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Application of the Rule of Edwards v. Arizona to Sixth Amendment Right to Counsel Cases -- Michigan v. Bladel Michigan v. Jackson

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Of recent, the United States Supreme Court has devoted a significant effort to the analysis of defendants' rights in interrogation settings. Through such cases as Maine v. Moulton (38 CrL 3037) and Moran v. Burbine (38 CrL 3182), the court has pursued, respectively, both Sixth Amendment and Fifth Amendment inquiries into the meaning of the right to counsel and its effect on a law enforcement officer's ability to question a suspect in custody.

In the Moulton case the court condemned police action in recording an indicted defendant's discussion, with his codefendant-turned-informant, of the crime for which he had been indicted without his opportunity to consult with counsel first.

In the Burbine case the court upheld the refusal of police interrogating a murder suspect to inform him that a lawyer retained on his behalf was attempting to reach him.

The difficulty raised in the law enforcement community by such decisions as Moulton and Burbine is not so much "what" those decisions stand for as "which" right to counsel, Fifth Amendment or Sixth Amendment, an officer may be dealing with in a given context.

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Since the decision in Miranda v. Arizona (384 U.S. 436 (1966)), the Fifth Amendment right to counsel, spawned by the court's interpretation of that Amendment, has been relatively well understood by the officer on the street. For whatever else it may mean, virtually every officer understands that a suspect's request for a lawyer brings any interrogation, or would-be interrogation, to a screaming halt unless either the suspect or the suspect's lawyer initiates further conversation. This rule, set forth in Edwards v. Arizona (451 U.S. 477 (1981)),

whether understood by name or by principle, is one which creates no apparent problem in application.

The right to counsel envisioned by the Sixth Amendment, however, is a horse of a different color. Many officers have a vague notion that a suspect who is represented by a lawyer must be dealt with through the lawyer but the precise point in time at which this vicarious negotiation must occur, remains, in large part, a mystery.

In Michigan v. Jackson (39 CrL 3001) Opinion No. 84-1531 and Michigan v. Bladel (39 CrL 3001) Opinion No. 84-1539, both decided April 1, 1986, the Supreme Court compounded the already nebulous distinction which exists between the right to counsel protected by the Fifth and Sixth Amendments.

The facts in both cases are substantially similar and require only brief recitation. Defendant Bladel was arrested and arraigned on murder charges arising out of the killing of three railroad employees. At the arraignment, Bladel, in the presence of the police, requested appointment of counsel because of his inability to afford counsel. A notice of appointment was mailed to a law firm, but prior to the firm's receipt of the notice, Bladel was interviewed by the police and confessed to the murders.

Defendant Jackson requested appointment of counsel at his arraignment on murder and conspiracy charges. Prior to arraignment he had made inculpatory statements to the police. Nonetheless, after the arraignment, at which police had been present, and prior to his opportunity to consult with counsel, Jackson was questioned concerning the charges to "confirm" that he was the proper suspect. In both cases the defendants were given proper Miranda advisements prior to questioning and waived the presence of counsel. In both cases the defendants were convicted based, in significant part, on their post-arraignment statements. In both cases the defendants argued that their right to counsel had been violated by state-initiated questioning after the request for counsel at the arraignment and that there was no valid waiver for Sixth Amendment purposes.

The court's analysis of the defense argument begins with its examination of the Sixth Amendment right to counsel itself. The court notes that the Sixth Amendment right to counsel guarantees an accused "... the right to rely on counsel as a 'medium' between him and the State." (Text at 3003 citing Maine v. Moulton, 474 U.S. at ___) and further that this right to counsel envisioned by the Sixth Amendment is not limited merely to "representation in formal legal proceedings (Text at 3003). The court's answer, however, to the question of when the right attaches is replete with confusion. While the facts of Bladel and Jackson are such that an actual request for counsel did occur, the language in the Supreme Court's opinion goes on to say that "... we presume that the defendant requests the lawyer's services at every critical stage of the prosecution." (Text at 3003), but then notes, in a footnote to the opinion that "... we do not, of course, suggest that the right to counsel turns on such a request ... (r)ather we construe the defendant's request for counsel as an extremely important fact in considering the validity of a subsequent waiver in response to police-initiated interrogation." (Text at 3003, footnote 6.) The issue of when a defendant has "requested" counsel thus becomes hazy.

Following the pronouncement that the Sixth Amendment right to counsel attaches upon the defendant's "request" the court then states that the rule of Edwards v. Arizona (cite supra) will apply to Sixth Amendment as well as Fifth Amendment counsel requests.

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Effectively this ruling will do little to clarify the distinctions heretofore existing between the Fifth and Sixth Amendments' assurance of counsel. Rather, law enforcement officers will be placed in the unenviable position of deciphering whether an arraigned defendant, who has not asked for counsel, has nonetheless "requested" counsel so as to bar police interrogation. Justice Rehnquist's dissent indeed posits that "... the Court most assuredly does not hold that the Edwards per se rule, prohibiting all police-initiated interrogations, applies from the moment the defendant's Sixth Amendment right to counsel attaches, with or without a request for counsel by the defendant." (Text at 3005), and then goes further to note that such an interpretation would render the term "waiver" obsolete in Sixth Amendment counsel situations.

Following the logic of the majority, a defendant may be said to have "requested" counsel "... after a formal accusation has been made -- and a person who had previously been just a 'suspect' has become an 'accused.'" (Text at 3003) Traditionally this stage may be said to occur at indictment. Once the "request" for counsel occurs, there can be no police-initiated interrogation of the defendant, even if the police should obtain a waiver of rights from the defendant. Additionally, even should the police not be present when the request for counsel is verbally made by a defendant, the knowledge of that request will be imputed from "one state actor to another." (Text at 3003)

Pending clarification of what a "request" for counsel must entail, officers are now placed in somewhat of a quandry. While, as Justice Rehnquist points out in his dissent, a suspect who has merely reached the point at which the Sixth Amendment right to counsel applies should not be presumed to have requested counsel so as to invoke the Edwards rule, the majority's opinion begs clarification. Until this issue is resolved, officers are best advised not to initiate questioning of a suspect who has been indicted, whether a formal request has been made for counsel or not.

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