

The Right to Remain Silent



*Examining the
Berghuis v. Thompkins case
on the right to remain silent*

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Speaker Profile



Dr. David Miller

AMU Assistant Professor of Legal Studies

- College professor for over 25 years, working mainly with pre-law students.
- Currently teaches Criminal Law, Criminal Procedure, Evidence, and Constitutional Law.
- Military service includes: trial counsel (prosecutor), military magistrate, defense attorney, and instructor at U.S. Army Military Police School.
- Published many articles on tax law for BNA.

Speaker Profile



Scott McBride

Sergeant, Fulton County Police Department
AMU Student of Criminal Justice

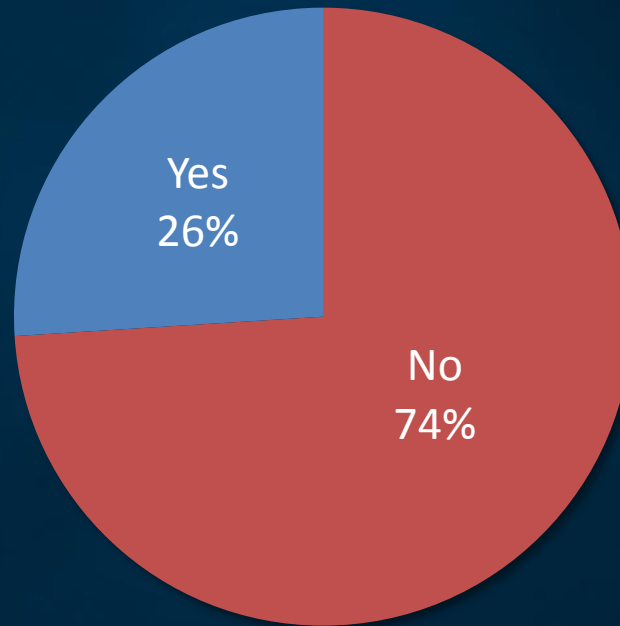
- Duties currently include intelligence and crime analysis.
- Worked Patrol, Community Policing, Crime Prevention, Public Info, and Intel.
- Trained by the Georgia Bureau of Investigations in Intelligence Analysis under the Georgia Terrorism Information Project.
- Certified Police Instructor with over 2,000 hours of police training.

Poll #1

Have you heard of this ruling before?

Poll #1

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January 10, 2000

- Southfield, Michigan
- Confrontation in front of strip mall
- Van Chester Thompkins produced .45 caliber semi-automatic handgun
- Samuel Morris fatally struck by four bullets
- Frederick France injured as he fled into Rite-Aid

One Year Later

- Columbus, OH: Thompkins pulled over, ID'ed over traffic violation
- Interrogation from 1:30 p.m. to 4:30 p.m. in Ohio by Southfield detectives
- Thompkins declined to sign “Notification of Constitutional Rights” waiver
- Did Thompkins verbally confirm that he understood his rights?
 - Verbal confirmation originally testified by Detective Helgert
 - At trial, “I don’t know that I orally asked him.”

Acknowledgement of Rights

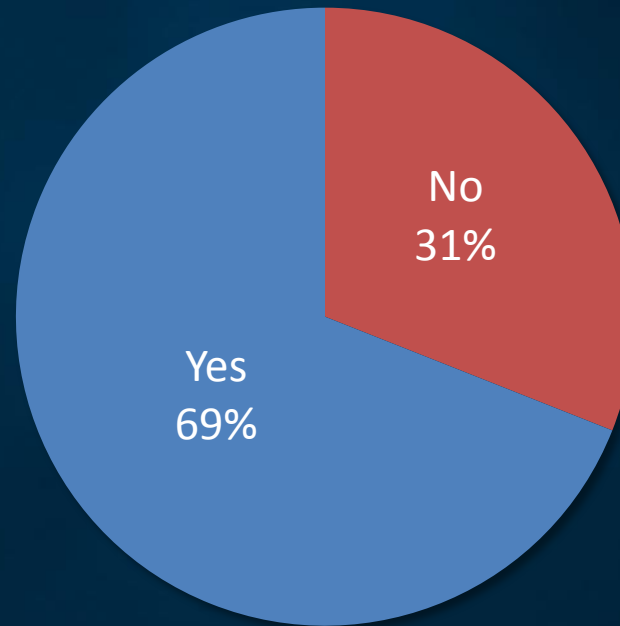
- Does the refusal to sign the *acknowledgement of rights* amount to an invocation of one's rights?
- Use of audio/video
- Confessions without *Miranda*
- Verbal waivers (street-level interviews)
- Recording interviews via Smartphones and other devices
- Technique: Nodding

Poll #2

Does your department require a signed waiver before you can do an interrogation?

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Acknowledgement of Rights

- *Miranda* does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights
- Thompkins chose not to invoke rights when he spoke
- Warnings were read out loud
- No actual waiver – was there an *Implied Waiver*?

Implied Waiver

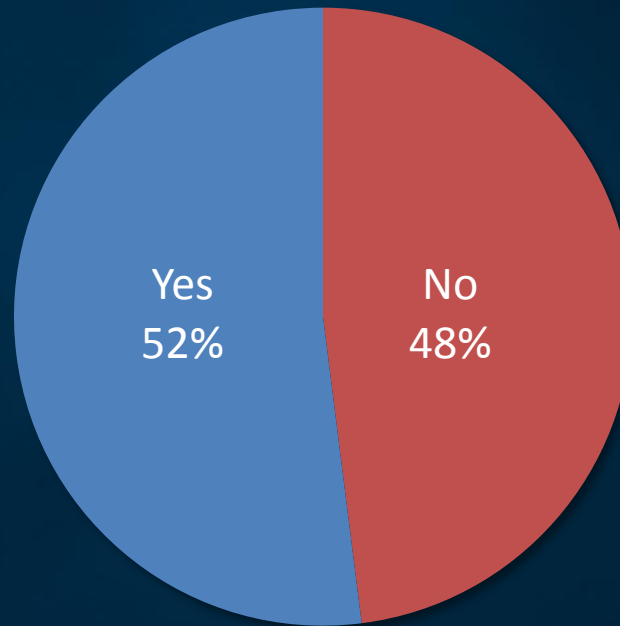
- Three hour silent interview with Thompkins
- What do limited responses mean? Was Thompkins' conduct an invocation of his rights?
- Wear them down; get them to make mistakes
- Tailor interrogation to the suspect
- Technique: A clever ruse

Poll #3

Have you dealt with an interview where the subject remained relatively silent?

Poll #3

Have you dealt with an interview where the subject remained relatively silent?



Implied Waiver

- 1994: Request for attorney must be definitive; not ambiguous
- Very few people actually ask for an attorney
- Why require affirmative statement on attorney and *not* on the right to remain silent?

Implied Waiver

California: *"I'm not going to talk about nothin'."*

Ohio: *"I don't even like talking about it, man... I told you... what happened, man..."*

Kansas: *"And since we're not getting anywhere I just ask you guys to go ahead and get this over with and go ahead and lock me up and let me go and deal with Sedgwick County, I'm ready to go to Sedgwick County, let's go."*

Wisconsin: *"Then put me in jail. Just get me out of here. I don't want to sit here anymore, alright? I've been through enough today."*

Louisiana: *"Okay, if you're implying that I've done it, I wish to not say any more. I'd like to be done with this. Cause that's just ridiculous. I wish I'd... don't wish to answer any more questions."*

Implied Waiver

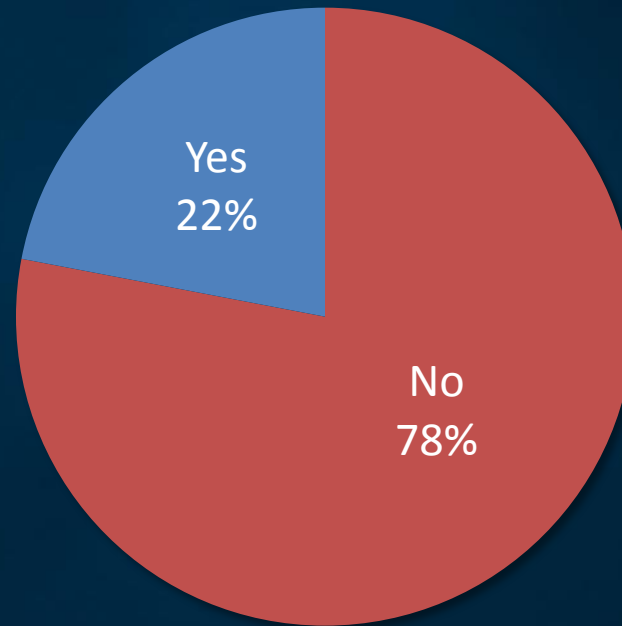
- Unambiguous invocation of *Miranda* rights results in an objective inquiry
- Thompkins knowingly and voluntarily made a statement to police, so he waived his right to remain silent
- Praying to God for forgiveness was sufficient to show a course of conduct indicating behavior
- No evidence statement was coerced
- “Difficult decisions about an accused’s unclear intent”

Poll #4

Have you used a religious theme in an interview?

Poll #4

Have you used a religious theme in an interview?



The God Technique

- “Do you believe in God?”
- Making a connection to the suspect
- Varying results

“[T]he Fifth Amendment privilege is not concerned ‘with moral and psychological pressures to confess emanating from sources other than official coercion.’”

Oregon v. Elstad, 470 U.S. 298, 305 (1985)

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Conclusion

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Q & A

Please type your questions in the chat feature

Thank You!

For additional questions
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