

A grand jury returned an indictment charging a man with bank robbery and when he could not make bond, he was jailed pending trial. He had received Miranda warnings when arrested and had made no statement at that time. The prosecutor arranged to have an undercover informant placed as the man's cellmate and instructed the informant to find out about the bank robbery without asking any direct questions about it. The informant, once in the cell, constantly boasted about the crimes that he had committed. Not to be outdone, the man finally declared that he had committed the bank robbery with which he was charged.

At the man's trial, his attorney moved to exclude any testimony from the informant concerning the man's boast.

How will the court likely rule on the motion?

- A. Deny the motion, because the man had received Miranda warnings.
- B. Deny the motion, because the man was not interrogated by the informant.
- C. Grant the motion, because the man's privilege against self-incrimination was violated.
- D. Grant the motion, because the man's right to counsel was violated.

Explanation:

Right to counsel

	Applicability	Request	Waiver
Fifth Amendment	Suspect has right to counsel when: in custody <i>and</i> subjected to interrogation	Unambiguous request required	Valid if made: knowingly intelligently
Sixth Amendment	Defendant has right to counsel when: judicial proceedings commence <i>and</i> critical stage of prosecution	No request required (attaches automatically)	voluntarily

A court should exclude (ie, suppress) any statement that was taken in violation of a defendant's **Sixth Amendment right to counsel**. This right:

automatically attaches once judicial proceedings have commenced (eg, when the defendant is indicted) *and*

guarantees a defendant access to an attorney at every **critical stage of the proceedings**.

A critical stage is an event where the absence of counsel may prejudice the defendant's right to a fair trial, including **interrogations**. For Sixth Amendment purposes, an interrogation occurs when a **law enforcement officer or undercover police informant** engages in conduct designed to deliberately elicit an incriminating response from the defendant.

Here, the man was indicted for bank robbery (judicial proceedings commenced). After he was jailed pending trial, the prosecutor placed an undercover informant in the man's cell to get information about the bank robbery. The informant constantly boasted about his prior crimes to deliberately elicit an incriminating response from the man (interrogation) **(Choice B)**. Since an interrogation is a critical stage requiring access to counsel and no attorney was provided, the man's statement was obtained in violation of the Sixth Amendment and will likely be excluded.

(Choices A & C) Under the Fifth Amendment privilege against self-incrimination, law enforcement officers must give Miranda warnings to a suspect before a **custodial interrogation** by police. But here, the man was interrogated by an undercover informant—not a police officer. Therefore, Miranda warnings were not required, and the man's statement was not obtained in violation of this Fifth Amendment privilege. And though

police initially Mirandized the man when arrested, these warnings do not absolve the Sixth Amendment right to counsel violation.

Educational objective:

The Sixth Amendment right to counsel automatically attaches once judicial proceedings commence and guarantees a defendant access to an attorney during all critical stages of the prosecution—including interrogations conducted by law enforcement officers and undercover police informants.

References

U.S. Const. amend. VI (right to counsel).

United States v. Henry, 447 U.S. 264, 273 (1980) (recognizing that a secret interrogation conducted by a cellmate violated the Sixth Amendment right to counsel).

Illinois v. Perkins, 496 U.S. 292, 296–98 (1990) (holding that only known law enforcement must give Miranda warnings prior to custodial interrogation).

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