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EDITOR'S NOTE

Welcome to the 2025 3rd Volume, 3rd Edition of the *UST Law Journal*. This year's volume reflects our ongoing commitment to producing rigorous, forward-looking, and socially relevant legal scholarship that addresses the evolving challenges of our national, regional, and global legal landscape. As we expand our digital platform, the Editorial Board remains committed to our goal of providing accessible, high-quality research that fosters informed dialogue among scholars, practitioners, policymakers, and graduate students. We thank our contributors and readers for their trust and engagement as we usher in another year of meaningful discourse.

In this Volume, the fourth article, "*In The Eyes Of The Child: The Proposed Rule On Child-Hearsay Exception For Child Abuse Victims,*" emphasizes child protection, which remains one of the most urgent and evolving areas of legal reform, considering that our justice system is not only procedurally rigorous but also humane and sensitive to the vulnerabilities of children. The article aims to bridge the gap between legal doctrine and the lived realities of children, one of the most vulnerable groups in society.

This article engages with a critical evidentiary issue that continues to shape child abuse prosecutions, that is, the admissibility of hearsay statements made by child victims who may be unable, unwilling, or too traumatized to testify in open court. The author thoughtfully examines the legal and psychological complexities that render the traditional hearsay rule not well-suited for cases involving children, where the strict application of evidentiary barriers often results in the silencing of the very victims the law seeks to protect.

The article provides a careful survey of comparative jurisprudence, proposed reforms, and trauma-informed approaches to child testimony. It emphasizes that any child-hearsay exception must be crafted with due regard for constitutional rights, procedural fairness, and the integrity of the judicial process, while recognizing the developmental limitations and emotional vulnerabilities of children. By proposing a

structured and balanced evidentiary rule, the author makes a meaningful contribution to ongoing discussions among lawmakers, advocates, and practitioners seeking to strengthen the legal framework for child protection.

This article emphasizes that justice for children requires more than legal technicalities since it necessitates a justice system that views the world through the eyes of the child. We are looking forward to your reflective reading on these timely and compelling issues, hoping that it will inspire continued discourse and judicial reforms that uphold both child welfare and due process.

IRENE D. VALONES, DCL, DPA
Editor-In-Chief

IN THE EYES OF THE CHILD: THE PROPOSED RULE ON CHILD-HEARSAY EXCEPTION FOR CHILD ABUSE VICTIMS

By:

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ABSTRACT

The United Nations Convention on the Rights of the Child states that in all actions concerning children, especially those undertaken by courts of law, the best interest of the child shall be the primary consideration. This includes actions concerning children who are victims of abuse, whether sexual or physical, and of neglect.

To ensure that their best interest is protected, numerous legislations and court issuances have been passed and promulgated. One of these is the admission of out-of-court or hearsay statements of children, which is seen as an answer to the findings of experts in behavioral science that children suffer emotional trauma or psychological injury if they are made to testify in court. Also, child-hearsay exception is now found in the different rules to prevent these children who were victims of abuse from being retraumatized from the trauma that they already suffered from the hands of their abusers.

Using the black letter approach, contextual doctrinal approach, and comparative and historical methodologies, the author tries to address whether the current Philippine rule on child-hearsay exception is sufficient, and to determine what are the best practices in the different jurisdictions that can be adopted in the Philippines.

In addressing this concern, it cannot be disregarded that the accused also has a right, primary of which is his or her constitutional right to presumption of innocence in general, and the right to confrontation in particular.

Thus, this study seeks to balance these rights by determining the legal propriety of creating a separate and expanded rule on child hearsay exception but without however disregarding and never disrespecting the rights of the accused to confront his or her accuser/s against him or her.

Keywords: Child-Hearsay Exception, Right to Confrontation, Hearsay Rule, Unavailable Child Doctrine

. INTRODUCTION

At the age of 15, AAA was a victim of sexual abuse by the accused, CICL XXX, who was also 15 years old during the time of the commission of the crime. AAA testified in court against CICL XXX, and her testimony led to his conviction.

In affirming the conviction of the accused, the Supreme Court has pronounced the long-established rule that testimonies of child victims are normally given full weight and credit; that when a girl, especially a minor, said that she was raped, she was saying all that was necessary to show the commission of this crime.

The Supreme Court here found AAA's testimony, (*i.e.*, that she was suddenly grabbed by the accused who immediately molested her) direct, clear, straightforward, credible, and convincing, which was also in accordance with the testimony of a victim crying for justice.

Another case of sexual abuse, or more particularly the crime of rape, was also committed against a minor, who incidentally was also called AAA, a 9-year-old child, by her own father. Like in the first cited case, this also led to successful prosecution against and eventual conviction of the malefactor.

In this case, the trial court, the Court of Appeals, and the Supreme Court all found the testimony of AAA (*i.e.*, that she was raped by her own father twice while her mother was working abroad in Qatar) forthright, candid, and steadfast even during cross-examination.

In *XXX v. People*, the accused committed physical violence and abuse against his own children by hitting his 10-year-old son with a dustpan while cursing him, and by attacking, assaulting, kicking, and pulling the hair of his 12-year-old daughter while also cursing her.

This has also resulted in the accused's conviction for his violation of Section 10(a) of Republic Act No. 7610 or the Child Abuse Law after the Supreme Court found that the accused committed the crime that debased, degraded, or demeaned the intrinsic worth and dignity of his own children as human beings.

But what was not discussed in these three cases was the emotional trauma and psychological harm that these children, all

victims of sexual abuse, may have suffered, first, while the acts of defilement were taking place, and second, while testifying in court against and pointing to the people who defiled them. The latter emotional trauma, caused by testifying in court, is the subject of this study.

In the pursuit of efficient and effective justice, particularly in light of enforcing the rights of children as a vulnerable sector of society, the Philippine legal system must ensure that there is a harmony between the rights of the accused and children, particularly when it comes to the unique vulnerabilities of children who appear before it as witnesses.

In the Philippines, the Child Witness Rule *acknowledges the diverse* developmental, psychological, and emotional needs of children, necessitating measures to safeguard their welfare throughout judicial proceedings.

Among the legal dilemmas in the provisions of this Rule is the classification of child witnesses into those who are “unable” to testify in open court due to reasons such as death, mental incapacity, or trauma, and those who are "available" but deemed vulnerable to the rigors of examination in the courtroom.

This distinction between child witnesses reflects the need for a progressive approach to the Child Witness Rule in the criminal justice system, consistent with State policy to balance the accused's constitutional right to confront witnesses, on the one hand, and the paramount interest in protecting children from further harm, on the other.

ADMISSIBILITY OF CHILD ABUSE VICTIM’S TESTIMONY

Indeed, the Child Witness Rule has specific provisions dealing with the admissibility of the child abuse victims’ out-of-court statements. According to this Rule, a statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding.

However, before such a hearsay statement may be admitted, its proponent shall make known to the adverse party the intention to offer such a statement and its particulars to provide him or her a fair opportunity to object.

Additionally, the Child Witness Rule stipulates that if the child is available, the court, upon motion, may require the child to

be present at the presentation of their hearsay statement for the purpose of cross-examination.

In ruling on the admissibility of such hearsay statement, especially when the child is unavailable, the court shall consider these particular factors, namely:

1. whether there is a motive to lie;
2. the general character of the declarant child;
3. whether more than one person heard the statement;
4. whether the statement was spontaneous;
5. the timing of the statement and the relationship between the declarant child and witness;
6. cross-examination could not show the lack of knowledge of the declarant child;
7. The possibility of faulty recollection of the declarant child is remote; and
8. The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.

Nonetheless, recent findings from experts in the field of behavioral science suggest that a child's involvement in a trial or hearing causes them special stress, which in turn affects their testimony in court. This may be true regardless of whether the child is available or declared psychologically unavailable.

An available and yet vulnerable child can still suffer this kind of stress for participating in the proceedings because, among others, of their previous experience of abuse. A vulnerable child, according to authorities, is one who has a greater risk of experiencing physical or emotional harm and/or experiencing poor outcomes caused by, among others, a history of abuse of any kind, such as, for the purpose of this study, sexual and physical abuse. Hence, he or she is also covered by this study.

According to the learned opinion submitted by the American Psychological Association to the US Supreme Court in the case of *Maryland v. Craig* – in the case where they served as *amici curiae* - the legal involvement of children can slow the course of their normal cognitive and emotional development; that is why distressed children do not advance at the same pace as other children not similarly situated.

According to them, temporary developmental regressions may even appear in the child. Although adults also may suffer distress from legal involvement, their development is, however, more

complete. Thus, the negative impact of legal involvement may be more significant for children than adult victims.

There were also other studies made about the impact on children who testified in court. For instance, Pantell (2017) said that children experience anxiety during their appearances in court; and their main fear is facing the defendant, especially felt by children who testified in the courtroom. These include the following: (a) being hurt by the defendant; (b) embarrassment about crying or not being able to answer questions; and (c) going to jail. The more frightened a child is, the less he or she can answer the questions propounded on him or her.

According to Ernberg (2018), children with a history of sexual abuse provide less information while being asked questions, and they show reduced performance in answering specific questions. Aside from the developmental effects on children's testimony, the experience of sexual abuse can create difficulties for children reporting crime.

According to her, a lot of emotional and motivational factors, such as feelings of guilt and shame, can influence the child victim's ability to testify; and children indeed omit sensitive details from their testimony for reasons beyond memory limitations.

Nathanson and Saywitz (2015), on the other hand, have said that participating in legal proceedings can be an anxiety-provoking experience for many, if not most, children; it can also have long-lasting ill effects for some children, which may interfere with their recovery from their adverse childhood experiences brought about by these legal proceedings.

They have further said that, although the harm is not immediately apparent for all child witnesses, participating in the legal system can cause distress for them, which can last for years long after the case is already terminated.

They also said that the potential sources of stress for child witnesses include the following: (1) repeatedly testifying in court; (2) harsh cross examination; (3) confronting the accused; (4) lack of social support; (5) lack of familiarity; and (5) lack of legal knowledge.

From the results of their studies, Nathanson and Saywitz found that children in both laboratory and field studies express anticipatory anxiety about testifying in court. These include facing the accused and cross examination, which children rate as the most stressful.

Other distressing factors include: (1) not being believed; (2) not knowing what to do in court; (3) not understanding the proceedings; and (4) not knowing the answers to questions asked on the stand.

After examining all the available data, they concluded that the formality of the courtroom is assumed to promote accuracy of eyewitness testimony; however, when the witness is a child, the unfamiliar setting and formal atmosphere could have the opposite effect.

According to them, the distracting, confusing, or anxiety-provoking setting could interfere with their attentional, motivational, and retrieval strategies that underlie memory and communication. This adversely affects their testimonies.

Andrews, Ahern, and Lamb (2017) stated that courtroom questioning can be unusual and difficult for children, who are accustomed to being tested by knowledgeable adults, and often feel pressured to answer adult questions.

In another study, Westcott and Page (2002) have stated that cross-examination is not a positive experience for many child witnesses, and that lengthy and harsh cross-examination is harmful for children. Cross examination, if it is lengthy and harsh, may also have the potential to weaken the child's resilience by contributing to a child's negative outlook or by adversely affecting the child's coping style.

Westcott and Page (2002) even coined the term "traumagenics" (trauma causing factors), that is, instead of the court appearance representing a resolution to the investigative process, it can create new trauma for a child or prolong recovery from the original one.

According to them, the four trauma causing factors for victims of sexual abuse who are made to testify in court are the following: (1) traumatic sexualization; (2) betrayal; (3) powerlessness; and (4) stigmatization.

The findings shared by these experts are implicitly recognized in our own jurisdiction through the following cases.

In *People v. Baring, Jr.*, the Supreme Court said: "On account of the increased number of children coming into the realm of the judicial system, we adopted the Rule on Examination of a Child Witness to govern the examination of child witnesses who may

either be victims, accused or witnesses to a crime. This rule ensures an environment that allows children to give reliable and complete evidence, minimize trauma, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth."

In *Genil v. Judge Rogaciano*, the Supreme Court declared: "The Rule on Examination of a Child Witness provides that the court shall exercise control over the questioning of children so as to facilitate the ascertainment of the truth and ensure that questions are stated in a form appropriate to their developmental level and protect them from harassment or undue embarrassment."

In *People v. Santos*, the Supreme Court has succinctly stated: "The trend in procedural law is to give a wide latitude to the courts in exercising control over the questioning of a child witness. As a child of such tender years not yet exposed to the ways of the world, she could not have fully understood the enormity of the bestial act committed on her person."

And in *People v. Gaudia*, the Supreme Court, after citing a foreign scholar, has pronounced: "Studies show that children, particularly very young children, make the 'perfect victims'. They naturally follow the authority of adults as the socialization process teaches children that adults are to be respected. The child's age and developmental level will govern how much she comprehends about the abuse and therefore how much it affects her. If the child is too young to understand what has happened to her, the effects will be minimized because she has no comprehension of the consequences. Certainly, children have more problems in providing accounts of events because they do not understand everything they experience. They do not have enough life experiences from which to draw upon in making sense of what they see, hear, taste, smell and feel. Moreover, they have a limited vocabulary."

Hence, some quarters espouse that children who are victims of abuse should not be made to testify in court. Rather, their statement must be made outside of the court and can be testified on in the court by someone to whom the child made that statement. This is the essence of the child-hearsay exception.

Thus, based on the foregoing studies made by experts in the field of behavioral science, compelling a child to testify under the present Child Witness Rule, even if such child is available, may not serve the purpose of why there should be a child-hearsay exception rule in the first place because of their vulnerability to

experiencing emotional and psychological trauma if they are made to testify in court.

Eliminating therefore the distinction between the available or unavailable child and letting the out-of-court statement of the child be used as evidence in the prosecution of child abuse cases may be one of the effective solutions to the different findings on the adverse effect on child victims of abuse who are testifying in court.

However, the accused's constitutional right to confrontation is also noteworthy to dissect. The Philippine Constitution guarantees the basic and essential right of the accused to meet the witnesses against him or her face-to-face.

Consequently, the Philippine Rules of Criminal Procedure have adopted this constitutional precept and states that in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witnesses against him or her at the trial.

The Confrontation Clause, a constitutional precept that the Philippines has adopted from foreign jurisdictions, is directed against the *ex parte* examination of a witness against the accused.

Thus, according to one eminent authority in Evidence Law, the accused's right to confrontation in criminal proceedings is applied this way: a witness against a party must testify in the presence of and subject to examination by that party, and under oath. This examination must be held at trial unless the witness is unavailable.

According to the Supreme Court, the accused's right to confrontation essentially means to meet the witnesses against him or her face to face. Included in this right is the right of an accused to cross-examine such witnesses. Cross-examination must be done with sufficient fullness and freedom to test the witness's accuracy and truthfulness as well as freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

The right to confrontation is part of due process. It has a two-fold purpose, namely: (1) to afford the accused an opportunity to test the testimony of the witness by cross examination; and (2) to allow the judge to observe the deportment of the witness.

Thus, denying the accused the right to confront the witnesses against him or her will render the testimony of such witnesses inadmissible because the same will not only be incompetent for

having been made in violation of the constitutional provision, but such out-of-court statement is also inadmissible for being hearsay.

Hearsay, according to the Revised Rules of Evidence, is a statement, which may either be an oral or written assertion, or a non-verbal conduct, other than one made by the declarant while testifying at a trial or hearing, offered to prove the truth of the facts asserted therein. Hearsay is inadmissible as evidence because of its being an out-of-court statement.

However, the right to confrontation is not absolute. Hearsay statements can be admitted as evidence if they fall under any of the exceptions provided in the Rules on Evidence, or any other rule, such as the Child Witness Rule, where a single provision deals with the child's out-of-court statement who is a victim of physical or sexual abuse.

In the latter, as already mentioned, the child's hearsay statement can be admissible only if the child is judicially declared unavailable and his or her testimony has circumstantial guarantee of trustworthiness.

The thrust, therefore, of this study is to determine the need to promulgate a separate and expanded rule on the child hearsay exception for children who are victims of sexual and physical abuse, whose out-of-court statements can be admitted in court with the child's least participation in court proceedings, or none at all, but without violating the accused's constitutional right to confrontation.

II. HISTORICAL BACKGROUND

In this chapter, the author discusses the origin and evolution of the right to confrontation, as well as the origin and evolution of the hearsay rule in general and the child hearsay exception in particular.

The discussion of the historical background of these two important concepts, both in criminal procedure and evidence, is essential to the balancing of the interests of the rights of child abuse victims, on the one hand, and the constitutional right of the accused to confrontation, on the other.

A. Origin and Evolution of the Right to Confrontation

The right to confront one's accusers is a concept that dates back to Roman times. During the time of Justinian's Code in 534

C.E., it had become an accepted practice that witnesses would testify in court personally in the presence of the accused, although there was no express requirement of this practice from the Code.

According to Justinian's *Constitutum on Witnesses*, Novel 90: "In criminal matters, in which there is a danger concerning great things, by all means witnesses are to be present before the judges and inform of those things that are known to them."

The decline of the Roman Empire led to other ways of conducting criminal proceedings. These are trial by ordeal, battles, and oaths. The rise of these alternative modes of dispute resolution was, ironically, concurrent with the emergence of doubts about the continued applicability of the right to confrontation.

This notwithstanding, the ecclesiastical courts continued to practice the Roman procedure, as shown in the *Decretum* work of Gratian in the twelfth century, which states that, "an accuser is not to be heard unless the defendant is present."

This right to confrontation, along with the concept of hearsay, was further developed after the infamous trial of Sir Walter Raleigh for treason in 1603.

In that infamous trial, Raleigh was arrested and charged with treason for his alleged involvement in a plot to overthrow the reign of King James. The Crown's main evidence against him was the signed and sworn confession of Raleigh's friend Henry Brooke, 11th Baron Cobham, who at one point even recanted his allegations, though he eventually reasserted them.

Despite the repeatedly vehement protest from Raleigh numerous times, Cobham still did not appear on the witness stand for cross-examination during the former's trial. Thus, Raleigh demanded from the judges to call and make Cobham appear, saying: "[t]he Proof of the Common Law is by witness and jury: let Cobham be here, let him speak it. Call my accuser before my face …" To his dismay, the judges refused. Despite his protests, the jury convicted him and sentenced him to death.

This principal evil of *ex parte* examinations, like what happened to Raleigh, was what the Confrontation Clause intended to prohibit. However, despite the outcry occasioned by Raleigh's trial, hearsay testimony was still regularly admitted in English courts until at least 1675. According to Wigmore, the "fixing" of the doctrine of the law against hearsay appears to have taken place only between 1675 and 1690.

As early as the start of the 15th century, there were already many English judges and commentators, such as John Fortesque, Thomas Smith, Matthew Hale, and William Blackstone, among others, who praised the open and confrontational style of the English criminal trial.

For instance, Sir William Blackstone, a known legal luminary during the 18th century England, spoke of confrontation of adverse witnesses as among the advantages of the English manner of giving testimony, *i.e.* by word of mouth or orally.

Since the United States was a former colony of the United Kingdom, the confrontation right was later exported to that country. Its early state constitutions guaranteed the accused's right to confrontation. Some began using the "face-to-face" formula. And as early as 1776, some authorities began adopting that language which was very similar to the Confrontation Clause found in the Sixth Amendment of the United States Constitution.

The US Supreme Court did not consider a major Confrontation Clause case until 1895 in the famous case of *Mattox v. United States*. In this case, the Court declared that "the primary object of [the clause] … was to prevent depositions or *ex parte* affidavits …"

It is this definition that would form the basis for the modern revolution in the right to confrontation.

The Confrontation Clause issue became dormant for almost a century. However, in 1970, there were two decisions of the US Supreme Court that have become milestones in the further development of this constitutional right. These two cases are *California v. Green* and *Dutton v. Evans*.

In *Green*, the US Supreme Court emphasized that the essential elements of the Confrontation Clause were cross examination, oath of the witness, face-to-face confrontation, and the observation of the witness' demeanor.

The case of *Dutton*, on the other hand, emphasized that the common denominator between the exceptions to the hearsay rule and the right to confrontation is the reliability of the out-of-court statement made by the declarant.

A decade after the decision in *Green* and *Dutton*, the US Supreme Court came up with another landmark decision in *Ohio v. Roberts*. This has become the foundation of many exceptions to

the hearsay rule not only in the United States but also in other jurisdictions such as in the Philippines.

In *Roberts*, the US Supreme Court stated that the Confrontation Clause operates in two separate ways to minimize the application of the exceptions to the hearsay rule.

The first one is the face-to-face requirement, which provides that the prosecution must either produce the declarant or demonstrate his or her unavailability.

The second one, on the other hand, requires that if the declarant is unavailable, the statement may still be admitted if it shows adequate indicia of reliability, which can be inferred if the evidence falls within a firmly rooted hearsay exception, or if there is a showing of particularized guarantees of trustworthiness.

The foregoing is the historical development of the accused's constitutional right to confrontation. As one can see, its discussion cannot be complete without discussing also the rule on hearsay and its exceptions.

This particular rule on evidence has further developed as a consequence of Raleigh's infamous trial. As already discussed, the Raleigh's trial has become the foundation of the Anglo-American common law of hearsay and, in the United States, the Confrontation Clause.

In a 1919 speech before the Royal Historical Society commemorating the Raleigh trial, Edwardian jurist Harry L. Stephen declared, "if I have to admit that English administration of justice grossly failed on this occasion[,] there can be no doubt that the reaction was immediate and that … the essential features of what we consider justice in such matters were gradually developed on consistently progressive lines."

Considering the importance of the Raleigh's trial in the development of these "essential features" of common law justice, many American evidence and criminal procedure textbooks have introduced these topics by discussing his infamous trial where he decried Cobham's absence from the courtroom to give a face-to-face testimony.

This episode in legal history was relevant not only to the development of the accused's right to confrontation, but also to the shape it has given to the discourse on confrontation to the present day.

B. JURISPRUDENTIAL DEVELOPMENT OF THE CHILD-HEARSAY EXCEPTION VIS-À-VIS THE ACCUSED'S RIGHT TO CONFRONTATION

As in the right to confrontation, this exception to the hearsay rule was adopted by the Philippines from the United States, particularly from the decisions rendered by the US Supreme Court.

Before discussing its evolution, it is well to first examine how the child-hearsay exception is understood.

According to Finn (2011), the child hearsay exception is best understood as a variation of the excited utterance exception. Under Philippine law on evidence, it is referred to as *res gestae*. But unlike the excited utterance exception, the child hearsay exception does not require that the child's statement be made under the stress of or near in time to the event. The rationale is because child abuse victims often delay in disclosing the incident until they are in a safe position to disclose it to a trusted adult, rather than disclosing the abuse immediately.

Child's hearsay statement is also understood as a medical statement exception to the hearsay rule, an exception which is not found in the Philippine Rules on Evidence. In *Blake v. State*, which was decided by the Supreme Court of Wyoming, it was held that, in situations involving physical or sexual abuse of children, statements made by a child victim to a medical professional may be admitted. Medical statements from incidents of child abuse cases are admitted because of the special character of diagnosis and treatment in sexual abuse cases.

A child's hearsay statement can also be admitted under the residual exception. This is also known as the catch-all exception under the United States' Federal Rules of Evidence, which has also been adopted in the Philippine Rules of Evidence.

The reason for its adoption in the United States' Federal Rules of Evidence, and later in the Philippines' own Rules on Evidence, is that it provides a vehicle for admitting hearsay that does not fall under other hearsay exceptions but involves guarantees of trustworthiness.

According to Mueller, Kirkpatrick, and Richter (2019), in applying the residual exception to statements by abused children, courts have developed a list of factors that hinge on trustworthiness. These include the following:

1. Precocious knowledge and age-appropriate language;
2. Behavioral changes (fearfulness, regression in toilet habits, sleep disturbances, new problems at home or school);
3. General demeanor and effect, and indications of pain or emotional upset;
4. Spontaneity;
5. The presence or absence of bias or other motives on the part of the speaker or the reporting witnesses;
6. Signs of tension or disagreement between the child and the person of the accused of abuse;
7. The training and techniques of people who talk to the child;
8. The number and consistency of repetitions of basic story; and
9. The character of the child.

After the discussion on how the child-hearsay exception is understood, it is also well to discuss its evolution or the place of this particular exception to the hearsay rule in relation to the accused's constitutional right to confrontation. And this can be explained through the cases decided by the United States Supreme Court on the matter.

In *Coy v. Iowa*, the US Supreme Court stressed that no statute could create a presumption of trauma to victims of child abuse that can outweigh the accused's right to confrontation.

The case sprang from the alleged sexual assault committed by the accused to two 13-year-old girls while they were camping out in the backyard of the house next door to him.

At the start of the trial, the prosecution made a motion to allow the witnesses to testify via closed-circuit television or behind the screen. Consequently, the trial court approved the use of a large screen to be placed between the accused and the witness stand during the girls' testimony.

The accused in that case of *Coy* objected to the use of the screen, citing his right to confrontation. According to him, the device would violate his right to face-to-face confrontation. His right to due process, according to him, would be violated since the procedure would make him appear guilty and thus erode the presumption of innocence in his favor.

The Iowa Supreme Court rejected his argument about the alleged violation of his confrontation right. According to that court, since the ability to cross-examine was not impaired by the screen,

there was no violation of the Confrontation Clause. It eventually convicted him.

When his case reached the United States Supreme Court, it disallowed the use of the screen, and it remanded the case to the lower court for further proceedings. According to the Court:

> The perception that confrontation is essential to fairness has persisted over the centuries because there is much truth to it. A witness "may feel quite differently when he [or she] has to repeat his [or her] story looking at the [person] whom he [or she] will harm greatly by distorting or mistaking the facts. He [or she] can now understand what sort of human being that [person] is." … It is always more difficult to tell a lie about a person "to his [or her] face" than "behind his [or her] back." In the former context, even if the lie is told, it will often be told less convincingly. The Confrontation Clause does not, of course, compel the witness to fix his [or her] eyes upon the defendant; he [or she] may studiously look elsewhere, but the trier of fact will draw its own conclusions. Thus, the right to face-to-face confrontation serves much the same purpose as a less explicit component of the Confrontation Clause that we have had more frequent occasion to discuss – the right to cross-examine the accuser; both "ensur[e] the integrity of the factfinding process."

In this case, Justice O'Connor suggested that face-to-face confrontation could be subject to exceptions when necessary to further an important public policy.

The ruling in this case is important because it essentially opened the door for future exceptions to the face-to-face requirement.

Such an important public policy came two years after, when the US Supreme Court reached an entirely different conclusion in the case of *Maryland v. Craig*.

The case of *Craig* was about the accused who was tried in Maryland court on several charges of sexual abuse of a six-year-old child. Before the start of the trial, the prosecution sought to invoke a provision in a statute permitting a court to receive the testimony of a child abuse victim through a one-way circuit television if it is determined that the child will suffer serious emotional distress during courtroom testimony that may result in his or her inability to communicate.

The accused objected on the ground that the procedure would violate her right to confrontation. The lower court overruled her objection. She was later convicted by the lower court. The State Court of Appeals reversed on appeal. The case then reached the US Supreme Court.

The issue in *Craig* was whether the Confrontation Clause categorically prohibits a child witness in a child abuse case from testifying against a defendant at trial, outside of the defendant's presence, through a one-way closed-circuit television. The US Court then ruled in this way:

> We have accordingly stated that a literal reading of the Confrontation Clause would "abrogate virtually every hearsay exception, a result long rejected as unintended and too extreme." Thus, in certain narrow circumstances, "competing interests, if closely examined, may warrant dispensing with confrontation at trial." … Given our hearsay cases, the word "confront," as used in the Confrontation Clause, cannot simply mean face-to-face confrontation, for the Clause would then, contrary to our cases, prohibit the admission of any accusatory hearsay statement made by an absent declarant – a declarant who is undoubtedly as much a "witness against" a defendant as one who actually testifies at trial.

In sum, the Confrontation Clause reflects a preference for face-to-face confrontation at trial, a preference that "must occasionally give way to considerations of public policy and the necessities of the case[.]"

Thus, the Court in *Craig* concluded that a state's interest in the physical and psychological wellbeing of child abuse victims is sufficiently important that in some cases may outweigh the defendant's right to face his or her accusers in court. This is especially true where face-to-face confrontation will cause significant emotional distress to child abuse victims.

However, the Court in *Craig* pronounced that, although face-to-face confrontation is not an absolute constitutional requirement, it may be legally curtailed only where there is a case-specific finding of necessity.

Several years after the decision of the U.S. Supreme Court in the cases of *Coy* and *Craig*, another case that has a huge impact

on the accused's right to confrontation, as well as to the child-hearsay exception, is the case of *Crawford v. Washington*.

In *Crawford,* the US Supreme Court has emphasized that what the Confrontation Clause proscribes was the use of *ex parte* examinations as evidence against the accused. It rejects the view that the Confrontation Clause applies only to in-court testimony.

However, before the Confrontation Clause can be applied to an out-of-court statement, such statement must be considered testimonial. Testimonial statement, according to *Crawford*, means statement that the declarant reasonably expects to be used in the prosecution.

One good example of a testimonial statement is a statement taken by police officers during the conduct of their investigation and interrogations to a possible suspect to the crime.

The subsequent case of *Davis v. Washington* has attempted to make a clearer definition of what a testimonial statement is. In this case, it has been determined when a statement made to a law enforcer is considered testimonial.

According to *Davis*, statements made to police officers are nontestimonial if it is made in the course of police interrogation under the circumstances which objectively indicates that the primary purpose of interrogation is to enable police assistance to meet an ongoing emergency.

On the other hand, statements are testimonial when the circumstances objectively indicate that there is no such emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to future criminal prosecution.

Taking its cue from the ruling in *Crawford* regarding the distinction that has to be made whether an out-of-court statement is testimonial or non-testimonial, the US Supreme Court in *Ohio v. Clark* has ruled that out-of-court statements by very young children will rarely, if ever, involve the Confrontation Clause. Thus, it is nontestimonial and therefore admissible as evidence.

The case of *Clark* is about a child who was a victim of physical abuse by the partner of his biological mother while the latter was miles away engaging in prostitution. When his preschool teacher discovered red marks on him, the 3-year-old boy identified the accused as his abuser.

The issue that was answered in this case was whether the accused's right to confrontation prohibits prosecutors from introducing the incriminatory statement made by the child, who at the time of trial, was unavailable for cross-examination.

In answering in the negative, the US Supreme Court has ruled that the statements in question were not testimonial. The reason, according to the Court, is that statements by very young children will rarely, if ever, implicate the Confrontation Clause. Young children have little understanding of prosecution, and it is extremely unlikely that a child of very young age would intend that his or her statement be a substitute for trial testimony.

On the contrary, a young child in these circumstances would simply want the abuse to end, would want to protect other victims, or would have no discernible purpose at all.

C. EXPERTS' JUSTIFICATIONS FOR A SEPARATE AND EXPANDED RULE ON CHILD-HEARSAY EXCEPTION

Several legal experts, as well as behavioral science experts, have offered justification for a separate and expanded rule regarding the child hearsay exception.

Gochnour (2010), for one, has espoused the implementation of the rule on the child-hearsay exception for children who are victims of sexual abuse.

According to him, sexual abuse is both underdisclosed and underreported. The difficulty of charging and prosecuting an abuser is exacerbated by the lack of witnesses aside from the child, the absence of corroborating physical evidence, and the reluctance or inability of the victim to testify against his or her perpetrator.

However, despite his espousal of a child abuse victim's out-of-court statement as an exception to the hearsay rule, he said that the alleged offenders must be provided with the same due process rights as any other defendant. The Sixth Amendment of the US Constitution guarantees every accused his or her right to confront any witness against him or her through the instrument of cross-examination.

To support his thesis, he pointed out that courts, and even prosecutors, have attempted to admit as evidence out-of-court statements of child abuse victims given to third parties to resolve the difficulties of prosecuting the alleged offenders. This happens even when those statements fail to meet the hearsay exception's

general and usual requirements because of necessity, and because of the widespread belief that children are unlikely to lie about sexual abuse.

He is also aware that questions regarding the admissibility of out-of-court statements are not unique to cases involving children, but "there are perhaps no other cases in which these questions arise so regularly and are imbued with such urgent significance."

Furthermore, detecting and prosecuting sex offenders, according to him, is notoriously difficult, "in large part because there often are no witnesses except the victim."

He also pointed out that child victims often experience low self-esteem, guilt, isolation, depression, embarrassment, and feelings of inadequacy. These feelings, according to him, lead to their hesitation in telling almost everyone about the abuse, and a tendency for children to feel guilty and blame themselves for its occurrence.

These and other traits of victimization make children unwilling, and in some cases unable, to answer the detailed questions relating to the abuse that police and prosecutors ask.

The private nature of sexual abuse, lack of corroborating evidence for children's claims, and difficulties with child testimony indicate the need for a hearsay exception to the out-of-court statements of children who are victims of sexual abuse.

Fell (2013), on his part, emphasized that victims of child abuse often do not disclose immediately after the abuse has taken place. Sometimes, victims of abuse keep the events to themselves for many years.

According to him, oftentimes, victims of child abuse are unaware of the wrongful nature of the conduct or that what has occurred is not normal. They often experience feelings of confusion and guilt, a desire to forget the incident, a fear of not being believed, and in many instances, may remain silent as a result of intimidation by the abuser.

On the other hand, if victims of child abuse make a disclosure of the incident, their testimony of what they said, the people to whom it was said, the time it was said, and how they appeared while saying it, are considered important factors in establishing a strong case. However, their testimonies are often considered hearsay; and hearsay is generally inadmissible unless it falls under any of its exceptions.

Fell (2013) noted that majority of the states have adopted the tender years exception to resolve some of the problems associated with decisions to exclude the out-of-court statements made by the child abuse victims.

The exception varies in different jurisdictions; but generally, the exception allows for the admission into evidence the fact that a child – and even an adult who is considered incompetent under the law – complained about an incident of abuse, whether it be sexual, non-sexual, or both, if the judge determines that there is a certain level of trustworthiness or reliability in the statement.

The tender years exception is a codified use of the residual exception. The term "equivalent circumstantial guarantees of trustworthiness in many of the tender years statutory exceptions is culled from the residual exception. Many states have codified the residual exception, which has been utilized to admit child abuse hearsay. It is more inclusive than the prompt outcry exception because the exception does not turn on whether the child cried out promptly. The court merely weighs the child's spontaneity and timing as one of several factors to determine whether the evidence has circumstantial guarantee of trustworthiness.

Fell (2013) noted that courts have said that there is no mechanical test for determining trustworthiness. They merely relied on factors such as spontaneity and consistent repetition, the mental state of the declarant, use of terminology unexpected of a child of similar age, and lack of motive to fabricate.

He reiterated that child abuse disclosures are frequently admissible under the residual exception because it is often the only evidence that the abuse has occurred. If considered trustworthy, the statement is more probative than any other evidence on the point for which it is offered.

In their article *So You're Faced with Child Hearsay: What's In, What's Not*, Tragos and Sartes (2024) opined that the child hearsay rule does not supersede the other exceptions to the hearsay rule. It is not intended to open the floodgates for the state to the detriment of the defendant. It is a limited exception for a specific purpose.

For Dwarakanath (2022), prosecuting child abuse cases is complex. According to her, very few instances of child abuse are reported. Even fewer cases result in formal charges. Prosecutors

cite perceived incompetence and lack of child credibility as reasons for not initiating adversarial proceedings.

However, Dwarakanath (2022) stated that the two main reasons why prosecutors choose not to initiate proceedings is a lack of corroborative evidence and the child being unable to emotionally withstand testifying in court. Testifying face-to-face can retraumatize a child because he or she is forced to relive their trauma as he or she faces his or her abusers in court.

According to her, the child's relationship with the defendant can add additional stress to them while testifying. The stress, in turn, affects children's ability to provide complete and accurate testimony. Thus, children's testimony creates multiple problems: (a) accuracy problems; (b) credibility problems, and (c) the potential for re-traumatization. Although it will never be intended to retraumatize or discredit the child, it is also not to be intended that the testimony at trial be unreliable.

The whole reason for the rule against hearsay in the first place, according to her, is the lack of reliability. However, when it comes to children, their testimony may be just as unreliable as hearsay, if not more so, because they are susceptible to influence.

An appropriate solution, according to Dwarakanath (2022), must be to balance the need to protect and believe children and to produce reliable evidence at trial. Child-hearsay exceptions, according to her, reflect this balance because child-hearsay statements are reliable, and they can be drafted in ways that do not require the child to testify and be re-traumatized.

Stevenson (2017) said that, historically, the problem of providing and delivering courtroom testimony was complicated by the issue of whether children could, or should, appear as a witness in court, and if permitted, whether their testimony should be under or without an oath.

Child witnesses, according to him, were often subjected to embarrassing and intimidatory practices. And worse, some judges were complicit in allowing defense lawyers to use various tactics to discredit a child's evidence and their integrity, or accepted claims that a child agreed or acquiesced to the sexual act. It acknowledged the psychological and physical impact that the intimidating court atmosphere, delays, uncompromising legal rules, and age-inappropriate cross-examination could have on individuals.

This observation is also shared by Mulkey. According to her, testifying in court may still prove to be traumatic for children, and experience in court proceedings can exacerbate emotional and behavioral problems for some of them.

In the wake of the Supreme Court's decision in *Crawford*, children are now even required to testify more frequently. Yet, some of these victims may suffer irreparable harm if required to testify against the defendant.

Accommodation made for child witnesses testifying in court reflects the understanding that children are a special, more vulnerable class of witnesses. However, whenever a witness testifies against the accused in a criminal proceeding, the constitutional right to confrontation is always raised. Although it is beyond dispute that courts must balance the welfare of child witnesses against the constitutionally guaranteed rights of the accused, this balance is often a delicate one.

Murkey also stated that facing the defendant is one of, if not the most frightening part, of the criminal proceedings for child witnesses. The experience of testifying can also be harrowing and traumatic, which may simply retraumatize an already traumatized victim of child abuse.

According to her, the use of modern technologies is beneficial in eliciting testimonies from child witnesses. However, she also acknowledged its limits. Courts will sometimes allow the admission of hearsay, closed-circuit testimony, or videotaped testimony by children to help reduce potential trauma for child witnesses. However, prosecutors rarely utilized the same and often primarily used those that were easiest to implement. And because live testimony is generally assumed to be more credible, requiring the child witness to actually come to court to testify is naturally preferred.

Another legal scholar, Vaughn II, said that the child hearsay exception will limit the short-term psychological trauma that child abuse victims suffer during the trial proceedings. In many instances, by not placing the child on the witness stand and instead offering a statement made out of court by a child, panel members will receive more truthful testimony. As a result, panel members can receive more information about the case.

One of the rationales of the Confrontation Clause is that it is much more difficult for a witness to lie in open court in front of the defendant, and more likely that the jury can detect a lie from the demeanor of the witness. Additionally, one of the drafters'

overarching reasons for the Confrontation Clause is to make the fact-finding process more reliable.

However, the rationale is not always applicable when applied to children. Facing the accused in a child abuse case can be a traumatic experience for a child victim. In fact, studies have shown that the aspect of the legal process that is most distressing to a child involves the act of testifying.

This distressing act of testifying results in "poorer eyewitness memory performance." This can also cause the child to refuse to testify or be unable to verbalize answers.

The effects, therefore, of forcing children to testify are that they may provide testimony that is riddled with unintentional inaccuracies. Although the Confrontation Clause attempts to protect the truth, when children are involved as witnesses, the exact opposite often occurs.

There are thirty-eight (38) states that have enacted some form of a codified child hearsay exception. These statutes, while different, have recurring themes. Most of the statutes address, at a minimum, four main points: (a) the age of the child; (b) availability of the witnesses; (c) corroboration of the statements; and (d) whether a trustworthiness test is outlined within the text of the statute itself.

The codes of these different states have their different definitions of a child. They range from under 10 years old to 16 years old. Unfortunately, according to Vaughn II, there is very little legislative history or explanation as to why each state chose their particular age to define a child.

Of the 38 states that have a codified child hearsay exception, 12 of them include exceptions for the developmentally or cognitively challenged persons. This allows for those specific situations where a child may be physically older than the state's cut-off for the hearsay exception but is developmentally or cognitively under the specific age.

The statutes and rules address the constitutional concerns at trial concerning the rights of the accused to confrontation in two ways. *Firstly*, if the statement at issue is testimonial, the Confrontation Clause is satisfied if the child witness testifies at trial and is subject to cross-examination. And *secondly*, if the statement is nontestimonial, according to *Crawford* and its progeny, the Confrontation Clause is already satisfied.

Under the evidentiary rules, corroborative evidence is relevant and is admissible to prove the out-of-court statement of a child. Corroborating evidence can include: (1) medical and physical abuse; (2) changes in the behavior of the child; (3) corroborative hearsay statements; (4) reliability of the person who heard the statement; (5) more than one victim with the same story; (6) defendant's opportunity to commit the act; (7) admission by the defendant; (8) prior uncharged misconduct of the defendant; and (9)expert testimony that the child was abused.

In sum, either the child testifies, or the statement is nontestimonial.

Most of these states' child hearsay exceptions allow for admission of the statements without regard to the child's availability. According to Vaughn II, this seems to be the most sensible. If the statement has already passed the hurdle of Confrontation Clause, there should be no restriction on whether the child is available as a witness or not.

Under Rule 804 of the Military Rules of Evidence, a witness is deemed to be unavailable when a privilege applies, the witness refuses to testify despite an order to do so, or he/she testifies to not remembering the subject matter, or the witness cannot be at trial because of sickness or death.

However, outside of these instances, it is not as simple as whether someone testifies or not. Courts should determine that a child is unavailable if there is evidence that he or she will suffer psychological harm or trauma if he or she testifies.

Some states have taken this position, according to Vaughn II, if the child suffers psychological harm if he or she testifies, that would be enough to render a child unavailable at trial.

Most of the states that have a child hearsay exception also require corroboration of the statement if the child is unavailable as a witness. It is a scary position to allow a simple statement made by an unavailable child to be used to convict an accused. Thus, many states have built into the text of their rule the requirement for a reliability test as well as corroboration.

But the distinction between a reliability test and corroborating evidence is not needed as long as the constitutional concerns have been addressed. As long as the statement is nontestimonial or the witness is available to testify, any challenge to the rule based on the Confrontation Clause will not succeed.

In conclusion, there are multiple benefits of a specific and codified child-hearsay exception rule. According to Vaughn II, it helps ensure that the statements received as evidence are truthful. As detailed in his article, numerous studies have shown that children struggle to convey the facts when subjected to the rigors of the trial process. Although testifying in court is stressful for anyone involved, children are not usually the ones making the decision about whether they will participate in the proceedings.

The rule that Vaugn II proposed attempts to shield the child as much as possible from the rigors of trial testimony, while at the same time ensuring that the factfinder is presented with reliable information. This leads to the second benefit that a specific and codified child-hearsay exception rule may offer: it provides a predictable and workable rule when preparing for litigation that involves a child witness.

The U.S. Constitution mandates, and an accused is entitled to, the right to a fair trial. Thus, requiring a reliability test if the child does not testify, but not requiring one when they do, strikes the much-needed balance between an accused's constitutional rights and the prosecution of those who may have harmed children.

According to Brown and Stricklin, Jr., cases involving child abuse or custody disputes usually require the child's testimony because it is the main issue in litigating child abuse cases. The problem though is that few children, especially those under the age of 12, are comfortable or capable of testifying in courtrooms. And also, studies have shown that it can be detrimental to a child's welfare to subject them to adversarial proceedings.

Thus, they have offered various solutions in circumventing the hearsay rule, particularly the child's out-of-court statement, through the use of: (a) depositions; (b) pre-recorded videotaped testimony; (c) in-chamber interviews; (d) written statement by the child of his or her preference; (e) attorney *ad litem*; (f) guardian *ad litem*; and (g) expert testimony and interviews with forensic evaluator.

With regard to interviews with a child witness by a forensic evaluator, they cited an opinion made by the Court of Appeals of South Carolina in the case of *State v. Douglas*.

In the said case, the South Carolina Court of Appeals held that a forensic evaluator may acquire by study or experience – and hence can be considered as an expert in the field – such knowledge of the subject matter of her testimony as would enable

him or her to give guidance and assistance to the jury in resolving factual issue, which is beyond the scope of the jury's good judgment and common knowledge.

III. METHODOLOGY

A. Nature of the Methodology Deployed

In this study, the author has used the contextual doctrinal research, as well as comparative, historical, and descriptive methods of legal research.

According to Taekema and van der Burg (2024), contextual doctrinal research is one that focuses on a doctrinal core and merely includes the output of other disciplines. Thus, in this kind of research methodology, a researcher frequently includes the output of other disciplines generated by other research as input in his or her doctrinal work.

Thus, contextual doctrinal research is essentially a black-letter approach, which involves the analysis and legal interpretation of the law in light of the output from research in other disciplines.

The researcher employed a descriptive research methodology, which aims to describe the current status of the study's subject.

B. Methodological Objectives

The contextual doctrinal research is used to further the study of certain provisions of the Rule on Examination of Child Witness, particularly the child hearsay exception for child victims of abuse, in light of the findings of different experts, which are already cited in this work, on the effects on children if they are made to testify in court. Thus, in examining the dissertation of these specific provisions of the Rules, the researcher has resorted to textual analysis of the law, an approach characterized as black letter.

Black letter approach or doctrinal method, as some would prefer to say it, is concerned with answering the question, "What is the law"? Thus, undertaking doctrinal work means seeking to identify and understand the body of practices and ideas that emerge from recognized legal materials. Recognized legal materials are those that are authoritative sources of state law.

Thus, using the black letter approach, the author conducted a deeper study of the pertinent provisions of the Child Witness

Rule, the Supreme Court cases discussing this Rule regarding the examination of Child Witnesses, and other cases relating to child abuse victims, especially those dealing with the child unavailable doctrine.

He also used the comparative method of conducting legal research to study the different rules on child hearsay exception in different jurisdictions, such as the different states in the United States and the United Kingdom, where the rules on hearsay and the right to confrontation were developed, as well as Canada and Australia, where the use of the hearsay rule vis-à-vis the right to confrontation, especially the child-hearsay exception, have been in advance development.

He likewise used descriptive research to describe and explain the legal concept of the child-hearsay exception as distinguished from the other kinds of exceptions to hearsay that have long been found in our Rules on Evidence.

Aside from the black letter, contextual doctrinal, descriptive, and comparative methods, the researcher also used the historical approach to study the evolution of the accused's right to confrontation, the hearsay rule and its exceptions, and the concept and evolution of the child hearsay exception as found in different jurisdictions, which later found its way into their own rules.

IV. ANALYSIS AND DISCUSSION

A. The Child-Hearsay Exception Under the Child Witness Rule

The Child Witness Rule provides for a hearsay exception provision in child abuse cases. According to this rule, a statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding.

However, before the same to be admissible, it must be subject to the following rules:

1. Its proponent shall make known to the adverse party the intention to offer such statement and its particulars to provide him or her with a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require

the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. When the child is unavailable, the fact of such a circumstance must be proved by the proponent.

0. In ruling on the admissibility of such a hearsay statement, the court shall consider the time, content, and circumstances thereof, which provide sufficient indicia of reliability. It shall consider the following factors:

a. Whether there is a motive to lie;
a. The general character of the declarant child.
b. Whether more than one person heard the statement;
c. Whether the statement was spontaneous;
d. The timing of the statement and the relationship between the declarant child and witness;
e. Cross-examination could not show the lack of knowledge of the declarant child;
f. The possibility of faulty recollection of the declarant child is remote; and
g. The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.

0. The child witness shall be considered unavailable under the following situations:

a. He or she is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or
a. He or she is absent from the hearing and the proponent of his or her statement has been unable to procure his or her attendance by process or other reasonable means.

0. When the child witness is unavailable, his or her hearsay testimony shall be admitted only if corroborated by other admissible evidence.

One way of eliciting the hearsay or out-of-court statement of the child abuse victim who is declared unavailable is through videotaped or audiotaped interviews.

However, this provision regarding the admissibility of the videotaped and audiotaped interviews of the child differs from another provision of the Child Witness Rule regarding the taking of depositions. This particular provision states that, if the court finds that the child will be unable to testify in open court at trial, it shall issue an order requiring the deposition of the child to be taken and preserved by videotape.

This deposition-taking provision in the Child Witness Rule can be understood in the light of the ruling of the Supreme Court in *Vda. de Manguerra v. Risos*, reiterated in *Go, et al. v. People*, and whose rulings are extensively discussed in *People v. Ang, et al.*

In these cases, the Supreme Court held that the conditional examination of a prosecution witness for the purpose of taking his or her deposition should be made before the court, in the presence of the accused, where the case is pending, which is the clear mandate of Section 15, Rule 119 of the Rules of Criminal Procedure.

This particular aspect of the right of the accused to confrontation, *i.e.* that any conditional examination shall be done before the court and in his or her presence, must be the reason why the same provision in the Child Witness Rule provides that the rights of the accused during trial, especially the right to counsel and to confront and cross-examine the child, shall not be violated during the taking of deposition.

Considering the presence of the accused during the taking of deposition, which must be done before a trial court as mandated by the Rules of Court, the Child Witness Rule, and standing jurisprudence, it cannot be said that the concerns raised by the experts in behavioral science as regards the emotional and psychological trauma that the child may suffer when made to testify is addressed.

With regard to the child who is declared available, the author sees no legal obstacle in applying the other provisions of the Child Witness Rule regarding the other ways of eliciting the testimonies of child abuse victims by availing of the services of an interpreter, facilitator, or support person, or through the use of a testimonial aid/emotional security item.

B. THE CHILD-HEARSAY EXCEPTION UNDER THE PRESENT JURISPRUDENCE

The Philippines' existing jurisprudence adheres to the unavailable child doctrine as an exception to the hearsay rule in child abuse cases.

In *People v. XXX258054*, a case involving rape of a minor by her own father, the Supreme Court has explained its rationale this way: with the best interests of the child in mind, an exception to the hearsay rule was created to ensure that cases of child abuse or attempted child abuse could still be tried notwithstanding the unavailability of the child. It seeks to ascertain truth and prevent miscarriage of justice that may result from the unavailability of the child; and this includes the child's enforced absence from the hearing to prevent them from testifying against their abuser, as in the present case.

Nowhere in the case just cited did the Supreme Court say that the accused's right to due process in general, and right to confrontation in particular, was violated in ruling on the admissibility of the child abuse victim's out-of-court statement. This is because, according to the Court, children are especially vulnerable.

Thus, according to the case just cited, the State, through its laws, must protect the children from all forms of abuse and exploitation. Through the unavailable child doctrine, child victims can secure justice for abuses perpetrated against them even if they are unable to testify in court. The requirement that other admissible evidence corroborate the child's hearsay testimony ensures that the accused's right to due process is not violated and their right to confrontation is respected.

In this case, the child was considered unavailable because she did not testify, and the prosecution was unaware of her whereabouts at the time she was scheduled to testify.

In another case, *People v. BBB*, the Court also considered the child unavailable – thus, her out-of-court statement implicating the accused was admitted as an exception to the hearsay rule - because during the time that she was supposed to testify, she was suffering from post-traumatic stress disorder as a result of the sexual violence she experienced at the hands of the accused; and her presentation in court would expose her to severe psychological injury.

If the child is declared unavailable as in the cited cases, his or her statement can be testified on by another who will take the witness stand. This is the essence of the child-hearsay exception.

It can be deduced that, from the way the unavailable child doctrine is applied in the Philippine jurisdiction, both under the Child Witness Rule and jurisprudence, hearsay statement is understood as an out-of-court statement notwithstanding that the Philippine Revised Rules on Evidence, prior to its amendment which took effect on May 1, 2020, previously defined hearsay as lack of personal knowledge.

It can also be safely concluded then that, notwithstanding that the Child Witness Rule took effect on 15 December 2000, or during the time that the old definition of hearsay was still applicable, the child-hearsay exception is already understood as an admissible out-of-court statement made by a child for the reason that the provision on child-hearsay exception in the Child Witness Rule has been adopted from the rules on child-hearsay exception of the different states of the United States, which has defined hearsay in its Federal Rules of Evidence as an out-of-court statement.

This postulate is supported by the Supreme Court's discussion on the child unavailable doctrine in the already mentioned case of *People v. XXX25804*, thus:

> With the best interests of the child in mind, an exception to the general rule that hearsay evidence is inadmissible was created in Section 28 of the Rule **to ensure that cases of child abuse or attempted child abuse could still be tried notwithstanding the unavailability of the child**. It seeks to ascertain truth and prevent miscarriage of justice that may result **from the unavailability of the child, including the child's enforced absence from the hearing to prevent them from testifying against their abuser**, as in the present case. It cannot be gainsaid that children are especially vulnerable. The State, through its laws, must protect them from all forms of abuse and exploitation. **Through the doctrine of unavailable child, child victims can secure justice for abuses perpetrated against them even if they are unable to testify in court**. The requirement that other admissible evidence corroborate the child's hearsay testimony ensures that the accused's right to due process is not violated. Moreover, the prosecution still has to discharge the burden of proving the accused's guilt beyond a reasonable doubt. (emphasis supplied)

C. THE CHILD-HEARSAY EXCEPTION RULE IN FOREIGN JURISDICTIONS

1. United States

In the United States, there are substantially common requisites among its different states concerning the admissibility of child abuse victims' out-of-court statements as an exception to the hearsay rule.

In fact, according to the Harvard Review Law Association, the language of the Washington statute is a model for all but one of these states that espouse the child-hearsay exception. This is a manifestation of the strict adherence given by these statutes and rules to the guidelines established in *Roberts,* as already discussed.

The Washington statute and the other similarly worded rules on child hearsay from other states have provided that a statement made by a child abuse victim, not otherwise admissible by a statute or court rule, is admissible in evidence in criminal proceedings if:

1. The court finds in a hearing conducted that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

0. The child either:

a. testifies at the proceedings; or
a. is unavailable as a witness, provided that when the child is unavailable as a witness, such a statement may be admitted only if there is corroborative evidence of the act.

As one can see, these requisites, read alone, are no different from the Philippines' own provision on the child-hearsay exception as provided in its Child Witness Rule. But one law can be a rich source of provision for a child's unavailability.

The Massachusetts General Laws require the proponent of child hearsay to demonstrate a diligent and good faith effort to produce the child to testify and bear the burden of establishing unavailability. The decision rendered by the Supreme Judicial

Court of Massachusetts makes this statutory provision a confrontation clause requirement.

The mentioned law states that the child's unavailability is established by demonstrating that the child is not competent to testify or that, based on expert testimony, testifying would likely cause the child severe psychological or emotional trauma.

In *Colin C.*, the Massachusetts Supreme Court stated that when trauma is the basis for unavailability, the prosecution must show, by more than mere preponderance of evidence, that the admission of hearsay is necessary to avoid severe and long-lasting trauma to the child.

Another requirement before declaring the child unavailable to testify is the conduct of a reliability hearing. According to *Colin C.*, the reliability hearing is a confrontation clause requirement and adds that the separate hearing must be on the record, and that the judge's determination must be supported by specific findings.

The Massachusetts General Laws divides the reliability inquiry into four parts, as follows.

Firstly, the judge must consider whether the recipient of the hearsay statement documented the child witness's statement. *Secondly*, the judge must consider the child's capacity, at the time of making the statement, to observe, remember, and give expression to what the child had experienced. This can be supported by expert testimony from the psychiatrist, psychologist, or clinician who examined the child.

Thirdly, the judge must consider the time, content, and circumstances of the statement. In this criterion, the reliability factors include, among others, the spontaneity and consistency of the child's statements, the absence of leading and suggestive questions, a motive to fabricate, and the child's developmentally inappropriate knowledge and terminology.

And *fourthly*, the court must consider the child's sincerity and ability to appreciate the consequences of such statement. It was held in *Colin C.* that the child's lack of comprehension of the consequences of lying, revealed in reliability hearing, casts doubt on the admissibility of the hearsay statement.

Although the Philippines' Child Witness Rule also provides for a judicially declared unavailable child due to psychological and emotional trauma, the above-cited law in foreign jurisdiction and related court decision have discussed the same in more detail,

which could be a part of the proposed Philippine rule on child-hearsay exception.

Another requirement for the admissibility of the child abuse victim's out-of-court statement if such a child is declared unavailable is that the statement must be corroborated by other evidence. According to Finn, the factors which corroborate child hearsay include, among others, medical or physical evidence of victim's abuse, victim's developmentally unusual sexual knowledge, and sexually explicit behavior. Other factors include eyewitness testimony, a defendant's opportunity to commit the act, and admissions made by the defendant.

0. United Kingdom

In England and Wales, there is legislation dealing with, among others, the presentation of child abuse victims as witnesses, but not necessarily during court proceedings. The Youth Justice and Criminal Evidence Act 1999 provides for the video recording of pre-trial cross-examination and re-examination of a child witness.

According to its pertinent provision, when there is a directive from the court for a video recording to be admissible as evidence in chief of the witness, that directive must also provide that any cross-examination or re-examination of a witness shall also be video recorded.

For such a recording to be admitted as evidence of the child witness under cross-examination or on re-examination, as the case may be, the same must be done in the presence of the defendant and the latter's counsel.

The accused, the court, and legal representatives acting in the proceedings must be able to see and hear the examination of the witness; they can communicate also to the child witness through the person administering the proceedings.

Where a recording of the examination of a witness has been made, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings unless the court directs otherwise.

The Youth Justice and Criminal Evidence Act provides for the examination of child witnesses through an intermediary, who can be an interpreter or another person approved by the court.

An intermediary, according to Spencer, is any person to whom the opposing sides give a list of issues to explore with the child in a manner that person considers most likely to bring out the truth. Or it could be someone more like an interpreter, as already said, whose role is limited to helping the usual team of adversarial questioners to put their questions in a language that the child can understand.

The function of an intermediary is to communicate:

1. to the witness, questions put to the witness; and
2. to any person asking such questions, the answers given by the witness in reply to them, and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

The enactment of this particular provision is in response to the Pigot Report in 1989.

This said report produced a scheme where the child's evidence, including that produced during cross-examination, would be taken ahead of the trial. The child would first be interviewed by trained examiners, who must be video-recorded. If the interview confirmed the commission of an offense, the tape would be shown to the defense, who could then request a further interview at which they could put their questions to the child in the presence of the judge.

Should there be trial on the merits, the first video-interview would replace the child's live evidence-in-chief, the second video-interview would replace the child's live cross-examination, and the child would then withdraw from the proceedings.

This system of pre-trial cross-examination also appears to be in compliance with the European Union law, particularly the Framework Decision on the Rights of Victims, which was adopted in 2001. The Framework has required all EU member states to put in place various protection for the victims of crime, including mechanisms to enable their evidence to be given without having to appear in open court.

0. Canada

In Canada, its particular legislation dealing with the child witness in general is the 1893 Canada Evidence Act, which was last amended in 2005.

The said law provides that, if a proposed witness is a person 14 years of age or older whose mental capacity is challenged, the court shall, before permitting the person to give evidence, conduct an inquiry to determine:

1. whether the person understands the nature of an oath or a solemn affirmation; and
2. whether the person is able to communicate the evidence.

A person referred to in the foregoing who understands the nature of an oath or a solemn affirmation and is able to communicate the evidence shall testify under oath or solemn affirmation.

On the other hand, if the said person does not understand the nature of an oath or a solemn affirmation but is able to communicate the evidence, he or she may testify provided he or she undertakes to tell the truth.

A person who neither understands the nature of an oath or a solemn affirmation nor is able to communicate the evidence shall not testify.

Aside from the Canada Evidence Act, Canada also has the Criminal Code of 1988. This law allows for the admission in evidence of video-recordings of interviews with child abuse victims under the age of 18 provided:

1. the recording is made within a reasonable time from the events in question; and
2. the child testifies and adopts the contents of the recording while on the witness stand.

With regard to Canada Evidence Act, despite its general application, a number of court cases decided by the Canadian Supreme Court has applied the same to hearsay statements of child abuse victims.

For instance, in its 1990 decision in *R. v. Khan*, the Supreme Court of Canada has allowed the admission of out-court-statements made by a child sexual abuse victims if it is established at a *voir dire* that the evidence is reliable, and its admission is necessary.

In this case, the Canadian Supreme Court ruled that a mother could testify about a statement made to her by her then 3-year-old daughter about 15 minutes after an alleged sexual assault by the child's doctor during a medical examination.

Justice McLachlin, the *ponente* in the case, observed that there is a need for increased flexibility in the interpretation of the hearsay rule to permit the admission in evidence of statements made by children to others about sexual abuse. She ruled that hearsay statements are admissible if they meet the test of necessity and reliability.

Since *Khan*, Canadian jurisprudence is consistent on the admissibility of children's out-of-court statements in criminal trials. This type of hearsay evidence is admitted not just for the purpose of supporting the credibility of a child who testifies but also for the truth of its contents. Thus, presently, Canadian courts are now prepared to convict on the basis of child's hearsay statements about abuse, even if the child does not testify.

But, as provided in *Khan*, before such child abuse victim's out-of-court statement can be admitted into evidence as an exception to the hearsay rule, such statement must be necessary and reliable.

According to Bala, necessity as a result of testimonial incompetence might, for example, be established by the testimony from a psychologist who has interviewed the child and can testify that the child does not have sufficient ability to understand and respond to questions about the alleged events in court. Necessity may also be established if it is shown that the child will suffer emotional trauma from testifying.

In *R. v. Rockey*, the Supreme Court of Canada has ruled that mere discomfort is insufficient to establish necessity. But if there is evidence that an already traumatized child might be further traumatized by being questioned by a strange person in a strange situation, that suffices. The Court is not required to wait for proof of actual harm to the child.

As already discussed, the child's hearsay statement must not only be necessary but must also be reliable. According to Bala, reliability for the purpose of admissibility is decided on the balance of probabilities at the time that the Crown seeks to have the statement admitted, but the ultimate assessment of guilt (and reliability of a hearsay statement of a child that abuse occurred) must be established beyond a reasonable doubt after an assessment of all the evidence.

As explained in *Khan*, an explicit hearsay statement of a young child about sexual abuse is generally considered sufficiently reliable to be admitted into evidence, because young children do not ordinarily have knowledge about sexual matters and thus are unlikely to fabricate allegations on their own.

0. Australia

In Australia, particularly Western Australia, they have the Evidence Act of 1906, which deals with how statements of child abuse victims can be gathered and presented in court. The said law provides that if the proceeding has been commenced in court, the prosecutor may apply to a judge of the court for an order directing that the whole of the affected child's evidence (including cross-examination and re-examination) be:

1. taken at a special hearing and recorded on a visual recording; and
2. presented to the court in the form of that visual recording, and that the affected child should not be present at the proceeding.

The above-cited law has allowed the child's entire evidence, which includes examination-in-chief, cross-examination, and re-examination, to be taken at a special hearing and recorded on videotape. The videotape can later be presented as the child's evidence at trial so that the child need not be present then.

The aim is to enable children to give evidence early and as free from external pressures and stresses as possible. These new protective measures, which began in 1992, are, however, limited to those cases that were considered to be the most difficult for children, *i.e.* offenses involving sexual or physical violence.

The rationale for this provision is also articulated by Jackson. According to him, it is necessary: (1) to keep the child away from his or her abuser and the latter's supporters; and (2) to make sure that he or she knows what is going on and what is going to happen. This requires physical separation from the abuser and his or her supporters, as well as impartial help in coping with the unknown and fearsome court proceedings.

D. THE NEED FOR A SEPARATE AND EXPANDED RULE ON CHILD-HEARSAY EXCEPTION IN THE PHILIPPINES

A new and separate rule on the expanded concept and application of the child-hearsay exception can increase protection of

the rights of child abuse victims during legal proceedings through the institution of procedural mechanisms that will prevent them from being retraumatized, which can be brought mainly with their appearance in court for examination.

Based on the different laws and rules that were cited, especially in the United States, before a child's out-of-court statement is admitted, the said child should first be judicially declared unavailable after a summary hearing is held, which may not require the extensive examination of a child, to determine if he or she indeed can withstand the rigors of the trial proceedings.

Even if the child is available to testify, it cannot be said that the findings made by experts in behavioral science has no application to him or her. Their findings that testifying in court has a long-lasting ill-effect on the child, and that they may suffer adverse cognitive development, do not actually make an exception.

Thus, there is a need to adopt other procedural mechanisms from other jurisdictions as discussed above.

But before the adoption of this procedural mechanism, the proposed rule has to answer the following questions:

a. Who should be considered a child under the proposed Rule on Child-Hearsay Exception?
a. In what kind of abuse is the exception applicable?
b. How can the out-of-court statements of child abuse victims be taken without violating the accused's constitutional right to confrontation?

1. THE CHILD UNDER THE PROPOSED RULE ON CHILD-HEARSAY EXCEPTION

The age of the child is a basis for applying the child-hearsay exception, but the threshold varies from state to state. Hence, some jurisdictions consider the age of under 10. Some states consider the age of under 12. And some others provide in their laws that the age must be under 14. Thus, as one can see, the basis of age for the application of the child-hearsay exception is more or less arbitrary.

In the Philippines, the definition of a child witness under the Child Witness Rule must be the determining factor in determining who can qualify for the child-hearsay exception.

Under that rule, a child witness is any person who, at the time of giving testimony, is below the age of 18 years; and in child abuse cases, a child includes one over 18 years but is found by the court as unable to fully take care of himself or herself, or protect himself or herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

This definition of a child under the Child Witness Rule is also in consonance with the definition provided in the UN Convention on the Rights of the Child and other international and regional conventions mentioned in this study.

For instance, the African Charter on the Rights and Welfare of the Child defines a child as every human being below the age of 18.

The European Convention on the Exercise of Children's Rights also states that a child refers to a person who has yet to reach the age of 18.

0. THE ABUSE CONTEMPLATED UNDER THE PROPOSED RULE ON CHILD-HEARSAY EXCEPTION SHOULD REFER TO BOTH PHYSICAL AND SEXUAL ABUSE.

As with the determination of the proper age to whom the child-hearsay rule should apply, a survey of the laws and rules of the different states likewise shows varying answers to the question. Some state laws cover only sexual abuse, some cover physical abuse, while some cover both kinds of abuse.

In the Philippines, the proposed rule on child-hearsay exception should cover both sexual and physical abuse because even the Child Witness Rule covers both physical and sexual abuse.

The reason is not hard to fathom. According to Dwarakanath (2022), the traumatic effects of physical and sexual abuse are similar and support the idea that child hearsay statutes should be applicable in both physical and sexual abuse cases.

Thus, both kinds of abuse, *i.e.* physical and sexual, should be maintained in the proposed rule.

0. The taking of the child abuse victim's out-of-court statement does not violate the accused's right to confrontation.

Prescinding from the foregoing discussion, a question can now be asked: How can an out-of-court statement of a child abuse victim be taken without violating the accused's constitutional right to confrontation?

It is important to protect the welfare of the child, especially if he or she is a victim of abuse, because, according to the erudite opinion of experts in behavioral science, testifying in court is mostly traumatic for children. And this trauma has a lingering effect even when they have grown up. Additionally, the traumatic experience of testifying in court affects their cognitive development.

On the other hand, it is one of the constitutional rights of the accused to meet their accusers face-to-face and cross-examine them. This right, however, must at times give way to some more compelling state interest, such as the physical and psychological well-being of child abuse victims, as mentioned in the already cited case of *Craig*, thus:

> The Confrontation Clause does not guarantee criminal defendants an absolute right to a face-to-face meeting with the witnesses against them at trial. The Clause's central purpose, to ensure the reliability of the evidence against a defendant by subjecting it to rigorous testing in an adversary proceeding before the trier of fact, is served by the combined effects of the elements of confrontation: physical presence, oath, cross-examination, and observation of demeanor by the trier of fact. Although face-to-face confrontation forms the core of the Clause's values, it is not an indispensable element of the confrontation right. If it were, the Clause would abrogate virtually every hearsay exception, a result long rejected as unintended and too extreme … Accordingly, the Clause must be interpreted in a manner sensitive to its purpose and to the necessities of trial and the adversary process. … Nonetheless, the right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy, and only where the testimony's reliability is otherwise assured. …
>
> ….
>
> A State's interest in the physical and psychological wellbeing of child abuse victims may be sufficiently important to outweigh, at least in some cases, a

> defendant's right to face his or her accusers in court. The fact that most States have enacted similar statutes attests to widespread belief in such a public policy's importance, and this Court has previously recognized that States have a compelling interest in protecting minor victims of sex crimes from further trauma and embarrassment ...

The case of *Craig*, however, requires that before a child abuse victim's hearsay statement is admitted, there must be a case-specific finding of such necessity, *i.e.* that the child will suffer emotional and psychological trauma if he or she is made to testify in court.

Although this ruling pertains to other jurisdictions, particularly in the United States, there is no reason why it should not be adopted as part of the Philippine law and rules. After all, the rules on evidence, the rules on hearsay and its exceptions, and the Confrontation Clause and other constitutional rights are legal concepts that originated from them.

So, the question remains: How can a child abuse victim's out-of-court statement be taken without violating the accused's constitutional right to confrontation?

One solution is proposed by Friedman. According to him, when it comes to the testimony of a child abuse victim, the services of a forensic examiner can be availed of, thus:

> A more satisfactory solution, I believe, is to recognize that a very young child is incapable of being a witness within the meaning of the Confrontation Clause, because she [or he] does not understand the gravity of the consequences of her [or his] statements. But she [or he] is still a source of evidence, and as a matter of due process an accused should have some opportunity to examine her [or him]. That opportunity need not be through cross-examination by a lawyer in open court, an exercise that, with respect to very young children, is usually fruitless and often grotesque. A better system would be to allow an examination out of court by a qualified forensic examiner, pursuant to an approved protocol.

A forensic examiner in foreign jurisdictions may be a guidance counselor, licensed psychologists, social worker, and even schoolteachers, who can be used to facilitate the examination of child abuse victims.

Another solution for admission of the child's hearsay statement is the one offered by Bala. According to him, the most commonly admitted types of children's hearsay evidence is video-recording of an investigative police interview with a child. If a child testifies, the admission of the recording is governed by statute, but if the child does not testify, the hearsay approach is applied.

The statute being referred to is the Canada's Criminal Code of 1988. This law allows for the admission in evidence of video-recordings of interviews with child abuse victims under the age of 18 provided: (1) the recording is made within a reasonable time from the events in question; and (2) the child testifies and adopts the contents of the recording while on the witness stand.

Indeed, the above-cited provision adequately protects the rights of the accused because, under the said provision, the child must: (1) be a witness; (2) adopt the contents of the recorded video while testifying; and (3) be available for cross-examination about its contents.

But what if the child cannot testify or, under the provision of Child Witness Rule, unavailable? This is where the hearsay statement of a child abuse victim can be admitted.

According to the Harvard Law Review Association, the hearsay statutes create a special exception to the hearsay rule for statements made by child abuse victims, enabling the child's mother or doctor, for instance, to repeat in court the child's description of the abusive acts.

But still, they have stated an obvious requirement. Courts may admit hearsay statements only if they bear a particularized guarantee of trustworthiness, *i.e.* there must be an independent corroboration of the abusive act. In this way, the constitutional right of the accused to confrontation can still be guaranteed, protected, and safeguarded.

These proposals are in consonance with the Philippines' Child Witness Rule with regard to its provision on the availability or non-availability of child abuse victims. But for obvious reasons as already discussed, whether the child is available or unavailable to testify, the videotaping of the statement should be done by a forensic examiner or, under the rules in England and Wales, by an intermediary.

If the child is available, all that he or she needs to do is to identify for purposes of authentication his or her videotaped

statement during court proceedings. And if the child is unavailable, such video-recorded statement can be admissible as an exception to the hearsay rule.

But how can the child be judicially declared unavailable, or for a more appropriate term, vulnerable to suffering emotional or psychological injury if made to testify in court? That is the function of a forensic examiner whose duty lies in the determination whether a child will suffer said emotional or psychological injury if made to testify in court.

The affirmative answer to this query will be a ground for the conduct of pre-trial cross-examination of a child witness by an intermediary. Under the United Kingdom's Youth Justice and Criminal Evidence Act of 1999, the child's entire evidence will be taken ahead of trial. The child would first be interviewed by trained examiners, which must be video-recorded. If the interview confirmed the commission of an offense, the tape would be shown to the defense, who could then request a further interview where they can put their questions through the said intermediary.

Should there be trial on the merits, the first video-interview would replace the child's live evidence-in-chief, and the second video-interview would replace the child's live cross-examination.

This proposed procedural mechanism finds support in the US Supreme Court case of *Idaho v. Wright* where it is held that videotaping may well enhance the reliability of out-of-court statements of children regarding abuse.

The videotape, according to the case of *State of Iowa v. Rojas*, is more reliable than other forms of hearsay because the trier of fact could observe for itself how the questions were asked, what the declarant said, and the declarant's demeanor.

V. CONCLUSION

The Supreme Court, in several cases cited in this study, recognized that the promulgation of the Child Witness Rule was seen as important in addressing, among other things, the trauma that a child may suffer from testifying in court.

Indeed, this is also the concern raised by the different experts in behavioral science, *i.e.* that a child testifying in court usually

suffers from emotional trauma and psychological injury brought about by the act of testifying. According to the experts, this has a long-lasting adverse cognitive effect on the child.

The Child Witness Rule has a specific provision dealing with a child's hearsay statement. The unavailable child doctrine, which is also now found in Philippine jurisprudence, allows the admission of the out-of-court statement of a child who is deceased, or suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological or emotional injury if made to testify in court.

But what was not touched upon by the rule is the child who may be available but is considered vulnerable, that is, one who has a greater risk of experiencing physical or emotional harm and/or experiencing poor outcomes caused by a history of sexual or physical abuse.

Furthermore, the present provision of the Child Witness Rule on the child hearsay exception does not require a case-specific finding of necessity to determine if the child is psychologically unavailable, or available but vulnerable, before the child's out-of-court statement can be admitted in court. Hence, it cannot be said that the rule squarely addresses the concern raised by the different experts in the fields of behavioral science.

Thus, studies have been conducted on the laws and rules enacted and promulgated in other countries, including those dealing with the child hearsay exception, such as the United Kingdom, Canada, and Australia.

From the study done on the laws of these countries dealing with child hearsay exception, it was deduced that other procedural mechanisms, such as the examinations done by forensic examiner or intermediary, the video and audio recording of such examinations prior to the hearing, and the presentation of such video and audio recorded statement of a child in court, among other procedural mechanisms, can be done without violating the equally important right of the accused to due process and confrontation.

There is thus a need to recalibrate the country's approach and to revisit this hearsay exception provision of the Child Witness Rule by adopting the other procedural mechanisms as found in the rules from other jurisdictions and from there, to come up with a new, separate, and distinct rule on child hearsay exception.

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