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FOREWORD

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This symposium focuses on the treatment of children as victims and witnesses in criminal trials (frequently involving sexual abuse) and draws lessons from that experience. While scholarship in this field sometimes appears to re-hash the same questions, I believe we have indeed made substantial progress in our understanding of both the legal issues and the underlying social science on a number of fronts. The articles presented here catalogue a portion of what we have learned, note important areas where progress is needed, and hopefully even nudge some of the most stubborn points of continued disagreement toward resolution. They are written by an extraordinarily talented group of scholars from the fields of law and social science; in fact, many of the articles are the product of interdisciplinary collaboration.

This symposium grapples with the major evidentiary and social science issues that bedevil the field of criminal litigation when children are the victims and witnesses involved. These issues include hearsay and confrontation, avoidance of trauma, and the consequences for fairness and accuracy. The hotly debated question of the suggestibility of children is among the topics considered, and suggestions are offered for how to conduct interviews that avoid the worst dangers of suggestiveness. The importance of maintaining an accurate record of the interviews is emphasized. All of the articles clearly reflect the fact that, while substantial progress has been made in understanding the major problems of the field, there is still much more work that remains to be done.

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The first two articles examine aspects of the principal hearsay exceptions used in cases involving children. The article by Myers, Goodman, Cordon, and Ghetti probes the interplay between hearsay theory and social science research regarding the trustworthiness of three of these exceptions. I review the developments in, and arguably the disintegration of, the exception for statements made for medical diagnosis or treatment.

Professor Lyon focuses on how more restrictive applications of hearsay exceptions may compel courts to confront the dangers of suggestibility. He examines particularly the often-criticized practice of repeated questions by interviewers and challenges some of that criticism. While much progress has been made in advancing social science knowledge about the problems of suggestibility, the article by Warren and Marsil identifies and discusses six important areas where little progress has been made.

Professor Walker brings together legal and empirical research concerning forensic interviewing practices. She catalogues the best techniques currently being employed and notes areas where major unanswered questions remain. In her article, Professor McGough advocates mandating the recording of such forensic interviews, not just as a matter of practical concern, but as a constitutional requirement.

The article by Marsil, Montoya, Ross, and Graham examines the efforts to shield children from trauma when they testify and the consequences of those practices with regard to accuracy and effectiveness of children's testimony. It couples this examination with an overview of the effect of using hearsay statements from children, again examining the consequences with regard to shielding, accuracy, and effectiveness. Professor Friedman challenges the accepted paradigm involving the Confrontation Clause and hearsay statements from children; he proposes a set of alternative approaches.

This symposium was organized in conjunction with the Evidence and Criminal Justice Sections of the American Association of Law Schools. Many of the papers were first presented at the organization's annual meeting in San Francisco in January 2001. I wish to thank the AALS for its support, those who attended for their helpful comments and questions, and most importantly, the talented scholars whose work appears in this symposium.