



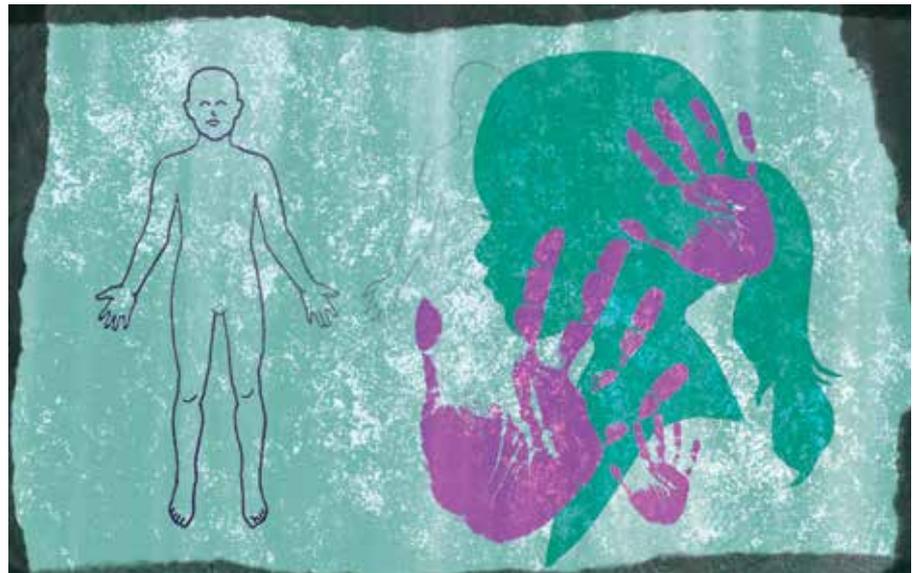
Codifying the Use of Dolls and Diagrams as Testifying Aids for Children in Abuse Cases

A defendant allegedly sexually assaults a minor child. A video recording of the subsequent forensic interview shows the child using an anatomically correct doll or drawings to help convey what happened to her. From an evidentiary perspective does it matter that the child drew pictures of two stick figures, depicting herself and the defendant, to indicate where the defendant touched her? Are the drawings less credible if they were pre-drawn or drawn by someone else and the child pointed or added to the pictures? In general, are drawings less credible than anatomically correct dolls? A comprehensive law review article in 2013¹ discusses broad child interview and protocol questions involving the use of anatomical diagrams, reviews the relevant case law, and highlights some of the controversies regarding evidentiary use of dolls and diagrams.

This article explores a related, narrower question: Should the use of dolls or diagrams as testifying aids in child abuse cases be codified in statute?

Codification of the Use of Dolls and Diagrams

A number of jurisdictions have codified the use of anatomically correct dolls and diagrams in child abuse cases.² According to the National Center for Prosecution of Child Abuse, National District Attorney Association, those that allow the use of both are Missouri,³ New Hampshire,⁴ New Jersey,⁵ New York,⁶ West Virginia,⁷ Puerto Rico,⁸ and the federal government.⁹ Those that



mention only dolls without specifically including diagrams or drawings are Connecticut,¹⁰ Michigan,¹¹ Pennsylvania,¹² and Wyoming.¹³ The absence of codification does not necessarily mean that dolls, diagrams, or drawings are not admissible. Case law may nonetheless permit their admission as evidence.

Statutory law can be only so explicit. Some gaps are filled in by agency or department regulation, some by case law. In 1921, prior to becoming U.S. Supreme Court Justice, Benjamin Cardozo famously wrote, “No doubt the ideal system, if it were attainable, would be a code at once so flexible and so minute, as to supply in advance for every conceivable situation the just and fitting rule. But life is too complex to bring the attainment of this ideal within the compass of human powers.”¹⁴ In theory, so long as they are constitutional, statutes define

the boundaries of judicial decision-making. Still, statutes inevitably require court interpretation in order to be sensibly implemented.

The Legal View from the Trenches

Would codifying the use of dolls and diagrams would be prudent? Arkansas attorney Kevin Hickey thinks not. “The use of dolls in these types of cases is haphazard at best in my experience. The lack of appropriate training in the proper use of the dolls would be the number one problem/issue that I have seen—and this problem is rampant. Further, there is a dearth of appropriately trained forensic interviewers which, combined with the improper use of dolls, can create a forensic interview that is essentially useless as far as trying to determine what may or may

See Testifying on page 34

TESTIFYING continued from page 26

not have happened to a child. I have a hard time believing that codifying the use of dolls will be helpful, primarily due to the fact that the circumstances surrounding the use of the dolls is different on a case-by-case basis. There is simply no way to address each and every fact situation by statute/codification. If I were to put any type of codification in place it would be to prevent the use of dolls because of their highly prejudicial nature.”

California attorney Thomas Cifarelli comments, “I see no reason to implement laws requiring the use of props such as anatomical dolls when it comes to questioning children regarding child sexual abuse allegations. Investigating the validity of sexual abuse claims is crucial to protecting the child, prosecuting an offender, and bringing a successful civil negligence suit for damages. The cornerstone of any investigation of child sexual abuse is the forensic interview of the child. Historically, children often fail to report abuse for a host of reasons, including embarrassment, fear or the desire to protect a loved one, language issues if the child is particularly young, and a failure of memory. Given these

concerns, forensic interviewers and clinicians implemented the use of nonverbal props such as anatomical dolls in the 1980s and 90s to assist during interviews of child victims of abuse. At that time there was not much data on whether they worked. Research conducted since then indicates that while dolls can potentially be helpful in certain circumstances, especially when used together with an experienced interviewer, dolls don’t appear to always help. For example, dolls don’t appear to have much use with young children under the age of five, and there’s research suggesting that dolls tend to inhibit some children from talking no matter their age. More recently, body diagrams have become a more preferred tool for some interviewers to use with certain children. Rather than legislate the use of dolls or diagrams when questioning sex abuse victims, it would appear to make more sense to leave it to the experienced clinicians and forensic interviewers to decide when and if props are necessary on a case-by-case basis.”

Reference Notes

1. Kendrick, E. Morgan. (2013). Diagram debate: The use of anatomical diagrams

- in child sexual abuse cases. *Liberty Law Review*, 8(25), 125-168. Some of the significant cases include *State v. Bowie*, 101 So. 3d 46 (La. Ct. App. 2011); *State v. Michael H.*, 970 A.2d 113 (Conn. 2009); *State v. Johnson*, 57 So. 3d 412 (La. Ct. App. 2011); *State v. Michael H.*, 970 A.2d 113 (Conn. 2009).
2. The National Center for Prosecution of Child Abuse. (November, 2014). *Anatomical Dolls and Diagrams*. Available at http://www.ndaa.org/pdf/Anatomical_Dolls_11_7_2014.pdf
3. MO. REV. STAT. § 492.304 (2014).
4. N.H. Court Rule 93-A (2014).
5. N.J. STAT. ANN. § 2A:84A-16.1 (2014).
6. N.Y. CRIM. PROC. LAW § 60.44 (2014).
7. W. VA. CODE ANN. § 61-8-13 (2014).
8. P.R. LAWS TIT. 34, APP. II § 131.3 (2014).
9. 18. USC. § 3509 (2014).
10. CONN. GEN. STAT. § 54-86g (2014).
11. MICH. COMP. LAWS § 24.275a (2014).
12. 42 PA. CONS. STAT. § 5987 (2014).
13. WYO. STAT. § 7-11-408 (2014).
14. Cardozo, B. N. (1921). *The Nature of the Judicial Process*. New Haven: Yale University Press. Available at http://constitution.org/cmt/cardozo/jud_proc.txt

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UTAH continued from page 28

Division staff. These staff members provide services under programs such as the Workforce Innovation and Opportunity Act, refugee services, Wagner-Peyser, and veterans services. Fifty-six additional training sessions were held throughout the state to help train staff located in Utah’s 31 American Job Centers. Courses included curriculum on family-focused case management, executive functioning, cognitive processes, trauma awareness, and motivational interviewing. Interest in the trauma awareness training grew so strong that Workforce Services opened the trauma awareness training to partners and the public.

Utah’s investment in intensive and iterative training is paying off as the

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culture of service has changed. Utah has seen a change in the way staff serves families. Better relationships have increased communication with program recipients that, in turn, has resulted in increased engagement.

Increased engagement between families and staff has resulted in better employment planning efforts. Improved employment planning efforts have led to increased positive change in families and positive outcomes in helping families to obtain sustainable wages. The change has been most noticeable in families with the most barriers to overcome. Utah continues to use the academy structure to roll out additional skill building for staff and is planning a next phase of skill building for career counseling techniques.

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