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The word 'props' is used here to distinguish these aids from gadgets and technical devices.

Practitioners have long reported that communication props such as paper and pens, dolls and body diagrams can bridge the gap between what children know and understand, and what they can explain in words. The publication of the Memorandum of Good Practice (MOGP) in 1992 supported this notion. Indeed, the MOGP was the first practitioner guidance document to suggest that props could be useful tools to support a vulnerable witness' communication within criminal justice settings. That position still stands today, and is documented within the contemporary police interviewing guidance document, Achieving Best Evidence (ABE, 2011). In addition to police interviewing guidance, section 30 of the Youth Justice and Criminal Evidence Act 1999 makes provision for the use of props within court settings. In this context, the Special Measures direction ('Aids to Communication') states that:

"A Special Measures direction may provide for the witness, while giving evidence (whether by testimony in court or otherwise), to be provided with such a device as the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from."

Reference to the use of communication props is also made in the Criminal Practice Directions 2013 and Criminal Procedure Rules 2015 – both of which apply to vulnerable witness testimony. Thus, it comes as no surprise that intermediaries and police officers report using items such as dolls, body maps and drawings when facilitating communication and gathering evidence from vulnerable witnesses, whether they be children or adults. Such practitioners view them as tools that can 'assist with questioning and clarification' and 'enhance memory'. The advantages and pitfalls of using communication props are well documented within the field of psychology; and ABE 2011 clearly outlines some of these factors. What is unclear is the extent to which practitioners such as police, though aware of the potential of communication props, are also aware of their associated risks if used injudiciously.

Introduction of the Section 28 pilot 2014

In line with contemporary interviewing guidance (ABE, 2011), communication props can be used in criminal justice settings to 'scaffold' witness accounts. In other words, whilst props are not a substitute for verbal testimony, they can support a witness' efforts to communicate detail, enabling them to show and tell rather than just explain in words. Witnesses are also enabled to communicate information that may be embarrassing and/or distressing. For instance, dolls and body maps can provide a means of establishing the particular words that a vulnerable person uses for body parts including sexual organs, once they have attempted their initial account. It is essential that none of the above are used to initiate a disclosure; but they can be valuable for clarifying detail. For example, use of props can help when seeking to clarify body areas that have been touched, but only after information about touch has already been spontaneously reported (Brown, 2011).

Some research has been carried out, in controlled rather than real-life settings, on the recall accuracy of witnesses when dolls and body maps were used to obtain initial accounts or to increase the amount of new information volunteered. For these studies, participants either watched a video or took part in a staged event, after which they were asked ‘non-leading’ questions. The findings based on these criteria were not consistent. By contrast, when dolls and body maps were used in conjunction with leading and/or suggestive questioning, the research demonstrated clearly that a witness’ recall accuracy could be severely compromised.

In light of this research and resulting debate, practitioners have been advised to exercise caution. Such props should **never** be presented as items of play prior to questioning since innocent, spontaneous actions such as removal of clothing from a doll could all too easily be wrongly interpreted as evidence of abuse. More important still, they should **never** be combined with leading/suggestive questioning techniques at interview lest they should elicit inaccurate information.

The consistent benefits achieved using drawing (by vulnerable witnesses themselves) to support communication about what they have seen or experienced, have long been demonstrated in research with little contention. Again when used appropriately, drawing can reduce anxiety, provide the scaffolding for communication and aid memory retrieval. In studies, children who produced a drawing while being appropriately questioned about events, were found to report twice as much (accurate) information as their peers who did not produce a drawing. This is significant because young children often provide only brief accounts when asked open questions (e.g. ‘Tell me what happened . . .’, Salmon, 2001). The positive effects of drawing while recalling information are said to stem from children being better able to use external cues to aid memory retrieval as opposed to using internal cues, something which is more cognitively demanding.

Drawing has also been found to improve the amount and accuracy of information reported by children with autism spectrum disorder, enabling them to perform on a par with their typically developing peers. In Mattison, Dando & Ormerod’s laboratory study (2015), children viewed a video depicting a shop theft and were later interviewed about what they had seen. Some children chose, during their recording, to draw the people from the scene as represented in Figure 1, while others drew and talked about the position of the camera and the location of the road and shop (see Figure 2).

Note that, in order for drawing to support memory retrieval effectively, the witness **must** be the creator of the drawing. Production of drawings by anybody other than the person being questioned (e.g. by an intermediary, police officer or advocate) runs the risk of contaminating a witness’ memory of events and/or inappropriately leading them.

Overall, as with dolls and body maps, the empirical literature is clear that drawing is only beneficial in the justice process when it is used in conjunction with appropriate, non-suggestive questioning. Since this is often contrary to traditional cross-examination styles, the point needs careful explanation in intermediary reports and further discussion at Ground Rules Hearings, with reference to the existence of empirical studies.

What can intermediaries do to ensure appropriate use of communication props?

Intermediaries must be mindful that communication props, whether these be drawings, dolls, body maps or other equipment such as pipe cleaners and wooden mannequins (available from Hobbycraft and other suppliers), can very frequently enable witnesses to recall their best evidence. But, as discussed above, there are clear risks and pitfalls so these must only be used appropriately. ABE Guidelines (2011) are very clear on this matter. The Revised edition, due to be made available online during ABE, further reinforces this advice to make good use of props – but to do so thoughtfully.

To be effective and to minimize risk, intermediaries must first test the efficacy of the prop they are planning to use. This should be undertaken as part of their communication assessment session(s) and prior to facilitating communication at an investigative interview or during trial proceedings. Testing the use of any communication prop must be done on a case-by-case basis, and only explored using neutral ('non-evidential') topics. The intermediary's subsequent notes for discussion with the interviewing officer prior to ABE should also be reflected in the interviewing officer's resulting ABE planning notes. Intermediaries play a valuable role in assisting police when deciding why, when and how props might be used. Likewise, if a case is proceeding to trial, the intermediary report should detail how such communication props were employed during assessment, clearly outlining the rationale as follows:

- why it was necessary to use, or explore using, communication props with this particular witness;
- when such communication props might be useful (e.g. pre-interview, during the ABE or at trial) either to aid preparation or during questioning itself;
- how communication props could or would be introduced and used in either setting.

At court the intermediary must further discuss potential use of props, at the Ground Rules Hearing. The rationale for their use should have been made clear in the court report, with reference to the specific communication needs of the vulnerable person. If some illustrations, of props or pictures drawn during assessment, have been attached to the intermediary report in an Addendum, this can help to facilitate meaningful discussion with judge and counsel. If participants have fully understood what has been recommended and how the props or drawings might be used, fewer challenges should arise during cross-examination. Emphasis of the potential risks of leading or suggestive questions alongside props can be very valuable at Ground Rules Hearings.

The intermediary report and Ground Rules discussions can further assist advocates when they provide the judge and intermediary with a written list of proposed questions, prior to cross-examination. In such cases, the intermediary can advise not only about the appropriate vocabulary and complexity of questions, but also about which particular questions may benefit from the witness' use of a communication prop or drawing to facilitate their response.

If evidence is to be given via live link, the witness will have the opportunity of a pre-trial court familiarization visit. During this visit, when practising answering neutral, non-evidential questions from the court room, they should be given the opportunity to practise using the props that have been recommended. The intermediary must ensure that a table is provided at an appropriate height for the camera and the witness. And if the use of drawing has been

recommended, the intermediary should be mindful about the use of light coloured pens on white paper (for instance, yellow ink is difficult to see on camera). Since it is essential that the potential visibility of props is considered prior to cross-examination, the pre-trial visit also provides the perfect opportunity to test everything out. At trial and with the judge's permission it may help the court, during cross-examination, if the intermediary describes briefly and simply what is being drawn; or they may be asked to hold up the item within easy view of the camera.

So in conclusion, and with no apology for frequent repetition of the message, drawing or use of dolls, body maps and other props by a witness can ALL add value during questioning so long as this is thoughtfully planned and used without leading.

Further information and guidance

Further information about the use of dolls, body maps and drawing in criminal justice settings can be sought from The Advocate's Gateway in Toolkit 14: Using Communication Aids in the Criminal Justice System. This toolkit has been developed by practitioners and researchers and provides practical, evidence based guidance. Further, information is also given about the use of Alternative and Augmentative Communication (AAC) for persons with complex communication needs.

References

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This article highlights the benefits and risks of using communication props such as drawings, dolls, body maps or other equipment to support a vulnerable witness' communication within criminal justice settings.