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TDC Tip

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I Can't Question a Suspect Who is Represented by a Lawyer, Can I?

By Charles Gillingham

Yes, you can.

The United States Supreme Court did an absolute about face in Sixth Amendment Jurisprudence recently and you should be aware of the ramifications. The court held that officers may question a represented suspect under certain circumstances.

REPRESENTED SUSPECT

Until this past summer, it was axiomatic that if a suspect was represented by a lawyer you could not question her. (*Michigan v. Jackson (1986) 475 U.S. 625.*) The US Supremes, however, changed the rule. The new rule is this, IF A SUSPECT IS REPRESENTED, YOU PROVIDE MIRANDA WARNINGS, THE SUSPECT WAIVES AND HAS NOT PREVIOUSLY INVOKED THE RIGHT TO COUNSEL, YOU MAY QUESTION THAT SUSPECT. Yes, you read that correctly. If a suspect is represented, you may question that suspect. Be aware that all of the other Miranda rules we know and understand did not change in any way.

MONTEJO V. LOUISIANA

In *Montejo*, defendant was arrested for murder and placed in custody. At his arraignment *Montejo* was appointed an attorney. Three days later, officers went to the jail and removed *Montejo* with the stated goal of returning to the crime scene to find the murder weapon. The officers Mirandized the defendant and obtained a valid waiver. While they had *Montejo* out of the jail they asked him to write an apology letter to the wife of the victim. The defendant wrote the letter, it was admitted at his trial, defendant was convicted and sentenced to death. It would seem at first blush the eliciting of this confession/apology note was taken illegally.

Montejo argued on appeal that the letter was elicited in violation of the *Michigan v. Jackson* which stated that police cannot question a represented suspect irrespective of whether the suspect waived Miranda.

The U.S. Supremes decided to provide a bright line rule. You CAN interview a represented suspect provided the following is true, you have provided Miranda warnings, the suspect waives, and the suspect has not previously invoked her right to an attorney (unless of course she contacts you and wants to talk). The same strict adherence to Miranda must be followed, if a suspect unambiguously requests an attorney, all questioning must cease. Moreover, it would appear that an attorney's request that officers not question their client, are without force. The Sixth Amendment is personal, and it would seem through this decision, must be requested by the suspect.

RESULT

The primary reason for the decision is one that you already know, the "substantial cost" to society in deterring officers from taking voluntary, non-coerced confessions to crimes. As a society, the Court held, we have a compelling interest in the guilty being arrested and successfully prosecuted.

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