



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

# ONE MINUTE BRIEF

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**NUMBER:** 2010-09    **DATE:** 06-01-10    **BY:** Devallis Rutledge    **TOPIC:** Implied Miranda Waivers

**ISSUE:** After a custodial suspect has received and understands *Miranda* warnings, may police interrogate, even though no express waiver has been obtained, and even if the suspect initially says nothing?

In *North Carolina v. Butler* (1979) 441 US 369, 373, the US Supreme Court said that a waiver of *Miranda* can be **express** or **implied**. (Also see additional cases cited in 1MB 2008-18.) A suspect gives an implied waiver when, after receiving the warning and acknowledging his understanding of the rights, he answers a question or makes a statement, even though he was not specifically asked, "Do you want to talk about what happened?" But what if the warned suspect initially remained silent during prolonged interrogation and then eventually made an incriminating statement? Would that statement be admissible?

Van Chester Thompkins committed murder in Michigan. After his arrest, officers Mirandized him and obtained evidence of his understanding of the rights. **They did not seek an express waiver, but simply began asking questions.** For some two hours and 45 minutes, Thompkins barely spoke (an occasional "yes" or "no" or "I don't know," or a head nod). When he was then asked if he believed in God and prayed God would forgive him for the killing, he gave affirmative answers. He challenged admissibility of his answers, arguing that his silence was an invocation, that he never waived *Miranda*, and that references to God made his statement involuntary. The US Supreme Court rejected all of these contentions:

*"The prosecution ... does not need to show that a waiver of Miranda rights was express. An implicit waiver of the right to remain silent is sufficient to admit a suspect's statement into evidence. ... Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement **establishes** an implied waiver of the right to remain silent. ... Thus, after giving a Miranda warning, police may interrogate a suspect **who has neither invoked nor waived** his or her Miranda rights."*

*Berghuis v. Thompkins* (2010) 560 US \_\_\_, WL 2160784

Although some lower courts have historically expressed uneasiness about implied waivers, *Berghuis* has now settled the issue: all *Miranda* requires police to do to insure full admissibility under the Fifth Amendment is to (1) give the warning, and (2) confirm the suspect's understanding of the rights. Officers may, at their option, also ask the suspect whether he wants to talk, **or dispense with this question and commence interrogation**. Unless the **suspect unambiguously communicates** his desire to invoke silence or counsel, *Miranda* does not bar evidentiary use of resulting statements.

- Abrogating contrary rulings in several California decisions (*Adams*, *Montano*, *Esqueda*), the Supreme Court also held that reference to the suspect's religious faith to prompt an incriminating admission did **not** make the statement involuntary:

*"The fact that [Officer] Helgert's question referred to Thompkins's religious beliefs also did not render Thompkins's statement involuntary. The Fifth Amendment is not concerned with moral and psychological pressures to confess emanating from sources **other than** official coercion." Berghuis, supra.*

**BOTTOM LINE: "In sum, a suspect who has received and understands the Miranda warnings, and has not invoked his Miranda rights, waives the right to remain silent by making an uncoerced statement to police." Berghuis, supra.**

Citations and internal punctuation omitted from quotations. **Bold** emphases added.

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