No. 09-1396

In The
Supreme Court of the United States

RICKY LEE ALLSHOUSE,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, THE PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, THE PUBLIC DEFENDER ASSOCIATION OF PENNSYLVANIA, AND THE DEFENDER ASSOCIATION OF PHILADELPHIA, AS *AMICI CURIAE* ON BEHALF OF PETITIONER

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QUESTION PRESENTED

Amici adopt and incorporate the question presented by petitioner.

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INTEREST OF *AMICI CURIAE*[1]

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit corporation with membership of more than 10,000 attorneys and 28,000 affiliate members in all fifty states. The American Bar Association recognizes the NACDL as an affiliate organization and awards it full representation in its House of Delegates.

The NACDL was founded in 1958 to promote research in the field of criminal law, to advance knowledge of the law in the area of criminal practice, and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. Among the NACDL's objectives are to ensure the proper administration of justice and appropriate application of criminal statutes in accordance with the United States Constitution. Consistently advocating for the fair and efficient administration of criminal justice, members of the NACDL have a keen interest in

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, and their counsel, made any monetary contribution towards the preparation and submission of this brief. Pursuant to Supreme Court Rule 37.2(a), *amici curiae* certifies that counsel of record for both parties received at least 10-days notice of *amici curiae*'s intent to file this brief and have consented to its filing in letters on file with the Clerk's office.

knowing whether forensic interviewers may be used to introduce statements of non-testifying witnesses.

In the wake of *Crawford v. Washington*, 541 U.S. 36 (2004), and *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009), courts have routinely wrestled with the question of whether the Confrontation Clause permits this form of surrogate testimony. This practice poses serious problems because it fundamentally alters the structure of a criminal trial, hampers its truth-seeking function, and ultimately threatens the integrity of our criminal justice system. To delay intervention will perpetuate confusion and facilitate injustice in a substantial number of criminal cases nationwide.

DEFENDER ASSOCIATION OF PHILADELPHIA

The Defender Association of Philadelphia is a private, non-profit corporation that represents a substantial percentage of the criminal defendants in Philadelphia County at trial, at probation and parole revocation proceedings, and on appeal. The Association is active in all of the trial and appellate courts, as well as before the Pennsylvania Board of Probation and Parole. The Association attempts to ensure a high standard of representation and to prevent the abridgment of the constitutional and other legal rights of the citizens of Philadelphia and Pennsylvania.

PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

The Pennsylvania Association of Criminal Defense Lawyers ("PACDL") is a professional association of law students and attorneys admitted to practice before the Supreme Court of Pennsylvania and who are actively engaged in providing criminal defense representation. As *Amicus Curiae*, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and insure by rule of law those individual rights guaranteed by the Pennsylvania and U.S. Constitutions, and work to achieve justice and dignity for defense lawyers, defendants, and the criminal justice system itself. PACDL includes more than 750 private criminal defense practitioners and public defenders throughout the Commonwealth.

PACDL sets the standard for protecting the constitutional rights of criminal defendants in Pennsylvania, and thus is closely watching the issues in this case. Moreover, PACDL members have a direct interest in the outcome of this matter because the Opinion, unless reversed, would uphold a precedent that would continue to violate basic principles of constitutional law.

PUBLIC DEFENDER ASSOCIATION OF PENNSYLVANIA

The Public Defender Association of Pennsylvania is a Pennsylvania non-profit corporation whose membership

is comprised of the Chief Public Defender, or his designee, in each of the 67 counties of this Commonwealth.

The Amicus Committee of the Board of Directors of the Public Defenders Association of Pennsylvania has discussed this case and determined the issue presented in this matter is of such importance to the indigent criminal defense community, the clients we represent, and the public at large throughout the Commonwealth of Pennsylvania, that it should offer its views to the Court for consideration.

I. STATEMENTS MADE DURING COORDINATED OR CHILD ADVOCACY CENTER INTERVIEWS ARE FORENSIC IN PURPOSE AND THEREBY CONSTITUTE TESTIMONIAL HEARSAY.

In *Davis v. Washington*, 547 U.S. 813, 822 (2006), this Court made clear that a statement is testimonial

> when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

This language is subject to either of two interpretations: that the interrogator's purpose is, first and foremost, to gather evidence "relevant to later criminal prosecution" or that the primary purpose is to "establish or prove past events" with the *potential* that such evidence is "relevant to later criminal

prosecutions." Regardless of which is correct,[2] because the national model and practice are for social workers or persons with similar positions to conduct an interview *on behalf of* police, this Court should determine that statements to a child protective services agent interviewing the child as part of a team response to a charge of child abuse are paradigmatically testimonial.

The instant matter addresses the admissibility of statements taken from a four year old child by a Children and Youth Services investigator after an abuse investigation had commenced. Because the national model is for a single interview to serve both social work and police objectives, relieving police of the interviewing task by having trained child interrogators in less forbidding attire conduct the

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[2] *Amici* emphasize that *Davis* elaborated that "it is in the final analysis the declarant's statements, not the interrogator's questions, that the Confrontation Clause requires us to evaluate." *Id.* at 822, n.1. Coupled with the pronouncement in *Crawford v. Washington*, 541 U.S. 36, 51 (2004) that "[a]n 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[,]" it is clear that statements made to persons in authority detailing the nature of criminally abusive acts and the identity of the perpetrator are in no way casual but instead are fundamentally testimonial. This is an accusatory statement, the equivalent of 'witnessing' in a criminal prosecution, and thus "testimonial." *See., e.g.,* Friedman, *Crawford, Davis* and *Way* Beyond, XV Journal of Law and Policy No. 2, 553, 573-574 (2007).

questioning, those statements must be within the reach of the Confrontation guarantee.

Child Advocacy Center Interviews as Police Investigative Tools Produce "Testimonial" Statements

Recognizing that subjecting children witnesses/victims to multiple interviews was emotionally deleterious, prosecutors and child advocates nationwide established protocols for child witness interviewing. These protocols make clear that a child interview is to be conducted by a non-threatening person (*i.e.*, by a person not wearing a gun, handcuffs, etc.) even though its function is to obtain and preserve evidence for investigation and prosecution.

That this is the model for child interviews is confirmed by the American Prosecutor's Research Institute. In its text INVESTIGATION AND PROSECUTION OF CHILD ABUSE (Third Edition),[3] APRI recommends that a multidisciplinary team of police, social workers and other investigators prepare the interview, which will be conducted by one team member while others may watch through a one-way mirror. *Id.*, 41. The text specifically discourages the

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[3] The text is available on line at http://books.google.com/books?id=k3YJBaPISIEC&dq=national+institute+of+justice+child+victim+interview&pg=PP1&ots=J_g_Rz3GHI&source=in&sig=BL1yxGh3e7QZ-mZpxk44Q1HqpwM&hl=en&sa=X&oi=book_result&resnum=12&ct=result#PPR6,M1.

presence of uniformed police, as "[u]niforms may have a chilling effect on children." *Id.*

The protocol APRI recommends is that adopted nationally and in Pennsylvania. As the National Center for Victims of Crimes reports,

> [i]n an effort to reduce or eliminate the need for multiple interviews, many states have established child advocacy centers, sometimes called Children's Justice Centers. Such centers are child friendly facilities that bring together a variety of services for child victims and coordinate investigations of abuse between agencies. Such centers often hold joint interviews of child victims by various professionals, or videotape interviews with children for later viewing by officials.[4]

Thus, as of 2004, "[m]ore than 40 states have legislation concerning joint investigation and cooperation between law enforcement and social services and authorizing multidisciplinary teams." Raeder, ENHANCING THE LEGAL PROFESSION'S RESPONSE TO VICTIMS OF CHILD ABUSE, 24 Crim. J. 12 (Spring, 2009). Indeed, as of 2008 the numbers of such centers had grown astronomically, as documented by the Department of Justice:

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[4] Special Provisions for Children in the Criminal Justice System, http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32472.

> The number of Children's Advocacy Centers in the United States has grown dramatically in the last 20 years. The first CAC was created in 1986 and by 1994, there were 50 CACs established nationwide. As of 2006, the National Children's Alliance (NCA), the accrediting organization for CACs, reported more than 600 CACs.[5]

A survey of agency self-reports on the internet confirms this to be the preferred model:

- North Dakota reports that

  > [o]ften a team investigation includes a "joint interview" of the child. Typically, the criminal investigator and the child protection worker decide in advance who will ask the questions of the child while the other takes notes and follows up with questions that his/her investigation requires. Some jurisdictions bring child victims to an "interviewing specialist" where the child protection worker, criminal investigator, and perhaps an attorney, watch the interview through a one-way mirror or on closed circuit television.[6]

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[5] (Cross et al., Evaluating Children's Advocacy Centers' Response to Child Sexual Abuse 2 (NCJ 218530, August 2008), available at http://www.ncjrs.gov/pdffiles1/ojjdp/218530.pdf).

[6] http://www.co.dakota.mn.us/NR/rdonlyres/00000981/nrjtqgjvlcsjoqlcooktbfznsgovteyd/ChildVictimsWitnesses.pdf

- Arlington, Virginia, has a specific protocol that

  > [e]very effort shall be made to limit in-depth interviews of a child to one time at the Child Advocacy Center [and] [t]he forensic interviewer interviews child(ren) with Police, CPS and other MDT members observing through the two-way mirror.[7]

- In California, a joint program of Marin and Contra Costa counties provides for a forensic interview where

  > [t]he Team at the CIC is comprised of a social worker, police detective, deputy district attorney, and a child victim advocate. Team members participate in an interview by observing through a one-way mirror, and by communicating through a listening device in the interviewer's ear. This team approach ensures that each agency gets the unique information it needs without further interviews and adult intervention.[8]

These protocols are used in forty-six states[9] including Pennsylvania, where petitioner's case occurred. In 2002, the Pennsylvania Commission on

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[7] www.dcjs.virginia.gov/juvenile/cja/teams/protocols/arlingtonCounty.doc

[8] http://www.cvsolutions.org/index.php?option=com_content&view=article&id=55&Itemid=70

[9] The pervasiveness of these protocols is confirmed by the American Academy of Pediatrics, which offers lists of such programs. *See, e.g.*, www.aap.org/sections/childabuseneglect/medicaldiagnostic.cfm

Crime and Delinquency funded the creation of child victim interview Guidelines for the state, a project completed with participation by the Pennsylvania District Attorneys' Association. These Guidelines, published by the Pennsylvania Coalition Against Rape, offer specific procedures for child witness/ victim interviews. The Guidelines describe a single interview format that "will minimize further trauma to the child, promote healing of the child and facilitate a successful prosecution."[10] A measurement [implementation] criterion of this Guideline is the directive that "[a]gencies will cooperate with each other to avoid multiple interviews of the child."[11] Aside from the general protocols which encourage police involvement in the overall process, the method of conducting the interview itself confirms its forensic nature.

Following this Court's emphasis in *Idaho v. Wright*, 497 U.S. 805, 812-13 (1990) that proper interviewing technique and recording of the interview could guarantee the reliability of a child victim's out-of-court statements to ensure their admission at trial, two forensic-focused interviewing protocols have been developed and promulgated.

The National Institute of Child Health and Human Development (NICHD) protocol for child

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[10] PCAR, Guidelines 27 (2002) www.pcar.org/sites/default/files/file/healthcare/SART_Guidelines.pdf

[11] *Id.*

witness interviewing begins the interview process with an introduction, an explanation of the importance to tell the truth *and* of the appropriateness of answering "I don't know" or "I can't recall," and then proceeding with open-ended questions rather than "option-posing" inquiries.[12] The second principal protocol is denominated "RATAC," a mnemonic for "Rapport, Anatomy Identification, Touch Inquiry, Abuse Scenario and Closure," and was developed for forensic use by the American Prosecutors' Resource Institute.[13]

This review of national and Pennsylvania protocols makes clear that interviews of children by social workers (as in the case at hand) produce core testimonial statements. Such statements are taken as part of a police-involved (if not led) investigation

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[12] Lamb *et al.*, Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol, Child Abuse Negl. 2007; 31(11-12): 1201-1231.

[13] American Prosecutors' Resource Institute, Finding Words: Half a Nation by 2010, http://www.ndaa.org/pdf/finding_words_2003.pdf. Disturbingly, it has been urged that the child interview protocol avoid certain topics to better qualify the responses as non-testimonial. Interviewers are urged to avoid "a truth/lie scenario in a forensic interview since this unnecessarily incorporates the test for taking an oath into the process [and] . . . to never ask a child what should happen to the abuser or parent since this aspect is not relevant to the forensic interview phase." Phillips, Weathering the Storm after *Crawford v. Washington*, APRI Update, Vol. 17, No. 5 (2004).

whose objective is to obtain information for use in later prosecution. Moreover, in the formulation of *Crawford*, they are "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial . . . "

This point – that multi-disciplinary team members serve the functional equivalent of police in an abuse investigation – is underscored by cases addressing interviews of suspects and defendants by Children and Youth Services or similar non-police investigators. *See, e.g.*, *State v. Oliveira*, No. 2007-30-C.A. at 12 (R.I. Dec. 19, 2008) (available at http://www.courts.ri.gov/supreme/pdf-files/07-30.pdf) (because the caseworker's purpose was to investigate child abuse and because she knew she would be required to hand over any statements of the defendant to police, using the statement against him at trial denied him "the basic protection of [the right to the assistance of counsel]."). The same is true in Pennsylvania. *Commonwealth v. Ramos*, 532 A.2d 465, 468 (Pa. Super. Ct. 1987) (requiring *Miranda* warnings during interrogation by a CYS investigator because "CYS is not only a treatment agency, but is the investigating arm of the statewide system of Child Protective Services").

In such circumstances, to hold forensic team interview statements nontestimonial would subject the Confrontation right to untenable manipulation. Indeed, the American Prosecutor's Resource Institute, after acknowledging that "a forensic interview is most often conducted through a multi-disciplinary team

(MDT) process where many purposes are being served by interviewing the child one time[,]" urges prosecutors to emphasize the child-welfare-first focus of the interview to avoid Confrontation Clause protection for the accused.[14] As Professor Richard Friedman emphasizes, "[l]abeling one purpose after the fact as primary seems to be a rather arbitrary exercise – and thus the test invites manipulation to enhance the chance that the evidence will be received."[15] Thus, the statements here, formal accusations of abuse, are squarely within the *Davis* standard that "the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution[ ]" and require Confrontation protection.

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[14] Phillips, The Luxury of Indecision: Child Forensic Interviews After *Davis* And *Hammon*, APRI UPDATE, Volume 19, Number 6 (2006) (http://www.ndaa.org/publications/newsletters/update_vol_19_number_6_2006.pdf)

[15] Friedman, *Crawford, Davis* and *Way* Beyond, XV Journal of Law and Policy No. 2, *supra*, at 560 (footnote omitted). *See also*, Raeder, ENHANCING THE LEGAL PROFESSION'S RESPONSE TO VICTIMS OF CHILD ABUSE, 24 Crim. Just. 12, (ABA, Spring 2009) ("Because *Crawford* has turned these best practices into a blueprint for creating testimonial statements, most children who are interviewed at CACs will have to testify for those statements to be admitted.").

II. THE SPLIT OF AUTHORITIES REGARDING WHETHER FORENSIC INTERVIEWS OF CHILDREN PRODUCE TESTIMONIAL HEARSAY IS SUBSTANTIAL AND CONTINUING.

The necessity for this Court's granting *certiorari* in the instant case is found in the abundance of conflicting authorities addressing whether and when interviews of child abuse and/or assault complainants are testimonial. This division of authority is exceptionally problematic because of the continuing pervasiveness of such abuse[16] and the potentially harsh punishments faced by those convicted of these offenses.[17]

Amici incorporate herein the discussion of conflicting decisional law detailed by Petitioner in section I of the REASONS FOR GRANTING THE

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[16] Although there has been a decline in these cases, the numbers remain significant:

> more than 1.25 million children (an estimated 1,256,600 children) experienced maltreatment during the NIS-4 study year (2005-2006). This corresponds to one child in every 58 in the United States. A large percentage (44%, or an estimated total of 553,300) were abused, while most (61%, or an estimated total of 771,700) were neglected.

Fourth National Incidence Study of Child Abuse and Neglect, 5 http://www.acf.hhs.gov/programs/opre/abuse_neglect/natl_incid/nis4_report_exec_summ_pdf_jan2010.pdf

[17] Sentencing ranges go as high as thirty (30) years for acts of child abuse. *See, e.g.*, OLR Report, SENTENCES FOR CHILD ABUSE, http://www.cga.ct.gov/2000/rpt/olr/htm/2000-r-1064.htm

WRIT. The inconsistency and incompatibility of these holdings, when meant to address and ensure a federal constitutional right, cannot stand. That they bedevil courts nationally is beyond question. As one jurist noted,

> Other courts have cited Rangel, both favorably and unfavorably, on this critical and recurring issue. Trial and appellate courts across the country are attempting to find a suitable accommodation between the defendant's constitutional right of confrontation and a young child's inability to testify fully and accurately in the courtroom setting.

Rangel v. State, 250 S.W.3d 96, 98-99 (Tex. Crim. App. 2008) (Cochran, J., dissenting to the dismissal of the petitions for discretionary review).

Amici and their members regularly encounter the question posed by forensic interviews of children and strongly believe that the criminal justice system would benefit from resolution of that question. As the cases surveyed by petitioner demonstrate, the split of authorities regarding the admissibility of child forensic interview testimony is deep and shows no signs of resolving itself in the near future. Indeed, the split itself is entrenched and growing with time, and has been previously noted by the Attorneys General of numerous states when they supported a request for *certiorari* in a previous child witness case.[18] As a

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[18] Br. Amicus Curiae of Missouri et al., *Iowa v. Bentley*, No. 07-886.

result, only prompt review by this Court can provide the guidance necessary to resolve the Confrontation Clause question.

III. RECOGNIZING FORENSIC INTERVIEWS AS TESTIMONIAL WILL NOT PREVENT CHILDREN'S VOICES FROM BEING HEARD IN THE COURTROOM.

A constitutional command is precisely that – a mandate that cannot be set aside because of the consequent difficulties it places on the Government.

> The Confrontation Clause may make the prosecution of criminals more burdensome, but that is equally true of the right to trial by jury and the privilege against self-incrimination. The Confrontation Clause – like those other constitutional provisions – is binding, and we may not disregard it at our convenience.

Melendez-Diaz v. Massachusetts, ___ U.S. ___, at ___, 129 S. Ct. 2527, 2540 (2009). Yet, to defuse the anticipated argument that declaring forensic interviews to be testimonial will disable prosecutors in child abuse cases, *amici* identify here the numerous means available to ensure child complainants having their claims heard and their rights vindicated.

An abundance of courtroom accommodations and legal doctrine exist to facilitate the presentation of children's testimony. Pursuant to *Maryland v. Craig*, 497 U.S. 836 (1990) a one-directional closed circuit

television process may be utilized for children otherwise traumatized by appearing in the same room as the accused, and subsequent decisional law has upheld this for two-way video questioning upon the requisite showing of necessity. *See, e.g.*, *United States v. Yates*, 438 F.3d 1307, 1313 (11th Cir. 2006) (collecting cases).

Altering the forbidding aspect of the adult courtroom to be less intimidating to a child is a trend that is strongly in evidence and will only continue. Legislation permits accommodations as a matter of course[19] or at most upon a showing by a preponderance that the adaptation is needed to ensure that the child testifies reliably.[20] There is also a recognition,

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[19] *See, e.g.*, Missouri House bill No. 863, permitting courts to modify the oath to a child-friendly format and limit the time during which a child testifies to accommodate the "energy, comfort, or attention span of the child . . . " http://www.house.mo.gov/billtracking/bills091/biltxt/truly/HB0863T.HTM. A detailed listing of such statutes is found in THE CHILD WITNESS IN CRIMINAL CASES, American Bar Association (2002). *See also*, Hall and Sales, COURTROOM MODIFICATIONS FOR CHILD WITNESSES: LAW AND SCIENCE IN FORENSIC EVALUATIONS (American Psychological Association (2008).

[20] *Id.*, setting the preponderance standard as the threshold for permitting a child to carry a comfort item or having a support person present. What must be shown is that

> a. The child in question cannot reliably testify without the item in his or her possession; and
>
> b. Allowing the item is not likely to prejudice the trier of fact in hearing and evaluating the child's testimony.

Id.

one likely to grow as judges themselves become more aware of children's capacities and needs, that courts have the inherent authority to import flexibility into the courtroom presentation of child witness testimony.[21]

As well, resorting to interviewing processes that are designed to produce testimonial evidence, in particular the taping of structured interviews, may actually reduce the need for children to testify in court. The one detailed experiment tracking a jurisdiction with mandatory taping showed a substantial increase in guilty pleas and the concomitant reduction in the need for children to face the potential trauma of courtroom testimony.[22] Additional research shows that where taping occurs and the child testifies (removing Confrontation barriers to the tape's admissibility) positive juror reliance on videotaped interviews as corroborative of the child's in-court testimony.[23] Thus, it is unsurprising that a variety of advocates and

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[21] Courts have applied this authority, found in many evidence codes in Rule 611, to permit leading questions on direct examination of child witnesses. *See, e.g.*, *United States v. Archdale*, 229 F.3d 861, 866 (9th Cir. 2000); *Padilla v. State*, 278 S.W.3d 98, 106 (Tex. App. Texarkana 2009).

[22] Vandervort, Videotaping Investigative Interviews of Children in Cases of Child Sexual Abuse: One Community's Approach, 96 J. CRIM. L. & CRIMINOLOGY 1353, 1389 (2006).

[23] Myers et al., *Jurors' Perception of Hearsay in Child Sexual Abuse Cases*, 5 PSYCHOL. PUB. POL'Y & L. 388, 409 (1999).

researchers have called for taping of these interviews.[24]

The doctrine of forfeiture by wrongdoing permits even testimonial hearsay to be utilized where it can be shown that the conduct of the accused was intended to and did cause the unavailability of the child. "Acts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions." *Giles v. California*, 128 S. Ct. 2678, 2693 (2008).

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[24] *See, e.g.* Russell, Electronic Recordings of Investigative Child Abuse Interviews, Center Piece (National Child Protection Training Center) Volume 1, Issue 8 (2009) http://www.ncptc.org/vertical/Sites/%7B8634A6E1-FAD2-4381-9C0D-5DC7E93C9410%7D/uploads/%7B0B9329AD-C748-4012-8954-C3E8587A9865%7D.PDF. Russell notes that electronic recording of child interviews was endorsed by the American Professional Society on the Abuse of Children (APSAC) "as 'the most comprehensive and accurate method of documentation.'" *Id.*, at 1. *See also* Raeder, ENHANCING THE LEGAL PROFESSION'S RESPONSE TO VICTIMS OF CHILD ABUSE, 24 Crim. Just. 12, (ABA, Spring 2009) ("It is my belief that even after *Crawford*, prosecutors have an incentive to videotape children in [child advocacy centers] so that when they testify the videotape will bolster their credibility by showing the interview was nonsuggestive. Where the interview takes place at a Child Advocacy Center, the incidence of recording is much higher than elsewhere. Cross et al., Evaluating Children's Advocacy Centers' Response to Child Sexual Abuse 3 (NCJ 218530, August 2008), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/218530.pdf

Perhaps most importantly, children *do* testify, regularly and without severe trauma resulting.

> [C]hild abuse researcher Professor John Myers, states that "despite the difficulty, most children are able to testify in the traditional manner, especially when they are prepared and supported through the process." Empirical research also suggests that the outcome of the prosecution has as much impact on the child's well being than whether the child testifies or not.[25]

The capacity of the judicial system to accommodate the testifying child is well demonstrated. Claims to the contrary cannot defeat the Constitutional command for ensuring confrontation of testimonial proof.

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[25] Scallen, COPING WITH CRAWFORD: CONFRONTATION OF CHILDREN AND OTHER CHALLENGING WITNESSES, 35 Wm. Mitchell L. Rev. 1558, 1575-1576 (2009) (footnotes omitted).

CONCLUSION

For the foregoing reasons, the Petition for Writ of *Certiorari* should be granted.

Respectfully submitted,

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