

引介美國司法實務就性侵害兒童案件之 「傳聞法則之例外」

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目 次

壹、臺灣高等法院臺南分院 97 年度上訴字第 1215 號刑事判決之疑義	肆、性侵害兒童案件「傳聞法則之例外」
貳、美國證據法上兒童於法庭外之陳述	一、激動言詞
一、證據適格之認定	二、診療目的所為之陳述
二、Crawford 案判決之回顧	三、陳述人不宜出庭證述之情形
參、供述與非供述證據之認定	四、殘餘例外
一、兒童向社工人員所為之陳述	(一)可信性擔保
二、兒童向醫療人員所為之陳述	(二)證明之價值
三、兒童於緊急情境下向警方所為之陳述	(三)司法利益之考量
四、兒童向家人、朋友所為之陳述	伍、結論—「兒童傳聞法則例外」之借鑒

關鍵詞：性侵害、強制性交罪、傳聞法則、兒童被害人、傳聞例外

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摘要

2010 年的白玫瑰運動，揭露我國法院長期對於兒童被害人之性侵害案件判刑過輕、無罪率偏高，不滿的聲浪重挫我國最高法院之威信，亦使得其判決理由書受到嚴格檢視，其中不乏荒謬論理者¹。對照下，美國法上的 Statutory Rape，則一律重罰成人與兒童性交行為，於實務上審理此類案件，就調查證據可能遭遇之困境，早有深刻體悟，故承認兒童被害人之指述乃被告有罪與否的重要依據，並且創設若干兒童傳聞法則之例外。其法理不外性侵案件屬私密犯罪，兒童的語言特性若不先以承認，一旦拿掉兒童指述之部分，被告即難以被定罪。是美國的實務操作以兒童利益為最優先考量，傾向兒童語境（state of mind）下欠缺動機之表達為真實，由被告舉證說服陪審團。即兒童作為被害人和普通證人之證言可信性風險有別，而非兒童語言一概有受成人誘導之危險。本文爰以我國法院裁判為例，說明其無罪判決之論理難招折服外，同時引介美國傳聞法則之例外，冀供我國參考。

American Courts Admit Hearsay Exceptions for Children in Sexual Assault Cases

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Abstract

There were several cases in Taiwan in which individuals convicted of sexually abusing children received what were widely considered to be excessively light sentences or not-guilty. This led to the White Rose movement in 2010, which was launched on Facebook and eventually brought the issue to the attention of the president and the executive, legislative and judicial branches. Of which the judgments were reviewed critically and found with absurd reasoning. In contrast, the American law highlights the legislative determination of child protection by denying child's consent ability of having sex and implementing aggravated penalties. The US has perhaps the most comprehensive safeguards against sex crimes where the courts has known the difficulties in discovering evidence and combated sex crimes against children in a meaningful way, such as child testimony and hearsay exceptions. Its reasoning is as simple as the sexual assault is in a secretive crime, and once a child victim's testimony not allowed to be admitted, the defendant would be set free. American courts, thus, consider children's state of mind first that a child victim's testimony under the absence of motive makes the accusation believable. This paper based on the court's judgments in Taiwan to account for its inconvincible reasons, aims to introduce how American hearsay exceptions used in trial for child victims in statutory rape for our courts' reference.

¹ 參見最高法院 101 年度臺上字第 1068 號、100 年度臺上字第 6913 號、90 年度臺上字第 5426 號等判決。