

ests protected by the Amendment—protection of privacy and maintenance of an accusatorial system—with the noncriminal purpose, the necessity for self-reporting as a means of securing information, and the nature of the disclosures required, Justice Harlan voted to sustain the statute.<sup>276</sup> *Byers* was applied in *Baltimore Dep't of Social Services v. Bouknight*<sup>277</sup> to uphold a juvenile court's order that the mother of a child under the court's supervision produce the child. Although in this case the mother was suspected of having abused or murdered her child, the order was justified out of concern for the child's safety—a “compelling reason[ ] unrelated to criminal law enforcement.”<sup>278</sup> Moreover, because the mother had custody of her previously abused child only as a result of the juvenile court's order, the Court analogized to the required records cases to conclude that the mother had submitted to the requirements of the civil regulatory regime as the child's “custodian.”

### **Confessions: Police Interrogation, Due Process, and Self-Incrimination**

**The Common Law Rule.**—By the latter part of the eighteenth century English and early American courts had developed a rule that coerced confessions were potentially excludable from admission at trial because they were testimonially untrustworthy.<sup>279</sup> The Supreme Court at times continued to ground exclusion of involuntary confessions on this common law foundation of unreliability without any mention of the constitutional bar against self-incrimination. Consider this dictum from an 1884 opinion: “[V]oluntary confession of guilt is among the most effectual proofs in the law, . . . [b]ut the presumption upon which weight is given to such evidence, namely, that one who is innocent will not imperil his safety or prejudice his interests by an untrue statement, ceases when the confession appears to have been made either in consequence of inducements of a temporal nature, held out by one in authority, touching the charge preferred, or because of a threat or promise by or in the presence of such person, which, operating upon the fears or hopes of the accused, in reference to the charge, deprives him of that free-

<sup>276</sup> 402 U.S. at 448–58. The four dissenters argued that it was unquestionable that *Byers* would have faced real risks of self-incrimination by compliance with the statute and that this risk was sufficient to invoke the privilege. *Id.* at 459, 464 (Justices Black, Douglas, Brennan, and Marshall).

<sup>277</sup> 493 U.S. 549 (1990).

<sup>278</sup> 493 U.S. at 561. By the same token, the Court concluded that the targeted group—persons who care for children pursuant to a juvenile court's custody order—is not a group “inherently suspect of criminal activities” in the *Albertson-Marchetti* sense.

<sup>279</sup> 3 J. WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE § 823 (3d ed. 1940); *Developments in the Law—Confessions*, 79 HARV. L. REV. 935, 954–59 (1966).