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# Witnessing without words<sup>1</sup>

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SUSAN BALANDIN

*Centre for Developmental Disability Studies*

## INTRODUCTION

Despite reports that people, particularly women, with a disability are at greater risk of abuse than their non disabled peers (Sobsey, 1994; Tamura & Webber, 1992), there are few records of individuals with severe communication impairment (SCI) appearing in court. SCI is defined as occurring when speech is temporarily or permanently inadequate to meet all the individual's communication needs, and the inability to speak is not due primarily to a hearing impairment. (ASHA, 1991) Thus, individuals with disabilities who cannot speak because of a severe congenital physical disability (e.g., cerebral palsy), acquired disability (e.g., motor neurone disease), or temporary loss of speech (e.g., post surgery, or trauma to the larynx) have SCI. In addition, some individuals with an intellectual disability may also have SCI. The reported incidence of SCI varies from 0.12% of the population (Bloomberg & Johnson, 1990) to 0.2-0.6% (Beukelman & Mirenda, 1998). There is also some suggestion that the incidence of SCI increases with age and may affect as many as 4.2% of the population over 85 years (Hirdes, Ellis-Hale, & Pearson Hirdes, 1993)

Individuals who have SCI may use an augmentative or alternative communication (AAC) system to communicate. Such systems may be unaided (e.g., sign) or aided (e.g., communication boards, letter boards, computers or voice output communication aids [VOCAs]). These systems can be accessed directly by the user (e.g., by pointing, eye gaze, or pressing keys) or may be accessed indirectly (e.g., by use of a switch to scan the system). Many AAC users require assistance from a natural speaking communication partner to help encode the message and to clarify that the listener understands the

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<sup>1</sup>Address for correspondence: Susan Balandin, PhD, Centre for Developmental Disability Studies, PO Box 6, Ryde NSW 1680

message correctly (Balandin, 1993; Light & Binger, 1998). In this paper, AAC does not include facilitated communication where a facilitator physically supports the communicator to access a keyboard (Crossley, 1991). There has been controversy over this method of communication (Beukelman & Mirenda, 1998) and further discussion is beyond the scope of this paper.

Communication systems that support everyday interaction at home and in the community may not support communication in unusual or highly specific situations such as an interview with the police or in court. For example augmentative communication systems (e.g., word boards, letter boards, symbol books) may not contain the vocabulary required to report an incident to the police or to answer questions under cross examination in court. In addition, individuals who use more sophisticated communication systems (e.g., electronic systems) may experience difficulty and fatigue when using the system in high stress situations (e.g., court). The use of an AAC system may prejudice the natural speaking partner (i.e., the person who is able to use his/her own speech) who is unfamiliar with AAC systems. Augmented communicators complain that people shout at them as though they were deaf or of being treated as if they have an intellectual disability. They also note that natural speakers frequently address comments to the support person rather than to the augmented communicator (Huer & Lloyd, 1990). There are many anecdotal reports of police treating the AAC user differently from other members of the public. There is also a belief that an AAC user cannot appear in court and make a reliable testimony (Borthwick, 1998; Tamura & Webber, 1992). Use of an AAC system does not in itself indicate a severe intellectual disability or a language disorder. However, courts have a tradition of oral argument. Thus, despite the fact that sign language is now accepted as a valid language for individuals who are deaf, anyone who cannot speak may be thought to have a cognitive impairment (Borthwick, 1998). Therefore, although the use of AAC should not prevent the user from reporting an incident to the police or appearing in court, to date there are few cases reported where an AAC user has been involved in legal proceedings.

Borthwick (1998) suggested that those with SCI are either not taken seriously when they make a complaint, or are not able to complain as they do not have a communication system to facilitate this. Consequently, individuals with SCI may be targets for abuse, as they are perceived as not being able to tell anyone about the incident. In addition, the augmented communicator may be unable to report events he or she witnessed or in which he/she was involved because the communication partners (e.g., police) have no understanding or knowledge of how to communicate using an AAC system. Low incidence of report may also be due to a lack of a communication system deemed suitable by carers, support workers or police. Alternatively, the augmented communication may not be accepted as a valid form of communication, particularly if the augmented communicator requires some assistance to utilise the system. Borthwick (1998) also noted that to date there are no

principles to guide the use of non-speech communication systems in court.

There are a number of issues that mitigate against the successful use of an augmentative communication system in novel high stress communicative contexts. These situations would include dealings with the police or appearing in court. The natural speaking partner in these situations must be prepared to take an active role in the communicative interaction and to be flexible about how the interaction takes place. What follows is a brief summary of some of the main issues that impact on augmented communication in a legal context and some strategies that may assist in ensuring a successful communicative exchange.

### **ASSISTANCE FROM THE COMMUNICATION PARTNER**

Many augmented communicators require the communication partner to be actively involved in the communicative interaction. This participation can range from simply writing down the letters that the augmented communication points out on a letter board and then reading out the words, to assisting in row column scanning of symbols on a board. Many augmented communicators also use vocalisations that may need to be interpreted at least initially until listeners are familiar with the sounds and what they mean. Borthwick (1998) noted that unless lawyers are able to agree on an acceptable assistant and level of assistance, the augmented communicator might not be able to give evidence. Assistants who are supporting an augmented communicator in court must be trained. They need to understand exactly what their role is and what assistance they may offer. Similarly, the judge and lawyers must also understand how the AAC system is used and the interaction managed. Checking back for clarification of the message is a common strategy in an AAC interaction. In addition, augmented communicators frequently make use of single word utterances, represented by a symbol on a board and then it is up to the communication partner to clarify the meaning of the utterance by a series of questions. This may cause problems in court and both lawyers and assistants in conjunction with the augmented communicator must have an opportunity to discuss this practice and whether it is acceptable within court or not. Of course, lawyers and judges can converse with the augmented communicator without an assistant, but may have to move close to the augmented communicator. Communication partners also need to practise active listening.

### **ACTIVE LISTENING**

Communication is a two way process. In any communicative interaction both parties are usually listener and communicator. The turn taking nature of a communicative interaction can be likened to a partnership. In an augmented communication interaction, the listener is forced to take an active responsibility for the success of the interaction. Communication partners who are

unfamiliar with the augmented communicator or the system will find it helpful to ask if the augmented communicator has any specific instructions that will assist the natural speaking partner and ensure that the interaction proceeds as smoothly and quickly as possible.

It is important that the natural speaker allows the augmented communicator enough time to compose the message and respond (Balandin, 1993; Light & Binger, 1998; Segalman, 1992). A waiting period of 10 seconds is considered a minimum waiting time for a response (Light, Datillo, English, Gutierrez, & Hartz, 1992). Slow response does not indicate a lack of knowledge or understanding, but rather is related to the effort required to organise the motor skills needed to access the system. Individuals with a severe physical disability may experience difficulty in accessing the AAC system accurately (e.g., always pressing the desired key or applying appropriate pressure to a switch). Moreover, stress or fatigue impact on motor ability and are likely to increase problems with access and accuracy. Thus, it is important for the listener to remain relaxed and not to put more pressure on the augmented communicator by showing signs of impatience, bombarding him/her with additional questions or appearing to lose interest.

Segalman (1992), himself an augmented communicator, noted that it is disconcerting if the listener appears to lose interest in the conversation (e.g., walks away or starts to hum). Loss of interest devalues the AAC user and interrupts the flow of the communicative interaction. Furthermore, it is both discourteous and confusing if the natural speaker conducts an additional conversation during waiting periods (Balandin, 1993; Segalman, 1992). Active listeners remain engaged in the interaction, seek clarification and allow plenty of time for a response.

In some situations the listener may anticipate what the augmented communicator is about to say. Some augmented communicators prefer the listener to finish the utterance, others resent this. It is important to ascertain whether the augmented communicator likes to be interrupted in this way or not. If the augmented communicator is happy to have utterances completed by the listener, it is vital to check that the interpretation is correct before proceeding with the next part of the interaction. Many symbol board users do not have access to phrases that quickly repair an interaction (e.g., that is not what I meant, try again, ask me more questions) and this can lead to confusion and miscommunication (Balandin, 1994; Balandin & Iacono, 1993).

## **COMMUNICATION SYSTEM**

There are many different types of AAC systems and each system is customised for the user. Communication partners need to understand how to use the system. If the augmented communicator cannot explain, there are usually instructions on the systems (e.g., point to each column, I will blink my eyes when you point to the column that contains the symbol I need. Then point to each symbol in that column. I will blink when you point to the correct symbol).

It is important never to pretend to understand the augmented communicator's message or to become irritated with the augmented communicator because of communication breakdowns. Often a person who is familiar with the augmented communicator can assist.

## **VOCABULARY**

Augmented communicators who rely on symbols rather than spelling for communication may not have the specialised vocabulary needed for an interview with the police or to appear in court. This vocabulary can be developed and put on the system on a topic board and the augmented communicator can then learn to use it. However, lack of appropriate vocabulary should not be confused with inability to communicate because of a lack of understanding. Some attempts have been made to develop specific symbols to assist augmented communicators and people with an intellectual disability understand and use the legal system (Prem-Stein & Clemios, 1996). Augmented communicators may find it useful to meet with a solicitor or someone with knowledge of the legal system who can explain any vocabulary that is context specific. The augmented communicator can then ensure that the necessary vocabulary is not only understood but also available for use.

## **QUESTIONING**

Questioning often forms a major component of any augmented communicative interaction. Natural speakers must remember that augmented communicators, particularly symbol board users, find it much easier and quicker to answer one question at a time. Closed questions (i.e., ones that require a yes/no answer) are frequently employed. Use of closed questions is a quick method of gaining information but is very limiting. The use of leading questions and the natural speaker's ability to control a conversation through the use of questions is a major problem for all augmented communicators (Farrier, Yorkston, Marriner, & Beukelman, 1985). It also poses problems in court, particularly when the augmented communicator tends to rely on single word utterances. Those posing questions may need to be creative in their use of questions to ensure that the augmented communicator has the opportunity to expand on themes if necessary and has the time to answer questions fully.

## **COMMUNICATION RATE AND FATIGUE**

The rate of any augmented communicator's message delivery is extremely slow (Balandin, 1994; Merchen, 1990; Vanderheiden & Kelso, 1987). A natural speaker speaks approximately 175-250 words a minute. A skilled augmented communicator may manage 10-15 words a minute. This can be very frustrating for all participants in the communicative interaction. This lack of speed results in the use of single word utterances, vocalisations and undue

reliance on closed questions in an attempt to speed up the interaction. Lack of speed does not indicate lack of intellectual or language ability. Usually, the greater the degree of physical disability, the slower the speed of communication. Communicating using an AAC system can be extremely tiring and many augmented communicators are unable to maintain long conversations without some rest. Similarly, the active listening required is also fatiguing and communication partners may also need time to rest rather than risk asking the augmented communicator to say the whole message again because the listener "switched off" and missed a part of the message. Prolonged communication in court or at a police station, coupled with anxiety can be very fatiguing. Such fatigue can result in increased physical problems (e.g., increased spasticity and extension in people with cerebral palsy) that impact on the augmented communicator's ability to access the system accurately. Regular breaks, possibly every 15 minutes will help minimise fatigue. Medication may also cause fatigue or drowsiness. Some people experience drowsiness after taking medication. It may be wise to attempt to schedule court appearances in the morning when individuals are rested. It is also important to ask about medication and the likely affects on the individuals immediately before or after taking medication.

## **STRESS**

Stress, like fatigue can exacerbate the effects of a physical disability and make communication more difficult. Given the lack of court appearance by augmented communicators, it can be argued that few augmented communicators are likely to have been inside a court or even a police station. It may be helpful if the augmented communicator can attend the police station or court with a support person. It may also be helpful if they can visit the building (e.g., the court) before they have to appear. This enables the augmented communicator not only to become familiar with the surroundings but also enables him/her to check that lifts, toilets and telephones are accessible and to ensure that the building itself is accessible. Such visits may help reduce the anxiety and stresses experienced by the augmented communicator and thus assist ease of communication.

## **SEATING AND LIGHTING**

Natural speakers conversing with augmented communicators may need to be able to see the communication system in order to see the symbols or letters indicated. This means that the communication partner may need to sit beside or in front of the augmented communicator. In addition, as noted, the natural speaker may also need to check that the message is being interpreted correctly. Thus the lawyer or judge may need to move beside the augmented communicator and there must be space for this to happen. Similarly, police should remember that the very nature of a police interview might be stressful.

This stress may be exacerbated if the police person stands behind the augmented communicator looking down on the system. It is more comfortable for all concerned if the natural speaking communication partner sits beside or in front of the augmented communicator so that both can see the system and also make eye contact. Augmented communicators use nonverbal communication (e.g., facial expression) as do natural speakers and it is important to see this. However, a word of caution. Individuals with SCI may not be able to control their facial expressions and communication partners may need to ask if they are interpreting facial expression or voice tone correctly.

Communication aids that have voice output are suitable for use in a one to one situation but the voice may not be loud enough to be heard in a large room or by a number of people. Turning up the volume often distorts the sound. A microphone positioned near to the speaker of the VOCA is usually required in such situations. It is not always possible to position a microphone on a wheelchair tray so a microphone that can be adjusted in height on a stand or even a hand held microphone may be needed. The sounds produced by such devices may initially be difficult to understand but after a few minutes, as the listener becomes familiar with the voice, it often becomes easier to understand.

It is also important that the augmented communicator can see the communication system. Bright light or shiny surfaces may cause reflection that makes the system difficult to see. It is important to check that the augmented communicator is seated to maximise good light and minimise glare.

## **SUMMARY**

To date there are few reports of augmented communicators appearing in court, yet there are many anecdotal reports of augmented communicators expressing frustration at their inability to successfully communicate with police or act as witnesses in legal proceedings. Augmented communicators are more at risk for abuse than natural speakers in the community (Tamura & Webber, 1992). Abuse aside, they have presumably the same likelihood of needing to go to the police or to court as any other citizen. However, there are a few cases where AAC has been used successfully in court (L. Joosten, personal communication, December 12, 1998). In these successful cases, a number of accommodations enabled the augmented communicator to go to the police and subsequently act as a witness. All those involved in an augmentative communication interaction need to modify their communication style and be flexible in arrangements that will facilitate the interaction. Prejudice that discriminates against augmented communicators must be overcome. Despite problems with rate and access, AAC must be recognised as valid communication. Only when this occurs will augmented communicators be able to exercise the same legal rights as any other citizen.

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