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In re Grand Jury Subpoenas - Juveniles' Right to Counsel Inside the Grand Jury

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With the promulgation of rule 14(e), future Chiarella-like insiders will not escape liability, as 14(e) is addressed specifically to nondisclosure of nonpublic tender offer information. However, the court may be faced with a similar legal scenario that does not precisely fit the 14(e) statutory scheme or any other SEC rule. In those situations, the court will have to trace again the liability of a person possessing inside information from *Kardon* (affirmative duty to disclose as a result of the fiduciary obligations inherent in an insider's status) through *In re Cady, Roberts* (duty to disclose arising out of a relationship giving access to corporate information) to the holding in *Chiarella* to determine the question of liability. If there is no statutory provision, then the court probably will also be able to consider liability based upon the Solicitor General's misappropriation theory, which was strongly urged by Chief Justice Burger. Chiarella was not convicted—but, a future "Chiarella" in a non-tender offer situation, even absent a specific statutory provision, may be convicted of violating 10(b) and 10b-5.[42]

Rodolfo J. Aguilar, Jr.

In re Grand Jury Subpoenas—JUVENILES' RIGHT TO COUNSEL INSIDE THE GRAND JURY

Grand jury subpoenas were issued to David and Eric Graham, ages 16 and 12, after their mother was found murdered in their home. Their father filed a motion to quash the subpoenas. The trial court appointed counsel to represent the minors to avoid any possible conflict of interest, and after the argument on the motions, the court quashed the subpoenas. The state sought to reinstate the subpeonas and to require the attendance of the children before the grand jury. The Louisiana Supreme Court granted certiorari and *held* that it would violate the concepts of fundamental fairness embodied in the

42. The Court was reluctant to allow Chiarella to evade liability. It is conceivable that had the misappropriation theory been timely advanced, Chiarella's conviction would have been affirmed. Justice Stevens' concurring opinion reflects the attitude of the Court:

> I write simply to emphasize the fact that we have not placed any stamp of approval on what this petitioner did, nor have we held that similar actions must be considered lawful in the future. Rather, we have merely held that petitioner's criminal conviction cannot rest on the theory that he breached a duty he did not owe.

Chiarella v. United States, 100 S. Ct. 1108, 1120 (1980).

Declaration of Rights of the Louisiana Constitution[1] to compel a minor's attendance at a grand jury hearing without affording him the protection of the counsel of an attorney. *In re Grand Jury Subpoenas*, 387 So. 2d 1140 (La. 1980).

Traditionally, a witness called to testify before a grand jury has had no right to counsel.[2] The denial of such a right has most often been attributed to the ancient history, the special nature, and the constitutional prerogatives of the grand jury system.[3] The grand jury has been a basic element of the Anglo-American criminal process since 1166 and theoretically serves as the citizen's voice in the enforcement of criminal laws.[4] The grand jury is convened as a "body of laymen, free from technical rules, acting in secret, pledged to indict no one because of prejudice and to free no one because of special favor."[5]

The grand jury functions both as a body of accusers and as a protector of the citizen from unfounded accusations.[6] As accuser, the grand jury inquires independently into crimes committed within its jurisdiction and issues indictments on the finding of probable cause. For example, in Louisiana, though a state grand jury usually acts in response to crimes brought to its attention by the district attorney, the grand jury's inquisitorial power is not limited to such cases, and the grand jury may inquire into any offense triable by a district court in the parish in which the jury sits.[7] The state grand jury need not even call witnesses, as it may indict upon the juror's own personal knowledge of crimes.[8] As protector, the grand jury is supposed to

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1. LA. CONST. art. I, §§ 2, 3 & 16.

2. United States v. Mandujano, 425 U.S. 564, 581 (1976); *In re* Groban, 352 U.S. 330, 333 (1957); United States v. Daniels, 461 F.2d 1076 (5th Cir. 1972); Gilmore v. United States, 129 F.2d 199 (10th Cir.), *cert. denied*, 317 U.S. 631 (1942); *In re* Black, 47 F.2d 542 (2d Cir. 1931); United States v. Grunewald, 164 F. Supp. 640 (S.D.N.Y. 1958); United States v. Blanton, 77 F. Supp. 812 (E.D. Mo. 1948); State v. Williams, 310 So. 2d 528 (La. 1975). *But see* Sheridan v. Garrison, 273 F. Supp. 673 (E.D. La. 1967), *rev'd on other grounds*, 415 F.2d 699 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970).

3. See cases cited in note 2, *supra*.

4. Note, *Criminal Procedure—Right to Counsel in Investigative Grand Jury Proceedings: Washington Criminal Investigatory Act of 1971—R.C.W. §§ 10.27.120-.140 (1971)*, 47 WASH. L. REV. 511, 513 (1972). For a history of the grand jury, *see generally* Costello v. United States, 350 U.S. 359, 361-62 (1956); Blair v. United States, 250 U.S. 273, 279-83 (1919); Hale v. Henkel, 201 U.S. 43, 59 (1906); 4 W. BLACKSTONE, COMMENTARIES 301-03 (Lewis' ed. 1902); G. EDWARDS, THE GRAND JURY 1-44 (1906); 1 W. HOLDSWORTH, HISTORY OF ENGLISH LAW 321-23 (7th ed. 1956); 1 F. POLLOCK & F. MAITLAND, HISTORY OF ENGLISH LAW 151 (2d ed. 1909).

5. Costello v. United States, 350 U.S. 359, 362 (1956).

6. Hurtado v. California, 110 U.S. 516, 556 (1884) (Harlan, J., dissenting).

7. LA. CODE CRIM. P. art. 437.

8. LA. CODE CRIM. P. art. 483. *See* State v. Vial, 153 La. 883, 96 So. 796 (1923); State v. Richard, 50 La. Ann. 210, 23 So. 331 (1898).

"[stand] between the accuser and the accused . . . to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will."[9] If the evidence presented is insufficient to establish probable cause, the grand jurors no-bill the accused,[10] thus preventing hasty, malicious, or oppressive prosecutions. This protective function is reflected by the fact that the declarations of fundamental rights in both the United States and Louisiana Constitutions contain a requirement of a grand jury indictment for all serious crimes.[11] Largely because the grand jury, as an independent group of citizens, is presumed to protect the witness' rights,[12] courts have held that a grand jury witness has no constitutional right to counsel.[13]

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9. Wood v. Georgia, 370 U.S. 375, 390 (1962). *See* Hale v. Henkel, 201 U.S. 43, 59-66 (1906).

10. LA. CODE CRIM. P. art. 444. A Louisiana grand jury may also pertermit entirely the matter investigated. LA. CODE CRIM. P. art. 444.

11. U.S. CONST. amend. V; LA. CONST. art. I, § 15.

12. Many writers argue that the modern grand jury basically functions as the investigative arm of the prosecutor, which makes it unlikely for the grand jury to be able to fulfill its traditional role as "independent protector" of the witness or the accused. The prosecutor's control of grand jury proceedings, the lack of procedural safeguards to protect the witness' constitutional rights, and the legally binding nature of a witness' testimony have eroded prior justifications for the exclusion of counsel. Whether these considerations necessarily should compel the right to counsel for *all* grand jury witnesses is beyond the scope of this note, though such an argument could be very persuasive. *See* United States v. Mandujano, 425 U.S. at 602-10 (1976) (Brennan, J., concurring); Sheridan v. Garrison, 273 F. Supp. 673 (E.D. La. 1967), *rev'd on other grounds*, 415 F.2d 699 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970); Meshbesher, *Right to Counsel Before a Grand Jury*, 41 F.R.D. 189 (1966); Steele, *Right to Counsel at the Grand Jury Stage of Criminal Proceedings*, 36 MO. L. REV. 193 (1971); Note, *The Rights of a Witness Before a Grand Jury*, 1967 DUKE L.J. 97, 122. The redactors of the 1974 Louisiana Constitution seemed to recognize such a need for counsel in article V, section 34, in which the legislature was authorized to provide for a right to counsel before a grand jury. However, the legislature has yet to act upon this grant of authority.

13. The lack of a right to counsel for a grand jury witness has most often been asserted in cases denying the assistance of counsel in administrative hearings. *See* Hannah v. Larche, 363 U.S. 420 (1960); *In re* Groban, 352 U.S. 330, 333 (1957). Only one United States Supreme Court decision has squarely addressed the question of whether a witness has a constitutional right to be represented by counsel while testifying before a grand jury. That case, *United States v. Mandujano*, 425 U.S. 564 (1974), in denying the existence of such a right, relied on dicta in *In re Groban*, 352 U.S. 330 (1957), which ruled that a witness before a grand jury cannot insist, as a matter of constitutional right, on being represented by counsel. The holding also relied upon *Kirby v. Illinois*, 406 U.S. 682, 689-90 (1972), for the proposition that the sixth amendment right to counsel does not come into play until criminal proceedings (indictment or information) have been instituted against the witness. In a concurring opinion, Justice Brennan noted that *Kirby's* premise was that "the constitutional privilege against compulsory self-incrimination is in no way implicated here." 425 U.S. at 602 (Brennan, J., concurring), *quoting* Kirby v. Illinois, 406 U.S. 682, 687 (1972). Because of the great

Grand jury hearings are non-adversary proceedings in which no final determination of guilt or innocence is made; rather, "[t]he function of the Grand Jury is to determine whether or not, from the evidence before it, there is probable cause to believe that a crime has been committed"[14] and to see whether or not probable cause for prosecution exists. Louisiana courts issue a subpoena for a witness to appear before the grand jury upon the request of either the grand jury or the district attorney.[15] The witness is administered an oath by which he must swear to keep secret the proceedings of the grand jury, and such secrecy cannot thereafter be invaded.[16] Only certain persons may be present at sessions of the state grand jury: the members of the grand jury, the district attorney and his assistants, the attorney general or an assistant attorney general, the witness under examination, the court reporter, and an interpreter, if necessary.[17] Any other person who intentionally is present is in constructive contempt of court.[18] Thus, the concept of defense counsel for a grand jury witness is not embraced by Louisiana statutory provisions. Louisiana courts also have followed the tradition of excluding counsel from the grand jury room.[19]

When called by the grand jury, the witness is legally bound to give his testimony.[20] This duty is based on the historic rule that "[t]he public has a right to every man's evidence."[21] However, the grand jury's authority to compel testimony is not unlimited. The

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danger of self-incrimination inherent in a grand jury interrogation, Justice Brennan believed the "substantive affinity" of the right to counsel and the privilege against self-incrimination should be recognized, and the sixth amendment right to counsel should be required to protect the fifth amendment right against self-incrimination, as was done in *Miranda v. Arizona*, 384 U.S. 436 (1966).

14. Eames v. Pitcher, 344 F. Supp. 207, 209 (M.D. La.), *aff'd*, 468 F.2d 905 (5th Cir. 1972).

15. LA. CODE CRIM. P. art. 439.

16. LA. CODE CRIM. P. art. 440. However, "[a] witness may discuss his testimony given before the grand jury with counsel for a person under investigation or indicted, with the attorney general or the district attorney, or with the court." LA. CODE CRIM. P. art. 434. Unlike with Louisiana grand juries, federal grand jury witnesses are not bound by an oath of secrecy. *See* FED. R. CRIM. P. 6(e)(2). There are other substantial differences between Louisiana and federal grand jury procedures, a discussion of which is beyond the scope of this paper. The illustrations used here in explaining the general nature of the grand jury system are based on Louisiana law, since the instant case involves a state grand jury.

17. LA. CODE CRIM. P. art. 433A. *See* State v. Revere, 232 La. 184, 94 So. 2d 25 (1957). *See also* FED. R. CRIM. P. 6(d).

18. LA. CODE CRIM. P. art. 433C.

19. State v. Williams, 310 So. 2d 528 (La. 1975).

20. United States v. Calandra, 414 U.S. 338, 345 (1974).

21. United States v. Mandujano, 425 U.S. 564, 572 (1976), *quoting* United States v. Burr, 25 Fed. Cas. 38 (No. 14,692e) (C.C. Va. 1807).

same amendment (the fifth) that establishes the grand jury guarantees that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."[22] The grand jury is considered a "criminal case" at which incriminating questions need not be answered by the witness.[23] This privilege has great significance to a grand jury witness because, in many instances, the very purpose of requiring the witness' presence is to ask him incriminating questions. Thus, this situation presents a great danger of infringement of the witness's right against self-incrimination.[24] One has no absolute constitutional right to remain silent before a grand jury.[25] In most cases the witness need not be informed of his privilege.[26] The witness must either answer the questions and risk self-incrimination or assert his privilege and risk prejudice in the eyes of the grand jury.[27] Another danger is that a premature or unfounded assertion of the privilege may lead to a contempt citation.[28] Most importantly, if the privilege is not invoked timely, it is considered waived.[29]

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22. U.S. CONST. amend. V.

23. Counselman v. Hitchcock, 142 U.S. 547, 562-63 (1892). *See* United States v. Monia, 317 U.S. 424, 427 (1943).

24. Of course, the grand jury may compel testimony which is self-incriminating in exchange for a grant of immunity, after which the witness must speak or be held in contempt. *See* LA. CODE CRIM. P. art. 439.1. This is allowed because, supposedly, "[i]mmunity displaces the danger." Ullmann v. United States, 350 U.S. 422, 439 (1956).

25. United States v. Mandujano, 425 U.S. 564, 572 (1976).

26. *See* United States v. Scully, 225 F.2d 113 (2d Cir. 1955); United States v. Gilboy, 160 F. Supp. 442, 461 (M.D. Pa. 1958). However, whenever the witness is the focus of the investigation, he must be warned of his right against compulsory self-incrimination before testifying. *See* State v. Jemison, 240 La. 787, 125 So. 2d 363 (1960); State v. Harrell, 228 La. 434, 82 So. 2d 701 (1955). Full-blown *Miranda* warnings need never be given to a grand jury witness, even when the witness is the focus of the investigation. United States v. Mandujano, 425 U.S. 564 (1976).

27. The defendant in *United States v. Winter*, 348 F.2d 204 (2d Cir. 1965), *cert. denied*, 382 U.S. 955 (1965), envisioned a third alternative. Confronted with a blunt question as to his guilt or innocence, the defendant saw as his alternatives the distasteful choice of either (1) admitting his guilt, (2) claiming the fifth amendment privilege and prejudicing the grand jury, or (3) lying and risking a perjury prosecution. He selected the third alternative but found the court unsympathetic.

28. *See* Rogers v. United States, 340 U.S. 367 (1951).

29. If the witness desires the protection of the privilege, he must claim it, or he will not be considered to have been "compelled" within the meaning of the fifth amendment. United States v. Monia, 317 U.S. 424, 427 (1943). Also, "if the witness himself elects to waive his privilege . . . and discloses his criminal connections, he is not permitted to stop, but must go on and make full disclosure," unless there is a "real danger" of further incrimination. Rogers v. United States, 340 U.S. 367, 373-74 (1951), *quoting* Brown v. Walker, 161 U.S. 591, 597 (1896). This waiver rule in the grand jury room seems to threaten the fundamental right against self-incrimination and to impose a severe threat to individual rights. *See* Comment, *The Grand Jury Witness' Privilege Against Self-Incrimination*, 62 NW. U. L. REV. 207, 219, 228-32 (1971).

Recent cases have shown an increased concern for the protection of the constitutional rights of juveniles.[30] *In re Dino*,[31] a previous Louisiana Supreme Court decision, refused to allow minors to waive their fifth amendment right against self-incrimination by themselves because of the general policy of Louisiana law to protect all minors from the possible consequences of immaturity.[32] The state now "must affirmatively show that the juvenile engaged in a meaningful consultation with an attorney or an informed parent, guardian, or other adult interested in his welfare before he waived his right to counsel and privilege against self-incrimination."[33]

In the instant case, only the two subpoenaed children, their seven-year-old sister, and their father were at home when their mother was murdered. The state refused to grant immunity to the subpoenaed children, though it maintained that the children were not suspects. Thus, in deciding whether to reinstate the grand jury subpoenas, the court felt that it had to resolve a conflict between the minor's right against self-incrimination and the state's interest in protecting the integrity of the grand jury. The court opted for the former.[34] The court stressed the fact that a witness has a duty to testify if called before a grand jury, subject only to his fifth amendment right against self-incrimination. Considering language in *In re Dino* that "most juveniles are not mature enough to understand their rights and are not competent to exercise them,"[35] the court in the instant case decided that the ordinary protections for adult witnesses were not enough to protect a child's interest. However, the court also felt that to quash all subpoenas to minors by the grand jury would severely limit the grand jury in its investigative duties. The court held that in order to protect the grand jury's investigative duties and the juvenile's constitutional rights, the proper remedy was to permit the subpoenas to stand and to allow juveniles to be accompanied by an attorney.[36]

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30. *See In re* Winship, 397 U.S. 358 (1970) (requiring proof beyond a reasonable doubt for delinquency judgments); Application of Gault, 387 U.S. 1 (1967) (requiring, *inter alia*, assistance of counsel for juveniles at a delinquency proceeding); *In re* Jones, 372 So. 2d 779 (La. App. 4th Cir. 1979) (extending the right to counsel to juveniles under the Louisiana Constitution).

31. 359 So. 2d 586 (La. 1978).

32. *See* LA. CIV. CODE art. 1785; LA. CODE CIV. P. art. 4501.

33. 359 So. 2d at 594.

34. The two concepts need not be mutually exclusive, however. See notes 42-49, *infra*, and accompanying text.

35. 359 So. 2d at 594.

36. The right to counsel granted to grand jury witnesses is expressly limited to juveniles. *In re* Grand Jury Subpoenas, 387 So. 2d 1140, 1143 n.3 (La. 1980).

The witness' right against self-incrimination in a grand jury setting supposedly is protected by the practice of allowing counsel outside the grand jury room and permitting the witness to leave the grand jury room at any time to consult with his attorney.[37] In *United States v. Capaldo*,[38] the court called this rule "a reasonable and workable accommodation of the traditional investigatory role of the grand jury, preserved in the Fifth amendment, and the self-incrimination and right to counsel provisions of the Fifth and Sixth amendments."[39] Other cases have illustrated the disruptive effects and intolerable delays which can and often do result from this practice, such as occurs when a witness leaves the grand jury room after every question for a fifteen-minute conference with his attorney.[40] The instant case rejected the contention that outside counsel could provide adequate protection for the juvenile's rights. The court stated that such a rule "offers little protection to the witness who may be too immature to accurately report the questions of the prosecutor to his attorney. Nor can we assume that the inexperienced minor unfamiliar with the self-incrimination privilege will understand when to assert the privilege."[41]

Such language seems quite logical and practically compelled in light of the *Dino* holding. *Dino* established three prerequisites which the state must follow in order to show an effective waiver of a child's right against self-incrimination. The state must show that the juvenile actually consulted with an attorney or an adult before waiver, that the attorney or adult consulted was interested in the welfare of the juvenile, and that, if an adult other than an attorney was consulted, the adult was advised fully of the rights of the juvenile. However, because of the isolation of the juvenile from the advice of such counsel or informed adult before a grand jury, there is a great possibility of the occurrence of what *Dino* prohibits—the juvenile may waive unknowingly his privilege against self-incrimination.

37. *See* United States v. Mandujano, 425 U.S. 564, 581 (1976); United States v. Corallo, 413 F.2d 1306, 1330 (2d Cir. 1969); United States v. Capaldo, 402 F.2d 820, 824 (2d Cir. 1968), *cert. denied*, 394 U.S. 989 (1969).

38. 402 F.2d 824 (2d Cir. 1968), *cert. denied*, 394 U.S. 989 (1969).

39. 402 F.2d at 824.

40. *See In re* Evans, 452 F.2d 1239, 1253 (D.C. Cir. 1971) (Wilkey, J., dissenting) (where at one point the witness left the grand jury room at 1:59 P.M., returned at 3:48 P.M., was asked the same question, again left the room, and finally, "[o]n her return read a prepared statement raising every conceivable objection"). Another criticism of the practice of allowing counsel outside the jury room only is that the practice is not constitutionally derived and therefore may be enjoyed only by those wealthy enough to hire a lawyer. United States v. Mandujano, 425 U.S. at 608-09 (Brennan, J., concurring).

41. 387 So. 2d at 1143.

By allowing the juvenile to be protected by counsel while testifying before the grand jury, the *Subpoenas* case has taken an important step in fully effectuating the rights enunciated in *Dino*.

The most intriguing aspect of the *Subpoenas* case is that it is completely silent as to the function of the juvenile's attorney before the grand jury. The case simply states that the juvenile is to be accompanied by an attorney, who is to be required to take the oath of secrecy provided in article 441 of the Louisiana Code of Criminal Procedure.[42] At the least, the attorney must assist the juvenile in the exercise or waiver of the privilege against self-incrimination, since this seems to have been the court's primary concern in granting the right to counsel. However, absence of language in the court's opinion concerning the function of the attorney before the grand jury raises a question as to whether the attorney is free to provide other services to the juvenile witness. Such services might include pointing out other testimonial privileges of the witness, objecting to questions designed to harass the witness and which have no bearing on the matter under investigation, and pointing out elements of the alleged offense missing from the evidence presented. This is an important consideration, since one of the most forceful arguments against the right of counsel at the grand jury stage is that an attorney's presence would disrupt the traditional order and format of the proceedings.[43] Certainly the prosecutor's domination of the grand jury will be diminished to some extent. However, the "[p]resence of a lawyer at a hearing does not necessarily turn it into a contentious or adversary proceeding, anymore than the presence of a physician at an execution turns it into a medical treatment."[44] One writer has suggested that:

> [a]ny tendency of the lawyer to "interfere" with a grand jury could be avoided completely by rules of procedure, just as there are presently rules for that very purpose at the trial stage. For instance, rules might deny the lawyer the right to ask questions during the proceedings but provide that he may submit a list of

42. LA. CODE CRIM. P. art. 441 requires that an oath of secrecy be administered to reporters and interpreters. In his concurring opinion, Chief Justice Dixon criticized the majority opinion for requiring attorneys to take such an oath. He believes that the threat of contempt proceedings for the violation of the oath of secrecy conflicts with the discretionary powers of an attorney in dealing with his young clients. *In re* Grand Jury Subpoenas, 387 So. 2d at 1143 (Dixon, C.J., concurring).

43. "Any holding that would saddle a grand jury with minitrials and preliminary showings would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws." United States v. Dionisio, 410 U.S. 1, 17 (1973).

44. Steele, *supra* note 12, at 204.

> suggested questions to the foreman, to be used at his discretion. Although the lawyer might be granted some opportunity to give his opinion as to the chances of conviction, the rules could be written so as to deny him the opportunity to make a pyrotechnic summation. Currently, the grand jury is informed (implicitly at least) of the prosecutor's estimate of the chances of conviction when he recommends indictment. The validity of that recommendation would certainly be enhanced if the grand jury had the benefit of a reasoned opinion from the suspect's own lawyer in those cases where he cared to comment. Such a procedure would force the prosecutor to exercise more responsibility in screening cases before presenting them to the grand jury and would also improve the grand jury's capacity to weed out cases that should not have been presented.[45]

However, since the instant opinion contains no language limiting the function of the juvenile's attorney, the proceeding could well become adversarial during the testimony of the juvenile and immediately thereafter if the attorney is allowed to summarize. This would alter the traditional role of the grand jury and might make the jury itself a more passive body which simply listens to the arguments of both attorneys and then decides whether to return an indictment.

Hopefully, the Louisiana Supreme Court will soon delineate the role the juvenile witness' attorney should assume before the grand jury. The most appropriate solution would be for the legislature to act under the authority granted in article V, section 34(B) of the Louisiana Constitution.[46] Under this grant of authority, the legislature should explain under what conditions a juvenile witness should be entitled to counsel before a grand jury and what role the attorney should take before that body. The writer submits that two Washington statutes could serve as guidelines for such future legislation. The first provides in part:

> Such an individual [called to testify before a grand jury] has a right to representation by an attorney to advise him as to his rights, obligations and duties before the grand jury . . . and must be informed of this right. The attorney may be present during all proceedings attended by his client unless immunity has been granted. . . . After immunity has been granted, such an individual may leave the grand jury room to confer with his attorney.[47]

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45. *Id.* at 205.

46. LA. CONST. art. V, § 34(B): "The legislature may establish by law terms and conditions under which a witness may have the right to the advice of counsel while testifying before the grand jury."

47. WASH. REV. CODE ANN. § 10.27.120 (1971).

The legislature could limit the statute to provide such a right only to juveniles. The second statute provides in part: "The attorney advising the witness shall only advise such witness concerning his right to answer or not to answer . . . and shall not otherwise engage in the proceedings."[48]

Such a statute would assure that the waiver requirements of *Dino* are met and would in no significant way either "interfere with the effective and expeditious discharge of the grand jury's duties,"[49] "saddle a grand jury with minitrials and preliminary showings [that] would . . . impede its investigation,"[50] or "delay and disrupt grand jury proceedings."[51] By avoiding these disruptive effects, such a statute would maintain the integrity of the grand jury system and would offer the greatest protection to the juvenile's right against self-incrimination.

William Blake Bennett

THE PROBLEMATIC APPLICATION OF *Succession of Brown*

Plaintiffs, decedent father's four acknowledged illegitimate children, sued to annul a judgment of possession recognizing decedent's adopted child as the sole heir. The plaintiffs attacked the constitutionality of article 919 of the Louisiana Civil Code, which prohibits acknowledged illegitimates from participating in the succession of their father if he is survived by legitimate descendants, ascendants, collateral relations, or spouse.[1] The trial court rendered judgment rejecting the plaintiff's demands. This decision was reversed by the Second Circuit Court of Appeal, and the case was remanded for a new judgment of possession to be entered, recognizing plaintiffs as heirs.[2] The Louisiana Supreme Court *affirmed*, declaring article 919

48. *Id* at § 10.27.080 (1971).
49. United States v. Calandra, 414 U.S. 338, 350 (1974).
50. United States v. Dionisio, 410 U.S. 1, 17 (1973).
51. United States v. Calandra, 414 U.S. 338, 349 (1974).

1. LA. CIV. CODE art. 919 provides:
Illegitimate children are called to the inheritance of their father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the state.
In all other cases, they can only bring an action against their father or his heirs for alimony, the amount of which shall be determined, as is directed in the Title: Of Father and Child.
2. 379 So. 2d 1172 (La. App. 2d Cir. 1980).