

APSAC Influences U.S. Supreme Court in Child Abuse Case

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The Supreme Court has relied on an amicus brief submitted by APSAC in a case that will have far-reaching effects on the ability of prosecutions to move forward despite child witnesses' inability or unwillingness to testify. In *Ohio v. Clark*, 135 S.Ct. 2173 (2015), the Court addressed whether the Confrontation Clause prevented the state from prosecuting a child abuse case by introducing hearsay from a 3-year-old victim who was found incompetent to testify at trial. The Supreme Court interpreted this clause to prevent prosecutors from admitting "testimonial" hearsay from anyone who the defendant is unable to cross-examine in *Crawford v. Washington*, 541 U.S. 36 (2004). Further, based on examining statements made to the police, the Court has held that statements are testimonial if their "primary purpose" was "to establish or prove past events potentially relevant to later criminal prosecution," as declared in *Davis v. Washington*, 547 U.S. 813, 822 (2006).

In *Clark*, the 3-year-old showed up at preschool with bruises, and when questioned by his teachers, the child reported that his mother's boyfriend had abused him. Relying on a hearsay exception for children's complaints of abuse, the trial court allowed the teachers to repeat what the child had said. The Ohio Supreme Court overturned the conviction on the grounds that the child's statements were testimonial hearsay.

The U.S. Supreme Court unanimously reversed this decision. In assessing the purpose of the statements, the majority opinion examined both the perspective of the child and of the teachers. Viewing the conversation from the perspective of the child, the Court held that "[s]tatements by very young children will rarely, if ever, implicate the Confrontation Clause." Quoting APSAC's amicus brief, the Court observed that "[r]esearch on children's understanding of the legal system finds that young children 'have little understanding of prosecution.'" The brief cited a series of studies examining children's understanding of the legal system, beginning with work by Rhona Flin, Karen Saywitz, Amye Warren, and others. Furthermore, echoing language from the brief, the Court stressed that when children disclose abuse, they do so not because they seek prosecution, but primarily because they want the abuse to stop or to help other victims.

Viewing the conversation from the perspective of the teachers, the Court concluded that the teachers' "immediate concern was to protect a vulnerable child who needed help." They had to confirm "whether any other children might be at risk," and "needed to know whether it was safe to release"

the abuse victim at the end of the school day. It made no difference that they were obligated to report suspected child abuse, because "mandatory reporting statutes alone cannot convert a conversation between a concerned teacher and her student into a law enforcement mission aimed primarily at gathering evidence for a prosecution." APSAC's amicus brief had reviewed all fifty states' mandatory reporting laws and demonstrated that the primary purpose of reporting and subsequent investigation is protection rather than prosecution.

The decision will remove barriers to prosecution in many cases, including any case in which very young children allege abuse, and many if not most cases in which children allege abuse when questioned by teachers, social workers, psychologists, and medical professionals.



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Mr. Lawrence and Dr. Lyon co-authored APSAC's amicus brief to the U.S. Supreme Court.