2009

Massiah v. United States

Yale Kamisar

*University of Michigan Law School, ykamisar@umich.edu*

Available at: [https://repository.law.umich.edu/other/133](https://repository.law.umich.edu/other/133)

Follow this and additional works at: [https://repository.law.umich.edu/other](https://repository.law.umich.edu/other)

Part of the Supreme Court of the United States Commons

Recommended Citation


This Article is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Other Publications by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlawrepository@umich.edu.
Massiah v. United States,

377 U.S. 201 (1964), argued 3 Mar. 1964, decided 18 May 1964 by vote of 6 to 3; Stewart for the Court, White in dissent. Massiah was decided at a time when the Warren Court's “revolution in American criminal procedure” was accelerating. According to Massiah, after the initiation of adversary judicial proceedings (by indictment, as in Massiah's case, or by information, preliminary hearing or arraignment), the Sixth Amendment guarantees a defendant the right to rely on counsel as the “medium” between himself and the government. Thus, once adversary proceedings have begun, the government cannot bypass the defendant's lawyer and deliberately elicit statements from the defendant himself.

The Burger Court revived and even expanded the Massiah doctrine in Brewer v. Williams (1977) and United States v. Henry (1980). As a result, the doctrine has become a more potent force than it had ever been during the Warren Court years.

After he had been indicted for federal narcotics violations, Winston Massiah retained a lawyer, pled not guilty, and was released on bail. Jesse Colson, a codefendant who had also pled not guilty and been released on bail, invited Massiah to discuss the pending case in Colson's car. Unknown to Massiah, his codefendant had become a government agent and had hidden a radio transmitter in his car. The Massiah-Colson conversation was broadcast to a nearby federal agent. As expected, Massiah made several incriminating statements.

The Massiah facts are a far cry from a typical confession case. Massiah was neither in “custody” nor subjected to “police interrogation” as that term is normally used. Indeed, Massiah thought he was simply talking to a friend and a partner in crime. Nevertheless, a 6-to-3 majority held that the defendant's statements could not be used against him at his trial. The decisive feature of the case was that after adversary proceedings had commenced against the defendant, and therefore at a time when he was entitled to a lawyer's help, the government had deliberately set out to elicit incriminating statements from him in the absence of counsel. This constituted a violation of the defendant's Sixth Amendment right to counsel.

The government argued that there was reason to think that Massiah was part of a large, well-organized drug ring and that therefore it was entirely proper for federal agents to continue their investigation of him and his alleged confederates even though he had already been indicted. The Supreme Court responded that, even though the police were justified in
investigating other crimes when they obtained Massiah's statements, the defendant's own incriminating statements pertaining to charges pending against him could not be used at the trial of those charges. On the other hand, evidence pertaining to new crimes as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained would be admissible even though other charges against the defendant were pending at the time. This approach was reaffirmed in Maine v. Moulton (1985).

Although overshadowed by, and often confused with Miranda v. Arizona (1966), the Massiah doctrine is a separate and distinct rule, and it supplements Miranda in important respects. Miranda is based on the privilege against compelled self-incrimination and the now-familiar Miranda warnings are required when a suspect is subjected to custodial police interrogation, which the Warren Court deemed inherently coercive. Massiah is based on the right to counsel. Its application turns not on the conditions surrounding police questioning, but on whether, at the time the government attempts to elicit incriminating statements from an individual, the criminal proceedings against that individual have reached the point at which the Sixth Amendment right to counsel attaches.

The difference between Massiah and Miranda is underscored by the “jail plant” situation, the case where a secret government agent is placed in the same cell with a person and instructed to induce him to implicate himself in the crime for which he has been incarcerated. Miranda does not apply, for the inherent coercion generated by custodial police interrogation is not present when a prisoner speaks freely to a person he believes to be a fellow inmate. Coercion is determined from the perspective of the suspect. Therefore, unless a person realizes he is dealing with a government agent, the government's efforts to elicit damaging admissions from him do not constitute “police interrogation” within the meaning of Miranda.

However, the Massiah doctrine would prohibit the government from using such tactics if adversary proceedings had already been initiated against the person, as the Court held in United States v. Henry (1980). But the secret government agent was not completely passive in that case; he stimulated conversations about the crime charged. The Court, however, has permitted the government to place a completely “passive listener” in a person's cell and use the statements acquired by such an agent even though adversary proceedings have commenced against the person. The line between “active” and “passive” agents—between eliciting incriminating statements and merely listening—is an exceedingly difficult one to draw.

Yale Kamisar, Police Interrogation and Confessions (1980)


Yale Kamisar