

University of Southern California Law

From the Selected Works of Thomas D. Lyon

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7. The Supreme Court and reluctant witnesses: Crawford v. Washington.

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Section on Child Maltreatment Newsletter

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News from the President

The Supreme Court and Reluctant Witnesses: Crawford v. Washington

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A recent U.S. Supreme Court case is sure to have a major impact on the prosecution of family violence cases in which the victim fails to testify at trial. A number of states have special hearsay exceptions for statements from victims of spouse abuse and child abuse. Those exceptions often allow the statements into evidence even when the victim does not testify (usually with additional requirements, such as corroborative evidence or a finding that the statement has “indicia of reliability”). The U.S. Supreme Court has recently held that if the victim does not testify, “testimonial” hearsay is inadmissible unless the defendant had an opportunity to cross-examine the victim, regardless of the quality of the statement. Without this opportunity to cross-examine, the defendant’s Sixth Amendment right to confront witnesses against him is violated. What counts as “testimonial” is somewhat unclear—it definitely includes formal statements made to the police at the stationhouse, but whether it includes, for example, 911 calls or police interviews at the scene of the crime has not been determined. I believe it is likely to include police and social work interviews with child witnesses taken before trial. Because the rule will bar out-of-court statements regardless of the quality of the statement, it won’t matter if the interview was videotaped, if the questions were open-ended, or if the child’s report was clear and elaborated. If the child doesn’t testify, then the statement will be inadmissible.

There are lots of reasons why abuse victims fail to testify. The reason for their failure will be extremely important in applying the rule. If a child fails to qualify as testimonially competent, it is difficult to see how the statement can be admitted, though the courts might find that some children are too young to make “testimonial” statements, if they define testimonial in terms of the child’s appreciation of how his or her statement will be used. If a victim refuses to testify, then the reasons for his or her refusal will matter. Simple fear of testifying is likely to be insufficient. Alternative methods for presenting testimony (such as through closed-circuit

television) might become more common, though prosecutors have been very slow to push for these techniques in the United States, and they are often prohibitively expensive and administratively cumbersome. Simpler methods for reducing victims’ fears will be needed, such as support persons and court education programs for children. If the victim is afraid because of the defendant, then it will be possible to argue that the defendant waived his confrontation rights by intimidation. Here, the challenge will be in proving the relation between the victim’s fear and the defendant’s actions. Ironically, the victim’s statements will be the most

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important proof of why the victim refuses to testify. It is also likely that courts will consider expert testimony regarding the effects of abuse on abuse victims’ willingness to come forward.

Psychologists interested in the effects of family violence on victims and in the reliability of testimony will want to keep abreast of future case law interpreting Crawford. There will be innumerable opportunities for practitioners and researchers to offer input.

APA conference

Don’t overlook the notices regarding the awards we’d like to present at the conference this year, including the Undergraduate Research Award, the Dissertation Award, and the Early Career Award for Outstanding Contributions to Practice. We need to receive all nominations by June 15.

Our conference program chair Angela Crossman has worked with the Division’s program chair Arthur Jones in putting together an excellent program. I’d like to highlight a few presentations that will be of special interest to child maltreatment practitioners and researchers. We’ll have a Division/Section reception on Wednesday afternoon at the Ala Moana Hotel across the street from the Convention Center. There will be symposia on “Trauma assessment and intervention with culturally diverse women and children,” chaired by Sandra Graham-Berman (Michigan); parent-child interaction therapy, chaired by Katherine Elliott (UC-Davis); child witnesses, chaired by Angela Crossman (John Jay) and Victoria Talwar (USC); and improving the community response to child abuse victims, chaired by Lisa Jones (UNH) and Ted Cross (Brandeis). Research on child maltreatment will be at the Poster session on Friday at noon. My presidential address will be Saturday at noon, and I’ll discuss current controversies in interviewing children about violence and abuse. Watch the Section webpage for further information; we’ll be posting places and times soon (just Google “Section on Child Maltreatment”).

ABA/APA Conference on Children and the Law

The Section continues working with the American Bar Association and other representatives of the American Psychological Association in planning for the ABA’s Children and the Law Conference, scheduled for June 3-5, at the Hyatt Regency Capitol Hill in Washington, D.C.

The conference presents an excellent opportunity for child maltreatment experts to reach lawyers and other professionals working in the dependency and family courts. We’ve successfully recruited Lisa Jones (University of New Hampshire) and Matt Fraidin (Legal Director of the Children’s Law Center in Washington DC) to team up to talk about the negative effects of the court process on children and how they may be alleviated. Michael Lamb of the National Institute of Child Health and Development (NICHD) has accepted an invitation to give two presentations on interviewing children and on suggestibility, and Brenda Jones-Harden (University of Maryland) has agreed to co-present in a session on Legal and Psychological Issues in Substitute Care. Sharon Portwood (U Missouri Kansas City), our President-Elect, and I will both be helping with sessions on the overlap between domestic violence and child abuse. If you would like more information about the conference, check out <http://www.abanet.org/child/conference2004.html>. And please let me know if you’d like to help with organization at the conference (I’ve received several letters of interest already, and am referring people to the organizers—thank you!).

APSAC Annual Colloquium

The Section also continues to work with the American Professional Society on the Abuse of Children in sponsoring a day-long training on research-based forensic interviewing of maltreated children at the APSAC annual conference, scheduled for August 4-7 in Hollywood, California. We’ve confirmed Yael Orbach of the National Institute of Child Health and Development, who will present the research on protocol interviewing, and Heather Stewart of the Children’s Justice Center in Salt Lake City, Utah, who will talk about issues regarding training, organizational support, and potential obstacles to implementation of protocol interviewing. For more information about the conference: <http://www.apsac.org/>

Other Conferences

We’re currently talking to the folks who organize the annual San Diego conference on child maltreatment about the possibility of co-sponsoring their conference by providing speakers. In sum, the Section is actively pursuing participation in a wide variety of venues as a means of both spreading the word and in encouraging professionals from various disciplines to consider membership. Let me know if you are involved in other conferences that might benefit from Section co-sponsorship, tlyon@law.usc.edu.