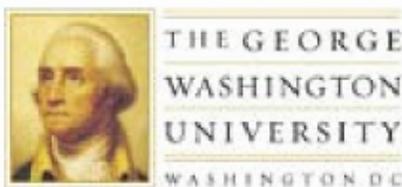


# The Burger Court Opinion Writing Database

## *Michigan v. Jackson*

476 U.S. 625 (1986)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

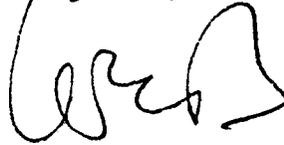
December 14, 1985

Re: No. 84-1531 - Michigan v. Jackson  
84-1539 - Michigan v. Bladel

MEMORANDUM TO THE CONFERENCE

At Conference I "passed" with respect to these cases. I now  
conclude to affirm.

Regards,



*Suppose  
Suppose 1.*

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: MARCH 27, 1986

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 84-1531 AND 84-1539

84-1531  
MICHIGAN, PETITIONER  
*v.*  
ROBERT BERNARD JACKSON

84-1539  
MICHIGAN, PETITIONER  
*v.*  
RUDY BLADEL

ON WRITS OF CERTIORARI TO THE SUPREME COURT  
OF MICHIGAN

[March —, 1986]

CHIEF JUSTICE BURGER, concurring in the judgment.

I concurred only in the judgment in *Edwards v. Arizona*, 451 U. S., 477, 487-488 (1981), and in doing so I observed that:

“The extraordinary protections afforded a person in custody suspected of criminal conduct are not without a valid basis, but as with all ‘good’ things they can be carried too far.”

The urge for “bright-line” rules readily applicable to a host of varying situations would likely relieve this Court somewhat from more than a doubling of the Court’s work in recent decades, but this urge seems to be leading the Court to an absolutist, mechanical treatment of the subject. At times, it seems, the judicial mind is in conflict with what behavioral—and theological—specialists have long recognized as a natural human urge of people to confess wrongdoing. See, *e. g.*, T. Reik, *The Compulsion to Confess* (1959).

We must, of course, protect persons in custody from coercion, but step by step we have carried this concept well be-

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 24, 1986

No. 84-1531) Michigan v. Jackson  
                  )  
No. 84-1539) Michigan v. Bladel

Dear John,

I agree.

Sincerely,

Justice Stevens

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

W  
CHAMBERS OF

JUSTICE BYRON R. WHITE

February 24, 1986

84-1531 - Michigan v. Jackson

84-1539 - Michigan v. Bladel

Dear John,

Please join me.

Sincerely yours,



Justice Stevens

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 21, 1986

Re: No. 84-1531 - Michigan v. Jackson  
No. 84-1539 - Michigan v. Bladel

Dear John:

Please join me.

Sincerely,



T.M.

Justice Stevens

cc: The Conference



CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

Supreme Court of the United States  
Washington, D. C. 20543

February 27, 1986

Re: No. 84-1531, Michigan v. Jackson  
No. 84-1539, Michigan v. Bladel

Dear John:

Please join me.

Sincerely,

Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 27, 1986

84-1531 Michigan v. Jackson

Dear John:

Bill Rehnquist has agreed to write a dissent in  
this case.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 19, 1986

84-1531 Michigan v. Jackson

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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32 11 30

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 84-1531 AND 84-1539

84-1531 MICHIGAN, PETITIONER  
v.  
ROBERT BERNARD JACKSON

84-1539 MICHIGAN, PETITIONER  
v.  
RUDY BLADEL

ON WRITS OF CERTIORARI TO THE SUPREME COURT  
OF MICHIGAN

[March —, 1986]

JUSTICE REHNQUIST, dissenting.

The Court's decision today rests on the following deceptively simple line of reasoning: *Edwards v. Arizona*, 451 U. S. 477 (1981), created a bright-line rule to protect a defendant's Fifth Amendment rights; Sixth Amendment rights are even more important than Fifth Amendment rights; therefore, we must also apply the *Edwards* rule to the Sixth Amendment. The Court prefers this neat syllogism to an effort to discuss or answer the only relevant question: Does the *Edwards* rule make sense in the context of the Sixth Amendment? I think it does not, and I therefore dissent from the Court's unjustified extension of the *Edwards* rule to the Sixth Amendment.

My disagreement with the Court stems from our differing understandings of *Edwards*. In *Edwards*, this Court held that once a defendant has invoked his right under *Miranda v. Arizona*, 384 U. S. 436 (1966), to have counsel present during custodial interrogation, "a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been ad-

p. 1 and

STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-1531 AND 84-1539

84-1531 MICHIGAN, PETITIONER  
v.  
ROBERT BERNARD JACKSON

84-1539 MICHIGAN, PETITIONER  
v.  
RUDY BLADEL

ON WRITS OF CERTIORARI TO THE SUPREME COURT  
OF MICHIGAN

[March —, 1986]

JUSTICE REHNQUIST, with whom JUSTICE POWELL joins,  
dissenting.

The Court's decision today rests on the following deceptively simple line of reasoning: *Edwards v. Arizona*, 451 U. S. 477 (1981), created a bright-line rule to protect a defendant's Fifth Amendment rights; Sixth Amendment rights are even more important than Fifth Amendment rights; therefore, we must also apply the *Edwards* rule to the Sixth Amendment. The Court prefers this neat syllogism to an effort to discuss or answer the only relevant question: Does the *Edwards* rule make sense in the context of the Sixth Amendment? I think it does not, and I therefore dissent from the Court's unjustified extension of the *Edwards* rule to the Sixth Amendment.

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

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MAR 23 1986

R. 1

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 84-1531 AND 84-1539

84-1531 MICHIGAN, PETITIONER  
v.  
ROBERT BERNARD JACKSON

84-1539 MICHIGAN, PETITIONER  
v.  
RUDY BLADEL

ON WRITS OF CERTIORARI TO THE SUPREME COURT  
OF MICHIGAN

[March —, 1986]

JUSTICE REHNQUIST, with whom JUSTICE POWELL and  
JUSTICE O'CONNOR join, dissenting.

The Court's decision today rests on the following deceptively simple line of reasoning: *Edwards v. Arizona*, 451 U. S. 477 (1981), created a bright-line rule to protect a defendant's Fifth Amendment rights; Sixth Amendment rights are even more important than Fifth Amendment rights; therefore, we must also apply the *Edwards* rule to the Sixth Amendment. The Court prefers this neat syllogism to an effort to discuss or answer the only relevant question: Does the *Edwards* rule make sense in the context of the Sixth Amendment? I think it does not, and I therefore dissent from the Court's unjustified extension of the *Edwards* rule to the Sixth Amendment.

My disagreement with the Court stems from our differing understandings of *Edwards*. In *Edwards*, this Court held that once a defendant has invoked his right under *Miranda v. Arizona*, 384 U. S. 436 (1966), to have counsel present during custodial interrogation, "a valid waiver of that right cannot be established by showing only that he responded to further

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

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Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 84-1531 AND 84-1539

84-1531 MICHIGAN, PETITIONER  
v.  
ROBERT BERNARD JACKSON

84-1539 MICHIGAN, PETITIONER  
v.  
RUDY BLADEL

ON WRITS OF CERTIORARI TO THE SUPREME COURT  
OF MICHIGAN

[February —, 1986]

JUSTICE STEVENS delivered the opinion of the Court.

In *Edwards v. Arizona*, we held that an accused person in custody who has “expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” 451 U. S. 477, 484-485 (1981). In *Solem v. Stumes*, — U. S. — (1984), we reiterated that “*Edwards* established a bright-line rule to safeguard pre-existing rights,” *id.*, at —, slip op. at 8—“once a suspect has invoked the right to counsel, any subsequent conversation must be initiated by him.” *Id.*, at —, slip op. at 3.

The question presented by these two cases is whether the same rule applies to a defendant who has been formally charged with a crime and who has requested appointment of counsel at his arraignment. In both cases, the Michigan Supreme Court held that post-arraignment confessions were improperly obtained—and the Sixth Amendment violated—because the defendants had “requested counsel during their

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

STANDING CHANGES THROUGHOUT  
SEE PAGES:

From: **Justice Stevens**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 84-1531 AND 84-1539

84-1531 MICHIGAN, PETITIONER  
v.  
ROBERT BERNARD JACKSON

84-1539 MICHIGAN, PETITIONER  
v.  
RUDY BLADEL

ON WRITS OF CERTIORARI TO THE SUPREME COURT  
OF MICHIGAN

[February —, 1986]

JUSTICE STEVENS delivered the opinion of the Court.

In *Edwards v. Arizona*, 451 U. S. 477 (1981), we held that an accused person in custody who has “expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” *Id.*, at 484-485. In *Solem v. Stumes*, 465 U. S. 638 (1984), we reiterated that “*Edwards* established a bright-line rule to safeguard pre-existing rights,” *id.*, at 646, “once a suspect has invoked the right to counsel, any subsequent conversation must be initiated by him.” *Id.*, at 641.

The question presented by these two cases is whether the same rule applies to a defendant who has been formally charged with a crime and who has requested appointment of counsel at his arraignment. In both cases, the Michigan Supreme Court held that postarraignment confessions were improperly obtained—and the Sixth Amendment violated—because the defendants had “requested counsel during their arraignments, but were not afforded an opportunity to con-

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 3, 1986

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Michigan v. Jackson, 84-1531  
84-6854, Beck v. Missouri

Petitioner was convicted of two counts of murder and sentenced to two consecutive terms of life imprisonment. The Missouri Court of Appeals reversed the convictions, but the Missouri Supreme Court, with two Justices dissenting, reinstated them.

According to the Missouri Supreme Court, after petitioner killed his two victims, he telephoned his mother and instructed her to find him a lawyer. His mother notified an Assistant Public Defender who was representing petitioner on unrelated charges. The lawyer informed the Sheriff that she was representing petitioner, and requested that he notify her when petitioner was apprehended. The Sheriff agreed. Petitioner was apprehended in Miami. He gave various oral and written statements on the day that he was arrested and a few days later. He was never informed about his lawyer's communications; nor was the lawyer informed about his arrest.

Petitioner challenges the conviction on Fifth and Sixth Amendment grounds, both of which were rejected by the Missouri Supreme Court. Petitioner's Fifth Amendment challenge would seem to be foreclosed by Moran v. Burbine; indeed, this was one of the few State Court opinions that had found no Fifth Amendment violation from willful police interference in attorney-client communications at the custodial interrogation stage. The Missouri Court also rejected petitioner's Sixth Amendment challenge because he was not arraigned until two weeks after his arrest. Petitioner challenges the determination that the Sixth Amendment was not triggered until the arraignment, but that case-specific issue does not

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 3, 1986

D

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Michigan v. Jackson, 84-1531  
84-6580, Marant v. Colorado

Petitioner was arrested in connection with his ex-wife's murder. He initially refused to talk to police until he had spoken with his counsel; his lawyer had previously requested that he be informed if petitioner was arrested. Police officers subsequently interrogated petitioner before he consulted counsel, and petitioner confessed. Petitioner filed a motion to suppress the incriminating statements; the trial court granted the motion, with the proviso that they could be used for impeachment. Petitioner did not testify. He was convicted of first degree murder and conspiracy to commit first degree murder. On appeal, he claimed that the ruling that the statements could be used as impeachment inhibited him from testifying; he also claimed that, unlike statements obtained in violation of Miranda, statements obtained in violation of the Sixth Amendment may not be used for impeachment purposes. In an unpublished opinion, the Colorado Court of Appeals concluded that statements obtained in violation of the Sixth Amendment could be used for impeachment. The Court recognized that a CA2 opinion seemed to go the other way, but noted that the CA2 opinion had been rejected by the Colorado courts. The Colorado Supreme Court declined further review.

Petitioner pursues his argument that statements obtained in violation of the Sixth Amendment may not be introduced for impeachment purposes. In view of the fact that petitioner did not testify, and that the statements were not introduced, I think that this

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

D

April 3, 1986

MEMORANDUM TO THE CONFERENCE

Re: Cases held for 84-1531, Michigan v. Jackson  
85-690, McCotter v. Felder

The Texas Warden petitions from the Fifth Circuit's decision granting habeas relief to respondent.

Respondent committed a murder in the course of a robbery. After an arrest warrant was issued, he was apprehended, arraigned, and imprisoned in Idaho, pending extradition to Texas. Respondent requested counsel at his arraignment, and counsel was appointed. The counsel informed the police that he wished to be present at any questioning of the defendant. The Idaho police scrupulously respected this request. A Houston police officer, however, flew to Idaho, interrogated respondent in the absence of counsel, and obtained a confession. Respondent was convicted of capital murder, and sentenced to death. The Texas Court of Criminal Appeals affirmed. The Federal District Court denied habeas relief, but the Fifth Circuit unanimously reversed. The Court found that, under Texas law, respondent's Sixth Amendment right had clearly attached and that the interrogation in the absence of counsel and in defiance of counsel's request violated the Sixth Amendment. See Pet. App. at B-8 ("Brewer v. Williams") requires the conclusion that the confession was obtained in violation of Felder's sixth amendment rights. As in Brewer, Felder's counsel instructed law enforcement authorities not to interrogate his client in his absence. The police initiated an interrogation of Felder in violation of counsel's instructions. Although Felder may have understood his sixth amendment right to the assistance of counsel during this interrogation, he did not waive the right to have counsel present. Because these

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

GVR

April 3, 1986

MEMORANDUM TO THE CONFERENCE

MVR Re: Cases held for Michigan v. Jackson, 84-1531  
84-6677, Holloway v. Texas (capital case)

The petitioner was convicted of murder and sentenced to death for the killing of a police officer. The conviction and sentence were affirmed by the Texas Court of Criminal Appeals with two judges dissenting.

According to the Court of Appeals, after petitioner was arrested, he was brought before a magistrate twice. After the second appearance, the magistrate appointed counsel to represent petitioner; the Texas Court's opinion is silent about whether the appointment resulted from petitioner's request. Before meeting with petitioner, the appointed counsel informed the District Attorney's office that he wished to be present at any interrogation. The counsel met with the defendant. The next day, while the lawyer was out of town, police officers interrogated petitioner. The Court of Appeals concluded that the interrogating officers had no knowledge that he was represented by counsel, and decided that petitioner had made a valid waiver.

I will vote to GVR on the basis of both Michigan v. Jackson and Moran v. Burbine. If we assume that petitioner requested counsel, as the dissent states and as the majority does not refute, then Jackson bears directly on the significance of that request. In Jackson, we emphasized that the "settled approach to questions of waiver requires to give a broad, rather than a narrow, interpretation to a defendant's request for counsel--we presume that the defendant requests the lawyer's services at every critical stage of the prosecution." Slip op. at 8. See also id. at 4-5 (after the initiation of formal

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 27, 1986

No. 84-1531 Michigan v. Jackson  
No. 84-1539 Michigan v. Bladel

Dear John,

I will wait for the dissent.

Sincerely,



Justice Stevens

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

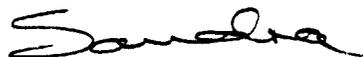
March 27, 1986

No. 84-1531 Michigan v. Jackson  
No. 84-1539 Michigan v. Bladel

Dear Bill,

Please join me in your dissent.

Sincerely,



Justice Rehnquist

Copies to the Conference