



JACKIE LACEY  
DISTRICT ATTORNEY

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

# ONE MINUTE BRIEF

COPYRIGHT © 2019 LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE. ALL RIGHTS RESERVED. MAY BE REPRODUCED FOR NON-COMMERCIAL PROSECUTORIAL, LAW ENFORCEMENT AND EDUCATIONAL PURPOSES ONLY. [1MB@da.lacounty.gov](mailto:1MB@da.lacounty.gov)

**NUMBER:** 2019-18    **DATE:** 08-23-19    **BY:** Devallis Rutledge    **TOPIC:** Unconditional *Miranda* Waivers

**ISSUE:** What are the ramifications if law enforcement officers impose *conditions* when seeking a *Miranda* waiver from a suspect?

Three principles of interrogation case law may be implicated by the manner in which a suspect waives *Miranda* prior to custodial police interrogation.

**(1) Valid waivers may be express or implied.**

*Miranda* waivers are *express* when, after a full warning and the suspect's acknowledgement of understanding, the suspect is pointedly asked if s/he wants to talk, and s/he makes some affirmative response. Waivers are *implied* if, e.g., after warning and acknowledgment, the suspect answers an engaging, non-threatening question and continues to answer questions. *Implied* waivers have the **advantage** of being less likely to provoke an invocation, and they are legally acceptable to satisfy *Miranda*. *Berghuis v. Thompkins* (2010) 560 US 370, 384. (See 1MBs 2008-18, 2010-09.)

Attempts to obtain *express* waivers, on the other hand, have the **disadvantage** of being more likely to prompt a suspect to invoke, thereby **inhibiting** the truth-seeking purpose of an investigation. *Oregon v. Elstad* (1985) 470 US 298, 309. Questions designed to obtain *express* waivers also run the risk of being inartfully phrased in such a way as to **create conditions** that may limit subsequent interrogation.

**(2) Waivers may be conditional.**

If a suspect's waiver is **conditional**, the admissibility of subsequent statements depends on whether interrogating officers honored any condition. *Connecticut v. Barrett* (1987) 479 US 523, 529 (where suspect **conditionally waived** by agreeing to talk, but not to put anything in writing until he had an attorney, his oral statements to police were admissible).

**(3) Unconditional waivers permit renewed, contemporaneous interrogation on any case, by any officer, without new warnings or waivers.**

*"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. Gratuitous repetition of warnings could prompt an invocation.

- A warning and waiver within at least the past **24 hours** before renewed interrogation is "contemporaneous." See *People v. Williams* (2010) 49 Cal.4<sup>th</sup> 405, 434-35 (40-hours OK); *People v. Mickle* (1991) 54 Cal.3d 140, 171 (36 hours OK); and cases cited in 1MB 2005-03. **But if a waiver were conditioned on talking "now," new warnings would be required before any later resumption of questioning.**

- Contemporaneous interrogation about a **different crime** does not require a new warning or waiver. *Colorado v. Spring* (1987) 479 US 564, 576-77. **But if a waiver were conditioned on talking "about this" or "about the charges against you" or "about the robbery," etc., new warnings would be required before questioning about other crimes.**

- A **change in interrogating officers** does not necessitate a new warning or waiver. *People v. Lewis* (2001) 26 Cal.4<sup>th</sup> 334, 386-87. Also, **changes in location or jurisdiction** do not require a new warning or waiver. *US v. Baron* (9<sup>th</sup> Cir. 1996) 94 F.3d 1312, 1320 (OK for DEA to question under contemporaneous waiver taken by state police). **But if a waiver were conditioned on talking "to me" or "to us," a different officer would have to re-warn.**

- These principles show the advantages of seeking *implied* waivers, which do not risk the inadvertent creation of a limiting condition. (*Exception*: if the suspect **invokes** and later re-initiates discussions, officers should take an *express* waiver of the right previously asserted, before resuming interrogation. *Oregon v. Bradshaw* (1983) 462 US 1039, 1045-46.)

- If an *express* waiver is sought following an admonition and acknowledgment of understanding, these principles support the advisability of simply asking: "*Do you want to talk about what happened?*" (Not "*now*." Not "*about these charges*." Not "*to me*" or "*to us*.")

**BOTTOM LINE: The prospect of obtaining maximum admissible statements from a custodial suspect is not generally enhanced by seeking an *express* waiver, nor by inserting qualifiers that may result only in a *conditional* waiver.**

<p>This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.</p>
--