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Jennifer Fox

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In the Courts:
**A Balancing Act: The Protection of Child Abuse Victims and the Rights
of a Defendant**

By Jennifer Fox

Alexandra Bochte in her article *The Double-Edged Sword of Justice: The Need for Prosecutors to Take Care of Child Victims* highlights the problematic operation of the justice system in forcing victims of child abuse to testify in open court. Courts have treated children as adults in sexual abuse cases. There has been a continuous struggle in order to balance a defendant's Sixth Amendment right to confront his accusers with protecting child victim's emotional and mental state. Although the courts have implemented new ways to protect the victim while staying in line with the defendant's Sixth Amendment rights, such as having the child be cross-examined through a one-way circuit television, the child's emotional and mental stress is still at issue. The Supreme Court is currently examining this issue in *Ohio v. Clark*. In order to protect child abuse victims from testifying in open court, courts should permit teachers and social workers to be viewed as law enforcement agents under the Confrontation Clause.

In *Clark*, a preschool teacher in Cuyahoga County reported that a three-year-old student had whip marks on her face and a bloodshot eye. Through questioning the teacher, a detective, and multiple social workers the child admitted that her mother's boyfriend, Darius Clark, was abusing her. The Grand Jury indicted Clark on felonious assault. At trial, the court allowed the preschool teachers, detective, and social workers to testify on behalf of the child. On appeal, Clark claimed that his Confrontation Clause rights under the Sixth Amendment were violated, due to the fact that the preschool teachers were testifying on the child's behalf rather than the child testifying herself. The Sixth Amendment states that "in all criminal prosecutions, the accused shall . . . be confronted with the witnesses against him." Clark claimed that he had the right to confront his accusers; in this case, the three-year-old child.

The Ohio Court of Appeals held that the trial court abused its discretion in permitting the detective, preschool teachers, and social workers to testify on behalf of the child's statements. The Court determined that because the statements were testimonial, and implicated the defendant of the crime, the fact that the child did not testify violated the Confrontation Clause. The decision was reversed and the case went to the Supreme Court of Ohio. The Supreme Court of Ohio found that the preschool teachers were acting in a dual capacity as an instructor and a law enforcement agent when they questioned the child about her injuries. The teachers were attempting to gather evidence against the defendant, and therefore the admission of the child's statements without the child being present in court did violate the Confrontation Clause under the Sixth Amendment.

Clark is now on the U.S. Supreme Court's docket. Arguments were presented to the Supreme Court in March 2015. The issue in contention is whether statements made by children to their teachers can be utilized as evidence in criminal trials where the child feels they are not able to testify. The Supreme Court will examine whether a teacher's

obligation to report child abuse permits them to be viewed as law enforcement agents under the Confrontation Clause. Additionally, the Court needs to determine if narratives from the students to teachers and social workers are considered to be testimonial. If the statements are determined to be testimonial, it further needs to be determined if prosecutors are, or are not, permitted to use the statements without the opportunity to cross-examine the victim.

The Supreme Court's decision will have many policy implications. Under the Federal Rules of Evidence, "every person is competent to be a witness . . ." This rule includes children, who may not be able to fully comprehend the situation. It is the role of the judge, not the jury, to determine if a child is competent to stand trial. But, a child may be subjected to emotional strife if they are forced to testify in trial. The Court needs to balance justice with the protection of child abuse victims.

If preschool teachers or daycare workers are viewed as law enforcement agents under the Confrontation Clause, this could potentially increase the amount of child abuse cases reported. Teachers are trained to look for signs of abuse in their students. If teachers are seen as law enforcement agents, they can protect the children who are often too young to understand and identify what happened to them. Teachers could report the abuse, and the statements given by the children could be used as evidence in order to indict abusers. If the statements are not allowed in, it will be difficult to indict individuals when the only witness is a young child, who will often have difficulty to stand trial.

By allowing teachers or social workers to be law enforcement agents and testify on behalf of the child, this could help remove young children from the trial process. As Bochte states in her article, placing a child in open court burdens the child with emotional and mental anguish. Rather than having a three-year-old child go through the ordeal of a trial, a child could be properly represented by their teacher or social worker; eliminating the need of the child to relive the abuse and be in fear while at court. If a teacher or social worker is viewed as a law enforcement agent and can speak on behalf of the victim, the defendant's Sixth Amendment right of confrontation would be fulfilled. Due to the fact the teacher or social worker is representing the victim, the defendant would have an opportunity to confront his accuser. This could balance the rights of the defendant, while protecting the emotional and mental state of the victim of child abuse. Teachers and social workers should be viewed as law enforcement agents on behalf of children who are victims of child abuse.

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