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ONE MINUTE BRIEF

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NUMBER: 2019-14 **DATE:** 05-29-19 **BY:** Devallis Rutledge **TOPIC:** Miranda Warning Exceptions

ISSUE: In what four instances are *Miranda* warnings not necessary before custodial police interrogation?

In the usual case of custodial police interrogation, *Miranda* warnings are prerequisite to obtaining a fully-admissible statement. *Miranda v. Arizona* (1966) 384 US 436, 445. But over the years, four exceptions to this general rule have been recognized.

(1) Presence of the suspect's attorney. *"The presence of counsel, in all the cases before us today, would be the adequate protective device necessary to make the process of police interrogation conform to the dictates of the [Fifth Amendment] privilege. His presence would insure that statements made in the government-established atmosphere are not the product of compulsion."* *Miranda*, at 466.

"It is generally accepted that if the attorney was actually present during the interrogation, then this obviates the need for the warnings." 2 W.R. LaFave, *Criminal Procedure*, § 6.8(a), p. 800 (3d ed. 2007) (collecting cases). See also *Roberts v. US* (1980) 445 US 552, 560-61; *Brady v. US* (1970) 397 US 742, 754; and 1MB 2012-11.

(2) Emergency exception. No warnings are required before custodial questioning to neutralize an immediate threat to **public safety** or **officer safety**, or to assist in the **rescue** of an imperiled person. A *"reasonable need to protect the police or the public from any immediate danger"* outweighs the need for *Miranda* warnings. *New York v. Quarles* (1984) 467 US 649, 657 and fn. 8 (unwarned questioning to locate a firearm discarded in a busy store). See also *People v. Davis* (2009) 46 Cal.4th 539, 591 (questioning to **rescue** a kidnap victim *"while life hangs in the balance"* is not subject to *Miranda*) and 1MBs 2010-06, 2009-11.

(3) **Covert interrogation.** *Miranda* warnings are designed to **neutralize compulsion** to confess that presumably emanates from a suspect's realization s/he is confronting custodial police interrogation. Therefore, warnings are unnecessary when the custodial suspect is **unaware** s/he is talking to an **undercover police officer**, and therefore does not experience that compulsive atmosphere.

*"Where the suspect does not know that he is speaking to a government agent, there is no reason to assume the possibility that the suspect might feel coerced. ... We hold that an undercover law enforcement officer posing as a fellow inmate **need not give Miranda warnings** to an incarcerated suspect before asking questions that may elicit an incriminating response." Illinois v. Perkins (1990) 496 US 292, 299, 300. See also 1MBs 2005-14, 2012-01.*

(4) **Prior contemporaneous warning and waiver.** If the suspect was given an adequate *Miranda* warning by **any officer**, from **any agency**, on **any case**, within the previous 24 hours of custody, and if s/he gave an implied or express waiver (and has not invoked), no new warning, waiver or reminder is necessary before subsequent questioning.

*"A Miranda warning is **not required** before each custodial interrogation; one warning, if adequately and reasonably contemporaneously given, is sufficient." People v. Braeseke (1979) 25 Cal.3d 691, 701-02. See also Wyrick v. Fields (1982) 459 US 42, 48 (holding that the passage of 2 hours after a warning and the suspect's waiver "would not have caused him to forget the rights of which he had been advised and which he had understood"); Colorado v. Spring (1987) 479 US 564, 576-77 (no new warning required when interrogators switched questioning from a firearms violation to a murder); and see cases collected in 1MB 2005-03, ruling that new warnings were not required after intervals ranging up to 40 hours, or after **changes** in interrogating **officers** or **agencies** or the **crimes** under discussion.*

BOTTOM LINE: *Miranda* warnings are not prerequisite to full admissibility of statements obtained during custodial police interrogation (1) if the suspect's attorney is present with him, (2) for questioning limited to neutralizing an imminent threat to public or officer safety or rescuing a victim from danger, (3) for undercover questioning, or (4) following a reasonably-contemporaneous warning and waiver.

(Bold emphases added in some quotations.)

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