

SUMMER 2022 UPDATE TO

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**LEARNING
EVIDENCE**

**FROM THE FEDERAL RULES
TO THE COURTROOM**

Fifth Edition

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LEARNING SERIES

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Summer 2022 Update

Learning Evidence: From the Federal Rules to the Courtroom (fifth edition)

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The fifth edition, published in late 2021, contains up-to-date rule language and judicial interpretations for most of the Federal Rules of Evidence. The Supreme Court has issued just one notable opinion since the book's publication. This update provides information about that decision.

Chapter 58 – The Sixth Amendment and Hearsay

On page 755, replace the last paragraph with this material:

In January 2022, however, the Court reaffirmed *Crawford*'s approach to the Confrontation Clause. In *Hemphill v. New York*,¹ the Court held that the defendant had not waived his Confrontation Clause rights when he raised a defense that blamed the declarant for his crime. In reaching that result, the Court stressed “*Crawford*'s emphatic rejection of the reliability-based approach of *Ohio v. Roberts*.”² “If *Crawford* stands for anything,” the Court continued, “it is that the history, text, and purpose of the Confrontation Clause bar judges from substituting their own determinations of reliability for the method the Constitution guarantees.”³

Eight Justices joined this opinion, and the only dissenter (Justice Thomas) took no issue with the Court's characterization of *Crawford*. Justice Thomas dissented only on the ground that the defendant had not preserved his claim in the lower court. *Hemphill*, therefore, offers a resounding endorsement of *Crawford*'s focus on cross-examination rather than reliability.

Hemphill did not require the Court to determine if the contested statement was testimonial; the State conceded that it was. It is possible that the Court's apparent consensus in *Hemphill* will fracture in a case presenting a more difficult determination of whether a statement is testimonial. For now, however, *Crawford* appears once again ascendant.

¹ 142 S. Ct. 681 (2022).

² *Id.* at 691.

³ *Id.*