

## Legal Updates

**U. S. C. Woodruff, 86 Fed. R. Evid. Serv. 1591 (W. D. Tenn. 2011)**

### **Use of selective silence**

The defendant was questioned by police about a robbery. The questioning was video recorded for use as evidence at trial. During the course of the conversation with police the defendant was confronted with incriminating evidence. The defendant made no statements in response to the evidence which was a tacit admission of guilt.

The tacit admissions would be inadmissible if the defendant had invoked his Miranda rights. However, the defendant introduced no evidence at trial that the police violated his constitutional rights. There was no evidence presented that the defendant told detectives he wanted to cease being questioned, invoked his right to silence, or asked for an attorney.

At trial the prosecution introduced the defendant's tacit admissions as evidence against him. The tacit admissions were the defendant's selective silence in response to incriminating evidence.

Under the rule established in the *Doyle V. Ohio* the prosecution may not normally use a defendant's post Miranda silence to impeach his trial testimony. However, in this instance the defendant had not explicitly asked for questioning to cease or an attorney to represent him. Thus, the silence in response to the incriminating evidence was admissible.