Washington.[222] The Court in *Crawford* rejected reliance on "particularized guarantees of trustworthiness" as inconsistent with the requirements of the Confrontation Clause. The Clause "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." [223] Reliability is an "amorphous" concept that is "manipulable," and the *Roberts* test had been applied "to admit core testimonial statements that the Confrontation Clause plainly meant to exclude." [224] "Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." [225]

Crawford represented a decisive turning point by clearly stating the basic principles to be used in Confrontation Clause analysis. "Testimonial evidence" may be admitted against a criminal defendant only if the declarant is available for cross-examination at trial, or, if the declarant is unavailable (and the government has made reasonable efforts to procure his presence), the defendant has had a prior opportunity to cross-examine as to the content of the statement.[226] What statements are "testimonial"? In *Crawford*, the Court wrote: "Various formulations of this core class of testimonial statements exist: *ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; extrajudicial statements . . . contained in formalized testimonial material, such as affidavits, depositions, prior testimony, or confessions; statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." [227] The Court added that it would "leave for another day any effort to spell out a comprehensive definition of 'testimonial,'" but, "[w]hatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." [228]

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sufficient evidence of trustworthiness of statements made by child sex crime victim to her pediatrician; statements were admitted under a "residual" hearsay exception rather than under a firmly rooted exception).

[222] 541 U.S. 36 (2004).

[223] 541 U.S. at 60–61.

[224] 541 U.S. at 63.

[225] 541 U.S. at 68–69.

[226] 541 U.S. at 54, 59.

[227] 541 U.S. at 51–2 (internal quotation marks and citations omitted), quoted with approval in Melendez-Diaz v. Massachusetts, 557 U.S. ___, No. 07–591, slip op. at 3–4 (2009).

[228] 541 U.S. at 68.