

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

**UNITED STATES OF AMERICA,
Plaintiff**

vs.

Case Number: 2:06 CR 168

**MATTHEW HENSLEY,
Defendant.**

Memorandum of Law as to United States vs. Wyatt

During the course of Defendant, Matthew Hensley's, Motion to Suppress hearing dated November 30, 2006, the Court cited United States vs. Wyatt, 179 F.3d 532 (1999), suggesting that Wyatt may be applicable to the circumstances of Defendant, Matthew Hensley's, case.

In Wyatt, the Defendant was questioned by police while standing outside of a tavern. After fielding a series of questions Wyatt refused to answer any more questions and said to the officers, "I think I should talk to a lawyer." The magistrate/judge concluded that Wyatt's statement was an unambiguous request for an attorney, but was ineffective to invoke his Fifth Amendment Right to Counsel because Wyatt was not in custody when he uttered it. Thus the absolute bar announced in Edwards vs. Arizona, 451 U.S. 477 (1991) against resuming interrogation of a defendant who has invoked the right to counsel does not apply in the case of Wyatt because the Defendant was not subjected to the coercive atmosphere found in custodial interrogation as discussed in depth in Miranda vs. Arizona, 384 U.S. 436 (1966).

In the instant case, Defendant, Matthew Hensley, unequivocally invoked his right to counsel at 2:05 p.m. during the preliminary questioning session when he was clearly in custody, hearing the interrogating officers tell him, on the one hand, that he has a right to an attorney before they begin questioning him then, immediately following the Defendant's invocation of his right to counsel, being advised thereafter by the same authority figures that had just advised him of his extremely important constitutional

rights, that it would benefit the defendant if he waived his right to counsel and gave the investigating police officers his side of the story—a bald faced lie under any possible scenario and certainly a far cry from “scrupulously honoring” the Defendant’s right to counsel in this particular situation where the Defendant was admittedly denied any phone calls to the outside, held incommunicado and both officers indicated they never intended to make any effort to contact either his family or an attorney. Quite to the contrary, officer Demetrious Flowers admitted that his comments to the Defendant immediately after the Defendant invoked his right to counsel, suggesting that it would be in the best interest of the Defendant to cooperate with the police, was an effort on the part of the police officers to encourage the Defendant to waive the right to counsel that he had just invoked.

Clearly, Wyatt can be distinguished from the instant case because the coercive effects of incommunicado captivity of Matthew Hensley was not present in Wyatt as the magistrate/judge found Wyatt not to be in custody at the time he made his request for counsel while Matthew Hensley was clearly in custody and subjected to the coercive effects of custodial interrogation highlighted by the officers’ attempts to dissuade Matthew Hensley from persisting in his right to counsel.

Respectfully submitted,

s/I. Alexander Woloshansky
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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECM/EFC system which sent notification of such filing to the following:

Philip Craig Benson
Philip.benson@usdoj.gov

and I hereby certify that I have mailed the document by U.S. Postal Service to the following CM/ECM/ECF participants.

S/ I. Alexander Woloshansky