

## *The Jackson Rule and the Sixth Amendment*

### *Michigan v. Jackson (1986) 475 U.S. 625*

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A criminal suspect's **Fifth Amendment** (i.e., "self incrimination") rights are different than his **Sixth Amendment** (i.e., trial) rights:

**Fifth Amendment self-incrimination rights** (including the "implied" **Fifth Amendment** right to the assistance of an attorney at his interrogation), as far as triggering a need to obtain a *Miranda* waiver, kick in when he is taken into custody (i.e., arrested) and is subjected to an interrogation. (*Miranda v. Arizona* (1966) 384 U.S. 436.)

**Sixth Amendment trial rights** first kick in when judicial proceedings have been initiated against him; "*whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.*" (*Kirby v. Illinois* (1972) 406 U.S. 682.)

**Before Arraignment or Filing an Accusatory Pleading:** When you give an in-custody suspect a standard *Miranda* admonishment, and obtain a waiver, as a *general rule*, you have received a waiver of the subject's **Fifth Amendment rights** only. Because the subject has not yet been arraigned in court, the interrogator need not be concerned with his **Sixth Amendment rights**.

**After Arraignment or Filing an Accusatory Pleading:** However, if criminal proceedings have already been initiated, "*whether by way of formal charge, preliminary hearing, indictment, information, or arraignment,*" then the interrogator must be concerned with the suspect's **Sixth Amendment rights** as well. The rules in this situation are this:

**If he has been arraigned**, or otherwise appeared in court, you should assume that he has either requested, or the court has appointed for him, an attorney (which normally occurs at arraignment). In such a case, you *cannot* initiate an interrogation without contacting and obtaining the permission of his attorney. (*Massiah v. United States* (1964) 377 U.S. 201.)

It matters not whether he is in or out of custody. (*Ibid.*)

But this only applies to the specific offense on which he was charged, or any lesser included offenses. (*Texas v. Cobb* (2001) 532 U.S. 162.) If you wish to speak with him about some other uncharged offense, he may be questioned without any **Sixth Amendment** concerns.

*Note:* A charged defendant can always choose to initiate an interrogation on his own, cutting out his own attorney. (*Patterson v. Illinois* (1988) 487 U.S. 285.) However, this is an extremely sensitive area with serious repercussions if not handled properly, and should probably be avoided

absent unusual circumstances. At the very least, the assistance of a prosecutor should be sought.

**If an accusatory pleading (i.e., complaint, indictment or information) has been filed against him, but he has not yet been to court**, then you can assume he has *not* yet requested, or been appointed, an attorney (this not normally happening until his first court appearance), and you *may* initiate an interrogation without having to seek the permission of, or notify anyone of your intention to do so. (This may or may not also include a privately retained attorney; that issue has yet to be decided.) *But:*

You must also seek a waiver of his **Six Amendment right to counsel** as well as his **Fifth Amendment, *Miranda*** rights.

If the subject knows that an accusatory pleading has been filed against him, a standard *Miranda* admonishment and waiver *has* been held to be sufficient. (*Patterson v. Illinois* (1988) 487 U.S. 285.)

If the subject *does not* know that an accusatory pleading has been filed against him, then he has to be informed of this fact so that he knows what he is waiving. (*People v. Engert* (1987) 193 Cal.App.3<sup>rd</sup> 1518.)

There are not a lot of examples yet on what must be said in the form of an admonishment. Probably, merely telling him that a complaint has been filed before admonishing him, and then giving him a standard *Miranda* admonishment and waiver, would be enough.

But, absent more defining case law, we are certainly on firmer ground if he is also specifically told that by waiving his *Miranda* rights, he is also waiving his ***Sixth Amendment right to the assistance of Counsel.***

The obtaining of an **arrest warrant** is *not* something that initiates a criminal prosecution; at least it has not yet been so held. Therefore, merely obtaining an arrest warrant, so long as a criminal case has not also been filed (i.e., a “**Ramey** warrant”), does *not* trigger the suspect’s **Sixth Amendment** protections.