

6th Amdt. Right to Assistance of Counsel Approach Outline

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- I. Assistance at Trial
 - A. Actually sentenced to imprisonment?
 - i. If Yes → Waived (serious colloquy between judge & D)?
 - a) If No → Right to assistance
 - b) If Yes → No right to assistance
 - ii. If No → No right to assistance
- II. Confessions
 - A. Post-attachment (offense-specific)?
 - Federal court = post-indictment
 - State court = post-complaint (or similar device)
 - i. If No → No 6th Amdt. right
 - ii. If Yes → Waived in *Miranda* setting (*Montejo*)?
 - a) If Yes → No right to assistance
 - b) If No → Deliberate elicitation (including active jailhouse informant)?
 - If No → No violation
 - If Yes → Counsel present?
 - If No → Violation
 - If Yes → No violation
- III. Identifications
 - A. Post-attachment?
 - Federal court = post-indictment
 - State court = post-complaint (or similar device)
 - i. If No → No right to presence of counsel
 - ii. If Yes → What type of lineup?
 - a) Live lineup/confrontation → Was counsel present as entitled?
 - If Yes → OK
 - If No → Violation
 - b) Photo lineup → Not entitled to presence of counsel
- IV. Due Process Violations at Lineups (5th Amdt., not 6th)
 - A. ID procedure unnecessarily suggestive & conducive to irreparable mistaken ID (single suspect shown, other indicia of police belief in guilt, police comment, clothing, background, facial hair, showing booking placard, etc.)?
 - i. If No → No DPC violation
 - ii. If Yes → Witness literally about to die?
 - a) If Yes → No violation
 - b) If No → Violation
 - B. ID testimony admissible?
 - i. Opportunity to view
 - ii. Degree of attention
 - iii. Accuracy of description

- iv. Certainty
- v. Time between crime & confrontation