the questions were asked. Do not use dolls repeatedly since multiple interviews of this kind provide the defense team with cross-examination opportunities, permitting the defense to ask the child how the dolls were shown the first time, how they were shown the second time, and so forth.

Therapist's opinion. If dolls were used in a therapist's interview, check to see if the therapist's opinion regarding abuse was based on what the child said or on the child's interaction with the dolls. A current trend in diagnosis is observation of children playing with anatomical dolls and psychological analysis of the child's interaction. In this way, the therapist can diagnose whether the child has been sexually abused. This approach often is used with preverbal children or with those children too traumatized to describe what happened. Unfortunately, reliance on this type of diagnostic opinion may cause problems at trial.

Be aware that if the therapist's opinion reflects the child's interaction with the dolls rather than the child's description of what happened, that opinion may not be allowed in court under what is commonly known as the Frye rule, after *Frye v. United States*, 293 F.1013 (D.C. Cir. 1923). Under this rule, expert opinions regarding new scientific methods of proof are not allowed in court until after the prosecution has proved that the opinions are based on generally accepted and sound scientific knowledge.

Because the data are inconclusive about whether doll interaction diagnosis is accepted as reliable in the scientific community, it may not be possible for the prosecutor to show the court that the testimony is reliable before it is admitted into evidence.

This situation occurred in California in the recent case of *In re Amber B.*, 191 Cal. App.3d 682 (1987). That case ruled that the therapist's diagnosis from observation of the child interacting with the dolls was *inadmissible* in California unless the technique can be shown to be generally accepted as reliable in the scientific community in which it was developed.



Photo by Ann Gardner, NCJRS

Anatomical dolls can be used to augment sound interview techniques by putting a child at ease and helping the child tell the facts of the incident.

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Techniques for using anatomical dolls

If, after weighing the pros and cons, you decide to use dolls, you should follow these techniques:

Introduce dolls. Introduce the dolls fully clothed. Put them on the table where the interview is to be conducted so they are visible as the child comes into the room. This makes the dolls less threatening.

Always have a witness present when interviewing a child using anatomical dolls.

Begin by introducing yourself. Ask the child about school, pets, and any dolls he or she has at home. This gives children a chance to talk about themselves and allows you to measure how articulate and intelligent a particular child is. From here, you can ask competency questions using the dolls to show that the child understands concepts such as color or size.

As with all criminal justice interviews, the possibility exists that the defense will claim you coached or put words into the mouth of the child witness. Using dolls makes your case particularly vulnerable to the coaching defense; whoever uses the dolls first may be accused of coaching. It may be claimed that the dolls were put into a suggestive position and the child was then asked, "Did that happen?"

If a witness is present during the interview, the witness can rebut the claim of coaching. The jury then has the benefit of hearing what the child said from another witness, and the claim of coaching has therefore made relevant what would otherwise be inadmissible hearsay.

The charge of coaching can also be rebutted by using audio or video taping. If you are comfortable with taping your

interview, the jury can see and hear what may be a powerful recording of the child tearfully describing what the defendant did.

The technique of having a witness present or of taping the interview forces the defense to choose between forgoing the coaching defense or permitting powerful hearsay to be presented to the jury. It provides corroborating proof that your interview was proper and demonstrates the futility of the coaching claim.

Learn the child's sexual vocabulary. After deciding that the child is a competent witness, find out what the child's words are for sexual parts. As will be discussed later, avoid pointing to or touching the doll's sexual parts when the child is telling what happened. However, pointing to and touching the dolls is appropriate when you are trying to learn the child's sexual vocabulary. You might say:

"Okay, you're really good on colors. Do you know about parts of the body? (Picking up doll and pointing to her hair.) What's this?"

Continue in this way, going to easy, nonsexual things like hands, arms, feet. Then say something like this:

"Why don't we take off the shirt and see what's there." (Taking off the doll's shirt and pointing to belly button.) "What's this?" (Taking off pants and pointing to genitals.) "What's this?" After the child answers, it is important to follow up with "Ever hear it called anything else?" "What?" "Who calls it that?"

These questions illustrate how to move from sexual part identification to the facts of the case in a nonleading, non-traumatic way. Often the offender will use and teach the child slang words and the child may not realize that these words are inappropriate. You can also make the transition when discussing the child doll's genitals and before showing the adult dolls. Ask if the child knows how children's sexual parts differ from those of adults. Before showing the adult dolls to the children, ask if they have ever seen an adult's sexual parts, and if so, whose?

Determine the case facts. Before going over what happened, ask the child if it would be easier to *tell* you what happened or to *show* you what happened using dolls. If the child wants to use dolls, then ask questions in an open-ended, nonleading manner:

Q: "Mary, do you know why you are here?"

A: "Uh-huh." (affirmative)

Q: "Why?"

A: "Frank (the suspect) did bad things to me."

Q: "Can you tell me what he did?"

A: (Silence, looking down to floor, eyes tearing.)

Q: "Would it be easier for you to show me with the dolls?"

A: (Nodding, taking dolls.) "I was here, and he was here" (placing adult doll on top of child doll).

Q: "Where were you when this happened, Mary?"

A: "In the bedroom."

Do not use terminology that suggests fantasy when introducing the dolls.

Because children normally use dolls in play, and because this play often involves fantasy, critics may claim that what the children tell you is the product of fantasy encouraged by you, the interviewer. This can be a particular problem if you use terminology that makes it look as if you are encouraging fantasy. It is therefore unwise to say to the child: "Let's pretend that this girl-doll is you and this man-doll is Frank (name of suspect)." Other words or phrases to avoid: "Imagine," "make believe," "play act," "game," or "let's imagine that."

All pointing, touching, positioning, and describing of sexual acts must be done exclusively by the child. If you do any of these things, you may be accused of suggesting answers to the child. Even if the purpose of the pointing or touching is to confirm what the child said first, you may be accused of coaching. This

Using dolls to interview child victims: Legal concerns and interview procedures

For further reading

For examples of cases concerning civil rights lawsuits involving the prosecutor's investigative function or the use of anatomical dolls, see *Myers v. Morris* 810 F.2d 1437 (8th Cir. 1987), *Pinkney v. Clay County* 635 F.Supp.1079 (D. Minn. 1986), or *Higgs v. District Court (Douglas County)* 713 P.2d 840 (Colo. 1985).

For specific articles about using anatomical dolls, see:

C. Aman and G.S. Goodman. *Children's Use of Anatomically Detailed Dolls: An Experimental Study*. Denver: University of Denver, Department of Psychology. 1987.

B.W. Boat and M.D. Everson. *Using Anatomical Dolls: Guidelines for Interviewing Young Children in Sexual Abuse Investigations*. Chapel Hill: University of North Carolina, Department of Psychiatry. 1986.

K.R. Freeman and T. Estrada-Mullaney. 1987. "Pre-filing Interviews of Young Child Witnesses." In *Prosecutor's Brief*, Spring 1987.

R. Gabriel. "Anatomically Correct Dolls in the Diagnosis of Sexual Abuse of Children." In *The Journal of the Melanie Klein Society*, 3, no. 2. 1985.

J.E.B. Meyers and N.W. Perry. "Demonstrative Evidence as an Aid to Testimony." In *Child Witness Law and Practice*. New York: John Wiley & Sons, 1987.

K.J. Saywitz. "Developmental-Empathic Method of Interviewing Children." In *Family Advocate*. (in press).

P.A. Toth and M.P. Whalen. "Legislative Protections for Children in Criminal Child Abuse Proceedings." In P.A. Toth and M.P. Whalen (eds.), *Investigation and Prosecution of Child Abuse*. Alexandria, Virginia: American Prosecutor Research Institute, 1987.

S. White, G.A. Strom, G. Santilli, B.M. Halpin. "Interviewing Young

Sexual Abuse Victims With Anatomically Correct Dolls." In *Child Abuse and Neglect*, 10, 1984.

S. White, G.A. Strom, G. Santilli. *Clinical Protocol for Interviewing Preschoolers With Sexually Anatomically Correct Dolls*. Cleveland: Case Western Reserve University, School of Medicine, Cleveland Metropolitan General Hospital. 1985.

For general articles on child sexual abuse, see:

A.W. Burgess, A.N. Groth, L.L. Holmstrom, S.M. Sgroi. *Sexual Assault of Children and Adolescents*. Lexington, Mass.: D.C. Heath and Company, 1978. Available from Kids Rights, P.O. Box 851, Mt. Dora, FL 32757. 1-800-892-KIDS. \$14.00.

D. DePanfilis. *Literature Review of Sexual Abuse*, 1986. Available from the Clearinghouse on Child Abuse and Neglect, P.O. Box 1182, Washington, D.C. 20013. Order no. 87-30530. Free.

King County Rape Relief. *He Told Me Not To Tell*, 1979. Available from the National Center for Violence and Antisocial Behavior, 5600 Fishers Lane, Rockville, MD 20852. 301-443-3728. Free.

U.S. Department of Health and Human Services. *Sexual Abuse of Children: Selected Readings*, 1980. Available from the Joseph J. Peters Institute, 260 S. Broad Street, Suite 220, Philadelphia, PA 19102. 215-893-0600. \$20.00 black and white; \$35.00 for color.

D. Whitcomb, E.R. Shapiro, L.D. Stellwagen. *When the Victim Is a Child: Issues for Judges and Prosecutors*, 1985. NCJ 097664. Washington, D.C.: Government Printing Office. Available from the National Institute of Justice/NCJRS, Box 6000, Washington, DC 20850. Free while supply lasts.

D. Whitcomb. "Prosecuting Child Sexual Abuse—New Approaches." In *NIJ Reports*, May 1986. NCJ 102994. Check the order form. Free.

is especially true if the interview was not taped because it may be impossible for the jury to understand the order of the touching.

Avoid positioning the dolls and pointing to or touching the doll's sexual parts when discussing what happened.

Any arranging or touching of the dolls is very difficult to clarify for the jury since you will have to answer "Yes" to the question: "Did you put the dolls in the described sexual position?"

Properly used, dolls serve a useful purpose

Anatomical dolls are just one of the many tools available to criminal justice practitioners. They may not be effective with very young children or with those approaching teenage years. They may be combined with other interviewing techniques like drawing or writing.

Although dolls can be useful in reducing stress, establishing rapport, determining competency, and learning the child's sexual vocabulary, they may also complicate the case. Police and prosecutors should examine carefully the potential problems before proceeding.

If you decide to use anatomical dolls for your interview, select appropriate ones, familiarize yourself with the manufacturer's accompanying manual, and plan the interview in advance.

Used properly, anatomical dolls can be an effective way of helping children explain what happened to them. Used improperly, dolls can block communication, inhibit you from making a proper case filing decision, cause severe case problems, and create the possibility of a civil lawsuit.

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