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Fare v. Michael C.: Juveniles and In Custodial Interrogations

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Fare v. Michael C.: Juveniles and In Custodial Interrogations

In the principal case, Fare v. Michael C., the United States Supreme Court rejects the position of the Supreme Court of California that a juvenile's request for the presence of his probation officer constitutes an invocation of the juvenile's right to remain silent within the meaning of the Miranda decision. The author examines the rationale applied by each court enroute to this split of opinion, and suggests a middle ground which would accomodate the concerns of both courts with respect to the protection of an accused juvenile at the custodial interrogation stage.

I. INTRODUCTION

The United States Supreme Court in *Miranda v. Arizona*,[1] held that when a person is taken into police custody, or has been deprived of his freedom of action in any significant way, he must be advised of his constitutional rights.[2] The Court realized that in custodial interrogations, the "potentiality for compulsion is forcefully apparent," and that without proper safeguards the process of in custodial interrogation would compel an individual "to speak where he would otherwise not do so freely."[3]

In the years following *Miranda*, there has been considerable controversy regarding the extent of *Miranda*'s prophylactic shield, and under what circumstances the safeguards of *Miranda* will apply to juveniles.

This note will examine the United States Supreme Court decision in *Fare v. Michael C.*,[4] which held that only an express demand to remain silent, or to speak with an attorney, will *per se* invoke one's fifth amendment rights.

II. FACTS OF THE CASE

In *Fare*,[5] sixteen year old Michael C. was taken into custody by

1. 384 U.S. 436 (1966).
2. *Id.* at 478-79 (prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, and that if he can not afford an attorney one will be appointed for him).
3. *Id.* at 457, 467.
4. 99 S. Ct. 2560 (1979).
5. 21 Cal. 3d 471, 579 P.2d 7, 146 Cal. Rptr. 358 (1978). *In Re* Michael C., is the

the police on suspicion of murder. After being advised of his *Miranda* rights, and acknowledging that he understood them, he was asked if he wanted his attorney present. Michael replied, "Can I have my probation officer here?" He was told by the police that his probation officer was not available at that time, and was asked if he would talk with them without an attorney present. Michael agreed and subsequently made incriminating statements and sketches.[6]

III. Analysis by the California Supreme Court

In the *Fare* opinion, the California Supreme Court stressed that its decision was not based upon the voluntariness of Michael's confession.[7] Rather, the decision turned upon whether or not his request for his probation officer was an invocation of his fifth amendment privilege against self-incrimination.[8]

The United States Supreme Court in *Miranda* clearly recog-

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case name at the California Supreme Court level, and Fare v. Michael C. is the case name used by the United States Supreme Court.

6. After advising the defendant of his Miranda right's, the following conversation took place:

Q. . . . Do you understand all of these rights as I have explained them to you?
A. Yeah.
Q. Okay, do you wish to give up your right to remain silent and talk to us about the murder?
A. What murder? I don't know about no murder.
Q. I'll explain to you which one it is if you want to talk to us about it.
A. Yeah, I might talk to you.
Q. Do you want to give up your right to have an attorney present here while we talk about it?
A. *Can I have my probation officer here?* (court's emphasis)
Q. Well, I can't get a hold of your probation officer right now. You have the right to an attorney.
A. How I know you guys won't pull no police officer in and tell me he's an attorney.
Q. Huh?
A. (repeat last question).
Q. Your probation officer is Mr. Christiansen.
A. Yeah.
Q. Well, I'm not going to call Mr. Christiansen tonight. There's a good chance we can talk to him later, but I'm not going to call him right now. If you want to talk to us without an attorney present, you can. If you don't want to, you don't have to. But if you want to say something, you can, and if you don't want to say something you don't have to. That's your right. You understand that right?
A. Yeah.
Q. Okay, will you talk to us without an attorney present?
A. Yeah, I want to talk to you.

Id. at 473-74, 579 P.2d at 8, 146 Cal. Rptr. at 359-60 (1978).

7. *Id.* at 477, 579 P.2d at 11, 146 Cal. Rptr. at 362 (1978).

8. The importance of this decision is a result of the Court's interpretation of *Miranda*, and what is necessary to *per se* invoke one's fifth amendment right. This point will further be explored *infra*, when the two courts decision's are compared. *See also*, 21 Cal. 3d at 477, 579 P.2d at 11, 146 Cal. Rptr. at 362 (1978).

nized the need for adequate protective devices in connection with in custodial interrogations.[9] The Court specified four warnings which were required to be given to all persons in a custodial surrounding[10] and held that once the individual asserted his fifth amendment right, in whatever manner, interrogation must cease.[11]

Following this line of thought, the California Supreme Court had previously held that an individual need not expressly state his request for an attorney in order to invoke his fifth amendment rights. The court in *People v. Randall* stated, "no particular form of words or conduct is necessary."[12] All that is necessary is conduct, which "reasonably appears inconsistent with a present willingness on the part of the suspect to discuss his case freely and completely with the police at that time."[13]

In interpreting the extent and nature of *Miranda's* application, California's Supreme Court proclaimed, "[i]t would certainly severely restrict the 'protective devices' required by *Miranda* in cases where the suspects are minors if the only call for help which is to be deemed an invocation of the privilege [against self incrimination] is the call for an attorney."[14] The court in *People v.*

9. 384 U.S. 436 (1966). The Court held that:

> The current practice of incommunicado interrogation is at odds with one of our nation's most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

Id. at 457, 458.

10. *See* note 2 *supra.*

11. The *Miranda* court stated:

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise.

384 U.S. 436, 473-74 (1966).

12. People v. Randall, 1 Cal. 3d 948, 955, 464 P.2d 114, 118, 83 Cal. Rptr. 658, 662, (1970) (suspect's telephone call to his attorney). *See also* People v. Burton, 6 Cal. 3d 375, 491 P.2d 793, 99 Cal. Rptr. 1 (1971) (request by a minor to see his parents); People v. Ireland, 70 Cal. 2d 522, 450 P.2d 580, 75 Cal. Rptr. 188 (1969) (suspect's statement: "Call my parents for my attorney"); People v. Fioritto, 68 Cal. 2d 714, 441 P.2d 625, 68 Cal. Rptr. 817 (1968) (suspect's refusal to sign a waiver of his constitutional rights).

13. 1 Cal. 3d 948, 956, 464 P.2d 114, 119, 83 Cal. Rptr. 658, 663 (1970).

14. People v. Burton, 6 Cal. 3d 375, 382, 491 P.2d 793, 798, 99 Cal. Rptr. 1, 6 (1971).

Burton held that it was foolish to assume that a minor in custody would call an attorney for assistance. Rather, it is far more likely that he would look to his parents for help.[15] Therefore, the court reasoned that when a minor requests to see one of his parents, it is to be construed as an invocation of his fifth amendment privilege.[16]

The California Supreme Court in the *Fare* case found that, "the juvenile court system [in California] places a close relationship between a minor and his probation officer."[17] Additionally, the court held that it was the job of the probation officer to care for and advise the juvenile[18] as well as "to represent the interests" of the juvenile, in accordance with legislative enactments.[19] These findings, combined with the instructions of the probation officer to the juvenile that he was to be contacted immediately[20] led the California Supreme Court to analogize with *Burton*[21] and to hold, "that the minor's request for a probation officer . . . indicated that the minor intended to assert his fifth amendment privilege."[22]

In judging a minor's request to see his probation officer as conduct which "reasonably appears inconsistent with a present willingness on the part of the suspect to discuss his case freely and completely with the police at that time,"[23] the court placed the burden on the state to demonstrate that such a request is not intended to be construed as an assertion of the fifth amendment privilege.[24]

The California court, finding that the state did not meet this burden, held that because the police did not immediately cease

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15. The majority stated that:

> It is fatuous to assume that a minor in custody will be in a position to call an attorney for assistance and it is unrealistic to attribute no significance to his call for help from the only person to whom he normally looks—a parent or guardian. It is common knowledge that this is the normal reaction of a youthful suspect who finds himself in trouble with the law.

Id. at 382, 491 P.2d at 798, 99 Cal. Rptr. at 5, 6 (1971).

16. *Id.* at 382, 491 P.2d at 797, 99 Cal. Rptr. at 5 (1971).

17. *In Re* Michael C., 21 Cal. 3d at 476, 579 P.2d at 9, 146 Cal. Rptr. at 361 (1978).

18. *Id.* at 477, 579 P.2d at 10, 146 Cal. Rptr. at 361.

19. *Id.*

20. The probation officer testified at the trial that he had "instructed Michael that at any time he has a police contact, even if they stop him and talk to him on the street, he is to contact me immediately" reasoning that "many times the kids don't understand what is going on, and what they are supposed to do relative to police . . . ." *Id.* at 476 n.2, 579 P.2d at 9 n.2., 146 Cal. Rptr. at 361 n.2.

21. In analogizing, the court found that the minors request for a probation officer was a "call for help," just as was a request for a parent in *Burton*. *Id.* at 476, 579 P.2d at 10, 146 Cal. Rptr. at 361. *See* notes 14 and 15 *supra*.

22. *Id.*

23. *See* note 12 *supra*.

24. 21 Cal. 3d 471, 478, 579 P.2d 7, 11, 146 Cal. Rptr. 358, 362 (1978). *See also*, People v. Burton, 6 Cal. 3d 375, 383, 491 P.2d 793, 798, 99 Cal. Rptr. 1, 6 (1971); People v. Randall, 1 Cal. 3d 948, 957, 464 P.2d 114, 120, 83 Cal. Rptr. 658, 664 (1970).

their interrogation, the confession should not have been admitted, and that such an admission was prejudicial *per se* and required reversal.[25]

IV. THE HOLDING OF THE UNITED STATES SUPREME COURT

The United States Supreme Court, in a five to four decision, reversed the California Supreme Court.[26] The majority held that the underlying rationale to the *per se* aspect of *Miranda* was based upon "the unique role the lawyer plays in the adversarial system of criminal justice in this country."[27] Fundamental to the Court's determination, was their assertion that "whether it is a *minor* or an adult who stands accused, the lawyer is the *one person* to whom society as a whole looks as the protector of legal rights of that person in his dealings with the police. . . ."[28] The Court reasoned that a probation officer, obviously not of the same posture as an attorney,[29] would not be able to provide for adequate representation of the individual,[30] and therefore a call for a probation officer should not be construed as a *per se* invocation of one's fifth amendment rights.[31]

Further, the majority of the Court found nothing in the juvenile's request to speak with his probation officer which indicated a desire to remain silent.[32] As a result, the Court's analysis shifted to a determination from the "totality of the circumstances" of whether or not there was a knowing and voluntary waiver of the minor's right to remain silent and to have the assistance of counsel.[33] The Court, finding nothing in the record to indicate otherwise, and in concurrence with the juvenile court, found that there had been a knowing and voluntary waiver, and therefore the juvenile's statements should have been admitted.[34] Accordingly, the decision of the California Supreme Court was reversed and remanded.

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25. *Id.*
26. 99 S. Ct. 2560 (1979).
27. *Id.* at 2569.
28. *Id.* (emphasis added).
29. *Id.*
30. *Id.* at 2570.
31. *Id.* at 2571.
32. *Id.*
33. *Id.* at 2572.
34. *Id.* at 2573.

V. COMPARISON OF THE TWO DECISIONS

Under *Miranda*, a two step approach is taken toward the problem of in custodial confessions and waivers. First, if an individual, after having been advised of his rights, expresses his desire to remain silent, or alternatively, asks for an attorney, then the interrogation must immediately cease because either request is a *per se* invocation of one's fifth amendment rights. However, if there is no such express *per se* invocation, and the interrogation continues without the presence of an attorney, a heavy burden is placed on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.[35] Any judgment as to the waiver of those rights, will be based upon the totality of the circumstances.[36] With this in mind, the decisions reached by the United States Supreme Court and the California Supreme Court in this case can readily be explained.

The California Supreme Court apparently felt that, in light of its recent decisions,[37] even an equivocal waiver is sufficient to invoke one's fifth amendment rights. In so doing, as exemplified in *Fare*, there is no need to resort to the totality of the circumstances test, since merely asking for one's probation officer is conduct which *per se* invokes one's fifth amendment rights.[38]

On the other hand, the United States Supreme Court applied a stricter interpretation of *Miranda*. In finding the *per se* rule of *Miranda* was justified by the "pivotal role of legal counsel,"[39] the Court was unwilling to further extend the *per se* rule. The Court, in essence held that only an unequivocal waiver[40] is a *per se* invocation of one's fifth amendment rights. The Court was therefore unwilling to find that a request by a juvenile to speak with his probation officer constitutes a *per se* request to remain silent.[41]

In finding no *per se* invocation of the juveniles fifth amendment rights, the Court proceeded to the next step of Miranda's two step approach,[42] namely, whether or not, based upon the totality of the circumstances, a knowing and voluntary waiver of the juveniles'

35. 384 U.S. at 475 (1966).

36. 99 S. Ct. at 2572; *See also*, Miranda v. Arizona, 384 U.S. 436, 475 (1966) and Carnley v. Cochran, 369 U.S. 506, 516 (1962).

37. *In Re* Michael C., 21 Cal. 3d 471, 579 P.2d 7, 146 Cal. Rptr. 358 (1978). *See also* note 13 *supra*.

38. 21 Cal. 3d 471, 474, 579 P.2d 7, 8, 146 Cal. Rptr. 358, 360 (1978).

39. 99 S. Ct. 2560, 2570 (1979).

40. The Court feels this way, despite the tone of the language used in the *Miranda* opinion. *See* note 11 *supra*.

41. 99 S. Ct. at 2571 (1979).

42. *Id.* at 2572.

fifth amendment rights had been made.[43] The Court held, in accordance with the juvenile courts' findings, that there was a knowing and voluntary waiver and that "the statements obtained from him were voluntary, were proper, and that the admission of those statements . . . was correct."[44]

VI. A CATCH-22 FOR JUVENILES

The United States Supreme Court recognized a potential problem that could result with a holding giving a probation officer more than one role to fulfill.[45] In some states, a catch-22 of sorts could result because a juvenile requesting the presence of his probation officer, thereby indicating a desire to protect his rights by remaining silent, might, by his request, actually hinder protection of those rights.[46] This dilemma could arise in a scenario similar to the one presented in the *Fare* case. A juvenile who has been arrested, requests to speak with his probation officer pursuant to the instructions of the probation officer. Yet, (unlike the *Fare* case) the probation officer actually encourages the juvenile to tell the police everything (due to the probation officer's possible dual role).[47] This predicament exists as a result of defects inherent in the juvenile justice system as it currently exists. The question presented involves whether something can be done to eliminate such a possibility and, at the same time, ensure a juvenile of his rights within the spirit and meaning of *Miranda* and *In Re Gault*.[48]

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43. As the Court stated:

> The totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his fifth amendment rights, and the consequences of waiving those rights.

Id. at 2572.

44. *Id.* at 2573.

45. *Id.* at 2569. This problem was also realized by the two concurring justices (Mr. Justice Mosk and Mme. Chief Justice Bird), of the California Supreme Court, but they still felt that the "questioned confession" did not meet the constitutional test of admissability. 21 Cal. 3d 471, 479, 579 P.2d 7, 12, 146 Cal. Rptr. 358, 363 (1978).

46. 99 S. Ct. at 2570. *See also In Re* Gault, 387 U.S. 1 (1967) (holding that a probation officer is not in a position to act as counsel).

47. Although the California Supreme Court has held that in California the probation officer is to represent the interests of the juvenile. *See* note 18 and 19 *supra*.

48. *In Re* Gault, 387 U.S. 1 (1967). The Court recognized that, "Special problems may arise with respect to waiver of the [fifth amendment] privilege by

VII. A SOLUTION TO THE PROBLEM

As noted, the Supreme Court has realized that there must be special considerations given to a juvenile's waiver of his fifth amendment rights.[49] As far back as *Haley v. Ohio*[50] the Court took judicial notice of the special protection that juveniles require. As the opinion of Justice Douglas stated:

> [W]hen, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens . . . [w]e cannot believe that a lad of tender years is a match for the police for such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.[51]

Several years later, the Court, in *Gallegos v. Colorado*,[52] pronounced that "[a] 14-year old boy, no matter how sophisticated . . . is unable to know how to protect his own interests or how to get the benefits of his constitutional rights."[53] The Court also stated that:

> He would have no way of knowing what the consequences of his confession were without advice as to his rights—from someone concerned with securing him those rights. . . . A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not . . . . Without some *adult protection* against this inequality, a 14 year old boy would not be able to know, let alone assert, such constitutional rights as he had.[54]

While the Supreme Court has obviously recognized, for a long period of time, that juveniles are in need of special consideration, it has only recently chosen not to grant certiorari in a case where the issue presented was whether a "juvenile can validly waive his right to remain silent and consult with an attorney in the absence of competent advice from an adult who does not have significant conflicts of interest."[55] Yet, several studies, independent of those of the court, have supported the proposition that a juvenile should be given competent adult advice before being allowed to waive his fifth amendment rights. Such a rule has been proposed

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or on behalf of children . . . the greatest care must be taken to assure that the admission . . . was not coerced or suggested, . . ." *Id.* at 55.

49. *See* note 48 *supra.*

50. 332 U.S. 596 (1948).

51. *Id.* at 599, 600.

52. 370 U.S. 49 (1962).

53. *Id.* at 54.

54. *Id.* (emphasis added).

55. Little v. Arkansas, 261 Ark. 859, 554 S.W.2d 312, *cert. denied.* 435 U.S. 957, *rehearing denied* 436 U.S. 923 (1978) (In this case the child did consult with an adult, but the advice given was not rational, the adult was confused at the time of the giving of the advice, and the child was a 13 year old girl of "low dull normal" intelligence).

by the President's Commission on Law Enforcement and Administration of Justice,[56] the Council of Judges of the National Council of Crime and Delinquency,[57] and the Institute of Judicial Administration-American Bar Association Joint Commission on Juvenile Justice Standards.[58] The reason that they favor this approach is clear. They recognize that "most juveniles are not mature enough to understand their rights and are not competent to exercise them."[59] Juveniles are in an obviously inferior position in relation to their interrogators.[60] Alone, without adult advice, only a small percentage of juveniles are able to knowingly and intelligently waive their *Miranda* rights.[61]

While a small minority of state courts have expressed their agreement that juveniles be required to receive competent adult advice before waiving their constitutional rights,[62] and a few

56. The Commission recommended that: "Counsel should be appointed as a matter of course whenever coercive action is a possibility, without requiring any affirmative choice by child or parent." PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 87 (1967).

57. THE COUNCIL OF JUDGES OF THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MODEL RULES FOR JUVENILE COURTS, Rule 25, at 53 (1969), proposed the following: "No extra-judicial statement by a child to a police officer or a court officer shall be admitted into evidence unless made in the presence of a parent or guardian of the child, or of the child's counsel."

58. INSTITUTE OF JUDICIAL ADMINISTRATION AND AMERICAN BAR ASSOCIATION, JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO POLICE HANDLING OF JUVENILE PROBLEMS (1977). Standard 3.2 reads as follows:

> Police investigation into criminal matters should be similar whether the suspect is an adult or a juvenile. Juveniles, therefore, should receive at least the same safeguards available to adults in the criminal justice system. This should apply to:
> A. preliminary investigations (e.g., stop and frisk);
> B. the arrest process;
> C. search and seizure;
> D. questioning;
> E. pretrial identification;
> F. prehearing detention and release.
>
> *For some investigative procedures, greater constitutional safeguards are needed because of the vulnerability of juveniles. Juveniles should not be permitted to waive constitutional rights on their own.* (emphasis added).

Id. at 54.

59. *See generally* Foster and Courtless, *The Beginning of Juvenile Justice, Police Practice, and the Juvenile Offender*, 22 VAND. L. REV. 567, 596 (1969).

60. *See* note 51 *supra*.

61. *See generally*, Ferguson and Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39 (1970).

62. *See, e.g.*, Lewis v. State, 259 Ind. 431, 436-40, 288 N.E.2d 138, 141-43 (1972); *In re* K.W.B., 500 S.W.2d 275, 279-83 (Mo. App. 1973); Commonwealth v. Webster, 466

states, such as Colorado,[63] Connecticut,[64] and Oklahoma,[65] have statutorily provided for adult advice for juveniles before a valid waiver of their fifth amendment rights can occur, the majority of the states have not.

VIII. CONCLUSION

It appears that the current United States Supreme Court will continue to limit the protective shield provided by *Miranda*. The Court's holding that a juvenile's request to see his probation officer is not an invocation of his *Miranda* rights, seems to reward those who are our system's worst offenders. For only those cunning few, who through previous dealings and troubles with the law, will be wise enough to possibly understand and evoke their constitutional rights. It is obvious that something must be done to protect the rights of the majority of our nation's juvenile offenders, so as not to expose them as easy prey for sophisticated

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Pa. 314, 320-28, 353 A.2d 372, 375-79 (1975). *See also* Weatherspoon v. State, 328 So.2d 875, 876 (Fla. 1976).

63. COLO. REV. STAT. ANN. § 19-2-102(3)(c)(I) (1973) provides:

> No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissable in evidence against the child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian, were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation. . . .

64. CONN. GEN. STAT. ANN. § 46b-137(a) (West Supp. 1979) provides:

> Any admission, confession or statement, written or oral, by a child shall be inadmissable in any proceeding for delinquency against the child making such admission, confession, or statement unless made by such child in the presence of his parent or parents or guardian and after the parent or parents or guardian and child have been advised (1) of the child's right to retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf, (2) of the child's right to refuse to make any statements and (3) that any statements he makes may be introduced into evidence against him.

65. OKLA. STAT. ANN. tit. 10, § 1109(a) (West Supp. 1979) provides:

> No information gained by questioning a child nor any evidence subsequently obtained as a result of such information shall be admissable into evidence against the child unless the questioning about any alleged offense by any law enforcement officer or investigative agency, or employee of the court, or the Department is done in the presence of said child's parents, guardian, attorney or the legal custodian of the child, and not until the child and his parents, or guardian, or other legal custodian shall be fully advised of their constitutional and legal rights, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court if the parties are without sufficient financial means; provided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein. . . .

See also ALA. CODE tit. § 12-15-67.

police interrogators who might play upon their inexperience and naivete. It is evident that the remedy must come through legislative enactments, similar to those noted above, in order to protect this country's youthful offenders from the compulsion inherent in custodial interrogations.

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