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IN THIS ISSUE

Three Perspectives on *Crawford v. Washington*

Erna Olafson, PhD, PsyD, Editor in Chief

In *Crawford v. Washington* on March 8, 2004, the U.S. Supreme Court altered prior interpretations of the Confrontation Clause of the Sixth Amendment to the U.S. Constitution. The three papers in this issue of the *Advisor* offer diverse views of the effects this watershed decision will have on the admissibility of children's hearsay statements.

Keeping the Balance True: Admitting Child Hearsay in the Wake of *Crawford v. Washington*

Victor I. Vieth, JD

Although *Crawford* is a watershed Sixth Amendment case, it may not impact most child abuse cases. It applies only to criminal prosecutions in which the child does not testify. In most states, child hearsay statements are permitted in civil child protection proceedings. Because child forensic interviews are not primarily for the purpose of criminal litigation but serve multiple other purposes, it can be argued that these interviews are not primarily "testimonial." Finally, since many child abuse victims are unavailable for trial *because* of the abuse, these offenders may have forfeited their right to confront the children they have harmed.

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Crawford v. Washington—Charting New Territory Under the Confrontation Clause: Implications for Child Abuse Litigation

John E. B. Myers, JD

It is important to note what *Crawford* did not do. If the person who made the hearsay statement testifies, the Confrontation Clause is satisfied and poses no barrier to admissibility. *Crawford* does not apply in civil cases. The Confrontation Clause is not applicable when the defendant offers hearsay against the prosecution. *Crawford* applies when out-of-court statements are "testimonial." Thus the critical question becomes When is hearsay "testimonial"? Although the answer will be determined case by case, it could be argued that not all hearsay statements in response to police questioning should be testimonial. However, given the overriding forensic purpose of Child Advocacy Center interviews, courts are likely to conclude that CAC interviews are testimonial. Hearsay statements to medical personnel for diagnosis and treatment should not be testimonial.

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Reasonable Efforts: Using the *Crawford v. Washington* "Forfeiture by Wrongdoing" Confrontation Clause Exception in Child Abuse Cases

Tom Harbinson, JD

In *Crawford,* the U.S. Supreme Court acknowledges a "Forfeiture by Wrongdoing" exception to the Confrontation Clause of the Sixth Amendment. This exception should allow prosecutors to get a significant number of children's out-of-court statements admitted in child abuse cases. The "Forfeiture by Wrongdoing" exception should apply if the accused has procured the child's unavailability to testify by persuading or bribing the child; by threatening the child, the child's family, or pets; by traumatizing the child; or by using others to procure the child's unavailability. This exception is based on the maxim that no one should be permitted to take advantage of his own wrongdoing.

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REGULAR FEATURES

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Keeping the Balance True: Admitting Child Hearsay in the Wake of *Crawford v. Washington*

Victor I. Vieth, JD[1]

"But justice, though due the accused, is due the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." —Justice Benjamin N. Cardozo [2]

Introduction

In a decision widely characterized as "highly favorable" to criminal defendants,[3] the U.S. Supreme Court has interpreted the Sixth Amendment Confrontation Clause[4] in such a manner as to undermine the ability of prosecutors to admit child hearsay statements when the child is unavailable for testimony.

In *Crawford v. Washington,*[5] the U.S. Supreme Court held that when hearsay statements of an unavailable witness are "testimonial," the Sixth Amendment requires that the accused be afforded a prior opportunity to cross-examine the witness.

Crawford overrules the decision in *Ohio v. Roberts,*[6] in which the Supreme Court found that the admission of hearsay statements could withstand a Confrontation Clause challenge if the statement bears adequate "indicia of reliability."[7] Reliability was inferred if the statement fell within a "firmly rooted" exception to the hearsay rule.[8]

The decision in *Crawford* also calls into question the Court's decision in *Idaho v. Wright,*[9] which relied on the *Roberts* analysis in ruling that child hearsay statements admitted under residual exceptions to the hearsay rule could withstand a challenge under the Confrontation Clause if the witness is unavailable and the statements have "particularized guarantees of trustworthiness," which is shown from "the totality of the circumstances" surrounding the making of the statement.[10]

Cases to Which *Crawford* Does Not Apply

Although *Crawford* is a watershed decision, it may not impact most child abuse cases. Specifically, the case does not apply to the following:

Civil child protection proceedings. The Confrontation Clause applies to "criminal prosecutions."[11] In most states, child hearsay statements are admitted in civil child protection proceedings under both firmly rooted and residual exceptions to the hearsay rule.[12] Although the due process clause of the Fourteenth Amendment accords parents a right to confront accusatory witnesses, confrontation rights under the due process clause "are not as extensive as rights guaranteed by the Sixth Amendment."[13] Accordingly, states should be permitted to admit child hearsay statements in civil child protection trials without regard to whether the prior statements were "testimonial."

Criminal proceedings in which the child will testify. The Court in *Crawford* specifically stated that "when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements."[14] Accordingly, in any criminal child abuse case in which the child testifies, the child's hearsay statements may be admitted under firmly rooted or residual exceptions even if the prior statements were "testimonial."

Cases to Which *Crawford* Does Apply: Defining 'Testimonial' Statements

In a criminal case of child abuse in which the child is unavailable to testify, *Crawford* bars the admission of hearsay statements that are "testimonial" unless the defendant was afforded an opportunity of prior cross-examination of the witness. Unfortunately, the *Crawford* Court chose to "leave for another day any effort to spell out a comprehensive definition of 'testimonial.'"[15]

The Court did, however, provide some clues as to hearsay statements that will be deemed "testimonial." The Court cited an 1828 Webster's dictionary definition of *testimony* as being a "solemn declaration or affirmation made for the purpose of establishing or proving some fact."[16] The Court went on to explain that an "accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not."[17]

The Court also gave specific examples of statements that are testimonial. The Court cited "extrajudicial statements…contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions."[18] The Court also suggested testimonial statements include those "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial."[19] In applying these definitions, the Court said statements "taken by police officers in the course of interrogations are also testimonial under even a narrow standard. Police interrogations bear a striking resemblance to examinations by justices of the peace in England. The statements are not sworn testimony, but the absence of oath was not dispositive."[20]

Crawford's Applicability to Firmly Rooted Hearsay Exceptions

Crawford may apply to child statements admitted under firmly rooted hearsay exceptions, such as excited utterances or statements for purposes of medical diagnosis. Indeed, the Court specifically referenced *White v. Illinois*,[21] a case in which child hearsay statements were admitted under these very exceptions, and questioned whether the statements admitted in *White* could survive the Court's new Confrontation Clause analysis.[22]

Whether or not *Crawford* applies in a given case depends on the circumstances surrounding the statement. A child blurting out a statement to a parent, teacher, or friend is likely making a "casual remark" and thus is not appreciative that the statement might be available at a trial. Statements made to a doctor may be viewed, if anything, as statements for purposes of treatment and not for trial. If so, the statements should be admissible under traditional hearsay rules even if the child does not testify.

The issue becomes more complex if the child's statement is made to a government official, such as a police officer. *Crawford* specifically called into question the excited utterances made to a police officer in *White v. Illinois* that were in response to questioning.[23] Keep in mind, though, that this language in *Crawford* is merely dicta. Prosecutors must be prepared to argue in future cases that a particular

child did not appreciate that his statements would be used for testimonial purposes—whether or not the statement was made to an investigator.

Crawford's Applicability to Forensic Interviews Admitted Under Residual Hearsay Exceptions

In cases in which the child is unavailable for trial, defendants may challenge the admissibility of forensic interviews under residual exceptions[24] to the hearsay rule on the basis these statements are "testimonial" in nature. In response to this challenge, prosecutors have several arguments at their disposal.

First, forensic interviews are not primarily for the purposes of criminal litigation. If done as part of a multidisciplinary response to the possibility of abuse, the interview serves the needs of the physicians who may treat the child, the therapists who may deal with the child's emotional needs, and the civil child protection professionals who may seek to prevent further abuse and even work toward the preservation of the family.

Although the statement may also serve the purposes of the prosecutor at a criminal trial, the interview itself is not to focus exclusively or even primarily on the needs of investigators or prosecutors. States following the CornerHouse/Finding Words protocol for the interviewing of children can cite the "child first doctrine," upon which the interview is based. Pursuant to this doctrine, the "child is our first priority. Not the needs of the family. Not the child's 'story.' Not the evidence. Not the needs of the courts. Not the needs of the police, child protection, attorneys, etc. The child is our first priority" (emphasis added).[25]

Moreover, forensic interviewers are specifically taught not to focus only on the possibility a child was abused by a given person. For example, forensic interviewers trained through CornerHouse or Finding Words are taught to explore "alternative hypotheses," including an innocent explanation for a child's account of genital touching or to identify a perpetrator other than one named by the child.[26]

These and other safeguards distinguish forensic interviews from the "formalized testimonial materials" for criminal trials cited by the court in *Crawford.*

Second, young children are unlikely to comprehend that a forensic interview may be used at trial. Again, *Crawford* suggested that a testimonial statement is one "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial."[27] As one commentator noted, young children making a statement to the authorities may not understand that sexual abuse is wrong or that a perpetrator is subject to punishment as a result.[28] If so, "it seems dubious to say that the children acting in these cases were acting as witnesses."[29]

Third, even older children may not understand that a forensic interview may be used for testimonial purposes. Studies indicate that many children do not understand the roles of police officers, judges, or lawyers in handling a case of child abuse—or any other case for that matter.[30] Even children as old as eleven "remain confused about what goes on in court."[31] This is why there is a plethora of written material to help professionals explain the court process to children.[32] Obviously, if children cannot understand even the purposes of a trial, it is ludicrous to suggest they understand that a neutral, fact-finding forensic interview would, in the words of *Crawford,* "be available for use at a later trial."

Fourth, *Crawford* does not apply if the defendant's conduct made the child unavailable for trial. The Court in *Crawford* said "the rule of forfeiture by wrongdoing (which we accept) extinguishes confrontation claims…."[33] As stated by one legal scholar, the right to confront witnesses is forfeited if "the accused's own wrongful conduct is responsible for the inability of the witness to testify under the conditions ordinarily required…. The forfeiture principle remains applicable even when the conduct that allegedly rendered the witness unavailable to testify is the same criminal conduct for which the accused is now on trial."[34]

If, then, the trial court determines that the defendant's abuse of the child has rendered the child unavailable for cross-examination, the defendant has forfeited his right to confront the child at trial. As one commentator noted, "Suppose that it appears the child may have been intimidated, either by the abusive conduct itself or by a threatening statement—'Don't tell anyone!'—that accompanied or followed the conduct. In such a case, it may be appropriate to apply the forfeiture principle."[35]

Conclusion

Although *Crawford* is a seminal Sixth Amendment case, it may not impact most child abuse trials. This is because the case only applies to criminal cases in which the child victim will *not* testify. Even when the case is invoked by defendants objecting to the admission of child hearsay, prosecutors have a number of arguments to distinguish child hearsay statements from the solemn, formalized statements discussed in *Crawford.* Finally, since many child abuse victims are unavailable for trial *because* of the abuse, these offenders may have forfeited their right to confront the children they have harmed.

About the Author

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[1] The author thanks APRI staff attorney Jodi Furness for her research assistance.

[2] *Snyder v. Massachusetts,* 291 U.S. 97 (1934).

[3] Linda Greenhouse, *Court Alters Rule on Statements of Unavailable Witnesses,* New York Times, Tuesday, March 9, 2004.

[4] This clause provides that "in all criminal prosecutions, the accused shall enjoy the right…to be confronted with the witnesses against him." United States Constitution, Sixth Amendment. This procedural guarantee applies to both federal and state prosecutions. *Crawford v. Washington,* 2004 U.S. Lexis 1838 at *12.

[5] *Crawford,* 2004 Lexis 1838.

[6] *Ohio v. Roberts,* 448 U.S. 56 (1980).

[7] *Id.* at 66.

[8] *Id.* Firmly rooted exceptions to the hearsay rule include statements for the purposes of medical diagnosis and excited utterances.

[9] *Idaho v. Wright,* 497 U.S. 805 (1990).

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Crawford v. Washington— Charting New Territory Under the Confrontation Clause: Implications for Child Abuse Litigation

John E. B. Myers, JD

Children disclose abuse to relatives, friends, and professionals. Following disclosure, legal proceedings may be commenced in criminal court, juvenile court, or family court. During court proceedings, one or more of the adults to whom the child disclosed may be called as a witness and asked to repeat the child's earlier statements. When this occurs, however, the attorney representing the accused is likely to make a hearsay objection. A child's words are hearsay when the words are repeated in court by someone who heard the child speak.[1] By making a hearsay objection, the defense attorney seeks to prevent the witness from repeating the child's words.

Consider an example: Sally, age five, tells her preschool teacher that she is being touched inappropriately at home. The teacher files a report, and a CPS social worker interviews Sally later that day. Sally repeats her description of abuse to the social worker. The next day, Sally is interviewed briefly by a police officer. Again, Sally describes the abuse. A week later, Sally is interviewed at a child advocacy center, where she repeats her description of the abuse on videotape. Criminal charges are filed against an adult living in Sally's home. At trial, the prosecutor calls the teacher, the social worker, and the police officer as witnesses and asks them to repeat what Sally said. The defense attorney makes a hearsay objection. Is the defense attorney right? Yes. Sally's description was given prior to the court proceeding, and the adults are asked to repeat Sally's words to prove that Sally was abused. Sally's words are hearsay. Next, the prosecutor offers the videotaped interview into evidence. Again, the defense attorney objects, and again the defense attorney is right. The videotape is hearsay.

If the prosecutor hopes to get Sally's hearsay statements into evidence, the prosecutor must overcome two obstacles: first, the rule against hearsay and, second, the Confrontation Clause of the U.S. Constitution. As for the hearsay rule, the law excludes hearsay unless the particular hearsay statement meets the requirements of an exception to the rule against hearsay. There are numerous exceptions to the rule against hearsay. The exceptions allow use in court of hearsay that is considered reliable. In child abuse cases, the exceptions that play the largest role are the "excited utterance" exception, the "medical diagnosis or treatment" exception, and "child hearsay" exceptions that allow any reliable hearsay describing abuse.

An excited utterance is a hearsay statement that is made shortly following a startling or traumatic event. A statement for purposes of medical diagnosis or treatment is a hearsay statement made to a nurse or doctor during the course of diagnosis or treatment. The child hearsay exception allows use in court of hearsay statements that do not fit into traditional exceptions like excited utterances, but that are judged to be reliable. Reliability is determined by a judge, after the judge considers all factors bearing on the accuracy of the statement.

The Confrontation Clause and Hearsay

Although the hearsay exceptions are important, the exceptions are not the focus of the present article. This article focuses on the second obstacle to using hearsay in court: the Confrontation Clause of the U.S. Constitution, located in the Sixth Amendment. It provides, "In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him." It is the Confron-

Footnotes (from pg 3) - Keeping the Balance True

[10] *Id.* at 819.

[11] United States Constitution, Sixth Amendment

[12] John E. B. Myers, Evidence in Child Abuse and Neglect Cases section 7.50 (1997 & 2003 supp).

[13] *Id.*

[14] *Crawford,* 2004 LEXIS 1838, *37 footnote 9, citing *California v. Green*, 399 U.S. 149, 162 (1970).

[15] *Id.* at *50.

[16] *Id.* at *27.

[17] *Id.* at *27-*28.

[18] *Id.* at *28.

[19] *Id.*

[20] *Id.* at *29.

[21] 502 U.S. 346 (1992).

[22] *Crawford* at *36.

[23] *Id.*

[24] A majority of states have statutory exceptions that admit child hearsay statements that are deemed reliable or they follow the federal rules of evidence, which provide that statements not admitted under firmly rooted hearsay exceptions may nonetheless be admitted as evidence if the statements have "equivalent guarantees of trustworthiness." Fed. R. Evid. 807.

[25] Finding Words training manual at 2 (2003) quoting Ann Ahlquist and Bob Ryan.

[26] *Id.* at 13. Other aspects of the CornerHouse/Finding Words protocol refute any claim that the purposes of the forensic interview is testimonial. For example, the protocol does not have a truth/lie inquiry. CornerHouse and APRI maintain that such an inquiry is a matter of competency for trial and is irrelevant for an interview. *See generally,* Lori S. Holmes & Victor I. Vieth, *Finding Words/Half a Nation: The Forensic Interviewing Program of CornerHouse and APRI's National Center for Prosecution of Child Abuse,* 15(1) Apsac Advisor (Winter 2003).

[27] *Crawford* at *28.

[28] Richard D. Friedman, *Children as Victims and Witnesses in the Criminal Trial Process: The Conundrum of Children, Confrontation, and Hearsay,* 65 Law & Contemp. Prob. 243, 250 (2002).

[29] *Id.*

[30] John E. B. Myers, Karen J. Saywitz, & Gail S. Goodman, *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony,* 28 Pacific L. Journal 1, 68-69 (1996) (citations omitted).

[31] *Id.*

[32] *See e.g.,* Lynn Copen, Preparing Children for Court (2000).

[33] *Crawford* at *42.

[34] Friedman, *supra* note 28 at 252.

[35] *Id.* at 253.

tation Clause that gives defendants the right to face their accusers (including children) in court. In addition to guaranteeing face-to-face confrontation, the Confrontation Clause limits the use of hearsay against defendants in criminal cases.

Prior to March 8, 2004, the impact of the Confrontation Clause on hearsay was limited. In a series of decisions dating back to 1980, the U.S. Supreme Court interpreted the Confrontation Clause so that when a person's hearsay statement satisfied the requirements of a hearsay exception (e.g., excited utterance), the statement nearly always satisfied the requirements of the Confrontation Clause. The result was that the Confrontation Clause seldom stood in the way of using children's hearsay in criminal cases. On March 8th, however, the Supreme Court dramatically altered its interpretation of the Confrontation Clause.

The Story of *Michael Crawford Versus the State of Washington*

Michael Crawford came to believe that his wife Sylvia had been the victim of attempted rape by Kenneth Lee. Michael and Sylvia went looking for Kenneth and tracked him to his apartment. A fight broke out, and Michael stabbed Kenneth in the chest. Later that night, the police arrested Michael. The police gave Michael and Sylvia *Miranda* warnings and proceeded to interrogate them. Michael admitted the stabbing, but said he had acted in self-defense when Kenneth pulled a weapon. During Sylvia's interview, which was videotaped, she corroborated Michael's version of events, except Sylvia said Kenneth did not have a weapon. Michael was charged with assault and attempted murder.

At Michael's trial, he claimed self-defense. Sylvia refused to testify against her husband. (In Washington and most other states, one spouse can refuse to testify against the other.) The prosecutor offered the videotape of Sylvia's police interview in which she said Kenneth was unarmed. The defense attorney objected that Sylvia's interview was hearsay. The prosecutor responded that the interview satisfied the requirements of the hearsay exception for statements against penal interest. Next, the defense attorney argued that admitting the videotaped interview violated Michael's rights under the Confrontation Clause. The judge rejected both defense objections and allowed the videotape to be played for the jury.

Michael was convicted of assault. Michael appealed to the Washington Court of Appeals and won. The prosecution then appealed to the Washington Supreme Court, where the prosecutor won. Finally, Michael appealed to the U.S. Supreme Court, arguing that playing Sylvia's videotaped hearsay statement violated the Confrontation Clause. In a decision that took the legal community by surprise, the Supreme Court sided with Michael. The Supreme Court's decision in *Crawford v. Washington*[2] dramatically changed the effect of the Confrontation Clause on the admissibility of hearsay.

Matters *Not* Affected by *Crawford*

Before discussing the change wrought by *Crawford*, it is important to note what *Crawford* did not do:

Confrontation satisfied when hearsay speaker testifies. *Crawford* did not alter the long-standing rule that when the person who made a hearsay statement testifies in court and can be cross-examined about the hearsay, the Confrontation Clause is satisfied and poses no barrier to admissibility.[3] Recall five-year-old Sally, discussed above. If Sally is able to testify in court and be questioned about her hearsay statements to the teacher, social worker, police officer, and child advocacy center interviewer, then the Confrontation Clause is satisfied. The prosecutor will have to find hearsay exceptions for Sally's statements, but the Confrontation Clause will not bar admission.

Crawford *does not apply in civil cases.* The Confrontation Clause of the Sixth Amendment applies only in criminal prosecutions. The Confrontation Clause, and its attendant restrictions on hearsay, does not apply in civil litigation.[4] Thus, *Crawford* does not govern hearsay in protective proceedings in juvenile court, which are civil. Nor does *Crawford* apply to proceedings in family court or to proceedings to terminate parental rights.

The Confrontation Clause applies only to hearsay offered against the defendant. In criminal cases, the Confrontation Clause applies only when the prosecution offers hearsay against the defendant. The Clause is not applicable when the defendant offers hearsay against the prosecution. The Confrontation Clause does not apply when the prosecutor offers the defendant's own words (party admissions) against the defendant.

Crawford's New Rule—Testimonial Hearsay

Prior to *Crawford*, hearsay that fit within an exception nearly always satisfied the Confrontation Clause. After *Crawford*, a number of hearsay statements that fit within exceptions will violate the Confrontation Clause and be inadmissible. The net effect of *Crawford* is that some hearsay statements that were admissible prior to the Supreme Court's decision are no longer admissible.

In *Crawford*, the Supreme Court created a new rule to govern the admission of hearsay statements by individuals who are not available to be cross-examined about their hearsay. When a hearsay speaker (called a declarant) is unavailable at trial, the judge must determine whether the hearsay is "testimonial." If the hearsay is testimonial, then it is only admissible if the defendant had a prior opportunity to cross-examine the declarant.[5] If, on the other hand, the hearsay is not testimonial, then the hearsay may be admitted without affront to the Confrontation Clause, provided it is sufficiently reliable.

Thus, the critical question becomes, when is hearsay "testimonial"? The Supreme Court declined to provide a definitive definition of *testimonial*, preferring to leave development of the concept to case-by-case analysis. The Court did, however, provide the following examples of testimonial hearsay:

(1) a formal declaration made for the purpose of proving a fact;
(2) prior testimony (including grand jury testimony) that the defendant could not cross-examine;
(3) an affidavit;
(4) a statement by a person in police custody in response to formal police interrogation; and
(5) hearsay statements that the declarant would reasonably expect to be used in later court proceedings.

It is clear from these examples, and from the Court's reasoning, that the principal goal of the Supreme Court in *Crawford* was to limit the admissibility of hearsay generated by government officials with an eye toward prosecution.

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When is hearsay non-testimonial? The Supreme Court mentioned as an example an off-hand, casual remark to a friend or family member.[6] Thus, a child's hearsay statement to a parent, babysitter, or friend is probably non-testimonial.[7] In *People v. Compan*,[8] the adult victim was physically assaulted by her husband. The victim called a friend and asked the friend to come pick her up. The friend drove to the victim's house and picked her up. During the ride to the friend's house, the victim described how her husband assaulted her. At the husband's trial for domestic assault, the victim did not testify, and the prosecutor put the friend on the witness stand to repeat the victim's hearsay statements on the day of the assault. On appeal from his conviction, the husband argued that the victim's hearsay was testimonial. The Colorado Court of Appeals rejected this argument, writing, "Here, we conclude that the victim's statements are not testimonial within the meaning of *Crawford*. The statements were made to the victim's friend, not to a law enforcement or judicial officer. Although the statements were not 'casual or off-hand' because the victim was distraught, they do not qualify as the kind of 'solemn or formal' declarations that the *Crawford* majority associated with testimonial statements. The victim's statements were not made for the purpose of establishing facts in a subsequent proceeding."

Are Hearsay Statements to the Police Testimonial?

Some hearsay in response to police questioning is clearly testimonial. But are all hearsay statements to the police testimonial? The answer is important for the future of child abuse litigation because children often disclose abuse to police officers. *Crawford* did not answer the question. We do know from *Crawford* that hearsay uttered in response to formal police interrogation is testimonial. Often, however, children disclose abuse to police officers in circumstances that bear little resemblance to formal interrogation.[9] Suppose, for example, that someone calls 911 to report abuse. The responding police officer arrives at the home and asks some questions. The child discloses. Is the child's hearsay statement to the police officer testimonial? If so, and the child cannot testify at trial, then the statement will not be admissible in court because the defendant had no opportunity to cross-examine the child. Such scenarios arise every day.

Although *Crawford* did not determine whether all statements to police are testimonial, it hinted in that direction. The Court stated more than once that hearsay statements in response to police interrogation are testimonial. Yet, the Court did not define *interrogation*, prompting one to ask, Does interrogation embrace only formal interrogation, typically at a police station? Or does interrogation include all questioning by the police regardless of setting, formality, or purpose? A footnote in *Crawford* indicates that some Justices of the Supreme Court are prepared to give a broad meaning to the word *interrogation.*[10] In the footnote, the Court referred to a 1992 child abuse case, *White v. Illinois*,[11] involving sexual assault on a four-year-old. In the middle of the night, the babysitter was awakened by the victim's screams. The babysitter saw the defendant leave the victim's bedroom. The police were called, and within forty-five minutes, a police officer questioned the child. In response to the officer's questions, the youngster disclosed sexual abuse. In the *Crawford* footnote, the Court stated that the child's statement to the police officer in *White* was testimonial. Although the *Crawford* Court's discussion of *White v. Illinois* was arguably dicta, if the Supreme Court adopts this broad interpretation of the word *interrogation,* then virtually everything crime victims say to police officers will be testimonial.

In *Cassidy v. State*,[12] the Texas Court of Appeals considered the hearsay statement of an assault victim to a police officer at the hospital where the victim was being treated for injuries. The court ruled that the police officer's interview of the victim did not constitute "interrogation" as that term was used in *Crawford*. Thus, the victim's statement was not testimonial.

In *State v. Forrest*,[13] the North Carolina Court of Appeals ruled that a kidnap victim's excited utterance to a police officer was not testimonial. The court wrote, "Just as with a 911 call, a spontaneous statement made to police immediately after a rescue can be considered 'part of the criminal incident itself, rather than as part of the prosecution that follows.' . . . Moore made spontaneous statements to the police immediately following a traumatic incident. She was not providing a formal statement, deposition, or affidavit, was not aware that she was bearing witness, and was not aware that her utterances might impact further legal proceedings. *Crawford* protects defendants from an absent witness's statements introduced after formal police interrogations in which the police are gathering additional information to further the prosecution of a defendant. *Crawford* does not prohibit spontaneous statements from an unavailable witness."[14]

In *Crawford*, the Supreme Court's chief concern was hearsay procured by the government for use in litigation. With this constitutional concern in mind, not all hearsay statements in response to police questioning should be testimonial.[15] The *Cassidy* and *Forrest* courts correctly held that statements to police officers in the field can be non-testimonial. Hopefully, as judges continue to grapple with this issue, they will take a case-by-case approach to the testimonial nature of statements to police.

Children's Hearsay Statements at Child Advocacy Centers

Since the mid-1980s, more than 300 child advocacy centers (CACs) have sprung up around the country to interview children in child abuse cases. Are children's statements during CAC interviews testimonial? CAC interviews serve several purposes:

(1) reduce the number of times children are interviewed,
(2) determine whether abuse occurred,
(3) gather forensic evidence,
(4) determine whether a child will be able to testify, and
(5) assess the child's mental health needs.

In the vast majority of CAC interviews, the forensic aspects of the interview predominate, and it is difficult to escape the conclusion that most CAC interviews are testimonial. Certainly this is so when a police officer conducts the interview to collect evidence. It is also true when a police officer or prosecutor observes the interview and suggests questions for the interviewer to put to the child.

Appellate courts are beginning to weigh in on whether CAC interviews are testimonial. In *People v. Geno*,[16] the Michigan Court of Appeals ruled that a CAC interview was not testimonial. The court wrote, "We conclude that the child's statement did not constitute testimonial evidence under *Crawford*, and therefore was not barred by the Confrontation Clause. The child's statement was made to the executive director of the Children's Advocacy Center, not to a government employee, and the child's answer to the question of

whether she had an 'owie' was not a statement in the nature of '*ex parte* in-court testimony or its functional equivalent.'"

On the other hand, the California Court of Appeals ruled in *People v. Sisavath*[17] that a CAC interview was testimonial. The California court wrote:

> The [CAC] interview took place on June 12, 2002. By that time, the original complaint and information had been filed and a preliminary hearing had been held. The deputy district attorney who prosecuted the case was present at the interview, along with an investigator from the district attorney's office. The interview was conducted by a "forensic interview specialist." Under these circumstances, there is no serious question but that Victim 2's statement was "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial."
>
> The People argue that the statement was not testimonial because the interviewer was "not a government employee"; the [CAC] is a "neutral location"; the interview might have been intended for a therapeutic purpose or related to removal proceedings [in juvenile court] and not intended for a prosecutorial purpose; the interview was not prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and it was not a police interrogation. They suggest that we should either hold that the interview was not testimonial or remand for a finding on the purpose of the interview.
>
> There is no need for a remand on this issue. None of the People's arguments are persuasive. The pertinent question is whether an objective observer would reasonably expect the statement to be *available for use* in a prosecution. Victim 2's interview took place after a prosecution was initiated, was attended by the prosecutor and the prosecutor's investigator, and was conducted by a person trained in forensic interviewing. Under these circumstances, it does not matter what the government's actual intent was in setting up the interview, where the interview took place, or who employed the interviewer. It was eminently reasonable to expect that the interview would be available for use at trial. . . .
>
> We have no occasion here to hold, and do not hold, that statements made in every [CAC] interview are testimonial under *Crawford*. We hold only that Victim 2's statements at the [CAC] interview in this case were testimonial.[18]

Given the overriding forensic purpose of CAC interviews, courts are likely to conclude, along with the California Court of Appeals in *Sisavath*, that CAC interviews are testimonial. Return to five-year-old Sally, discussed above. Recall that Sally was interviewed at a CAC. It is highly likely the judge will rule that Sally's videotaped CAC interview is testimonial and inadmissible unless Sally is able to testify in court and be cross-examined.

Are Hearsay Statements to Medical and Mental Health Professionals Testimonial?

Children disclose abuse to paramedics, nurses, doctors, and other medical professionals. Such statements often fall within the hearsay exceptions for excited utterances or medical diagnosis or treatment. But are hearsay statements to medical personnel testimonial under *Crawford*? If the professional's primary motivation in questioning a child is diagnosis or treatment, the answer should be no. Moreover, the fact that a professional is aware of the forensic implications of communicating with children should not change the result.

New Life for an Old Doctrine? Fresh Complaint of Rape or Sexual Assault

Centuries ago, English judges developed a doctrine called "fresh complaint of rape." The fresh complaint doctrine applies in rape and sexual assault prosecutions. Under the doctrine, the victim's initial—"fresh"—disclosure of rape or sexual assault is admissible in court to support the victim's credibility. In most states, the victim's "fresh complaint" is not considered hearsay.[19] The fresh complaint doctrine applies to statements by child victims. The victim's fresh complaint is admissible when the victim testifies. In many states, the victim's fresh complaint is also admissible when the victim does not testify.

In the 1980s and 1990s, states enacted special child abuse hearsay exceptions for reliable hearsay statements by children. As "child hearsay exceptions" spread across the country, prosecutors relied less and less often on the "fresh complaint" doctrine to admit children's disclosure statements. Indeed, in many states, the fresh complaint doctrine was falling into disuse. After *Crawford*, however, some hearsay statements that were once admissible under child hearsay exceptions will be inadmissible because they are testimonial. Faced with this prospect, in cases where the child does not testify in court, prosecutors are likely to return to the fresh complaint doctrine as a vehicle to gain admission for children's disclosure statements. In doing so, prosecutors will argue that *Crawford* does not block admission because a fresh complaint is not hearsay. It remains to be seen whether courts will approve this strategy.

Conclusion

The Supreme Court's decision in *Crawford v. Washington* changed the legal landscape regarding the admission of children's hearsay statements in criminal cases. In some cases, *Crawford* will prevent the use of hearsay that was formerly admissible. On the other hand, *Crawford* provides important protections for individuals accused of crime, and the Court's new approach is defensible on constitutional as well a policy grounds. In the coming months and years, lower courts will flesh out the meanings of "testimonial" and will create a roadmap for the new terrain. In the long run, *Crawford* will not impede child protection.

About the Author

John E. B. Myers, JD, is Distinguished Professor and Scholar at the University of the Pacific, McGeorge School of Law in Sacramento, California.

[1] Whether or not a child's words are hearsay is more complicated than the text indicates. For present purposes, however, the text is sufficient.

[2] 124 S. Ct. 1354 (2004).

[3] *See People v. Martinez*, 2004 WL 1078044 (Ill. Ct. App. 2004); *Cooley v. State*, 2004 WL 1175155 (Md. Ct. Special App. 2004).

[4] *See Commonwealth v. Given*, 808 N.E.2d 788, 794 n. 9 (Mass. 2004)(proceeding for civil commitment of sexually dangerous person; "The *Crawford* case has no direct bearing on this case, because, as we have made clear, the confrontation clause does not apply to civil commitment proceedings.").

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Reasonable Efforts
Using the *Crawford v. Washington* 'Forfeiture by Wrongdoing' Confrontation Clause Exception in Child Abuse Cases

Tom Harbinson, JD[1]

Reprinted with permission from the *American Prosecutors Research Institute (APRI) Update*, Volume 1, Number 3, 2004, pp. 1-2.

Introduction

In *Crawford v. Washington,*[2] the United States Supreme Court held that when an out-of-court statement of an unavailable witness is testimonial, the Sixth Amendment requires the accused be given a prior opportunity to cross-examine the witness.[3] The Court stated it would "leave for another day any effort to spell out a comprehensive definition of testimonial. Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations…"[4] The Court's use of the term "testimonial" appears to be directed at statements taken by agents of the government when a reasonably objective person should know those statements are being taken for possible use in court.[5]

In *Crawford*, the Court acknowledges a Confrontation Clause exception to its new rule on the inadmissibility of testimonial statements of unavailable witnesses.[6] As the Court explains, "the rule of forfeiture by wrongdoing (which we accept) extinguishes confrontation on essentially equitable grounds…"[7] *Crawford* approvingly cites *Reynolds v. United States,*[8] where the Court first applied the forfeiture-by-wrongdoing exception.[9] The *Reynolds* Court held, "The Constitution does not guarantee an accused person against the legitimate consequences of his acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege."[10] The exception is based on the maxim that no one should be permitted to take advantage of his own wrongdoing.[11]

Since *Reynolds,* the Supreme Court appears to have expanded the exception to allow admission of un-cross examined depositions not made under oath, if the witness was "absent from the trial by suggestion, procurement, or act of the accused," *Motes v. United States.*[12]

Crawford's approval of the forfeiture-by-wrongdoing exception should allow prosecutors to get a significant number of out-of-court statements of unavailable witnesses admitted. It is common in child abuse cases for the suspect to procure the child's unavailability to testify whether by telling the child not to tell,[13] by threats against the child,[14] the family,[15] or even pet,[16] or through use of others, such as family members.[17] The abuser's use of secrecy is intended to prevent the child from disclosing and testifying against the abuser.[18]

Testimonial Statements Are Admissible if the Accused Procures the Child's Unavailability

Since *Crawford* does not give a comprehensive definition of "testimonial" statements, prosecutors should argue child abuse videotapes and out-of-court statements by children are not testimonial.[19] Even if child abuse videotaped statements and other out-of-court statements are considered testimonial, these statements are admissible when the child's unavailability occurs due to procurement by the accused. Courts have held procurement includes persuasion, the wrongful disclosure of information, control by the suspect, acquiescence in others performing acts of procurement, and asking others to persuade the witness not to testify.[20]

Prosecutors must use *Motes'* language "…or act of the accused," to argue for the forfeiture-by-wrongdoing exception to include as many acts as possible. The act that constitutes the procurement, by itself, need not be wrongful. Things the child could view as being beneficial, such as gifts or money, should constitute procurement if they result in the child being unavailable.[21]

Footnotes (from pg 7) - *Crawford v. Washington:* Charting New Territory

[5] *See State v. Young*, 87 P.3d 308 (Kan. 2004)(defendant had prior opportunity [to] cross-examine the declarant).

[6] *See State v. Manuel*, 2004 WL 1171742 (Wis. Ct. App. 2004)("we have little difficulty concluding that Stamps' statement to his girlfriend is *not* "testimonial" in nature. The statement was not made to an agent of the government or to someone engaged in investigating the shooting.").

[7] *See Demons v. State*, 595 S.E.2d 76 (Ga. 2004)(victim was murdered by defendant; victim was afraid of defendant, and confided his fear to a co-worker who was victim's friend; the victim's statements to the co-worker were not testimonial).

[8] 2004 WL 1123526 (Colo. Ct. App. 2004).

[9] *See People v. Newland*, 6 A.D. 3d 330, 775 N.Y.S.2d 308, 309 (2004)(burglary prosecution; investigating police officer canvassed for possible witnesses; officer spoke to individual who was not a witness, but who provided useful information; "We conclude that a brief, informal remark to an officer conducting a field investigation, not made in response to 'structured police questioning' should not be considered testimonial, since it 'bears little resemblance to the civil-law abuses the Confrontation Clause targeted.'").

[10] 124 S. Ct. at 1368 n. 8.

[11] 502 U.S. 346 (1992).

[12] 2004 WL 1114483 (Tex. Ct. App. 2004).

[13] 596 S.E.2d 22 (N.C. Ct. App. 2004).

[14] 596 S.E.2d at ___. *But see* the dissenting opinion of Judge Wynn.

[15] *See Hammon v. State*, 809 N.E.2d 945 (Ind. Ct. App. 2004)(domestic battery case; "we hold the statement A.H. gave to Officer Mooney was not a 'testimonial' statement.").

[16] 2004 WL 893947 (Mich. Ct. App. 2004).

[17] 13 Cal. Rptr. 3d 753 (Ct. App. 2004).

[18] 13 Cal. Rptr. 3d at 757-758.

[19] In a small number of states (e.g., Oregon), fresh complaint evidence is hearsay within an exception.

Acts During the Crime Should Be Used to Show Procurement

Although the United States Supreme Court has not ruled on whether the exception applies to procurement made during the crime, the rationale behind the rule supports doing so. The critical wrongdoing the exception attempts to prevent is not based on when the act occurs, but whether the act caused a witness to be unavailable. Thus, the question should be, was the accused's act responsible for the witness being unavailable to testify?[22]

In a seminal decision, *New Jersey v. Sheppard,*[23] a ten-year-old girl stated her stepfather told her, during the time sexual abuse was occurring, he would kill her if she told. Prosecutors moved for use of two-way television, because an examining psychiatrist said it would be too traumatic for the girl to be present with her stepfather in the courtroom and trauma would render her unavailable to testify.[24]

New Jersey v. Sheppard illustrates that acts of the accused during the crime should be allowed for purposes of determining whether procurement of unavailability occurred. If the accused's acts are responsible for the child being in a condition where the child refuses to testify,[25] states she cannot remember,[26] or becomes non-responsive,[27] the requirement of unavailability should be considered to be met. Non-verbal acts and threats may assist the accused in committing the crime, but are also used to traumatize the victim so the victim will not tell.[28] The State should also be allowed to show, in a pre-trial hearing, it has made a good faith effort to have the witness testify, and should not be required to call the child at trial (or the pre-trial hearing) to show the child is unable to testify. [29]

Procurement by Traumatization Should Result in Testimonial Statements Being Admissible

A common act of procurement is procurement of unavailability by trauma. It is widely accepted that children can have Post Traumatic Stress Disorder (PTSD), Acute Stress Disorder (ASD), or Traumatic Stress Disorder (TSD).[30] Recently, the psychiatric community has become better at diagnosing PTSD or ASD in very young children and even infants.[31] One study found 34 percent of abused children met criteria for PTSD.[32] Talking to family members, caretakers, teachers, the child in pre-trial preparation, and perhaps referral to a child clinical psychologist may assist a prosecutor in determining if an accused's acts of procurement caused trauma that renders a child unavailable to testify. Under PTSD and ASD one of the symptoms of the condition is desperately and strenuously trying to avoid thoughts or being reminded of the event or person that caused the condition.[33] It is possible this condition, not simply the fact these children are young and have to face the defendant, may be responsible for some children "freezing" in the courtroom.[34] Unlike the standard enunciated in *Maryland v. Craig,*[35] where the trauma of seeing the accused makes the child unavailable, under this analysis it is the acts of the accused that constitute procurement by trauma that make the child unavailable.

The argument that trauma should not be considered by courts in determining admissibility of out-of-court statements because most children who appear in court, in the long-term, are not unduly traumatized, is irrelevant.[36] In determining unavailability, the trial court makes the decision about availability based on the witness's condition at the time of the hearing or trial—not what the witness's long-term condition will be.[37]

Standard of Proof

What should the standard of proof be for determining procurement occurred? The United States Supreme Court has not ruled on this issue, but a majority of the federal circuit courts have applied the "by a preponderance of evidence standard."[38] Applying this standard carries out the purpose of the exception and parallels case law on the admissibility of other evidentiary statements.[39]

Conclusion

In light of *Crawford*, it is critical for prosecutors to learn to use the forfeiture-by-wrongdoing exception. Prosecutors must educate themselves, law enforcement, caretakers, teachers, medical care providers, and child protection workers on the importance of documenting or asking the child, in a forensically appropriate way, about acts or words that may show procurement. Effective prosecution is aggressively investigating and building the case to make a strong record that will convince trial and appellate courts the accused has procured the child's unavailability.

About the Author

Mr. Harbinson, JD, is Senior Attorney at the National Child Protection Training Center in Winona, Minnesota. He has been a Minnesota prosecutor since 1986.

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[1] Senior Attorney, National Child Protection Training Center (at Winona State University, Winona MN).

[2] 2004 U.S. Lexis 1838 (March 8th, 2004).

[3] *Id.* at 14.

[4] *Id.*

[5] *See id.* at 27-30.

[6] *See id.* at 42.

[7] *Id.*

[8] 484 U.S. 145 (1878).

[9] *Crawford* at 42.

[10] *Reynolds* at 158.

[11] *Id.* at 159.

[12] 178 U.S. 458, 471 (1900) (un-cross examined depositions not taken under oath would violate confrontation unless procurement occurred).

[13] John R. Conte, ed., CRITICAL ISSUES IN CHILD SEXUAL ABUSE 118 (2002) (27% of child victims warned not to reveal abuse).

[14] *See e.g. State v. Bewley,* 68 S.W.3d 613, 616 (Mo. 2002) (defendant told boy he would kill him if he refused to submit to sex or told anyone).

[15] *See e.g. State v. Naucke,* 829 S.W. 2d 445, 448-449 (Mo. 1992) (four-year-old sodomy victim told she and her mother would be killed if she told about abuse).

[16] *See e.g. State v. Twist*, 528 A.2d 1250, 1254-1255 (Me. 1987) (grandfather killed children's cat by burning it in oven and told children he would shoot them if they told about sexual abuse).

[17] *See e.g. People v. Guce,* 560 N.Y.S.2d 53, 56 (N.Y. App. 1990) (six- and eight-year-old sexual abuse victims told by mother they would be responsible for father's incarceration and dissolution of family if they cooperated with prosecutor).

[18] *See e.g. People v. Brocklin,* 687 N.E.2d 1119, 1120 (Ill. App. 3d 1997) (grandfather told four-year-old sodomy victim not to tell about their "secret"). *See also* R. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 *Child Abuse and Neglect* 177 (1983).

[19] These statements should not be considered testimonial because they are not specifically prepared for court, young children are unlikely to comprehend the inter-

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view could be used at trial, or considered to be testimonial. *See* Victor I. Vieth, Keeping the Balance True: Admitting Child Hearsay in the Wake of Crawford v. Washington, UPDATE, Vol. 16 No. 12 (2004).

[20] See Motes at 471 (persuasion); *United States v. Aguiar,* 975 F.2d 45, 47-48 (2nd Cir. 1992) (defendant threatened to expose witness's criminal activity if witness testified); Steele v. Taylor, 684 F.2d 1193, 1199 (6th Cir. 1982) (witness under control of defendants' who procured her refusal to testify) cert. denied, 460 U.S. 1053 (1983); United States v. Mastrangelo, 693 F. 2d 269, 273-274 (2nd Cir. 1982) (defendant knew witness would be murdered and did nothing to stop it); United States v. Belano, 618 F.2d 624, 629-630 (10th Cir. 1970) (threats by defendant communicated by bartenders to victim).

[21] See e.g. State v. Henry, 820 A.2d 1076, 1078 (Conn. 2002) (defendant offered adult victim money if she would leave state).

[22] See e.g. United States v. White, 838 F. Supp. 618, 621 (D.D.C. 1993), 116 F.3d 903 (U.S. App. D.C. 1997), cert. denied 522 U.S. 960 (1997). Actions of procurement can be "a pattern of conduct" even if no specific verbal threat is made. See Black v. Woods, 651 *F.*2d 528, 531 (8th Cir. 1981). A majority of federal circuit courts have not required a finding the accused acted with intent or purposefully to procure the witness's absence. See John R. Kroger, The Confrontation Waiver Rule, 76 B.U.L. Rev. 835, 855-857 (1996)

[23] 484 A2d 1330 (N.J. Super. Ct. Law Div. 1984).

[24] Id. at 415-418.

[25] See State v. Yednock, 541 A.2d 887, 891 (Conn. 1988) (child "unavailable" when traumatized by testifying in front of defendant and refused to testify further.)

[26] See United States v. McHorse, 179 F.3d 889 (10th Cir. 1999) (when seven-year-old child sex abuse victim states she could not remember what defendant did, admission of her out-of-court statements does not violate confrontation as defendant had opportunity to cross examine); *See also* United States v. Owen, 484 U.S. 554 (1985) (Confrontation Clause only guarantees an opportunity for effective cross examination).

[27] See State v. Ross, 451 N.W.2d 231 (Minn. App. 1990) pet. for rev. denied (Minn. April 13, 1990) cert. denied 498 U.S. 837 (1990) (admission of out-of-court statements does not violate confrontation when child became non-responsive due to trauma of testifying in defendant's presence).

[28] *See* Richard D. Friedman, Confrontation and the Definition of Chutzpa, 31 ISRAEL L. REV. 506-535, 533 (1997) (where "child has been intimidated by either the abusive conduct itself or by a threatening statement—Don't tell anyone!—that accompanied or followed the conduct….the forfeiture principle may be appropriate."). Cases involving children could be considered to be a unique exception just as dying declarations possibly are. See Crawford at 33 n. 6 (if dying declarations must be accepted, it is sui generis).

[29] See Barber v. Page, 390 U.S. 719, 724-25 (1968) (witness not unavailable until State makes good faith effort to obtain witness's presence at trial). If pre-trial evidence shows the child will be unable to testify, that should be sufficient. See FED. R. EVID. 804 (a) (4) (if witness unable to testify due to mental illness witness is unavailable). See also Warren v. United States, 515 A.2d 208, 210 (D.C. App. 1986) (high likelihood of temporary, and possibility of permanent, psychological injury justified unavailability finding for adult rape victim); State v. Kuone, 757 P.2d 289 (Kan. 1988) (court's traumatized child finding justified unavailability requirement being met for child abuse victim).

[30] See Brett T. Litz, EARLY INTERVENTION FOR TRAUMA AND TRAUMATIC LOSS, especially pages 1-65 and 112-146 (2004); Dr. Spencer Eth, ed., PTSD IN CHILDREN AND ADOLESCENTS (2001).

[31]Michael S. Scheeringa and Theodore J. Gaensbauer, Post Traumatic Stress Disorder, in Charles H. Zeanah, Jr., ed., HANDBOOK OF INFANT MENTAL HEALTH, 2nd Ed., 369-381 (2000).

[32] Peggy T. Ackerman, Joseph E.O. Newton, W. Brian McPherson, Jerry G. Jones and Roscoe A. Dykman, Prevalence of Post Traumatic Stress Disorder and other Psychiatric Diagnoses in Three Groups of Abused Children (Sexual, Physical, and Both), 22 CHILD ABUSE AND NEGLECT No. 8, 759-774, 771 (1998); see *also* J.N. Briere & D.M. Elliot, Immediate and Long Term Impacts of Child Sexual Abuse, 4 FUTURE OF CHILDREN, 54-69 (1994) (majority of child sexual abuse victims have some or many PTSD symptoms).

[33] See Diagnostic and Statistical Manual of Mental Disorders-TR 309.81 (DSM-IV-TR) American Psychiatric Association (4th Ed. 2000) (PTSD diagnostic criteria include persistent avoidance of stimuli associated with persons or thoughts involved with the trauma); DSM-IV-TR 308.3, (ASD criteria include avoidance of stimuli that arouse recollections of the trauma such as thoughts or persons involved).

[34]Some children may exhibit dissociative symptoms. Dissociation involves "particular alterations in phenomenal experience that are related to a disconnection or disengagement regarding the self and/or the environment." Stephen J. Lyn and Judith W. Rhue, eds., DISSOCIATION: CLINICAL AND THEORETICAL PERSPECTIVES, 23 (1994). PTSD and ASD include dissociation as diagnostic criteria. See DSM-IV-TR 309.81 B (3) and 308.3 B (1) to (5).

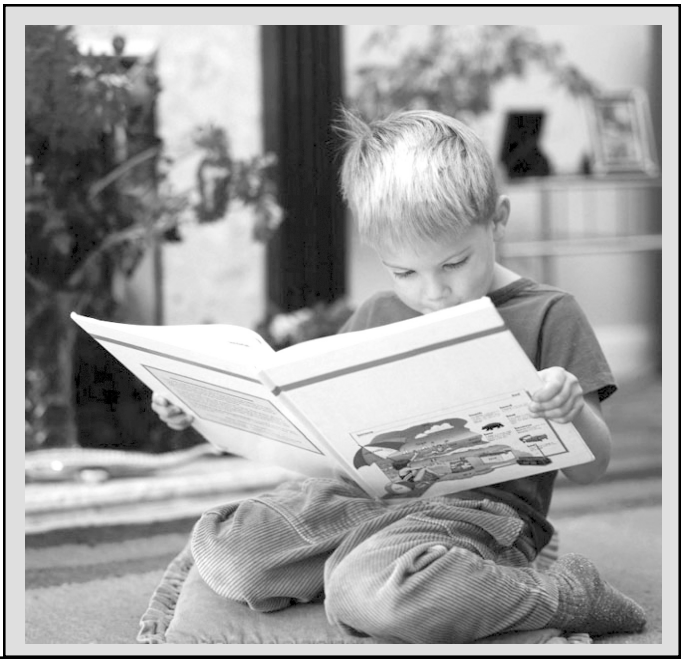
[35] 497 U.S. 836, 857 (1990).

[36] *See* Richard D. Friedman, *supra* at *532.*

[37] *See* FEDERAL RULES OF EVID. 804 (a).

[38] White v. United States, 116 F.3d 903, 911-913 (App. D.C. 1997) (most circuit courts adopted "preponderance" standard because higher standard would not deter misconduct).

[39] Id.



OLAFSON RELINQUISHES EDITORSHIP OF THE *APSAC ADVISOR*

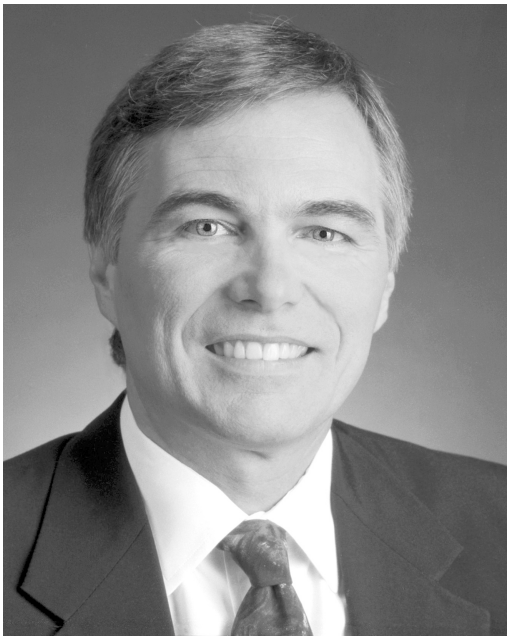
Erna Olafson, PhD, PsyD, will relinquish her role as editor in chief of the *APSAC Advisor* with the publication of this issue (Summer 2004). Erna has edited the newsletter for the past 2 years while continuing to fulfill her many other responsibilities, and she has been an outstanding editor.

During her editorship, Dr. Olafson has also served as the director of the Program on Child Abuse Forensic and Treatment Training and associate professor of clinical psychiatry at Cincinnati Children's Hospital Medical Center and the University of Cincinnati college of Medicine. She directs the Childhood Trust's trainings in forensic interviewing and is the training director of CCHMC's Trauma Treatment Replication Center, a regional center for the National Child Traumatic Stress Network (NCTSN) funded by the U.S. Department of Health and Human Services. Dr. Olafson is a member of the advisory group for the American Prosecutor's Research Institute Half a Nation /Finding Words training on investigative interviewing of children and is a trainer for the APSAC Forensic Interview Clinics. In 2003, she received the Pro Humanitate Literary Award from the North American Resource Center for Child Welfare.

As editor in chief for 2 years, Dr. Olafson has worked to maintain the high quality of the *Advisor* and managed to bring each of the eight issues in on schedule. While completing her work on the *Advisor*, she actively participated in APSAC's search for her replacement.

Erna, APSAC thanks you for your tremendous contribution to the organization in your volunteer role of editor in chief of the *Advisor*!

Dr. Erna Olafson, PhD, PsyD, editor in chief of the APSAC Advisor for the past 2 years.



Ronald C. Hughes, PhD, appointed editor in chief of the APSAC Advisor.

HUGHES APPOINTED EDITOR IN CHIEF OF THE *APSAC ADVISOR*

Ronald C. Hughes, PhD, will assume editorship of the *Advisor* with the Fall 2004 issue (Volume 16, Number 4). APSAC welcomes Dr. Hughes as editor in chief and looks forward to his tenure.

Dr. Hughes is the director of the North American Resource Center for Child Welfare Policy and the Institute for Human Services in Columbus, Ohio. His recent publications include the four-volume *Field Guide to Child Welfare*, *Target Competent Staff: Competency-Based Inservice Training for Child Welfare*, and *Child Welfare and Developmental Disabilities*. Dr. Hughes has provided extensive consultation and technical assistance to child welfare systems throughout North America in implementing large-scale, competency-based inservice training programs for child welfare staff. He has a doctor's degree in psychology from The Ohio State University and a master's degree in applied social sciences from Case Western Reserve University.

Ron's interests are varied, including bioethics, especially relating to treatment decision making for catastrophically ill children. Dr. Hughes' feature series of articles for the *Child Welfare Journal* helped establish standards for ethical decision making for critically ill, developmentally disabled neonates, as well as delineated implications for child welfare policy. He also serves as a member of the Family Trust Clinic's case assessment and consultation team and provides expert testimony in child welfare litigation cases.

Welcome aboard, Ron!

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CHANGE IN EDITORSHIP OF *CHILD MALTREATMENT*

After 10 years, Mark Chaffin, PhD, is stepping down as editor-in-chief of *Child Maltreatment*, APSAC's official journal. As the founding editor, Dr. Chaffin contributed an enormous amount of energy and time to the development of the journal, taking it from an idea to a widely read and highly respected professional publication. *Child Maltreatment* today reflects Mark's vision for the journal. He has striven for and achieved quality, scholarship, good writing, and coverage of important and sometimes controversial issues. Dr. Chaffin will hereafter be acknowledged as the founding editor.

Mark is currently a professor of pediatrics and clinical professor of psychiatry and behavioral science at the University of Oklahoma Health Sciences Center in Oklahoma City. He is also the director of research at the Center on Child Abuse and Neglect at OHSC and a consultant and faculty member of the Children's Mental Health Alliance in New York. Dr. Chaffin, in addition to his long tenure as editor in chief of *Child Maltreatment*, was the executive editor of the *APSAC Advisor* from 1992 to 1994. In 2000, he received the Outstanding Service Award from the American Professional Society on the Abuse of Children, and in 2002, he received the Pro Humanitate Literary Award from the North American Resource Center for Child Welfare.

Mark, APSAC thanks you for a memorable decade of service as the founding editor of our official journal, *Child Maltreatment*!

ONDERSMA APPOINTED EDITOR IN CHIEF OF *CHILD MALTREATMENT*

Steven L. Ondersma, PhD, has been appointed editor in chief of *Child Maltreatment* by the APSAC Board of Directors. Dr. Ondersma is an assistant professor in the departments of psychiatry & behavioral neurosciences and obstetrics & gynecology at Wayne State University in Detroit, Michigan. He will assume the editorship of *Child Maltreatment* with Volume 9, Number 1 (February 2005).

Steven L. Ondersma, PhD, appointed editor in chief of Child Maltreatment

Dr. Ondersma is a graduate of Calvin College and Wayne State University, where he earned a PhD in clinical psychology. He went on to receive clinical training via an internship and fellowship at the University of Oklahoma Health Sciences Center. His current program of research is in the area of brief motivational interventions in the perinatal period, and it focuses on parents at risk of child maltreatment, especially those with substance use disorders.

Steve has served as an associate editor of *Child Maltreatment* and the *Advisor*. Now, APSAC welcomes him to the editorship of *Child Maltreatment*.

WILLIAMS-GARDNER RESIGNS AS APSAC OPERATIONS MANAGER

Tricia D. Gardner (nee Williams), JD, has resigned from her position as operations manager for APSAC to accept a new opportunity as the director of the Child Welfare Training Program at the Center on Child Abuse and Neglect (University of Oklahoma Health Sciences Center). In her new position, she will manage a staff of 17 in providing training for child welfare workers throughout the state of Oklahoma.

Trish has been the key manager of APSAC's multifaceted professional training program for the past 2 1/2 years, and she has contributed greatly to the growth and development of this basic component of the APSAC mission. It has been her responsibility to plan, promote, and manage the annual Colloquium, the Forensic Interview Clinics, trainings at the San Diego Conference and other national meetings, and the Maui Trauma Treatment Conference. In addition, she has handled site selection for future colloquia and clinics, supervised the APSAC publications manager and the bookkeeper, and responded to the myriad of inquiries and requests that daily bombard the APSAC office.

APSAC will sorely miss Tricia's competent and caring persona, but we greatly appreciate her service to the organization over the past years. And, of course, we wish her well in the challenging new position she has assumed.

GOOD-BYE TO TOBY SMITH

Toby Smith, APSAC's membership manager for the past 4 years, is leaving the organization and moving to a new phase in her life. Toby came to APSAC at a time that we were rebuilding. She built membership from the ground up and helped stabilize the organization. We are grateful to Toby for the tremendous work she has done for APSAC and wish her well in her new ventures. Recently licensed as a minister, she will be teaching and working with youth and community groups in and around the Charleston area.

HELLO TO DAPHNE WRIGHT

APSAC extends a hearty welcome to Daphne Wright, who has come on board to manage membership. Daphne grew up in Hartland, Maine, and is currently located in Charleston, South Carolina. She has a master's degree in nonprofit management and has worked in business for over 20 years. She has also been heavily involved in educational programming and lobbying legislation related to learning disabilities (the passage of Eric's Law).

Daphne is active in community service through her work with the American Red Cross and literacy services. Her husband, Tom, is active in the nonprofit arena and is the district manager of Goodwill Industries of lower South Carolina; and her daughter, Andrea, is the director of health and safety at the American Red Cross. Eric, her son, is a computer programmer for IBM Global Services in Boulder, Colorado. We look forward to Daphne helping APSAC take the next steps toward meeting our strategic plan.

APSAC FORENSIC INTERVIEW CLINICS

APSAC is pleased to announce the success of the 2004 Forensic Interview Clinics. The training clinics focus on the needs of professionals responsible for conducting *investigative* interviews with children in suspected abuse cases. Interviewing alleged victims of child abuse has received intense scrutiny in recent years and increasingly requires specialized training and expertise. These comprehensive clinics offer a unique opportunity to participate in an intensive 40-hour training experience and have personal interaction with leading experts in the field of child forensic interviewing. Developed by top national experts, APSAC's curriculum emphasizes state-of-the-art principles of forensically sound interviewing, with a balanced review of several models. The two APSAC-sponsored clinics this year were held April 19 – 23 in Seattle, Washington, and June 14 – 18 in Norfolk, Virginia.

The Seattle Clinic Faculty included attorneys Paul Stern, Patti Toth, Anne Haynie, and Tom Lockridge

The 40 participants at the Seattle clinic represented 16 different states (Idaho, Washington, Montana, Oregon, North Carolina, Alaska, New York, Colorado, Nevada, Iowa, Texas, Wisconsin, Oklahoma, Kentucky, Utah, and Connecticut) and 3 countries (US, Canada, and Portugal). The experience of the participants ranged from less than one year (no previous interviews) to over 30 years (over 5,000 interviews) in the field of child abuse and neglect. These professionals represented a variety of disciplines, including law enforcement, social work, medicine, mental health, and law.

Clinic faculty member, Tom Lockridge, JD, reacts to his witness's testimony during the mock trial

There were also 40 participants enrolled for the Norfolk clinic. They represented 14 different states (Illinois, Virginia, Montana, California, North Carolina, Florida, South Carolina, Pennsylvania, Georgia, Ohio, Texas, DC, Oklahoma, and Connecticut) and 5 countries (Australia, Korea, Croatia, Guam, and the US). Their experience ranged from less that one year (no previous interviews) to over 31 years (over 2,000 interviews) in the field of child abuse and neglect. These professionals represented a variety of disciplines and agencies, including child advocacy centers, the Bureau of Indian Affairs, law enforcement, nursing, medicine, social work, and mental health.

The clinics involve a long week of learning and participating in practice interviews, but the outcome is worth it. The knowledge gained from the nationally recognized faculty (Laura Merchant, Julie Kenniston, Patti Toth, Paul Stern, Anne Haynie, Kee MacFarlane, Tom Lockridge, Nancy Lamb, George Ryan, Anne Graffam Walker, Susan Samuel, Chris Ragsdale, Andrea Grosvald, and Brian Holmgren) is invaluable to participants, and APSAC thanks them for their dedication to their craft. We look forward to announcing the dates for the 2005 clinics shortly.

A participant and child actor interact during a practice interview during the Seattle Clinic

CALL FOR POSTER PRESENTATIONS FOR MAUI CLINIC

APSAC announces a call for poster presentations for the Second Annual Trauma Treatment Clinic to be held November 29 – December 3, 2004, at the Kapalua Bay Hotel Kapalua, Maui, Hawaii. Visit: www.apsac.org and click on Trauma Treatment Clinic.

Program and Faculty: Innovations in assessment and treatment - John P. Wilson, PhD; treating chronic PTSD in adult survivors of childhood sexual abuse - Lori Zoellner, PhD; culturally sensitive treatment of trauma - Sarah Maiter, MSW, PhD; understanding medications for children with PTSD - Judith A. Cohen, MD; and advanced training in trauma-focused cognitive behavioral therapy - Anthony P. Mannarino, PhD, and Judith A. Cohen, MD.

Poster presentations will be held Monday through Thursday from 6:30 p.m. to 7:30 p.m., and workshop participants will be able to interact with poster presenters in a relaxed, intimate environment. Abstracts of 750 words are due by October 1, 2004. Posters may address any aspect of trauma treatment. Details can be found at www.apsac.org and click on Second Annual Trauma Treatment Clinic. Only the highest quality papers are accepted for poster presentation. This event provides a special opportunity to discuss important new data, clinical innovations, or papers on other aspects of trauma treatment. Submit abstracts to: contej@u.washington.edu by October 1, 2004 (see submission form on page 14).

POSTER SUBMISSION FORM

APSAC'S SECOND ANNUAL TRAUMA TREATMENT CLINIC
POSTER SUBMISSION FORM

Primary Presentation Format: _____ Research_____ Practice_____ Both

Title of Presentation:_____

1. ABSTRACT: Confine your abstract to one 8.5 x 11-inch page no smaller than 11-point font. To be considered, abstracts must identify at least three (3) educational objectives guiding the presentation. If cultural issues are relevant, indicate in the abstract how they will be addressed.

2. CURRENT VITAE: Send your curriculum vitae and a brief bio for each presenter.

3. ABSTRACT INFORMATION FORM

Lead Presenter:
First name: _____Last name: _____Degree: _____

Academic/Professional/Clinical Title:_____Affiliation:_____

Address:_____

City: _____ State: _____Zip:_____

Phone:_____ Fax: _____

E-mail: _____

APSAC Member: Yes _____No _____Member ID #: _____

Co-Presenter:
First name: _____Last name:_____Degree:_____

Academic/Professional/Clinical Title:_____Affiliation:_____

Address:_____

City:_____State:_____ Zip:_____

Phone:_____Fax:_____

E-mail:_____

APSAC Member: Yes _____No _____Member ID #: _____

*__PLEASE NOTE:__ Correspondence regarding this abstract submission will be directed to the lead presenter. All presenters are expected to attend the Trauma Treatment Clinic. APSAC does not pay any conference or travel expenses for poster presenters. Poster presenters are responsible for their own travel arrangements.

Submission Requirements:

- ❖ Submissions by E-mail are required. E-mailed submissions should include all information on the submission form, plus a current vitae and brief biographical sketch for each presenter (up to 3 presenters).
- ❖ E-mail file attachments should be in MS-Word, Rich Text Format, or ASCII format. Submission forms can also be found on the APSAC Web site (www.apsac.org).

Please submit E-mail submission to Jon Conte, PhD, at contej@u.washington.edu no later than 10/1/04
or Fax your submission to Jon Conte, PhD, at 206-275-4616

CALL FOR PAPERS for the *APSAC ADVISOR*

Purpose: The *APSAC Advisor*, a quarterly publication of the American Professional Society on the Abuse of Children, serves as a forum for succinct, practice-oriented articles and features that keep multidisciplinary professionals informed of current developments in the field of child maltreatment. *Advisor* readers are the more than 2,500 social workers, physicians, attorneys, psychologists, law enforcement officers, researchers, judges, educators, administrators, psychiatrists, nurses, counselors, and other professionals who are members and supporters of APSAC.

Appropriate material: *Advisor* editors are seeking practical, easily accessed articles on a broad range of topics that focus on particular aspects of practice, detail a common problem or current issue faced by practitioners, or review available research from a practice perspective.

Inappropriate material: Articles should be well documented and of interest to a national multidisciplinary audience. The *Advisor* is not an appropriate outlet for poetry or fiction, anecdotal material, or original research-based articles heavy on statistics but lacking clear application to practice.

Length: *Advisor* articles range from 4 to 12 double-spaced manuscript pages set in a 12-point typeface.

Previous publication: The *Advisor* prefers original material but does publish excerpts from previously published articles on topics of unusual or critical interest.

Peer review: All articles submitted to the *Advisor*, whether solicited or unsolicited, undergo peer review by the appropriate associate editor. If he or she thinks pursuing publication is appropriate, the associate editor may send copies of the article to one or two additional reviewers or return the article with comments to guide a revision.

Submission: All articles should be typed and double-spaced in 12-point type on 8.5 x 11 inch white paper, and submitted with an accompanying disk in Microsoft Word and a brief cover letter indicating that the article is offered for publication in the *APSAC Advisor*. The *Advisor* uses the manuscript format set forth in the latest edition of the style manual of the American Psychological Association.

Please send unsolicited manuscripts to:
Ronald C. Hughes, PhD
Institute for Human Services
1706 East Broad Street
Columbus, Ohio 43203

NOTE: An abbreviated style sheet prepared by APSAC to assist *Advisor* authors in manuscript preparation is available from the editor in chief on request (fax: 614-251-6005 or phone: 614-251-6000).

WASHINGTON UPDATE

Thomas Birch, JD, PhD
National Child Abuse Coalition

CONGRESS BEGINS FY05 FUNDING DEBATE, OUTCOMES UNCERTAIN

With a presidential election just 2 months away, and with all House seats and one third of the Senate up for contest, the congressional legislative session is considerably shorter this year. Longer recesses allow for the two national party conventions, and an early adjournment date gets legislators home to campaign. So Congress is getting down to the business of passing the 13 appropriations bills to keep the federal government in business in Fiscal Year 2005, beginning October 1.

The defense and homeland security funding measure went first in June. Following the July 4 recess, the congressional appropriations process began in earnest with the other money bills, including the Labor-HHS-Education funding bill, scheduled for committee drafting and possibly even floor votes before the August recess.

Whether Congress will spend or not is the big question. Both the House and Senate have passed budget resolutions outlining spending guidelines for appropriations, but Republican negotiators have been unable to reconcile the two plans into a single budget document.

Whether Congress will spend or not is the big question. Both the House and Senate have passed budget resolutions outlining spending guidelines for appropriations, but Republican negotiators have been unable to reconcile the two plans into a single budget document. The appropriations committees have been forced to draft their annual spending bills without the congressional budgetary guidance. Each chamber is following its own resolution, though both impose similar limits on spending. What's clear is that funding is tight and many in Congress, especially the Republican leadership, are reluctant to okay most of the spending increases proposed by President Bush in the FY05 budget plan he sent to Congress in February.

Congress could go a long way to improving funding for child welfare, child protective services, and child abuse prevention by taking the President's budget numbers. The Bush administration's budget, with an overall 4% increase in discretionary spending for the HHS Administration for Children and Families, would double funds for the Child Abuse Prevention and Treatment Act (CAPTA) basic state grants and the Title II community-based child abuse prevention grants, and would also increase spending for the Safe and Stable Families Program, Title IV-B(2), by $101 million to a new level of $505 million for prevention and other supportive services to families of children at risk.

Last spring, advocates for the President's budget request to double funding for CAPTA's basic state grants and community-based prevention grants had hoped for a Senate floor amendment to allow for the additional spending in the budget resolution. However, no amendment materialized. The battle was between tax cuts and spending. As an indication of how budget amendments fared on floor votes, an amendment proposed by Sen. Christopher Dodd (D-CT) to allow for an increase in the Twenty-First Century Community Learning Centers Program by $1 billion and lower the national debt by eliminating tax loopholes failed by a vote of 42 to 54; and an amendment offered by Sen. Mark Dayton (D-MN) to provide full mandatory funding for the Individuals With Disabilities Education Act (IDEA) part B grants by reducing tax breaks for the wealthiest taxpayers, failed to pass on a voice vote. Deficit hawks argue that the budget must be brought into balance by reining in the size of government.

Advocates have their work cut out to convince congressional appropriators to choose the higher funding levels for child welfare in the President's budget over the hold-even levels in the congressional budget resolution. On Capitol Hill, the political will exists for spending more on protecting children and preventing child abuse and neglect, but in the end, the legislative will may be weak. In April, 19 Senators joined in sending a letter to the Senate Appropriations Committee urging support for President Bush's request to increase CAPTA funding FY05, pointing out that "the nation's child welfare system has long been stretched beyond capacity…[while] funds for CAPTA programs have been nearly frozen for a decade."

The letter, initiated by Senators Christopher Dodd (D-CT) and Lamar Alexander (R-TN), speaks, too, to the current low priority in funding for protective and preventive services:

> *Billions of dollars are spent every year on foster care—too often the only option for families in crisis. While we should be protecting children who have been the most seriously injured, we can do a much better job at protecting children before the damage is so bad that we have no other choice than to remove them from their homes. Increasing funding for CAPTA's basic state grants and community-based prevention grants will help in a modest yet constructive manner to begin to address the current imbalance.*

A similar letter initiated by Rep. George Miller (D-CA) and Rep. Jim Greenwood (R-PA) and signed by 53 members of the U.S. House of Representatives was sent in June to the leadership of the House Appropriations Committee.

Darkening the picture a bit, in May the White House Office of Management and Budget (OMB) circulated a memo to federal agencies responsible for domestic programs to expect spending cuts in 2006 if President Bush is reelected. As examples cited in the OMB memo, the Women, Infants, and Children (WIC) nutrition program currently funded at $4.7 billion would be cut by $122 million

in 2006. Head Start likewise would be targeted, set to take a loss of $177 million (2.5% of its budget) in FY06, which would result in about 40,000 fewer children and their families receiving services. Commentators suggest that the administration is looking to cut spending in domestic programs to pay for the tax cuts imposed during the President's first term.

Since President Bush took office, Congress has passed tax cuts worth $1.7 trillion over 10 years. To preserve those tax cuts, Congress would have to cut federal spending by hundreds of billions of dollars each year. If Congress were to eliminate every dollar of the $438 billion in domestic discretionary spending in the federal budget this year for every education and child welfare program, every federally supported health care service and homeland security, the national parks, interstate highway system, and all the rest, the federal budget would still be in the red.

SURGEON GENERAL PLANS CHILD ABUSE WORKSHOP

U.S. Surgeon General Richard H. Carmona announced on April 1, 2004, his plan to create a new working group to "focus attention on the problem of child abuse and neglect and to identify ways to reduce it." The new effort will involve experts—not yet named—in criminal justice, medicine, child welfare, and education.

A workshop on child abuse and neglect convened by the Surgeon General is scheduled for September, bringing together experts in health, social services, faith community, law enforcement, criminal justice, education, and other fields, as well as parents and family representatives.

In his remarks at a ceremony in Washington, D.C., marking the start of National Child Abuse Prevention Month, Dr. Carmona said, "While child maltreatment has traditionally been thought of as a criminal justice issue, it is also very much a public health issue…. From the law enforcement side we emphasize protection, from the public health side we need to emphasize prevention…. The wrenching mental and physical health effects of child maltreatment continue for that child long after he or she is placed in a safe environment."

Carmona explained that "individual and societal consequences of child maltreatment can be severe," listing physical injury or death, chronic health conditions, broken families, emotional devastation, and increased health care expenditures.

A workshop on child abuse and neglect convened by the Surgeon General is scheduled for September, bringing together experts in health, social services, faith community, law enforcement, criminal justice, education, and other fields, as well as parents and family representatives. The workshop will examine the current system of care for children and the points at which families touch various systems, with the aim of promoting the prevention of child maltreatment through better coordination of existing programs. The Surgeon General is especially interested in promoting "child development literacy" in parents and adding another dimension to prevention efforts through the public health system.

Department heads and staff representing multiple federal agencies met on June 16 to begin mapping out directions for the initiative and develop plans for the Surgeon General's Workshop on Child Maltreatment. Improving the coordination of programs among agencies and across Departments appears to be a principal objective of the Surgeon General's effort.

IMPROVED GUIDANCE, BETTER DATA NEEDED FOR CHILD WELFARE ASSESSMENTS

Clear guidance from federal officials on improving child welfare services and better use of data to measure accountability could enhance the federal government's oversight of the states' child protective services and child welfare systems, according to a report released by the U.S. General Accounting Office on April 20, 2004.

In reviews conducted over the last 3 years, the U.S. Department of Health and Human Services (HHS) has found that no state fully complies with federal standards on the safety and well-being of children and other standards that assess child welfare system policies and procedures. The federal Child and Family Service Reviews (CFSRs) are based on state child welfare data and case files, as well as interviews with children, their biological parents, foster and adoptive parents, social workers, and juvenile and family court judges. The reviews developed by the HHS Administration for Children and Families (ACF) are aimed at evaluating performance in protecting children and in finding safe, permanent homes for abused or neglected children.

The GAO reported that "several state officials and child welfare experts we interviewed questioned the accuracy of the data used in the review process" and "uncertainties have affected the development, funding, and implementation" of plans for improvement.

Seven of the fourteen federal standards focus on the safety and well-being of children, including the incidence of abuse and neglect, the time they spend in foster care, and the stability of their living arrangements. Sixteen states failed to meet any of those seven standards: Alaska, California, Georgia, Illinois, Indiana, Michigan, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, South Dakota, Tennessee, Washington, West Virginia, and Wyoming.

Federal officials repeatedly cited states for certain deficiencies: significant numbers of children suffering abuse or neglect more than once in a 6-month period; caseworkers not visiting children often enough to assess their needs; and not providing promised medical and mental health services.

Many states said they did not have enough caseworkers to investigate reports of abuse or to monitor children in foster care. They have difficulty recruiting and retaining workers because salaries are

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often low. Officials in some states told the GAO that "insufficient funding and staff were among the greatest challenges."

States did somewhat better on the other standards used to assess their policies and procedures, the training of caseworkers, and the use of computers to keep track of children.

If states do not correct the deficiencies, they stand to lose a share of the $7 billion a year the federal government provides to states for foster care, adoption assistance, and other child welfare services. Penalties are estimated at $18.2 million for California, $3.6 million for Florida, $3.5 million for Texas, $3 million for Pennsylvania, $2.5 million each for Ohio and Michigan, and $2.3 million for New York.

States will be reevaluated periodically. HHS officials have said they would suspend the penalties if states developed plans of correction and made substantial progress. The GAO asserts in its report that "[s]ince 2001, ACF's focus has been almost exclusively on the CFSRs and regional staff report limitations in providing assistance to states in helping them to meet key federal goals."

CAPTA LAW ONLINE

The Child Abuse Prevention and Treatment Act (CAPTA), including the Adoption Opportunities Act and the Abandoned Infants Assistance Act, as amended by the Keeping Children and Families Safe Act of 2003, and signed into law on June 25, 2003, is now available on the Children's Bureau's (CB) Web site in HTML format at: http://www.acf.hhs.gov/programs/cb/laws/capta03/index.htm.

The statute is also available as a PDF file from the CB Web site at: http://www.acf.hhs.gov/programs/cb/laws/capta03/capta_manual.pdf.

CHILD ONLINE PROTECTION ACT UNCONSTITUTIONAL, AGAIN

For the third time in 7 years, the U.S. Supreme Court refused to uphold federal legislation designed to shield minors from pornography on the Internet, citing congressional failure to protect free speech while attempting to curb online obscenity. The Court's 5 to 4 decision leaves the Child Online Protection Act (COPA), signed into law by President Clinton in 1998, unenforceable.

Writing for the majority, Justice Anthony M. Kennedy held that "[c]ontent-based prohibitions, enforced by severe criminal penalties, have the constant potential to be a repressive force in the lives and thoughts of a free people."

The case now goes back to the lower court, where the U.S. Justice Department has the task of convincing a federal judge that COPA's provisions are the only possible way to prevent children from finding inappropriate sexual material on the Internet. Justice Kennedy's opinion virtually ensured the impossibility of that assignment by suggesting that parents have the option to use software that filters out pornography on the Internet.

Dissenting in the case of *Ashcroft v. ACLU* were Chief Justice William H. Rehnquist and Justices Antonin Scalia, Sandra Day O'Connor, and Stephen G. Breyer.

The Court first addressed the issue of shielding children from Web-based pornography when, in 1997, it struck down the Communications Decency Act of 1996 as a First Amendment violation. The 1998 COPA law was found unconstitutional in 2000 by the 3rd Circuit U.S. Court of Appeals. The Supreme Court reviewed that ruling in 2002 and instructed the 3rd Circuit to take another look. Again, the appellate court struck down the law.

Journal Highlights

Ronald C. Hughes, Judith S. Rycus, Sally Dine Fitch
North American Resource Center for Child Welfare

Journal Highlights informs readers of current research on various aspects of child maltreatment. APSAC members are invited to contribute by sending a copy of current articles (preferably published within the past 6 months) along with a two- or three-sentence review to: Ronald C. Hughes, PhD, Institute for Human Services, 1706 East Broad Street, Columbus, Ohio 43203 (fax: 614-251-6005 or phone: 614-251-6000).

TREATMENT SUGGESTIONS FOR YOUNG MOTHERS WITH COEXISTING DRUG ABUSE AND CHILD NEGLECT

The purpose of this study was to analyze research examining the relationship of drug abuse and child neglect, to review clinical treatments that appear to be effective with both perpetrators of child abuse and drug abusing adolescents, and to propose integrated interventions for use with adolescent mothers who use drugs and also neglect their children. Following a thorough review of relevant controlled outcome studies, and in the absence of studies regarding treatment outcomes with substance-abusing adolescent mothers who neglect their children, the author proposes a series of family-based therapy and individual cognitive problem-solving interventions, based on their demonstrated effectiveness in related subpopulations of adolescent substance abusers and child-neglecting mothers.

Donahue, B. (2004). Co-existing child neglect and drug abuse in young mothers. *Behavior Modification, 28*(2), 206-233.

BATTERED WOMEN OFTEN MALTREAT THEIR CHILDREN

The purpose of this study was to determine the prevalence and correlates of intimate partner violence among female caregivers of children reported to child protective services agencies. The study sample included 3,612 female caregivers selected from the National Survey of Child and Adolescent Well-Being study, who were interviewed about physical violence by a partner, substance abuse, mental health, and demographics. The study found the lifetime prevalence of intimate partner abuse of female caregivers of maltreated children was 45%, with a past-year prevalence of 29%. The study also reported that intimate partner abuse was strongly associated with both major depression and repeated abuse of children. The high prevalence of co-occurrence of intimate partner abuse and child abuse by female caregivers highlights the need for effective screening and identification of intimate partner violence in families referred to child protective services agencies.

Hazen, A. L., Connelly, C. D., Kelleher, K., Landsverk, J., & Barth, R. (2004). Intimate partner violence among female caregivers of children reported for child maltreatment. *Child Abuse & Neglect, 28*(3), 301-319.

WHY DO BATTERED WOMEN OFTEN MALTREAT THEIR CHILDREN?

This researcher states the purpose of the study was to understand why some battered mothers physically abuse their children. Her conclusions indicate factors other than battering have a strong effect. The study sample included 184 mothers—53 who were battered and abusive to their children, 57 who were not battered and not abusive, 33 who were battered but not abusive to their children, and 41 who were not battered but who did abuse their children. Each mother's history of childhood physical abuse and the availability of a support network were evaluated, comparing several variables. Findings included that mothers who were severely assaulted by their own mothers tended to physically abuse their children regardless of whether they were battered, even though their history of abuse was less proximate in time than other significant variables, such as stressors and quality of relationships. The author suggests that practice interventions include efforts to minimize transmission of violence across generations.

Coohey, C. (2004). Battered mothers who physically abuse their children. *Journal of Interpersonal Violence, 19*(8), 943-952.

USING HUMAN FIGURE DRAWINGS TO ELICIT INFORMATION FROM ALLEGED VICTIMS OF CHILD SEXUAL ABUSE

This study attempted to assess the utility of using a human figure drawing to elicit information from alleged victims of child sexual abuse, following open-ended prompts in an investigative interview. Ninety alleged victims of child sexual abuse, ranging in age from 4 to13 years, were interviewed by police officers using the National Institute of Child Health and Human Development investigative interview protocol, plus a human figure drawing with a series of questions about the drawing. The drawing with questions elicited an average of 86 new relevant details for the sample group. In a subgroup of 4- to 7-year-olds, an average of 95 additional details was elicited, comprising 27% of the total details elicited from the entire interview. The authors conclude that the use of a human figure drawing helped investigators elicit important information from child interviews, even after the investigators believed they had "exhausted" the children's memories. However, the authors caution that while most of the information obtained with the human figure and recognition memory prompts would be accurate and of value to investigators, the information elicited after the drawing had been introduced was more likely to be inaccurate than information obtained earlier in the investigative interview using open-ended prompts.

Aldridge, J., Lamb, M. E., Sternberg, K. J., Orbach, Y., Esplin, P. W., & Bowler, A. (2004). Using a human figure drawing to elicit information from alleged victims of child sexual abuse. *Journal of Counseling and Clinical Psychology, 72*(2), 304-316.

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DO GOOD NEIGHBORHOODS MEDIATE BAD PARENTING?

This study attempted to test the ecological hypothesis that healthy, socially cohesive neighborhoods can modulate the negative developmental effects on children of hostile and coercive parenting. Specifically, the study evaluated the "buffering effect" of neighborhood social cohesion and control on children's mental health and behavior. Forty-two first and second graders and their mothers participated in the study. The children were administered a child-friendly, interactive interview to elicit their opinions regarding parent-child relationships and their perceptions of their neighborhoods. The children's teachers completed a behavior assessment of the children. Mothers completed surveys of their perceptions of their neighborhood, and they completed a self-report hostility measure. The authors concluded that the positive social features of a neighborhood could serve a protective role for children, moderating the influence of hostility within the family environment. The authors acknowledge the study's limitations and the conflicting findings of other studies. They conclude that the study supports the proposition that positive features of children's neighborhoods, particularly those that engender social cohesion and involvement, may benefit children by attenuating the adverse effects of hostile parenting, and, there is a need to focus additional resources on the positive aspects of neighborhoods in developing resiliency in children.

Silk, J., Sessa, F., Morris, A., Steinberg, L., & Avenevoli, S. (2004). Neighborhood Cohesion Against Hostile Maternal Parenting. *Journal of Family Psychology, 18*(1), 135-146.

PET SCAN SUGGESTS PHYSICAL AND SEXUAL ABUSE ARE IMPORTANT FACTORS IN DEVELOPMENT OF BORDERLINE PERSONALITY DISORDER

This study measured the neural correlates of recall of traumatic memories in women with and without borderline personality disorder (BPD). Twenty women with a history of childhood physical or sexual abuse underwent measurement of brain blood flow with positron emission tomography (PET) imaging while they listened to descriptions of both neutral personal history events and traumatic abuse events. Brain blood flow during exposure to trauma and neutral personal history events was compared between women with and without BPD. There were notable differences in brain blood flow between the two groups. Women with BPD showed differences in blood flow to areas of the brain that could represent an inability to recognize or to correctly interpret social cues, and the generation of pathological emotion. The researchers conclude that traumatic stress, such as physical or sexual abuse, can be an important factor in the development of BPD.

Schmahl, C. G., Vermetten, E., Elzinga, B. M., & Bremner, J. D. (2004). A positron emission tomography study of memories of childhood abuse in borderline personality disorder. *Biological Psychiatry, 55*(7), 759-765.

LEVEL OF PSYCHOLOGICAL FUNCTIONING IN FOSTER CARE APPLICANTS

This study examined the psychological functioning of 161 family foster care applicants in terms of parenting, family functioning, marital quality, psychological problems, and social support. The study examined the characteristics of foster family applicants thought to influence the behavioral and emotional adjustment of foster children. The majority of men and women included in the foster care applicants had one or more problems in psychological functioning. Seventeen percent of women, 24% of men, and nearly half of married couples had three or more problems with psychological functioning. Just under 25% lacked adequate empathy. Given the frequency and variety of problems, the authors cite the need for targeted training, mentoring, and developmental monitoring of foster care applicants, as well as additional research examining the predictive validity of problems in psychological functioning.

Orme, J. G., Buehler, C., McSurdy, M., Rhodes, K. W., Cox, M. E., & Patterson, D. A. (2004). Parental and family characteristics of family foster care applicants. *Children and Youth Services Review, 26,* 307-329.

EMPIRICAL EVALUATION OF HOME VISITING PROGRAMS TO PREVENT CHILD ABUSE AND NEGLECT

Two articles and an invited commentary together review and critically assess the findings of a randomized, controlled trial to determine the impact of Hawaii's Healthy Start Program (HSP) in preventing child abuse and in reducing malleable parental risk factors for child abuse. Study subjects were families identified to be "at risk" of child maltreatment and were randomly assigned to intervention and control groups. Data were collected through annual maternal interviews, observation of home environments, and review of HSP, child protective services, and pediatric medical records. Child abuse and neglect were measured by observed and self-reported parenting behaviors, child hospitalizations for trauma, preventable child hospitalizations resulting from inadequate preventive care, substantiated child protective services reports, and maternal relinquishment of the primary care-giving role. Results indicated that HSP did not prevent child abuse; did not increase the use of nonviolent discipline; did not have a significant impact on reducing risk factors; and did not increase mothers' desire for or use of community resources to reduce risk factors.

The authors contend a primary contributor was staff's lack of knowledge and skill in recognizing and assessing well-documented risk factors, such as parental drug use, family violence, and maternal depression, as well as lack of skill in designing and implementing service strategies to address these risks. The authors also suggest that reliance on a parent-driven, strengths-based intervention model, in which parents retained responsibility to identify their own needs and choose their own service interventions, often precluded sufficient focus on high-risk conditions and behaviors. The authors note that these findings are not consistent with prior research that reports good results from home visiting programs. They contend that the rigorous experimental methodology used by this study greatly increases the reliability and validity of its findings, and that widespread methodological problems in previous research, including a preponderance of simple single-group or quasi-experimental designs, increase the likelihood of error in their results. The authors propose

a recommitment to rigorous, randomized, well-controlled study methodologies when evaluating the impact of service programs such as HSP. They also recommend retooling home visiting programs to focus on identifying and responding to risk factors for maltreatment, and suggest that the field refrain from large-scale program expansion and implementation when there is no empirically derived evidence that clearly documents successful program outcomes.

Duggan, A., Fuddy, L., Burrell, L., Higman, S. M., McFarlane, E., Windham, A., & Sia, C. (2004). Randomized trial of a statewide home visiting program to prevent child abuse: Impact in reducing parental risk factors. *Child Abuse & Neglect, 28*(6), 622-643.

Duggan, A., McFarlane, E., Fuddy, L., Burrell, L., Higman, S. M., Windham, A., & Sia, C. (2004). Randomized trial of a statewide home visiting program: Impact in preventing child abuse and neglect. *Child Abuse & Neglect, 28*(6), 597-622.

Chaffin, M. (2004). Is it time to rethink Healthy Start/Healthy Families? Invited commentary. *Child Abuse & Neglect, 28*(6), 589-595.

EVALUATING EFFECTS OF CHILD ABUSE TRAINING FOR POLICE RECRUITS

This study was designed to assess the effects of mandatory child abuse training of police recruits on their knowledge, skills, and attitudes toward abused children and abusive parents. Eighty-one new police recruits were randomly assigned to an experimental group that received mandatory child abuse training, and 101 were assigned to a comparison group that did not receive the training during the study period. No significant differences were found in demographic characteristics of the study groups. Instructional goals of the 8-hour training program were to provide recruits with skills in procedures for reporting cases of child maltreatment and providing an early intervention response. Part of the training was conducted by a child welfare social work professional. Content of the training included behavioral and physical indicators of maltreatment; conducting an emergency removal of a child from a home; interviewing child victims; and procedures for reporting to child welfare authorities. A pre-posttest method was used to evaluate outcomes. Pre- and posttest measures were the same and were administered concurrently to both groups. The posttest was administered 2 weeks after the pre-test. Results suggest that recruits in the experimental group acquired more knowledge, developed more skills, and felt more caring and sympathetic toward abusive parents than recruits in the comparison group. Study limitations included the absence of a follow-up study determining whether the impact of training persisted over time, and the use of participant self-report rather than objective observation of recruits. Despite the limitations, the author suggests the findings are consistent with previous research that supports a skill-based, recruit training curriculum, combined with a focus on moderating extreme negative emotional reactions toward abusive parents.

Patterson, George T. (2004). Evaluating the effects of child abuse training on the attitudes, knowledge, and skills of police recruits. *Research on Social Work Practice, 14*(4), 273-280.

EFFECTS OF ABUSE AND NEGLECT ON DEVELOPMENT OF THE CORPUS CALLOSUM

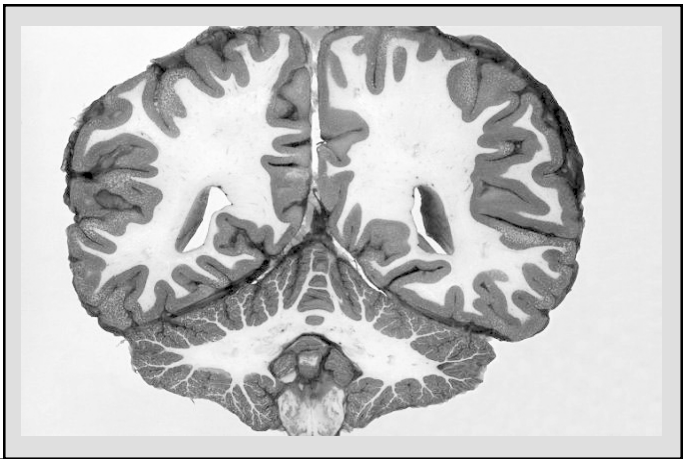
This study sought to determine whether there were abnormalities in the regional anatomy of the corpus callosum in children with a history of abuse or neglect. The corpus callosum is the major myelinated fiber tract connecting the left and right hemispheres of the brain and is responsible for the majority of interhemisphere transmission of information. The study examined the relative contributions of neglect, physical abuse, sexual abuse, posttraumatic stress disorder, psychiatric illness, and gender to the development of corpus callosum size. Corpus callosum size was measured through magnetic resonance imaging (MRI) scans in 26 boys and 25 girls admitted for psychiatric evaluation, 28 of whom were diagnosed as abused or neglected. These scans were then compared with scans of 115 healthy control subjects. The corpus callosums of the abused or neglected patients were 17% smaller than in control subjects, and 11% smaller than in psychiatric patients who had not been abused or neglected. Neglect was associated with substantially greater effect sizes than was sexual abuse in boys. In contrast, sexual abuse tended to be associated with larger effect sizes than neglect in girls.

Teicher, M. H., Dumont, N. L., Ito, Y., Vaituzis, C., Giedd, J. N., & Andersen, S. L. (2004). Child neglect is associated with reduced corpus callosum area. *Biological Psychiatry, 56*, 80-85.

ADVERSE CHILDHOOD EXPERIENCES PREDICT POOR PARENTING

The authors tested how adverse childhood experiences and adult poly-drug use predicted poor parenting in both mothers and fathers. A community sample of 237 mothers and 81 fathers was used. The authors found that both childhood maltreatment and parental drug problems had an adverse impact on parenting practices among mothers. Experiencing child abuse and/or neglect had a negative effect on later parenting. Parental alcohol or drug related problems also predicted poor parenting. Gender differences between mothers and fathers were found on several variables and constraints. For example, poly-drug problems and poor parenting were not related for fathers.

Locke, T. F., & Newcomb, M. D. (2004). Child maltreatment, parental alcohol and drug-related problems, poly-drug problems, and parenting practices: A test of gender differences and four theoretical perspectives. *Journal of Family Psychology, 18*(1), 120-134.



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12th Annual Child Abuse Conference, Biloxi, MS
call 228-868-9586

September 12-15, 2004
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or e-mail: sefranks@mindspring.com
or visit www.dontshake.com

September 19-22, 2004
ISPCAN 15th International Congress on Child Abuse and Neglect, Brisbane, Australia
call 617-3844-1138
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September 19-22, 2004
9th International Conference on Family Violence, San Diego, CA
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or visit www.fvsai.org

September 29, 2004
18th Annual Children's Network Conference, Ontario, CA
call Jennifer Celise-Reyes 909-387-8966
or fax 909-387-4656 or e-mail: jcelise-reyes@hss.sbcounty.gov
or visit www.co.san-bernardino.ca.us/childnet/

October 18-22, 2004
OUR KIDS Training: The Evaluation and Management of Child Sexual Abuse, Nashville, TN
call Suzanne V. Petrey 615-341-4911
or fax 615-341-4919 or
e-mail: suzanne.v.petrey@vanderbilt.edu

October 20-22, 2004
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call 202-638-2952
or fax 202-638-4004
or visit www.cwla.org/conferences/conferences.htm

October 27-30, 2004
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write to: 4900 SW Griffith Drive, Suite 274, Beaverton, OR 97005
or visit www.atsa.com

November 17-20, 2004
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or fax 614-292-6767
or e-mail: asc41@infinet.com
or visit www.asc41.com

November 29-December 3, 2004
2nd Annual Trauma Treatment Clinic, Maui, HI
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January 13-16, 2004
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Call 703-893-2400
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January 24-28, 2005
19th Annual San Diego Conference on Child and Family Maltreatment, San Diego, CA
call Linda Wilson 858-576-1700 ext. 4972 or
e-mail: sdconferences@chsd.org
or visit www.chadwickcenter.org

April 18-23, 2004
15th National Conference on Child Abuse and Neglect "Supporting Promising Practices and Positive Outcomes: A Shared Responsibility," Boston, MA
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