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Child Witnesses in the Criminal Justice System
By Jana Robinson

In March 2015, the US Supreme Court heard oral arguments in Ohio v. Clark, which fundamentally asks the question whether children must testify at all in criminal cases against their alleged abusers; i.e., can a teacher or other mandatory reporter be viewed as a law enforcement agent and thus provide testimonial evidence in place of the child? And does this violate a defendant’s Sixth Amendment Confrontation Clause rights? The Court’s decision could undo much of the holding of Crawford v. Washington (2004), and have major implications for the interpretation of the term “testimonial” evidence, which has given courts much difficulty since Crawford.

Neuroscience findings in the past two decades revealed that the brain continues to develop until approximately age 25, not 17 or 18 as was once believed. The legal system has been slow to accommodate these findings—despite a brief recognition of them in Roper v. Simmons (2004). While the research indicates brain development is far from complete by the teen years, courts have increasingly tried young children as adults for serious crimes (some as young as 11)—a seemingly inverse reaction to the neuroscience evidence.

There is a lack of research regarding how these findings apply to children as they navigate the judicial system as witnesses. Numerous guidelines have been created by government and NGO bodies—such as the ABA and the US Congress—containing recommendations for protecting children’s best interests while serving as witnesses. However, neither the Supreme Court nor individual states have adopted any of these guidelines, and the child’s experiences vary widely among jurisdictions.

Despite the many issues involved with child witnesses, the research that is available indicates that court involvement is not innately harmful or re-traumatizing to abused children. The practices used by law enforcement and other professionals (e.g., repeated interviews, delay in providing evidence, fear of cross-examination, use of alternative testimonial methods, etc.) are what makes significant differences for children as they navigate the judicial system.