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LEGAL NEWS

SUPREME COURT DECIDES TWO IMPORTANT CHILD ABUSE CASES

—by John E.B. Myers

On June 27, 1990, the U.S. Supreme Court decided two important child abuse cases in ways professionals who work with abused children can feel good about: one case dealt with children's statements during interviews, and the other with the constitutionality of allowing traumatized children to testify via closed circuit television.

The first case, *Idaho vs. Wright*, spurred APSAC to file an *amicus* brief with the court (see Spring, 1990, *Advisor*, p. 1). This case concerned the admissibility in court of children's statements to interviewers such as CPS workers, physicians, police officers, and mental health professionals. The Idaho court overturned a conviction of child sexual abuse because it was based on statements a 1-1/2-year-old child made to a physician who (1) did not videotape the interview, (2) asked leading questions, and (3) knew prior to the interview that the child might have been sexually abused.

The Idaho court's decision was frightening because it seemed to create a broad rule that nothing children say during interviews is reliable unless the interview is videotaped and the interviewer is ignorant of the reason for the interview and asks no leading questions. If the U.S. Supreme Court had upheld the procedural requirements maintained by the Idaho court, they would have applied in all states, leading to the exclusion of a tremendous amount of reliable hearsay evidence in child abuse prosecutions nationwide.

APSAC acted quickly and filed a "friend of the court" brief (signed as well by the AMA, NOW, the American Academy of Pediatrics, the National Association of Counsel for Children, the State of Rhode Island Office of the Child Advocate, and the Support Center for Child Advocates) that seems to have had a positive influence on the outcome of this case. Using language that appears to derive from APSAC's brief, the Supreme Court stated that hearsay statements "made by children regarding sexual abuse arise in a wide variety of circumstances, and we do not believe the Constitution imposes a fixed set of procedural prerequisites to the admission of such statements at trial. The procedural requirements identified by the [Idaho court], to the extent regarded as conditions precedent to the admission of child hearsay statements in sexual abuse cases, may in many instances be inappropriate or unnecessary to a determination whether a given statement is sufficiently trustworthy" to be admitted in evidence. The Court went on to write that, "We decline to read into the [Constitution] a preconceived and artificial litmus test for the procedural propriety of professional interviews in which children make hearsay statements."

The bottom line of the *Wright* decision is that professionals can continue to talk to children. Videotaping is often appropriate, but the Supreme Court recognized that children's statements don't have to be videotaped to be reliable.

Furthermore, while leading and suggestive questions should be used sparingly, there are cogent developmental and psychological reasons for selective use of directive and, at times, even leading questions with sexually abused children. The Supreme Court did not mention the Idaho court's concern about interviewer knowledge of the reason for the interview, but the prevailing practice of proceeding with full information can continue after the Wright decision. (For further information, see the Spring, 1990, issue of *The Advisor*, which is dedicated to interviewing issues.)

The Wright decision reemphasizes the importance of carefully documenting every aspect of the interview situation. Interviewers should preserve a record of exactly what children say and exactly what questions elicit children's reponses. In particular, interviewers should document children's mental and emotional state while disclosing abuse. Interviewers should also determine whether children or adults have reason to fabricate allegations of abuse. In the end, the ability to use children's statements describing abuse often hinges on how well interviews are conducted and documented. (For further information on hearsay evidence and the importance of documentation see "Preserving verbal evidence of child abuse" in *The Advisor*, V.2, n.2.)

In the second case, *Maryland vs. Craig*, the U.S. Supreme Court upheld the constitutionality of allowing selected children to testify via closed circuit television so that traumatized children do not have to face the defendant. In criminal trials, the Constitution provides that "the accused shall enjoy the right . . . to be confronted with the witnesses against him." In *Craig*, the Supreme Court held that although the right to confront one's acusers is very important, it is not absolute.

If the trial judge determines after a hearing that a particular child would be traumatized by face-to-face confrontation with the defendant, the judge may authorize televised testimony in which the child testifies from another room. The judge may not dispense with face-to-face confrontation on the generalized assumption that testifying is traumatic for all children. There

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NEWS

APSAC ESTABLISHES A PSYCHOLOGICAL MALTREATMENT TASK FORCE

—by Stuart N. Hart

During its January 1990 meeting, APSAC's Executive Committe established a task force on psychological maltreatment. The decision reflects the growing interest in the topic among child abuse and neglect specialists, and recognizes that important relationships exist between psychological and other forms of maltreatment.

NCCAN's second incidence study (1988), applying very conservative standards, found psychological maltreatment to represent a much larger portion of total child maltreatment in 1986 than was reported to CPS. Experts generally agree that psychological maltreatment almost always accompanies other forms of child abuse and neglect; is more prevalent than other forms of maltreatment; and is often more destructive in its impact on the lives of its victims (Brassard, Germain, and Hart, 1987; Egeland, Sroufe, and Erickson, 1983; Garbarino, Guttman, and Seeley, 1986).

Present evidence suggests that psychological maltreatment is inherent in all maltreatment (Erickson and Egeland, 1987); that sexual abuse is primarily psychological maltreatment (Brassard and McNeil, 1987; Hart and Brassard, 1990b); and that the psychological maltreatment associated with physical abuse, not the severity of the physical abuse, predicts the behavioral delays and developmental disorders which follow physical abuse (Claussen and Crittenden, in press).

From the beginning of our nation's involvement in child welfare, professionals have been concerned about psychological damage to maltreated children. But the quantity and quality of social services devoted to psychological maltreatment have been low (Hart and Brassard, 1990a,b). The major impediment to effective handling of psychological maltreatment has been the lack of operational definitions. One Federal statute on child abuse and neglect, Public Law 91-247, uses the term "mental injury" but fails to define it. Although a number of states have written standards for casework with emotional abuse, all have failed to provide adequate definitions for identification and assessment (Corson and Davidson, 1987). Research surveying expert opinion has identified the need for operational definitions as a first priority issue for advancing work in psychological maltreatment (Turgi, 1989).

Recently, a generic definition (Hart and Brassard, 1987) and operational definitions, decision-making standards, and associated instrumentation have been developed to guide the assessment of the presence and severity of psychological maltreatment (Claussen and Crittenden, in press; Hart and Brassard, 1986, 1990a). These measures and procedures are sufficiently well developed to provide direction for researchers and direct service personnel interested in assessing and studying psychological maltreatment (Crittenden and Hart, 1989).

These new developments and the encouragement provided by national centers (DHHS, 1990; NCPCA, 1987) have energized researchers and practitioners concerned with psychological maltreatment. The APSAC Executive Committee envisions coordination and cooperation between professionals that can be instrumental in producing new advances.

APSAC's Psychological Maltreatment Task Force (PMTF) is co-chaired by Stuart Hart and Marla Brassard (Directors of the Office for the Study of the Psychological Rights of the Child at Indiana University - Purdue University and the University of Massachusetts at Amherst, respectively). Membership on the PMTF is open to all interested APSAC members.

During 1990 and 1991, the PMTF will develop its priorities for the next three to five years of operation. Among the objectives to be considered are the following: (1) Conduct a national research symposium to clarify the present state of knowledge and produce an agenda and collaborations for research within and across maltreatment forms. (2) Produce and conduct training seminars on definitional issues, instrumentation, and assessment. (3) Produce, publish, and distribute written guides or training materials for recognizing, assessing, reporting, and treating psychological maltreatment.

PMTF business will initially be conducted by mail, telephone and telefax. Meetings of the PMTF will be conducted at each of the national meetings of APSAC. During the next year, meetings are planned to take place during the January (San Diego) and March (Huntsville, Alabama) APSAC national conferences. Invitations and reminders will be published in the newsletter and sent to those who have indicated an interest. Those interested in working with PMTF should contact Stuart Hart (OSPRC, School of Education, IUPUI, 902 W. New York St., Indianapolis IN 46202-5155. 317-274-6801 [w]; 317-255-5584 [h]; 317-274-0492 [FAX]; INDYCMSIMQM 100 [BITNET]).

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must be solid evidence, which goes beyond mere speculation, that a particular child would be traumatized.

How traumatic must testifying be to dispense with a defendant's right to confront his accuser? The Supreme Court did not decide this question. The Court did state that at a minimum, "the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimis*, i.e., more than 'mere nervousness or excitement or some reluctance to testify'." The Supreme Court emphasized that one important consideration is whether face-to-face confrontation would undermine a child's ability to communicate effectively in court. The Supreme Court noted that the Maryland statute, which requires serious emotional distress that would interfere with effective testimony, is sufficient. In the final analysis, the difficult task of determining how much trauma is required to dispense with face-to-face confrontation is left to state courts. Generally speaking, state courts require a fairly high showing of trauma to the child before they are willing to deprive a defendant of the right to face-to-face confrontation.

The decisions in *Wright* and *Craig* further the legal effort to protect abused children. The U.S. Supreme Court was good to children this year.

John E.B. Myers, JD, is Executive and Legal Editor of The Advisor.