Research Memorandum #73: Police Interrogation

State v. Mintz, 201 Maj. 2d 1 (20XX-27): "Having reviewed the variety of physical and psychological techniques police have used to elicit confessions from suspects, and having analyzed the deleterious effect of these techniques upon the 5th Amendment rights of these suspects, we pronounce the following rules. . . . Statements given without the full constitutional warnings and recitation of rights [which are identical to those in *Miranda*] are inadmissible when such statements are made during interrogation while the suspect is in custody or otherwise deprived of his freedom in a significant way. These warnings provide the opportunity to bring in an attorney who can combat the pressures on a defendant's 5th Amendment rights which are inherent in this situation. A defendant may, of course, waive these rights if done knowingly and intelligently, without threat or trick. Waiver will not be presumed, however, from a suspect's mere silence in face of the recitation of rights and warnings. Once a suspect indicates in any manner that he wants an attorney, all questioning must cease. Further, a suspect may 'cut off' questioning at any time. On the other hand, statements which are volunteered, and therefore not the product of questioning, do not involve any 5th Amendment concerns."

State v. Rhodes, 256 Maj. App. 3d 154 (20XX-7): "*Mintz* applies to 'interrogations' involving express questioning or its functional equivalent. We define this 'functional equivalent' as words or actions on the part of police that police should know are reasonably likely to elicit an incriminating response."

State v. Moth, 100 Maj. App. 3d 593 (20XX-13): "Appellant gave a confession when questioned at the police station without first being given *Mintz* warnings. Appellant, a parolee, had voluntarily come down to the station in response to a phone call from a detective who was investigating a series of burglaries. When he arrived at the station, he was told that he was not under arrest and was free to go at any time. Under these circumstances, Appellant was neither in custody nor in the coercive atmosphere envisioned by *Mintz*. As such, the *Mintz* warnings are not required."

State v. Quirk, 257 Maj. App. 3d 406 (20XX-7): "Police arrested the Appellant, who was a suspect in a shooting, in a public supermarket. At the time of the arrest, the suspect wore an empty shoulder holster. Fearing he had ditched the gun in the market, police asked, 'where's the gun?,' without first giving *Mintz* warnings. Nevertheless, we refuse to suppress the weapon which was located in the produce section, relying upon what we will term a 'public safety' exception to *Mintz*. The police motive in questioning was public safety and not obtaining incriminating evidence, and time was of the essence."

Eddy v. Warden, 170 Maj. App. 3d 274 (20XX-19): "In the case before us, police began questioning Petitioner shortly after his arrest. When Petitioner requested an attorney, the police followed the dictates of *Mintz* and ceased their interrogation. However, they came back a few hours later and resumed questioning. This they could not lawfully do. Once a defendant has requested an attorney, police may not again initiate questioning. While a defendant may initiate further discussions with the police, the mere fact that he may respond to renewed police questioning is not sufficient evidence of a valid waiver of counsel on his part."

State v. Park, 157 Maj. App. 3d 142 (20XX-12): "We have two issues before us. Appellant, a juvenile, confessed to police after the officers denied his request to see his probation officer. Is the request for a probation officer equivalent to a request for an attorney? If not, is a juvenile capable of waiving the right to counsel without advice? As to the first issue, our answer is 'no.' In no way does a probation officer stand in a position that can in any way be equated with that of counsel envisioned in *Mintz*. As to the second, our answer is 'yes.' While age is a factor, an alleged waiver by a juvenile must be assessed as would be the waiver of an adult, i.e., by looking at the 'totality of circumstances' to determine if it was made knowingly and voluntarily. In this regard, the court must evaluate the defendant's age, experience, background, and intelligence, and assess whether he has the capacity to understand the warnings given him, the nature of the 5th Amendment rights, and the con-sequences of waiving these rights."

State v. Thorns, 220 Maj. App. 2d 927 (20XX-25): "While appellant's request for an attorney was somewhat equivocal, here the police did not try to 'clarify' the request, but rather tried to talk the defendant out of having an attorney. That violated *Mintz*."

State v. Monk, 280 Maj. App. 2d 57 (20XX-19): "In the *Thoms* case, defendants' question 'Do you think we need an attorney?' was viewed by the court as 'ambiguous, but capable of being construed as a request for counsel' (cit. omitted). We take a similar view of the statement in the case before us – 'Well, maybe I should talk to my attorney.' When Detective Crimms ignored that statement and instead continued to discuss the case the police had against Monk, Monk's subsequent confession was obtained in violation of *Mintz*."

State v. Buttle, 201 Maj. App. 3d 393 (20XX-8): "Defendant, a graduate of the 11th grade, was given her *Mintz* warnings off a form, told police she understood her rights, and confessed. She now argues that her confession should not have been admitted at her trial because she never made an explicit waiver of her rights. We disagree. While mere silence cannot constitute a waiver under *Mintz*, an explicit statement of waiver is not necessary. Rather, we must look to the 'totality of the circumstances.' Here, silence coupled with an understanding of the *Mintz* rights and a subsequent course of conduct indicative of a waiver is sufficient to find a valid waiver."

Wyke v. Warden, 268 Maj. App. 2d 113 (20XX-22): "Once defendant waived his *Mintz* rights before taking the polygraph, police were free to question him without renewing the warnings."

State v. Mike, 277 Maj. App. 2d 1143 (20XX-21): "We deal here with a confession which violates due process in that it was involuntary. When appellant was questioned and confessed he was in the intensive care unit of the hospital, there were tubes in his nose, an 'IV' in his arm, and he was on strong drugs. Such a situation is not conducive to the exercise of a rational intellect and free will. The confession was not the product of 'free and rational choice.' *State v. Gerber,* 230 Maj. 1212 (1940)."

State v. Cult, 151 Maj. App. 3d 727 (20XX-12): "Appellant claims his confession, given to police while in the hospital, was involuntary due to the fact he was on demerol and scopalomine at the time. He cites us to *State v. Mike,* 277 Maj. App. 2d 1143 (20XX-21), and *State v. Gerber,* 230 Maj. 1212 (20XX-46). We first note that there is no expert testimony in the record regarding the effect of these drugs on the 'exercise of a rational intellect and free will.' *State v. Mike,* supra. We do not rest on our decision here, however. Rather we deny appellant's claim based upon the fact that there is nothing in the record before us establishing that he was on these drugs when he was questioned."

State v. Peters, 147 Maj. App. 3d 59 (20XX-12): "Appellant, a 13-year-old juvenile, attacks his confession as constitutionally involuntary. In this area of law, the prosecution must establish voluntariness 'beyond a reasonable doubt.' Further, one's 'will can be overborne' (cit. omitted) by (1) physical or psychological coercion; (2) drugs; (3) insanity. In these later two categories, a defendant may be incapable of making a free and rational choice, although this incapacity is not the fault of the police. Here, during Appellant's questioning he was vomiting, had the dry heaves, and almost fell out of his chair. He had consumed nine beers shortly before his arrest, and when arrested had an empty beer bottle in his hand. Here, the government has failed to carry its burden that the confession was voluntary."