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WHEN LIGHTNING STRIKES:

AN ANALYSIS OF MIRANDA V. ARIZONA

AS A JUDICIAL CONSTRUCT AND

AS AN ELEMENT OF CURRENT LAW ENFORCEMENT PROCEDURE

BY

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WHEN LIGHTNING STRIKES:
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The case before us raises questions which go to the root of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crimes. More specifically, we deal with the admission of statements obtained from an individual who is subjected to custodial police interrogation, and the necessity of procedures which assure that the individual is accorded his privilege under the Fifth Amendment...not to be compelled to incriminate himself.

These words of Chief Justice Earl Warren, prefacing the Supreme Court decision in *Miranda v. Arizona* (384, U.S., 1966), illustrate the sensitivity of the issue to be addressed: that of the rights of society as opposed to the rights of the individual. Obviously, the question predates *Miranda*, predates American criminal jurisprudence, predates the existence of the sovereign state itself. At its core, the debate is two-fold. One side views the interest of the state in protecting its citizens as paramount, while the other contends that the helpless individual, confronted by an edifice of modern governmental power, requires extraordinary protection. The conflict between custodial police interrogation and Fifth Amendment rights can be resolved only by striking a balance between security and liberty. Prior to the *Miranda* decision, arguments presented by
Fred E. Inbau and Yale Kamisar eloquently set forth the disparate conclusions of 'reasonable men' who attempted to do so.

Fred E. Inbau decried the myth that physical evidence alone was enough to locate a criminal and to establish guilt. Interrogation and confession, vital elements in the solution of crimes, warranted the isolation of a suspect, as well as "psychological tactics...classified as unethical if (evaluated) ...in terms of everyday social behavior." Normally, human nature precluded the unsolicited admission of a crime, and the 'average' man hesitated to make embarrassing admissions before an audience. Therefore, Inbau believed that private, one-on-one questioning was desirable. To require the presence of counsel at such interrogations would effectively quash confessions, for inevitably a lawyer would advise his client to remain silent. Counsel was not constitutionally mandated prior to the start of the judicial process, and the exclusion of statements obtained by police during periods of detention would rob society of valuable probative evidence. In conclusion, Inbau insisted that interrogators must deal with criminal suspects on a "somewhat lower moral plane" than that upon which they conducted business with ordinary citizens. The responsibility of legislatures and courts extended no farther than to insure that innocent persons were not induced to confess.

Juxtaposed against the 'law and order' conception of custodial interrogation was that of Yale Kamisar. Concentrating upon the evolution of the judicial process and law enforcement
practices, he asserted that the point at which a suspect's constitutional protections attached must be moved from the trial stage (The Mansion) to the detention stage (The Gatehouse). By perpetuating a legal dichotomy between 'judicial' and 'non-judicial' proceedings, society had maintained its honored tradition of civil liberties in the Mansion, while at the same time reaping the benefits of incriminating statements made in the Gatehouse. Kamisar also noted that originally, the proscription against self-incrimination meant that no man should be forced to make the first charge against himself. If law enforcement officials were allowed to utilize coercive techniques to compel confessions, they could accomplish that which the Fifth Amendment specifically denied to the judiciary. It mattered little that police lacked the formal tools of legal compulsion (perjury or contempt); the incommunicado environment of the station house naturally led an accused to assume he was under a legal obligation to answer all questions. The contrasting views of Inbau and Kamisar serve to emphasize the intensity of intellectual debate regarding custodial interrogation and the Fifth Amendment prior to 1966. In the years which followed, discussion became no less volatile.

Pre-Miranda decisions of the U.S. Supreme Court evinced three judicial approaches to the admissibility of confessions obtained during periods of custodial detention: voluntariness, due process, and focus. In Zhang Sung Wan (266, U.S., 1924), the Court upheld the admissibility of statements by a seriously ill Chinese, who had been held and questioned for over a week in
a secluded hotel room. Nevertheless, the Court accepted the government's contention that the defendant had "voluntarily acquiesced,...and had been in a good humor the entire time."

The infamous *Poran* (1927) decision of the New York Court of Appeals illustrates the impact of *Ziang Sung Man* upon many state jurisdictions. There, the Court of Appeals affirmed a murder conviction based on a confession elicited from a man who had fainted during questioning, had been revived with whiskey, and and been 'talked to' by an officer wearing a boxing glove.⁴

*McNabb v. U.S.* (318, U.S., 1943) was an attempt by the Supreme Court to limit the discretionary application of the voluntariness test in the Federal courts. Justice Frankfurter, speaking for the majority, held that the Supreme Court could formulate "rules of evidence in the exercise of its supervisory authority," that went well beyond the requirements of due process. In deeming inadmissible incriminating admissions made during a prolonged police detention (in violation of a Federal statute charging that suspects must come promptly before a magistrate), the Court interpreted 'promptly' to mean immediately. This holding was unanimously reaffirmed in *Mallory v. U.S.* (354, U.S., 1957). Notably, the McNabb-Mallory rule was never directly applied to the states through the Due Process Clause of the Fourteenth Amendment. Instead, the Supreme Court began to utilize the 'fundamental' aspects of the Sixth (right to counsel) and the Fifth (privilege against self-incrimination) Amendments to constrain state court findings of voluntariness.⁵
Several confession cases which came before the Court in the late 1950's were outgrowths of the idea that the entire Bill of Rights had not been incorporated "jot for jot" into the Fourteenth Amendment Due Process Clause. *Crooker v. Ca.* (357, U.S. 1958), involved the use to convict of statements obtained from an interrogation which had persisted after a denial of the suspect's request to see his attorney. Upholding the admissibility of the statement by a vote of five to four, the majority noted that "Due Process (was)...a concept less rigid and more fluid than those envisaged in other specific...provisions of the Bill of Rights."  

In the case of *Cicenia v. Lagay* (357, U.S., 1958), the defendant was actually prevented from speaking with a lawyer who had made repeated attempts to visit him. The Supreme Court ruled that *Crooker* was dispositive, but again the vote split along *Crooker* lines.  

However, one year later in *Spano v. NY.* (360, U.S., 1959), four concuring Justices reached the conclusion that once a person was formally charged by indictment or information, his fundamental constitutional rights attached. The majority in *Spano* decided the case solely on coerced confession grounds, but Chief Justice Warren (author of the majority opinion) had dissented in *Crooker*, contending that the right to counsel should begin prior to indictment. By 1959, a majority of the Supreme Court agreed that the right to counsel existed at least at the time of the formal indictment.  

Not until 1964 was the Supreme Court again presented with a case involving interrogation, self-incrimination, and the right
to counsel. In *Massiah v. U.S.* (377, U.S., 1964), a six to three majority reversed the conviction of a defendant who had been sought out by a government informant after indictment and appointment of counsel. Unfortunately, the *Massiah* decision did not lend itself to uniform interpretation. Lower courts read the holding to exclude only those statements which were induced by police officers or their agents in the absence of counsel (*U.S. v. Accordi*, 2nd Cir., 1965). However, none of these opinions gave consideration to the memorandum decision in *McLeod v. Oh.* (381, U.S., 1966) which reversed a narrow interpretation of *Massiah.*

*Crocker, Spano,* and *Massiah* reflected a growing perception among Supreme Court Justices that the process of custodial interrogation had become both accusatory and adversary. If confessions could be held inadmissible in order to safeguard the right to counsel at trial, it would seem a logical step to consider a similar protection for the privilege against self-incrimination. In *Mallory v. Hogan* (378, U.S., 1964), the Supreme Court declared that:

> Today the admissibility of a confession in a state criminal prosecution is tested by the same standards applied in Federal prosecutions. ...Wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by the (self-incrimination) portion of the Fifth Amendment.

With the complete incorporation of the Fifth Amendment privilege, there remained but one link in the chain of cases leading to *Miranda v. Arizona,* and to more than two decades of judicial backlash.
On June 22, 1964, the Supreme Court handed down its decision in *Escobedo v. Illinois* (378, U.S., 1964). A confession taken from a defendant in custody was held inadmissible simply because the defendant had requested, and was denied, an opportunity to consult with his attorney, and had not been warned of his "absolute Constitutional right" to remain silent. Not only was this 'per se' rule rejected in *Crooker, Cicenia*, and *Spano*, but for the first time the Court declined to employ the 'totality of facts' approach. Once an investigation "focused" on a single individual, the adversary process had begun, and constitutional rights attached. Prior to *Escobedo*, the Fifth Amendment privilege had been interpreted to allow a suspect to avoid self-incrimination, but not to avoid answering all questions. Criticism of the decision echoed the fear of the four dissenters, that the police would be "handcuffed" during a period of ever-increasing crime. However, *Escobedo* would prove to be a mere spark; the 'bolt of lightning' was yet to come.

*Miranda v. Arizona* (384, U.S., 1966), decided on June 13, 1966, was a triumphant victory for the per se approach of *Escobedo*. The Court required that under specific circumstances, specified procedures must be followed, or any statement by the defendant would be excluded, regardless of the fact that it was 'voluntary.' The purpose of this rule, applicable to both inculpatory and exculpatory remarks, was the protection of basic Fifth Amendment rights. The *Miranda* rule was actually derived from four separate cases, whose common elements constituted the core of the decision. Chief Justice Warren announced that;
In each, the defendant was questioned (by law enforcement officials) in a room in which he (was) cut off from the outside world... They all thus shared salient features -- incommunicado interrogation of an individual in a police-dominated atmosphere.

The factual situations dealt with in *Miranda* indicated that the Court did not intend to require warnings of constitutional rights in all interrogations. In the first section of the majority opinion, the Court detailed the physical and psychological elements that formed the basis of modern interrogation techniques, and disparaged the use of any tactic which would take advantage of a suspect thrust into an inherently compelling environment. However, the Court also acknowledged that a proper police investigation often required the questioning of persons not under restraint. The "focusing" process of *Escobedo* was explained by Chief Justice Warren as mere "Short-hand" for a situation in which the suspect was in police custody.

The majority's summary of its holding presented an exacting list of procedural protections necessary to secure a defendant's privilege against self-incrimination:

1. The suspect must be warned prior to questioning that he has a right to remain silent.
2. This warning must be accompanied by an explanation that anything he says may be used against him in court.
3. He must be clearly informed that he has a right to consult with a lawyer, and to have one with him during questioning.
4. He must be told that if he is indigent, a lawyer will be appointed for him.
5. The suspect may waive these rights and submit to questioning, but a "heavy burden" rests on the government to show that he did so knowingly and intelligently.
6. Even if the suspect waives his rights, he may stop interrogation at any time by asserting his right to silence, or requesting counsel.
So concise a summary inevitably suffered from 'per se-
itis,' and the four dissenting Justices did not fail to pounce
mercilessly upon the perceived vaguaries and flaws of the maj-
ority opinion. As in Escobedo, the departure from a flexible
due process standard was severely criticized. Justice Harlan,
joined by Justices Stewart and White, demanded a more "elabor-
ate, sophisticated, sensitive approach" for determining the
admissibility of confessions,\(^1\) while Justice Clark expres-
sed an uneasiness about the "almost total lack of empirical
knowledge on the practical operation of (the) requirements."\(^2\)
Yet another area of disagreement concerned the Chief Justice's
invocation of FBI warning practices, and the English Judge's
Rule to support his contention that restrictions on inter-
rogation would not impair effective law enforcement. Justice
Harlan countered that FBI warning procedures were less detailed
than Miranda's, and that the English Judge's Rule, while ex-
pressing a similar value for human dignity, nevertheless
lacked the backing of a formal exclusionary rule.\(^3\)

Criticism also focused on the historic scope of the privi-
lege against self-incrimination, and the practicality of the
new rule as a statement of public policy. Justice Harlan felt
that the majority had neither established an "adequate basis
for extending the Fifth Amendment's privilege...to the police
station," nor shown "that the new rules were...compelled by
Fifth Amendment precedents."\(^4\) In perhaps the most scathing
of the dissents, Justice White, noting that the majority's
new policy would no doubt have great practical implications,
bluntly predicted;

...The Court's rule will return a rapist, a killer,...to the environment which produced him. As a consequence, there will be...a loss in human dignity. The next victims are uncertain, unnamed, and unrepresented in this case.21

In his article "A Dissent from the Miranda Dissents," Yale Kamisar asserted that despite protestations of a sudden break with past precedent, a careful observer could hardly have considered Miranda a "bolt from the blue." Barriers to the application of the Fifth Amendment to custodial questioning were no less formidable than its application to legislative and civil proceedings; given Councilman v. Hitchcock (142, U.S., 1892) and McCarthy v. Ardsen (404, U.S., 1923), Miranda followed almost a fortiori.22 The evolution of decisions from McNabb through Escobedo illustrated an increasing dissatisfaction with the voluntariness standard, but the majority in Miranda had not rejected the old test entirely, nor did it fail to heed some of the dissenters' vilifications. The majority emphasized that the states and Congress were free to develop alternative (albeit coextensive) means for protecting a suspect's rights, and that its holding in no way "straight-jacketed" law enforcement.23

One week following the Miranda decision, the Supreme Court announced that neither Escobedo nor Miranda would apply retrospectively to cases where the trial commenced prior to the dates of decision in those cases (Johnson v. N.J., 384, U.S., 1966). Today, the Court probably would have evoked the Stovall v. Denno (388, U.S., 1967) rule, applying Miranda to those
case: where the interrogation occurred prior to June 13, 1966. In 1969, Miranda was declared inapplicable to the retrial of any case in which the original trial took place before Miranda. (Jenkins v. De., 396, U.S. 1969). The voluntariness test survived as the principle test for pre-Miranda litigation (Davis v. NC., 384, U.S. 1966). 24

Whether or not Justices, judges, and jurists were forewarned by the 'gathering clouds,' lightning had struck; Miranda v. Ar. was now precedent. In the spirit of the Common Law tradition, however, no precedent is immutable. Of the various social and political forces which interact to narrow a holding of the U.S. Supreme Court, among the most potent are the nation's courts themselves.

The major issues in Miranda revolved around the meaning of four words: custody, interrogation, warning, and waiver. The Federal and state courts, in defining these terms, have contributed a great deal to the 'honing' of the Miranda rule, and have cushioned its impact upon the criminal justice system. The manner in which courts have answered the questions presented by post-Miranda litigation is a primary means by which the initial holding has been narrowed. When lightning strikes, can thunder be far behind?

One of the central themes of Miranda was that of custodial interrogation. In an attempt to limit the Miranda holding, many Federal and state courts have ruled that situations in which an officer knew the suspect had committed a crime, intended to arrest the suspect at the end of an interview, or would
not have allowed the suspect to leave if he wished, did not require *Miranda* warnings if the questioning was otherwise non-custodial (*U.S. v. Luther*, 9th Cir., 1975/*Cummings v. State*, Md. App., 1975). A good example of such an interpretation was *People v. Allen* (NY. App., 1967), in which an officer with probable cause to arrest went to the suspect's home and questioned him in the presence of his family, without telling him he was under arrest. The court held that in this instance, no warning was required. Footnote number 46 of *Miranda*, detailing with approval the Scottish practice of in-home interrogation, lends support to this finding.²⁵ Discarding the more subjective "focus" concept, several courts formulated an objective test; under the circumstances, would a "reasonable man" have believed himself to be in custody? The Supreme Court tacitly approved this method in *Oregon v. Mathiason* (429, U.S., 1977), where a defendant voluntarily appeared at the stationhouse for questioning. The Court announced that in the absence of restrictions upon a person's freedom, 'compelling environment' alone did not mandate a reading of *Miranda* rights.²⁶

An additional Supreme Court case dealing with custody was *Beckwith v. U.S.* (96, S. Ct., 1976). Although that controversy involved questioning by the IRS, the logic of the decision appears to extend beyond the immediate circumstances. Beckwith had attempted to suppress statements made to the IRS in a non-custodial setting (his home). The Supreme Court clearly rejected the "focus" test, citing the *Miranda* requirement that a suspect must be denied his freedom in some "significant"
way.\textsuperscript{27} (In the Preliminary Printing of the \textit{Miranda} opinion, the sentence referred to in \textit{Beckwith} read "...in any way." This was revised in later printings.)\textsuperscript{28}

Subsequent to \textit{Miranda}, the courts have indicated that the place in which an interrogation occurs is a vital, but not a conclusive, factor in determining custody. Although all four \textit{Miranda} cases involved questioning in a police station, this environment is not inherently custodial. Under proper circumstances, someone may be 'invited' to the police station. (\textit{U.S. v. Freije}, 1st Cir., 1969). Questioning in a police vehicle, when clearly the result of such an invitation, is also non-custodial (\textit{Wussow v. State}, Tx., 1974 ).\textsuperscript{29}

In \textit{Mathis v. U.S.} (391, U.S., 1968), the Supreme Court (5-3) held that a person incarcerated for one offense was in custody for purposes of an interrogation conducted by IRS agents with respect to another offense. If the suspect is in jail, he is in custody for the purpose of any interrogation. An exception to this generalization arises only where courts have found that the prisoner was not 'interrogated' at all (\textit{People v. Morse}, Ca., 1969).\textsuperscript{30}

Ordinarily, questioning in the home is non-custodial, but the rule is not absolute. \textit{Orozco v. Texas} (294, U.S., 1969) concerned a suspect who was interviewed at four a.m. in his bedroom, by four officers. A six to two majority of the Supreme Court deemed "the use of these admissions, obtained in the absence of the required warnings, a flat violation of the self-incrimination clause as construed by \textit{Miranda}." When dealing
with in-home interrogations, such factors as the time of the investigation, the number of officers present, the extent of the questioning, and the belief of a "reasonable man" that his freedom was "significantly" impaired, contribute to the creation of a police-dominated atmosphere. An interesting case was *Commonwealth v. Eperjesi* (Pa., 1966), where the defendant was suspected of the murder of two children found in a refrigerator. Two policemen came to the defendant's home in the early afternoon, and she volunteered to them that she had shut the refrigerator door. The officers asked if she had known the children were inside, and she said yes. At issue was whether or not the questions should have been preceded by *Miranda* warnings, but the court found the situation to be non-custodial.

Places of business, stores and restaurants, government offices, and personal automobiles have usually been considered non-custodial environments for three reasons: the suspect was in familiar surroundings, the suspect was not isolated and was in a place of his own choosing, or the personnel asking the questions had no power to arrest (*Lucas v. U.S.*, 9th Cir., 1969/*U.S. v. Luther*, 9th Cir., 1975/*Chavez-Martinez v. U.S.*, 9th Cir., 1969).

The majority in *Miranda* insisted that its holding was not intended to hamper police investigative functions, and that general on-the-scene questioning to uncover facts was permissible, absent a compelling atmosphere. Construction of this language has been one of the most important aspects of *Miranda* law. Generally, the questioning of a suspect at a crime scene, prior to arrest, is considered non-custodial (*U.S. v. Davis*, Ma., 1969).
With respect to homicide investigations, the court in *State v. Oxentine* (NC., 1967) declared: "We do not interpret this important decision (*Miranda*) to exclude statements made at the scene of an investigation, when no one has been arrested, detained, or charged." Another form of on-the-scene questioning occurs when officers make inquiries of persons on the street under suspicious circumstances. The basic premise of federal and state decisions in this area has been that when police are confronted with a situation which could be resolved by an explanation from the person questioned, the confrontation is of a purely investigatory nature (*Jennings v. U.S.*, 5th Cir., 1968/*Lockridge v. Superior Ct.*, Ca. App., 1969).35

A related issue arising under *Miranda* is the status of the 'stop and frisk.' In most jurisdictions, the officer is authorized to ask a few simple questions, such as name, address, and explanation of actions. Although the right to ask such questions was neither approved nor disapproved in *Terry v. Oh.* (392, U.S., 1968), the concurrences of Justice White and Justice Harlan seemed to favor the idea.36 The California Court of Appeals held in *People v. Manis* (Ca. App., 1969) that a short period of on-the-street questioning in connection with a stop and frisk did not require *Miranda* warnings. Jurisdictions that have sustained such methods have relied heavily on the brevity and neutrality of the inquiries, implying that the situation is not only non-custodial, but also that what took place was not 'interrogation' in the *Miranda* sense of the word (*U.S. v. Ganter*, 7th Cir., 1970).37
The statements and demeanor of the police are also relevant determinants of custodial questioning. The officer who instructs a suspect that he is not under arrest, and is free to leave at any time, establishes a non-custodial interview, whereas formal arrest creates custody in all cases. As for the behavior of policemen, the higher the level of courtesy and deference to a suspect, the more likely it was that the suspect did not believe himself to be in custody (Stryke v. Bode, NJ. App., 1970). The more accusatory the officer, the greater the possibility that custody was inferred (People v. Arnold, Ca., 1967). The Fifth Circuit Court, in U.S. v. Akin (1970), held that gratuitous Miranda warnings did not themselves establish custody, and the New Mexico Court of Appeals went so far as to assert that the unnecessary giving of warnings, indicative of a "courteous and respectful" attitude on the part of the police, supported a finding of non-custody (State v. McHam, 1970).

In considering the issue of interrogation alone, courts at all levels have endeavored to temper Miranda's impact by delimiting the types of statements and questions which are not technically related to the violation of Fifth Amendment rights. Miranda clearly stated that "volunteered statements of any kind are not barred by the Fifth Amendment, and their admissibility is not affected by our holding..." A volunteered statement (one which is not made in response to questions asked by an officer) most commonly occurs when a person simply walks into a police station and makes damaging admissions. Such confessions are probably non-custodial as well. A volunteered
statement can even occur during an interrogation on police premises, if the suspect makes an incriminating remark which is not specifically responsive to an officer's question. In DeHart v. State (Tx., 1971), police asked the suspect "Do you know your father is dead?," to which he replied, "Oh I know! I only wish I had gotten my mother..."43

A suspect confronted with incriminating evidence might believe himself to be in custody, but what if he proceeds to volunteer damaging information? In most circumstances, it is proper to present evidence or facts to the suspect, even if the police misstate the nature of that evidence (Frazier v. Cupp, 731, U.S., 1969 -- that an accomplice had confessed).44

The question under Miranda is whether such confrontations are actually a form of 'silent interrogation.' Understandably, courts have been divided on the issue; state jurisdictions have usually found in favor of law enforcement officials, but the federal courts have been more careful to search out deliberate efforts on the part of the police to break down a suspect's refusal to talk (U.S. ex rel. Doss v. Bensinger, 7th Cir., 1972/Combs v. Wingo, 6th Cir., 1972). However, statements volunteered after a line-up are admissible (Camacho v. U.S., 9th Cir., 1968), as are those made when the suspect is present at the discovery of some piece of evidence (Diaz v. U.S., 5th Cir., 1967).45

Certain questions asked by police have been classified as non-interrogational. "Threshold," or clarifying questions often arise from the fact that voluntary admissions lack detail. For
example, in *People v. Savage* (Il. App., 1968), a man rushed in to a stationhouse sobbing "I done it! I done it! Arrest me!" Naturally, an officer asked him what he had done, and the man tearfully replied that he had killed his wife. "How?" inquired the officer. "With an axe," he answered, "that's all I had." The court held that these neutral questions were not designed to expand the scope of the suspect's statement.

The identity of the person conducting an interview has been yet another criterion employed by the judiciary to deflect the *Miranda* "bolt from the blue." Invariably, it has been held that a suspect interrogated by a private citizen need not be warned of his rights. However, the technique of relying upon a strict definition of the interrogator's status has rendered *Miranda* inapplicable even where a private citizen falsely represented himself as a police officer while questioning the suspect (*People v. Yleck*, Il. App., 1969). One of the theoretical underpinnings of *Miranda* was that the suppression of statements taken in violation of its rules would deter future police violence. For that reason, officers from foreign jurisdictions are not required to give the warnings; the deterence argument has no force in such cases (*U.S. v. Mundt*, 10th Cir., 1975).

Perhaps the stickiest wicket faced by courts in deciding *Miranda*-related litigation is the adequacy of the warnings given. *Miranda* required that three elements be present: the right to silence, the courtroom use of statements, and the right to assistance of counsel during questioning, regardless of financial status. Most complex are those cases where portions
of the requisite warnings have been omitted, or uttered in such a way as to distort or confuse their meaning. Common errors seem to relate to the right to counsel; either the officer merely says that the suspect has a right to counsel, that counsel will be appointed by the court, or that the police have no way of getting counsel for him immediately. These incomplete warnings usually prompt a reversal (Gilpin v. U.S., 5th Cir., 1969).  
While it must be made apparent to the suspect that he has a right to counsel both prior to and during questioning, federal and state jurisdictions have concluded that warnings must be given a reasonable construction. No strict verbal formula is mandated. Therefore, the statement "If you don't have an attorney, or can't afford one, I'll get one for you" was adequate (Evans v. Swenson, 8th Cir., 1972), whereas a warning of right to counsel "anytime" was insufficient (Biggerstaff v. State, Ok, 1971).  
The manner in which warnings are administered also affects their Miranda status. It has been held that they must be "clear, unhurried, and delivered in a way which implies that the suspect can claim his rights without fear of reprisal. A perfunctory... rattling off is improper" (Vanterpool v. U.S., 2nd Cir., 1968).  
In Jenkins v. State (Ms., 1968), the court announced that Miranda warnings, when given to illiterate or subnormal individuals, require meaningful advice...in language he can comprehend, and on which he can knowingly act. The crucial test is whether the words used by the officers, in view of the age, intelligence, and demeanor of the individual being interrogated, (convey) a clear understanding of all his rights.
Justice Harlan's *Miranda* dissent expressed a concern that policemen who resorted to third-degree tactics would not hesitate to lie about the fact that they had warned a suspect of his rights. It is true that many state jurisdictions have undermined the *Miranda* decision by holding that the uncorroborated testimony of an officer is sufficient to establish warning, even if the defendant makes assertions to the contrary (*State v. Bower*, Wa. App., 1968). However, when the precise nature of the warnings appears on the record, risks of future suppression are greatly reduced. In order to facilitate such practices, courts have accepted into evidence written warnings (*U.S. v. Lucarelli*, 9th Cir., 1970 — where the suspect is literate), tape recordings of warnings (*State v. Seufeldt*, NJ., 1968), and cards from which warnings were read (*Moll v. U.S.*, 5th Cir., 1969). Where a written and an oral warning were given, but one was deficient, courts have considered the correct warning reparative (*People v. Perry*, NY. App., 1976).

Is it necessary to give *Miranda* warnings to a defendant who knows his rights — a lawyer or a policeman? The *Miranda* opinion clearly held that "We will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning..." In *DuPont v. U.S.*, (D.C., 1969), a suspect was about to be warned when he asserted "I know my rights." The statement which followed was deemed to have been taken in violation of *Miranda*, because the officer should have persisted in giving the warning. A deviation from this rule surfaced in *Kear v. U.S.* (9th Cir., 1966), where the defendant
protested "I know I don't have to make a statement." It was clear that this man was specifically aware of his right to remain silent. Prior criminal or legal experience, while not enough in itself to allow police to dispense with Miranda warnings, can be used to establish the fact that the warnings were understood (Jordan v. U.S., 9th Cir., 1970).\textsuperscript{58}

The wealthy defendant presents yet another problem. To warn him of his right to the services of a lawyer is sufficient; the right is made no more meaningful by the inclusion of a statement that counsel will be appointed if he can not afford one. The Supreme Court explicitly recognized this rule in U.S. v. Mandujano (96, S. Ct., 1976) and Doyle v. Oh. (96, S. Ct., 1976).\textsuperscript{59}

With regard to waivers, a basic ambiguity of the Miranda opinion involved the Supreme Court's emphasis on the fact that, in the absence of counsel, a person in an inherently compelling atmosphere could not make a truly voluntary decision concerning his right to remain silent.\textsuperscript{60} If this is true, how could a choice to dispense with counsel be voluntary under the same circumstances? The majority in Miranda made two points regarding waivers; waivers could not be inferred from silence, and an express statement of willingness to talk without an attorney might constitute a waiver.\textsuperscript{61} Did the Court mean that the latter statement was merely one of many forms by which the right might be waived, or that even this prima facie waiver might not be conclusive. Evidence provided by federal and state courts once again evinces the use of a 'totality of
facts' approach. In *State v. Kremens* (NJ., 1968), the court concluded that:

Any clear manifestation of a desire to waive is sufficient. The test is the showing of intent, not the utterance of a shibboleth. The criterion is not solely the language employed, but a combination of that articulation and surrounding facts and circumstances. 62

Generally, it has been held that since there is no set formula for waiver, a suspect may be asked further questions to clarify whether or not he wishes to assert his rights (*People v. Tun- nage*, Ca. App., 1975). Non-verbal waivers, such as nods and shrugs, have also been allowed (*State v. Brammeir*, Or. App., 1970), as have signed waivers (*Brooks v. U.S.*, 5th Cir., 1969 -- if the suspect is literate). 63

The Miranda majority declared that the prosecution was under a "heavy burden" to prove waiver. 64 This has raised the question of whether the 'beyond a reasonable doubt,' or 'preponderance of evidence' rule should apply. An excellent presentation of the burden issue appeared in *State v. Davis* (Wa., 1968), where a second officer who had been present at a waiver was not called to testify, and the single witness's testimony was not confirmed by tape recordings or stenographic report. Emphasizing that the standard of proof under Miranda must be more than a "swearing contest," the court held that the state had failed to meet its burden. 65 A monkey-wrench was thrown into lower court interpretations of the requisite degree of proof, by the Supreme Court holding in *Lago v. Twomey* (404, U.S., 1972). When it announced that the prosecution could introduce a confession at trial after proof of voluntariness
upon a preponderance of evidence, the Court paved the way for assertions that a coerced confession was certainly a more serious matter than a voluntary confession secured in violation of Miranda. A fortiori, the prosecution should not bear a greater burden of proof in showing compliance with Miranda than in establishing voluntariness.66

Even where adequate warnings have been given, the suspect's mental competency can influence the validity of a waiver. Such factors as age, I.Q., level of education, and ability to cope with stress have been dispositive, as well as the effects of drugs, alcohol, or shock. In dealing with the problem of competency to waive, courts and counsel have relied on precedents from older cases involving the voluntariness of confessions.67

Miranda v. Arizona and its three companion cases involved suspects interrogated in connection with felony charges. Therefore, it was necessary to determine the decision's applicability to misdemeanors and other proceedings. In Baxter v. Palmigiano (96, S. Ct. 1976), the Supreme Court denied Miranda a general application by refusing to extend the rule to prison discipline cases. The holdings of several state courts have since indicated that Miranda does not affect misdemeanors that impose fines or short jail sentences (State v. Zucconi, NJ, 1967, et. al.).68 However, the validity of the felony-misdemeanor distinction is subject to attack as a result of Ar程geringer v. Hamlin (407, U.S., 1973), where the Supreme Court required states to provide counsel upon re-
quest in certain misdemeanor cases. The attack could be countered by the argument that counsel during interrogation serves an entirely different purpose than counsel during trial. Miranda may also be inapplicable to interviews by a parole or probation officer (State v. Johnson, SD., 1972/Kriven v. State, Tx., 1973/see Fare, p. 29, infra.). Other instances to which the rule has not been extended include license revocation proceedings (Buckner Corp. v. NLRB, 9th Cir., 1968), physical or chemical tests for intoxication (State v. Macuk, NJ, 1970), and welfare investigations (State v. Graves, NJ, 1970).69

In Walder v. U.S. (347, U.S., 1954), the Supreme Court allowed the limited use of inadmissible statements at trial for purposes of impeachment.70 The effect of Miranda upon Walder was clarified by Harris v. NY. (401, U.S., 1971), in which statements obtained in violation of Miranda were held admissible to impeach a defendant who took the stand in his own defense. Disregarding the implicit Walder limitation that impeachment should be allowed only in those cases where a defendant opened the issue of what he had said to police upon direct cross-examination, the majority upheld the use of prior statements to impeach, so long as they were inconsistent with trial testimony.

The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances.

The scope of Harris was further elaborated in Oregon v. Hass (420, U.S., 1975). Hass had been arrested, warned of his rights, and placed in a police car. He requested counsel, and
was told that this would be granted upon arrival at police headquarters. However, during the ride, the suspect was interrogated and made several incriminating statements. The Supreme Court of Oregon found his remarks inadmissible, but the U.S. Supreme Court reversed the decision on three grounds: the policy of Harris was controlling, a statement by a suspect who believed he was 'in trouble' was not involuntary, and a state court had no power to interpret the Federal Constitution more restrictively than the Supreme Court. The Court reached a different conclusion when presented with a case where the accused had taken the stand, testified freely, and was asked on cross-examination why he had not told his story to the police at the time of his arrest. Doyle v. Oh. (96, S. Ct., 1976) held that an accused could not be impeached for failure to tell his story. The rationale of the decision was that after hearing his Miranda rights, a suspect would assume that his silence carried no penalty. Therefore, it would be "unfair, and a deprivation of due process" to allow the use of silence to impeach.

Two additional gray-areas of Miranda which courts have sought to clarify are the 'fruits of the poisonous tree' doctrine, and the 'harmless error' rule. When a statement is taken in violation of Miranda, should it be used to obtain other damaging evidence? Many courts initially assumed that the derivative evidence rule applied. However, Michigan v. Tucker (417, U.S., 1974) clouded the standing of this assumption. The Supreme Court held that the prosecution in that case had properly used as a witness, a man whose full name had been given to police by
a defendant who had not received a complete *Miranda* warning. The Court noted that the effectiveness of applying the derivative evidence rule to *Miranda* situations was debatable, and that in any event, the suppression of a key witness's entire testimony seemed "unjustified." Even if the derivative evidence rule applied, the prosecution would have the option of showing that the evidence was independent and untainted (*Wong Sun v. U.S.*, 317, U.S., 1963).

Cases involving coerced confessions usually resulted in automatic reversals, regardless of the strength of other evidence (*Lynnun v. Ill.*, 372, U.S., 1963/*Haynes v. Wa.*, 373, U.S., 1963). In *Harrington v. Ca.*, (395, U.S., 1969), however, the Supreme Court evinced a willingness to consider constitutional violations as harmless errors; errors having no effect upon the verdict. If one does not believe that a voluntary statement taken in violation of *Miranda* is analogous to a coerced confession, it is difficult to condone automatic sentence reversals in the former instance. *Harrison* (392, U.S., 1968) was an interesting illustration of the harmless error rule and the fruits of the poisonous tree doctrine could intertwine. When a defendant takes the stand and gives damaging evidence against himself, the prosecution can argue harmless error regarding a variety of issues. But should the error cited be the erroneous admission of a confession taken in violation of *Miranda*, the defendant can counter that he would never have taken the stand if his statement had not been admitted. Therefore, the derivative evidence rule would preclude the use of his testimony to establish that the error
was harmless. 77

While lower federal and state courts nibble at the edges of a Supreme Court decision, there are only two formal means by which it can be repudiated: a Constitutional Amendment, or a subsequent ruling of the Supreme Court itself. In the latter instance, the Justices can simply ignore an odious precedent and hope it will die a natural death, construe it so narrowly that it fades to a mere shadow of its former self, or dare to overturn it. The Burger Court has employed all but the last method in its struggle with post-Miranda litigation.

Intense public reaction to Warren Court activism prompted the "conservative" backlash reflected in the five Supreme Court appointments of President Richard Nixon and President Gerald Ford. Together with Justices White and Stewart (frequent Warren Court dissenters in this area of law) a new majority has emerged in the realm of criminal jurisprudence. Decisions of the Burger Court previously discussed in relation to specific Miranda issues evince an unwillingness to extend the rule, 78 a review of cases which have come before the Court during the second decade of the 'Miranda-go-round- reveal a similar inclination.

In Brewer v. Williams (95, S. Ct., 1977), the Burgers skillfully avoided reaffirming Miranda, while at the same time rejecting a request by twenty-two states to overturn it. An examination of the facts in the Iowa child-murder controversy leads one to conclude that: 1) The Court purposely sought non-Miranda grounds for reversal; 2) Brewer was a poor test case. The defendant surrendered to Davenport police, and was booked
on charges specified in an arrest warrant. Having been informed by his attorney that Des Moines police would drive to Davenport to pick him up. Brewer was arraigned, advised of his rights, and jailed. Despite an agreement with police that the defendant would not be questioned during the ride to Des Moines, two officers (knowing Brewer to be deeply religious) asked him to "think about" the fact that his victim's unfound body would be denied a Christian burial. The suspect immediately directed the policemen to the site. Seizing upon the facts that Brewer had been arraigned, booked, and informed of his rights prior to questioning, a five to four majority of the Supreme Court cited Massiah as controlling precedent, and declined to consider whether Miranda would apply.79

The status of waiver of counsel under Miranda was addressed by the Burger Court in North Carolina v. Butler (99, S. Ct., 1979). There, the defendant was arrested for kidnapping and armed robbery, and fully advised of his Miranda rights. FBI agents who questioned Butler gave him an "Advice of Rights" form which he read, stated that he understood, but refused to sign. Without indicating a desire to consult with an attorney, Butler made damaging admissions which were used against him at trial. The Supreme Court of North Carolina reversed his subsequent conviction, interpreting Miranda to require that no statement made under custodial interrogation could be admitted unless the right to counsel was expressly waived. In overturning this holding, the U.S. Supreme Court (6-3) ruled that an explicit statement was neither "inevitably necessary, nor sufficient" to establish a waiver of Miranda.
rights. If the question was whether a defendant had knowingly and voluntarily relinquished his rights, courts must find an intelligent rejection of counsel in situations where intent was not stated overtly.\textsuperscript{80} When one considers the \textit{Faretta v. Ca.} (95, S. Ct., 1975) holding that defendants in state criminal trials have a right to proceed without counsel, \textit{Butler} is more easily understood. While silence itself does not constitute a waiver, it is a relatively short step from the acceptance of nods and shrugs (\textit{State v. Brammeir}, supra.) to the acceptance of statements made by a suspect who insists upon 'plunging ahead.' The Burger Court seemed to fear that a broader interpretation of \textit{Miranda} would require law enforcement officers to read a suspect his rights, and then to gag him if he attempted to speak without giving a prima facie waiver. However, the Court conspicuously ignored the \textit{People v. Tunnage} (supra.) approach, which would have allowed the police to ask clarifying questions to determine whether or not Butler intended to relinquish his rights.

The \textit{Miranda} rule specified that the presence of counsel during custodial questioning was essential to the protection of Fifth Amendment rights. \textit{Fare v. Michael C.} (99, S. Ct., 1969) was an excellent example of the current Supreme Court's attempts to suffocate \textit{Miranda} by applying it in letter, but not in spirit. A juvenile, arrested for murder and advised of his rights, was taken to a police station for questioning. At the outset, the boy asked to have his probation officer present, but the request was denied. He then agreed to speak without an attorney, and incriminated himself in the process. After con-
viction, a claim that the denial of the boy's request was a violation of Miranda rights was upheld by the Supreme Court of California. By a margin of five to four, the Burger Court reversed, holding that a juvenile's request to speak with his probation officer was not a per se invocation of Fifth Amendment rights. The juvenile at bar had knowingly waived his right to counsel, and therefore his statements were admissible. But what purpose was 'counsel' as discussed in Miranda intended to serve? The Fare dissenters argued that to define counsel as an attorney, and only an attorney, was to subvert a basic goal of Miranda: the protection of weak individuals who had been thrust into a compelling environment. Moral support was as important to the suspect as legal advise. However, had the majority ruled in favor of the juvenile's claim, it might have opened a Pandora's Box. Several state jurisdictions had determined that probation officers were not required to give Miranda warnings (page 24, supra.). If one of the purposes of counsel is to act as an independent source of support for the accused, a request to see one's probation officer (an employee of the state) might prove favorable in theory, but fatal in fact. Free from Miranda constraints, such an officer could conceivably elicit admissions from the suspect, and turn them over to the police on a 'silver platter.' In deciding such cases, courts would be faced with a myriad of questions involving untainted evidence and derivative use. It is fair to conclude, however, that the efforts of the Burger Court to limit Miranda have been based upon considerations of a more political nature.
The most recent installment of the *Miranda* controversy to come before the Supreme Court was *Rhode Island v. Innis* (100, S. Ct., 1980). The Court addressed the nature of 'interrogation' under *Miranda*, and once again the majority successfully argued for a narrowing construction. Innis, suspected of the shotgun murder of a cab driver, was arrested and advised of his rights. Stating that he understood the warnings, he requested an attorney. The suspect was then placed in a squad car with three armed officers. En route to the station, the vehicle passed a school for the handicapped, and one of the patrolmen remarked to his partner, "God forbid that some little girl should find that gun and hurt herself!" Thereupon, the defendant insisted that he show the police the location of the weapon. The Rhode Island Supreme Court reversed Innis' subsequent conviction on the grounds that, after an express invocation of the right to counsel, he had been 'interrogated.' On certiorari, the question before the Burger Court was whether the officer's indirect statement was a form of questioning which had provoked the incriminating response. The majority began its opinion with lip-service to *Miranda*; of course, they would *never* interpret 'interrogation' to mean merely direct questioning! "Other words or actions on the part of the police" must also be included. The catch was that it was up to the Court to decide whether an officer "reasonably knew" that his words or actions would be likely to induce a damaging admission. In vacating and remanding, the Supreme Court (6-3) found that Innis had not been interrogated. He was never directly questioned, and the dialogue between the two officers had invited no response.
Nothing in the record indicated that the officer knew Innis was "specifically" susceptible to an appeal concerning the safety of handicapped children, or that he was unduly disoriented at the time of arrest. Like the Faret decision, this holding chips away at the very foundations of Miranda. It is difficult to imagine a more compelling atmosphere than a locked police car filled with officers. It is also difficult to imagine a more blatant appeal to a suspect's conscience than the assertion that he may indirectly cause the injury of an innocent handicapped child! Miranda condemned the use of all psychological ploys, and under the circumstances, the 'intent' of the officer seems irrelevant.

Chief Justice Warren made reference in his Miranda opinion to a "badge of intimidation" placed upon those subjected to custodial interrogation. Significantly, the Chief Justice mentioned a similar "badge of inferiority" in Brown v. Board of Education (347, U.S., 1954). Both cases dealt with equality; the former with equality between policeman and suspect, and the latter with equality between Blacks and Whites. This dichotomy illustrates the major flaw of the Miranda opinion. Equality in the "Gatehouse" cannot be accorded the same deference as equality in the schoolhouse. Warren argued that a suspect was not on an equal footing with his interrogators, but never asked "should he be?" It is true that the individual, in recognition of his free will, must be accorded a "right to choose," but man's will is never free in the sense that he is totally uninfluenced by his surroundings.

While the sweeping language of Miranda has been rightly criticized in the past, I believe that its fundamental objectives
were sound. Wigmore spoke of achieving a "fair state - individual balance," and few would dispute the fact that as the power of the state has increased, the ability of the solitary man to protect himself has declined. The Miranda decision attempted to erect a protective barrier between the government and the citizen, so as to preserve the dignity of the individual. Since 1966 courts at all levels have reinterpreted Miranda, and in many instances have successfully narrowed and refined its meaning, without drawing into question the validity of its underlying premise. Were that premise to be completely eroded, no man would possess the freedom to reassert it.

The preceding chapters have focused almost exclusively upon the role of the judiciary (both federal and state) in the creation and enforcement of the Miranda rule. I have attempted to show that the exclusionary rule, a primary means for promoting the goals of the original decision, has been unevenly applied in response to such diverse and fluctuating variables as judicial temperament, political pressure, regionalism, and federalism. However, while researching the judicial contributions to a narrowing construction of Miranda, I was made increasingly aware of the extent to which court decisions at all levels depend upon the actions, experiences, and perceptions of local law enforcement officials for their implementation. If one wishes to make an accurate assessment of the impact of the Miranda holding, it is necessary to examine the attitudes and opinions of those directly responsible for its 'success' or 'failure' -- the local contingents of men in blue.
This chapter is the product of a **Miranda** survey questionnaire, distributed to the eighty-nine member Champaign, Illinois police department during October, 1981. The responses of those "least often asked" have provided not only a wealth of information regarding the attitudes of local police officers toward the requirements of **Miranda**, but also an unexpected insight into the relationship of a policeman to the courts, to his job, to his fellow officers, to his community, and to his own sense of morality and fairness. It has been fifteen years since Chief Justice Warren announced the list of criteria necessary to protect the constitutional rights of individuals subjected to custodial interrogation. As response to these questionnaires will illustrate, the controversy and uncertainty instigated in 1966, lingers in 1981. Having examined the "Gatehouse" from the perspective of the "Mansion," it is only appropriate to view the "Mansion" from the "Gatehouse," and perhaps more importantly, to view the "Gatehouse" from the "Gatehouse."

In 1968-1969, Neal A. Milner conducted an indepth comparative analysis of the impact of **Miranda** upon the police departments of four Wisconsin cities: Green Bay, Kenosha, Racine, and Madison. Although the passing of twelve years necessitated a shift in emphasis from the immediate impact of **Miranda** to its effectiveness and functional validity, and although Milner's study was certainly broader in scope, the latter has served as an indispensable foundation for the investigation at hand. The clarity, brevity, and simplicity of Milner's questions allowed little room for improvement, and
many elements of the Champaign questionnaire were based directly upon those of the Wisconsin Police Survey. Major deviations included the shortening of the form to accommodate limited tabulation facilities, the deletion of questions rendered inapposite by time (i.e. "Before Miranda was decided, did you expect the Supreme Court to make such a decision regarding police interrogation procedures?"), and the inclusion of several new items keyed to an understanding of the decision's theoretical underpinnings, and to its significance for individuals in custody. An additional objective of the Champaign survey was to provide policemen with an opportunity to express general opinions regarding the nature of their work.

Before examining the substantive outcome of the Champaign survey in detail, it may be useful to establish a few theoretical perimeters which will facilitate a more meaningful interpretation of the data which follows. Justice White's Miranda dissent ominously warned:

...The Court's rule will return a rapist, a killer...to the environment which produced him. As a consequence, there will be a loss in human dignity.

If the cause-effect relationship between court decisions and their ramifications could be so precisely identified, the work of political scientists would be much less complicated! Obviously, the Miranda majority intended no such outcome, but Justice White was correct in noting that the effects of a public policy do not necessarily coincide with the underlying goals of the policy-makers. His argument is dangerous, however, in that it makes three untenable assumptions:
1) that rapists and killers will usually/always be returned to the streets, because courts will be unable to patch the 'hole' which Miranda 'rent in the fabric of Justice,'

2) that no positive benefits or redeeming factors could possibly flow from the implementation of the Miranda rule,

3) that positive, although subtle, effects of the rule upon interrogative practices might not offset (in the long-run) those instances where it served as a prima facie inhibitor of investigative procedure.

Political scientist Austin Ranney has stated that the Supreme Court (and lower courts as well), attempts to bring about substantive changes in the behavior of individuals by enunciating goals, and by suggesting methods of policy implementation. Such 'goals' may be vague, both in the written opinions and in the minds of the Justices, but nevertheless, the relationship between courts and the results they want to achieve rests upon fundamental aspects of policy-making: intent, a desired line of action to implement that intent, and the line of action which implementors actually adopt.89

A public policy cannot become public unless it has been sanctioned and enforced by those whom society has vested with the authority to regulate in a given area. In the context of the Miranda decision, it would appear that local law enforcement officials were at once the end and means of the Court's attempt to secure constitutional rights during custodial interrogations. It was the behavior of policemen which the Court desired to change, but police departments themselves
were made principal overseers of the policy. Since 1966, the tenuous power of the exclusionary rule, the support of leaders within the law enforcement bureaucracy, and the tide of public opinion have been major forces influencing the interpretation and effectuation of the Miranda rule.

The results of the Champaign survey support the fact that in analyzing police responses to Miranda, it would be erroneuous to stress the issue of 'compliance,' as opposed to 'noncompliance.' This dichotomy implies that there is a single acceptable reaction to the decision, and that the policies of the Court were clearly articulated, allowing for but one interpretation. Edward Barrett illustrates the fallacy of such an approach:

No one disputes the simple proposition that the police must obey the law. The difficulties arise because in many areas there is wide disagreement about what the law is that the police must obey...90

As Milner emphasized in his 1969 study, compliance can be determined only by evaluating police behavior in the light of standards perceived as "relevant" by participants in the process. If police activities are not coextensive with the basic thrust of the Miranda decision, one must ask why the inconsistency exists. Are individual officers aware of the inconsistencies? If so, has either the law enforcement bureaucracy or society advocated the use of standards and values different than those of Miranda?91 Are policemen forced to walk a 'tightrope' between the rules of law and the expectations of their community? The best, and perhaps the only way to discover the attitudes of policemen toward Miranda is
to question them on an individual and anonymous basis, to examine their understanding of the decision's requirements, and to note the degree to which they have accepted or rejected its procedures.

Champaign, Illinois, a community of approximately 60,000, is located in the heart of the Midwestern agricultural belt. Despite its relatively small size, Champaign and its sister-city, Urbana, enjoy the dubious distinction of accommodating the University of Illinois, which in 1980-1981 boasted a total enrollment of over 35,000. As one might expect, the fact that the University maintains its own police force cannot completely mitigate the impact upon local law enforcement of so vast a number of young adults. The Champaign police force, headed by Captain Dye, consists of eighty-nine patrolmen, senior patrolmen, sergeants, and detectives, all of whom were requested to participate in this study.

Having obtained the permission of Captain Dye, eighty-nine three-page *Miranda* questionnaires were distributed to Champaign policemen at roll-call on October 14, 1981. Each questionnaire included a brief cover letter explaining the nature of the survey, stressing the anonymity of all responses, and indicating that the project had been cleared by the Chief of Police. The body of the survey consisted of ten multiple choice and ranking questions, relating directly or indirectly to the individual's opinion of, or experiences with, the *Miranda* rule. A concluding section
attempted to establish a more definite universe for the study, by requesting general information relating to rank, age, years of service, and educational background. Finally, each officer was invited to make any pertinent comments regarding the Miranda decision, and its effect upon his work. In the hope of inducing a higher response rate, all questionnaires were distributed in a pre-addressed, stamped envelope, which respondents were urged to mail directly to the author.

It is a tribute to the conscientiousness and accessibility of the Champaign police department that this survey achieved a response rate of 60% (unusually high for a political science study). At the outset, it is also surprising that nearly 38% of those who participated took the time to write comments in addition to the fourteen questions presented.

By rank, respondents included 60% patrolmen, 17% detectives, 11% senior patrolmen, and 9% sergeants. The Captain also completed a questionnaire. This breakdown corresponds closely to the numerical distribution of each group within the total Champaign police force, although the response rate of detectives was somewhat high, and that of senior patrolmen slightly low. In terms of age, the averages for each of these groups (excluding the Captain, age 49), were 34 years, 38 years, 36 years, and 42 years, respectively. The greatest age differential within any division was a twenty-two year gap between the youngest (age 25) and oldest (age 47).
patrolman. The average number of years spent on the force was 8 for patrolmen, 15 for detectives, 14 for senior patrolmen, 17 for sergeants, and 25 for the Captain. It is interesting, but perhaps not surprising, that the rates of response appear (for the most part) to vary inversely with both age and years of service. Also, the number of individuals within each rank who wrote additional comments evinces an underrepresentation of senior patrolmen similar to that noted in the rates of response. 44% of the patrolmen and detectives supplemented their multiple choice questions in some way, as did 40% of the sergeants. However, on 17% of the senior patrolmen, who represented a greater share of the total response than sergeants, elected to do so.

In Neal Milner's *Wisconsin Survey*, the levels of education attained by members of the police forces varied a great deal. Time would seem to have lessened this diversity, for the current study revealed a clustering of officers at three educational levels. None of the Champaign department members possessed a high school diploma alone, and 54% of those responding indicated that they had received a college degree, as well as special police training. 34% had received some college and some special training, while 12% had graduated from high school, and received additional police instruction. Differences in educational levels within the ranks can be summarized by the following table:
<table>
<thead>
<tr>
<th>Levels of Education</th>
<th>Patrolmen</th>
<th>Sr. Patrolmen</th>
<th>Detectives</th>
<th>Sergeants</th>
</tr>
</thead>
<tbody>
<tr>
<td>High School and Training</td>
<td>6%</td>
<td>----</td>
<td>22%</td>
<td>20%</td>
</tr>
<tr>
<td>Some College and Training</td>
<td>31%</td>
<td>50%</td>
<td>34%</td>
<td>20%</td>
</tr>
<tr>
<td>College Degree and Training</td>
<td>63%</td>
<td>50%</td>
<td>44%</td>
<td>60%</td>
</tr>
</tbody>
</table>

The largest percentage of college graduates (63%) is found among the youngest group of officers, followed closely by the sergeants -- those highest in rank below the Captain. The question of whether or not it is possible to establish a correlation between level of education and approval or disapproval of the *Miranda* decision will be discussed in connection with question nine of the survey.

The first item of the questionnaire requested that each officer rank, in order of significance, a list of seven 'problems' encountered by policemen in the line of duty. While not related to the *Miranda* issue per se, the seven choices represented possible perspectives regarding police work, and the factors which make it both an honor and a liability. A high priority ranking for such choices as Increasing Crime Rate, Low Community Morals, and Lack of Public Support was considered to evince a *societal* orientation, locating the greatest sources of interference with police work outside of government institutions, and beyond the control of law enforcement bodies. Insufficient Salary, Bad Working Hours, and Dangers of the Job were though to contribute to a *personal* orientation -- the officer deemed most significant those aspects of his job which affected not merely his duties
but his private well-being. These elements, while beyond the control of any single policeman, are related to the law enforcement bureaucracy itself, and therefore could be perceived as more susceptible to correction than general societal problems. Finally, the selection of Limitations Imposed by Court Decisions was considered an institutional orientation: identifying a separate and distinct branch of government as a primary source of interference with a policeman's performance of his functions. Of the seven problems presented, this one applied most specifically to the Miranda rule, but also encompassed Fourth Amendment search and seizure requirements, First Amendment and penumbral rights violations, and the application of the exclusionary rule in general.

Members of the Champaign police department selected two societal factors as most pressing: Lack of Public Support, and Increasing Crime Rate. It was interesting, however, to discover that Limitations Imposed by Court Decisions was identified as the third most significant problem. This seems to imply that many respondents were keenly aware of the judiciary's power to rule 'ex post facto' on their work, and to render it fruitless because of a 'technicality.' Two personal/bureaucratic factors ranked fourth and fifth (Low Salaries and Dangers of Job), while Low Community Morals and Bad Hours rounded out the list.

The responses to question one are important because they point to a correlation between the accessibility of...
a problem and its relative consequence for individual officers. The broader and more distant the cause of interference, the higher its perceived significance. Items subject to change by an independent branch of government, the courts, fell in the midrange, while those which could be altered by police departments themselves placed in the lower third. The only exception to this trend was the low rank accorded to a problem originally categorized as societal: Low Community Morals.

In retrospect, this could be explained by asserting:

1. That the officers did not perceive their community as 'distant' in the sense that it directly contributed to broader societal trends (i.e. increasing crime rates),
2. That the officers did not presume a relationship between 'morality' and crime,
3. That the citizens of Champaign including the criminals -- have unusually high moral standards....

Perhaps the most complex question included in the Champaign survey asked each respondent to indicate which of a series of nine statements expressed some element of the Miranda rule. These statements were constructed so as to reveal the officer's comprehension of the customary verbal formula, as well as its applicability in specific situations. Key factors which normally trigger the giving of Miranda warnings were purposely omitted from several of the choices. It was expected that a majority would correctly identify direct quotations from the rule, and reject items which were blatantly overbroad. More revealing would be the number who could detect subtle instances where Miranda would not apply.
As presupposed, the responses checked most often were those resembling the precise language of the warnings. 25% chose "a person in custody must be told that anything he says may be used against him in court," and 23% selected "a person in custody must be advised of his right to remain silent. However, 23% opted for the somewhat ambiguous "indigent suspects have a right to an attorney appointed by the county." The latter statement made no reference to key elements such as custody, or the type of offense about which the suspect was being questioned (felony/misdemeanor).

Two choices delineating the scope of Miranda's applicability received fairly large percentages of the total response, with somewhat confusing implications. That "a policeman can ask a person to come voluntarily to a police station without first advising him of his rights" was correctly selected by 15%, but at the same time, 14% incorrectly assumed that Miranda prevented an officer from talking to a person about a crime without first informing him of his right to silence. This statement made no mention of a 'custodial' interrogation, or even of the fact that the individual was questioned regarding a crime which he was suspected of committing! One might conclude that since the percentages of selection for these items were so close, they indicate confusion regarding basic aspects of the Miranda rule, or that Champaign officers had a better understanding of what the rule requires than of what it permits. However, it should be noted that the rapid reading of complex survey questions often produces results
less accurate than those obtainable when each portion is evaluated in isolation. As expected, erroneous statements regarding the presence of an attorney, the validity of voluntary confessions, and the legality of wiretapping were rejected almost unanimously (selected by fewer than .7%).

In order to determine whether or not an individual has consciously complied with a rule, it is necessary to examine his perception of its meaning. Question three presented Champaign officers with four 'goals' of the *Miranda* decision, from which they were to select the most fundamental. Only one of the 'goals' was completely inapplicable -- the "total suppression of voluntary confessions." All of the remaining ideas were stressed in Chief Justice Warren's opinion, but the questionnaire paraphrased them as more and less theoretical restatements of a single proposition. Officers responding to question three preferred the 'middle road;' 45% selected "to insure the voluntariness of any self-incriminating statements made by the suspect" as the primary purpose of *Miranda*. 32% of the policemen chose the most theoretical goal ("To protect individuals from pressures and intimidation inherent in custodial interrogations), while 21% indicated that the decision was meant to "prevent police brutality and coerced confessions." Since the latter statement reflected negatively upon law enforcement practices, it was enlightening that so high a percentage of officers acknowledged it as a motivation for the Court's decision. It is possible that while individuals might or might not have agreed
with this 'goal' as a basis for Miranda requirements, they nonetheless realized that physical and psychological abuse was an integral factor in the Warren Court's analysis.

Question four attempted to ascertain the degree to which Champaign policemen felt Miranda affected their day-to-day work, and to learn their opinions regarding the usefulness of statements by the suspect in the solution of crimes. The fact that Miranda has been diluted by courts at all levels during the past fifteen years was expected to have a substantial impact upon responses to the query; "to what extent do you think a policeman's job would be easier if Miranda were relaxed or withdrawn?" It is interesting to compare the results of the 1981 Champaign survey with those obtained by Milner in 1968-69. When asked the extent to which Miranda had changed, or would change, their jobs, the officers of Kenosha, Wisconsin (population 63,000 in 1968) replied: 95

<table>
<thead>
<tr>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Great or Very Great Change</td>
<td>62.5%</td>
</tr>
<tr>
<td>Some Change</td>
<td>37.5%</td>
</tr>
<tr>
<td>No Change</td>
<td>----%</td>
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In contrast, Champaign policemen answered question four (see above) as follows:

<table>
<thead>
<tr>
<th>Easiness</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>Much Easier</td>
<td>5.0%</td>
</tr>
<tr>
<td>Somewhat Easier</td>
<td>40.0%</td>
</tr>
<tr>
<td>No Change</td>
<td>55.0%</td>
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</tbody>
</table>

For communities of comparable size, fifteen years would seem to have reversed the perceived impact of Miranda upon police work. A majority (55%) of Champaign officers felt that no change would occur, even if the rule was completely abolished, whereas in 1968-1969, 62.5% of Kenosha officers believed that
Miranda had greatly influenced their jobs! One must ask whether this shift is attributable to:

1. The narrowing of Miranda by the courts,
2. A failure of the decision's goals to permeate the bureaucratic structure of law enforcement,
3. The truth of the long-standing assertion that statements/custodial interrogations are not essential elements of effective police investigation.

The attitude of a source which first acquaints us with an act or idea oftentimes plays a significant role in the subsequent formation of our own. Applicable to such diverse subjects as racial sensitivity, sexual mores, and food preferences, this concept of "impression" reinforces the importance of authority figures (parents, teachers, employers, political and religious leaders) in shaping individual and public opinions. Therefore, in order to obtain an accurate picture of police attitudes toward Miranda, it may be beneficial to examine initial exposure to the rule (question five), as well as each officer's estimation of whether or not his source was neutral, positive, or negative in its orientation (question six).

It did not seem unusual that the findings of the current study should diverge from those obtained several years ago. Both 51% of the Kenosha officers in Milner's study, and 51% of Champaign policemen, identified police training sessions or conferences as a primary source of information about the Miranda rule. However, 15% of the Champaign officers indicated they had learned most about the decision from television, radio, or schools (high school or college), while
only 7.5% of the Kenosha respondents did so. This phenomenon is due, of course, to the fact that most Kenosha officers had finished school and entered the police force prior to the loosing of the "bolt from the blue." Interestingly, the percentage of both groups citing the Supreme Court opinion itself as their major informant was quite close -- 11% (Champaign) and 10% (Kenosha). 8% of those currently questioned were exposed to the decision by newspaper reports, and none had learned of the rule through contact with a local judge. The effects of time are apparent in responses of 11.5% and 14.4% (respectively) given for these categories in 1968-1969.

Regarding the attitudes of various sources toward Miranda, 43% of the Champaign policemen perceived their source as neutral, 25% as positive, and 15% as negative. A correlation between the attitude of the source and that of the officer may be evinced by the fact that among those indicating opposition to the Miranda rule (see question nine, infra.), 40% viewed their source as negative, 40% as neutral, 20% unsure. No one who disagreed with the rule felt his initial exposure had been a positive one. Of all officers questioned, 17% were unaware of their informant's position. This could reflect a simple inability to recall the precise manner in which the Miranda requirements were first explained, but it could also serve to reemphasize the very subtle role which such factors as tone of voice, posture, literary style, and authority of the speaker, can play in the process of attitude formation.
Yet another factor related to the implementation of *Miranda* warnings has been their ability to actually accomplish the goals associated with them. Regardless of whether or not law enforcement officials completely understood or agreed with these goals, *Miranda* requirements would be less stringently followed if officers felt that a reading of rights benefited neither the suspect nor his interrogators. Question seven asked Champaign department members if, in their opinion, persons who had been read their *Miranda* rights seemed to understand them. The clear consensus of the force (94%) was that suspects comprehend their options regarding the making of statements, the presence of counsel, etc. 2% indicated that individuals regularly requested a more detailed explanation of their rights, while only 4% felt persons in custody neither understood the warnings, nor asked for further information.

The preceding results are significant because they imply that most Champaign officers believed suspects to be fairly well-acquainted with *Miranda* rights. What the answers do not tell us, however, is whether or not officers believed the warnings as given by the police to be the primary source of that understanding. Perhaps (as later officer comments will indicate) policemen felt that in today's "Adam Twelve" society, all persons are aware of their rights to some degree. Such a conclusion would tend to overlook a *Miranda* goal of particular concern to Chief Justice Warren: that a person interrogated in a custodial environment be made
fully aware that he possessed rights 'then and there,' -- a fact made that much more meaningful if the reassurance came from his interrogators. It would be presumptuous to assert that a presupposition by policemen as to a suspect's comprehension of his constitutional rights automatically leads to a perfunctory reading of the *Miranda* warnings, but we should at least bear in mind the numerous instances (under the best of conditions) in which all of us have stated "I understand," when we did not!

At work and at play, individuals ordinarily abide by rules not of their own creation. The acceptance of limitations imposed by "democratically" selected superiors has become so deeply ingrained in our culture, that we often fail to consider whether or not a regulation is truly beneficial in a particular case. If the decree has issued from an 'authoritative source,' we simply acquiesce. Most Americans would not run the red light at a deserted intersection. Has the *Miranda* rule become a 'given' for police officers? If most believe that the rule should be followed, would their reasons for doing so reflect a pragmatic, philosophic, or deferential/legalistic outlook?

Question eight of the Champaign survey set out to discover why policemen felt they must adhere to the *Miranda* requirements, regardless of personal perceptions of efficacy. It is notable that none of the respondents felt the rule could be disregarded; all agreed, for various reasons, that police should abide by the rule. The response most often
selected (45%) was a pragmatic assessment of current practices; "the decision should be followed because otherwise courts might undo police work by throwing out evidence." Reflecting a more philosophical approach, 16% assented to the notion that *Miranda* requirements helped to "counteract the disorientating effects of custodial interrogation." The two items remaining presented a legalistic approach, implying that the authority of the Supreme Court was the primary factor favoring the enforcement of *Miranda*. However, one of these choices urged deference to Supreme Court judgements in cases involving the protection of a criminal suspect's constitutional rights (relativistic -- 12%), while the other stressed the "Supreme"/interpretive power of the Court as sufficient justification for *Miranda*'s acceptance by law enforcement personnel (absolutist -- 11%).

16% of the Champaign department took advantage of the ever-popular "Other" response in answering question eight. Comments ranged from the philosophic to the pragmatic. Representative of the former were remarks such as:

- It (*Miranda*) should be followed because it is fair to all concerned.
- The decision reflects rights we all have, and should keep.

An impact-oriented approach was evinced by the following:

- *Miranda* forces the police to do a more thorough and accurate job.
- The rule should be followed to ensure rights, but the exclusionary rule should be dropped to allow other evidence to be used if rights are not given.
As always, the pragmatists made themselves perfectly clear. Miranda is just one of the rules of the game.

The decision should be followed because it is the current, standing position of the Supreme Court. I believe it is an overly protective measure... brought about by a few instances of poor police work.

When, in 1968-1969, Milner asked the policemen of Kenosha, Wisconsin, "What is your personal opinion of the Miranda rule?", nearly 63% responded with hostility. The attitude of a majority of Champaign officers was decidedly different. Despite some expression of doubt regarding Miranda’s ability to achieve its "purpose(s)," 74% of the men voiced approval of the warnings; 19% of these stated that they "strongly approved." Only 11% strongly disapproved. As previously mentioned, the percentage of officers with college degrees was significantly higher for the 1981 Champaign force (54.2%) than for the 1968 Kenosha force (24.8%). Therefore, an attempt was made to establish a correlation between the level of education attained, and a positive perception of the Miranda doctrine.

Of Champaign officers with college degrees, 79% accepted the rule, while 21% rejected it. Men with some college background favored the rule by a margin of 72% to 28%. 70% of the high school graduates responded favorably; 30% unfavorably. These results seem to indicate a direct (albeit marginal) relationship between level of education and attitude toward Miranda, although the increasing rate of
acceptance was incremental, and the sample small. Nevertheless, a nine percentage point difference between the approval rates of college and high school graduates stands as a significant empirical outcome, which must be addressed on its own terms. It is certainly possible that environmental elements unique to institutions of higher learning could instill a greater respect for abstract rights and liberties. However, (and unfortunately for those who pray that their surveys will yield 'neat and clean results') single- causation is the exception, rather than the rule. One might attribute a spread of % to education alone, but what about the factors which en' oled/motivated an individual to obtain his education? Home and family life, peer relationships, social and economic status -- all bear heavily upon our acceptance or rejection of everything from mini-skirts to the death penalty. Although the better-educated officer might be more receptive to the theoretical underpinnings of Miranda, his official duties require that he evaluate them in the light of his own experience. If the rule regularly worked injustice rather than justice, he, as well as his brethren with high school diplomas, would be likely to reject it.

At the beginning of this chapter, it was acknowledged that standards and values urged by law enforcement bureaucracies and the public at large often vie for supremacy with those expressed in the Miranda decision. Much of the Champaign survey concentrated upon the 'uncomfortable' position of the police officer as a servant of two masters: heeding both
the Supreme Court's commands regarding the rights of criminal suspects, and the orders of immediate superiors regarding the efficient solution of crimes. Seeking a somewhat different approach, the final question of the study emphasized the impact of community pressure upon a policeman's perception of the *Miranda* rule. What was the officer's view of the public's view of *Miranda*?

Whereas 74% of the Champaign respondents indicated personal approval of the warnings, only 39% believed that members of their community were similarly inclined. 6% suspected that the general populous was hostile toward *Miranda* requirements, and 15% felt most citizens were simply unaware of them (an interesting contrast to the overwhelming number of officers who believed that suspects were generally aware of their rights!). The perception of public apathy evinced in the officers' responses to question one (greatest problem in police work -- lack of community support/cooperation), surfaced again, as 40% of the men stated that the community, although aware of the rule, did not care about its implications for police or suspects.

From these statistics, one is tempted to hypothesize that an officer's attitude toward *Miranda* is not greatly influenced by public opinion. It seems natural that bureaucratic sentiments should hold greater sway over an employee's mindset. However, it must not be forgotten that the goal of 'efficiency' advocated by police superiors is directly related to the raison d'etre of local police forces;
protection of the community. Officers, well-aware of public disinterest in the intricacies of police work, could no doubt predict what would occur if any factor (i.e. strict adherence to a Supreme Court decree) significantly impaired the ability of law enforcement personnel to 'justify' their existence.

The basic thrust of the *Miranda* decision -- a concern for the preservation of individual autonomy and dignity in the face of ever-increasing state power -- has been a harmonious chord, sounding amidst the cacophony of debate regarding how best to achieve the desired end. In a similar manner, members of the Champaign police force who chose to write personal comments about *Miranda* contributed a unifying theme to the entire survey. The opinions expressed were diverse, but they were also uniformly articulate, honest, well-informed, and provided a depth of insight unavailable from any textbook compilation of "police attitudes." There could be no finer conclusion to this study than the words of the officers themselves.

The officers were invited to make any comments they wished about the *Miranda* rule, or its effect on their work, and an astonishing number accepted the offer. It would be impossible to include all of the remarks worthy of attention (twelve officers wrote not merely paragraphs, but 'mini-essays' on various aspects of the decision), but I have attempted to present those that briefly and clearly express ideas most often touched upon by others.
Many members of the Champaign force speculated as to why the Warren Court decided Miranda as it did. The reality of law enforcement abuses was acknowledged as a motivating factor, but the protection of defendants' rights was not disparaged vis-a-vis the need for community protection. Representative of remarks concerning the rationale behind Miranda were the following:

...A general lack of controls on police activity permitted the abuses that resulted in the Miranda v. Arizona case. Its implications are misconstrued, and often improperly applied. The fact is that for some thirty years prior to the Escobedo case, police had used (interrogation tactics which) were in most cases approved by society. However, the swing in attitudes from a need for "Law and Order" to the protection of individual rights...led to the landmark cases. Note that Escobedo, White, and Miranda...reflected the Court's shift toward a...loose-constructionist attitude. Each of those cases dealt with...gross procedural abuses. A criminal should not be protected from his own stupidity. Voluntariness is still the key.

Miranda came to be because of the tactics of some ignorant...police officers. If a suspect is going to confess, Miranda makes no difference. When I went to...school, we were trained that you can give the Miranda warnings in such a way that the suspect will always waive....

Several officers gave perceptive commentaries on the implications of Miranda for police work, noting the decisions major operational drawbacks, and suggesting changes which might make the rule less burdensome, or more effective.

I believe it is right to advise suspects, but some of the procedure is not necessary, i.e. re-advising of rights each time a new person talks to the sus-
pect. It is too easy for a suspect to say he didn't understand his rights after he's signed a form, and they were explained to him. Basic rights should be taught in school.

...The largest problem facing the police is not (any)...decision of the U.S. Supreme Court, but the incompetence of lower courts, prosecutors, police chiefs, and instructors in understanding them. Few police officers really understand when and where Miranda applies. This is because of the incompetent instruction at the University of Illinois Police Training Institute...and other such schools. (Officers) use Miranda in far more situations than they have to, with negative results. Miranda will never stop police misconduct. In the past, if a confession was forced...a police officer could lie and the testimony would be accepted. He can still lie. Big deal. In short, the problem with law enforcement today is not a result of the courts, but (of) law enforcement itself.

Numerous responses reflected the idea that in order to be truly effective, the Miranda warnings must be supplemented by a better understanding (not just awareness) of constitutional rights by all Americans. Such a concern was evident in the statement that,

Generally speaking, society has a poor understanding of the Miranda rule. Until better teaching of the Miranda decision, as well as the Bill of Rights, is achieved, being advised of these rights (sic) must continue.... Teaching the criminal justice system, Constitution, and Bill of Rights in public schools must improve.

While reiterating the previously mentioned themes of rationale, practical effects, and alternative methods of protection, one Champaign policeman provided a unique insight into the potential impact of media upon his job. At the same time, he articulated a belief shared by many
of his fellows; that the *Miranda* decision was an unrealistic response to extremely obvious incidences of police abuse.

...Under the circumstances at the time of the *Miranda* decision, there were many documented cases of police abuse regarding interrogation tactics. Although I feel a suspect should be treated fairly, I feel the Supreme Court overreacted in its attempt to "right" the "wrongs" of past indiscretions. My own experience has shown that people are not generally aware of *Miranda's* proper application. Alot of people demand that their rights be read to them -- even when the officer has no intention of questioning them. This, I assume, has come from watching too many *Adam-12* episodes, in which a person is arrested, and immediately advised of his rights. He is then whisked away in a squad car...

The initial paragraphs of this thesis prefaced an analysis of judicial contributions to a narrowing construction of *Miranda v. Arizona* with an examination of the concepts of "Law and Order" and "Individual Rights." In conducting a survey of Champaign police officers, an effort was made to understand the position of those whom society holds accountable for striking a balance between these goals on a day-to-day basis. Having completed the research and field work for this study, perhaps the most significant conclusion I have reached is that protection of the community and protection of the individual cannot be dichotomized; both are integral aspects of Justice. What is more, they are integral aspects of one another. If the rights of individuals are flagrantly violated, even in
an attempt to serve short-range goals of law and order, the
community is not truly 'protected.' The language of the
Bill of Rights clearly acknowledges what many seem to have
forgotten; a community is composed of individuals, and any
blow to the latter eventually redounds upon the former. The
man who chides that *Miranda* protections occasionally free
the guilty may someday have personal cause to be thankful
that they occasionally free the innocent.
FOOTNOTES


7Ibid., p. 470.

8Lockhart, Kamisar, and Choper, Constitutional Rights, p. 249.


29. Ibid., pp. 11-12.


33. Ibid., pp. 16-17.

34. Ibid., op. cit.

35. Ibid., p. 32.

36. Lockhart et. al., Constitutional Rights, pp. 189-192.

37. Zagel, Confessions, p. 28.


39. Ibid, p. 89.

40. Zagel, Confessions, p. 23.

42 Stephens, *Confessions of Guilt*, p. 149.


44 Lockhart et. al., *Constitutional Rights*, pp. 283-284.

45 Zagel, *Confessions*, pp. 34-35.

46 Ibid., p. 31.


51 Ibid., pp. 43-44.

52 Hall et. al., *Modern Criminal Procedure*, pp. 667-668.

53 Milner, *Court and Local Law Enforcement*, p. 19.


55 Zagel, *Confessions*, p. 45.

56 Ibid., pp. 46-48.


64. Medalie, *From Escobedo to Miranda*, pp. 227-228.


66. *Criminal Justice and Burger Court*, p. 87.


69. Ibid., pp. 67-69.

70. Hall et. al., *Modern Criminal Procedure*, pp. 660-661.

71. *Criminal Justice and Burger Court*, p. 88.


Zagel, *Confessions*, p. 78.

Lockhart et. al., *Constitutional Rights*, p. 148.

Ibid., pp. 294-296.

Zagel, *Confessions*, p. 81.

Burger Court Cases: 1969-1977:
- Oregon v. Mathiason (1977)
- U.S. v. Mandujano (1976)
- Doyle v. Ohio (1976)
- Lego v. Twomey (1972)
- Baxter v. Palmigiano (1976)
- Harris v. New York (1971)
- Oregon v. Hass (1973)

Also: *Michigan v. Mosley* (96, S. Ct., 1975):
Suspect was warned and claimed right to remain silent. Several hours later he was questioned about a separate offense, having been rewarned by a different officer.

Holding: There is no per se rule against second attempts to question, in the light of the time lapse between interrogations, the second warning, and the introduction of new subject matter. (Zagel, *Confessions*, p. 64).

Burger Court, p. 91.

Summary of Supreme Court Decisions, 1978-1979,


Ibid., p. 382.

Advanced United States Supreme Court Reports,
Lawyer's Edition, Vol. 64 L. Ed. 2nd, No. 3, June 76, 1980,
84 Medalie, *From Escobedo to Miranda*, p. 209.


86 Medalie, *From Escobedo to Miranda*, p. 221.


91 Milner, *Court and Local Law Enforcement*, p. 18.

92 *See Appendix*, p. __

93 Total Response Rate for Milner's Kenosha, Wisconsin Study: 54%. Milner, *Court and Local Law Enforcement*, p. 247.


Dear Police Officer:

Most people are aware that the police perform a very important function in our complex society, and that they are being asked to do more and more. As a part of my undergraduate thesis for the Political Science Department of the University of Illinois, I hope to find out your own views on one aspect of this subject. You are the best qualified -- and too often the least asked -- person to give your opinion on these matters.

Therefore, I am asking you to answer the short questionnaire which follows. Before you do, please note three important facts:

1. All of your answers will be completely ANONYMOUS. Please do not place your name on any portion of the questionnaire.
2. I have consulted your Chief about this questionnaire, and he has no objection to its completion by any member of this department.
3. This is NOT a test. There are no correct or incorrect responses. Simply answer the questions using your own general knowledge and opinions.

Thank you very much for interrupting your busy schedule to furnish this information. Along with this form, you should receive a pre-stamped return envelope addressed to Karla A. Kraus. Please mail your completed questionnaire directly to me at your earliest convenience.

Sincerely yours,

Karla A. Kraus
605 S. 4th, Apt. 204
Champaign, IL. 61820
QUESTIONNAIRE

1. Which of the following are the greatest problems facing you as a police officer? (Please rank items from #1 -- the greatest problem-- to #7 -- the least significant problem).

- Increasing Crime Rate
- Bad Working Hours
- Limitations Imposed On Your Job By Court Decisions
- Low Moral Standards In Your Community
- Lack of Public Support / Cooperation
- Insufficient Salary
- Dangers of Job

2. The Supreme Court case of Miranda v. Arizona resulted in a rule about police interrogation procedures. Describe this rule as best you can by placing an X next to all of the following statements which you feel apply to the Miranda rule.

- A person in custody must be advised of his right to remain silent.
- A person in custody must have an attorney present, whether he requests one or not.
- Confessions may no longer be used as evidence.
- A person in custody must be told that anything he says can be used against him in court.
- A policeman cannot talk to a person about a crime without informing that person of his right to remain silent.
- Wiretapping is no longer permitted.
- Indigent suspects have a right to an attorney, and one must be appointed by the county.
- Voluntary confessions are usually not a legal source of evidence or information.
- A policeman can ask a person to come voluntarily to a police station without first advising him of his constitutional rights.

3. The major 'goal' or purpose of the Miranda warnings, in your opinion, was to:

- Prevent police brutality and coerced confessions.
- Insure the voluntariness of any self-incriminating statements made by a suspect.
- Prevent voluntary confessions altogether.
- Protect individuals from the pressures and intimidation which is often inherent in a custodial interrogation.
4. To what extent do you think a police officer's job would be easier if the Miranda requirements were relaxed or withdrawn?

- Much Easier
- Somewhat Easier
- No Significant Change

5. From whom/where did you first learn about the Miranda rule (first source of detailed information)?

- Television/Radio
- Newspaper
- Reading the Supreme Court Opinion
- Local Judge
- Police Training School/Conference
- School (High School or College)

6. Did the source which first acquainted you with the Miranda rule seem to think that Miranda was:

- A Good Idea
- Source was Neutral
- A Bad Idea
- Do Not Know

7. In your opinion, do persons in custody who are read their Miranda rights generally seem to understand them?

- Yes
- They usually request a more detailed explanation of their rights.
- No, and they do not ask for further information.

8. Some people feel that the Miranda decision hampers law enforcement, and should not be followed by police. Others say the decision should be followed. Choose one of the following statements, which best summarizes your own opinion:

- Police departments should not follow the rule because it gives too much assistance to the suspect.
- The decision should be followed, because otherwise courts would undo police work by throwing out evidence.
- The decision should be followed because the Supreme Court is in the best position to know how to protect the constitutional rights of criminal suspects.
- The decision should be followed because only the Supreme Court has the right to decide what the law is.
The decision should be followed because it helps to overcome the disorienting effects which custodial interrogation might have on a suspect.

9. What is your personal opinion of the Miranda rule?
   ___ I strongly approve of the rule.
   ___ I approve of the rule.
   ___ I disapprove of the rule.
   ___ I strongly disapprove of the rule.

10. In your own opinion, what do the people in your community think about the Miranda requirements?
   ___ They strongly approve of them.
   ___ They strongly disapprove of them.
   ___ They approve of them.
   ___ They disapprove of them.
   ___ They are generally unaware of the rule.
   ___ They are aware of the rule, but do not care about its implications for police officers or suspects.

SOME GENERAL INFORMATION (Still Confidential):

1. What is your rank?

2. How long have you been on the Champaign Police Force?

3. How old are you?

4. Please indicate your level of education:
   ___ High School Graduate
   ___ High School, Plus Special Police Training, But No College
   ___ Some College, But No Special Police Training
   ___ Some College, And Some Special Police Training
   ___ College Degree, But No Special Police Training
   ___ College Degree, And Some Special Police Training

***If you wish, please make any other comments about the Miranda rule, and its impact on your work. Why do you think the Supreme Court decided the case as it did? As a working officer, what do you feel is the best way to protect a suspect’s rights, while at the same time protecting society from criminals? Do you feel the Supreme Court was unrealistic when it established the Miranda warning requirements? Please use the back of this sheet if necessary.
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<td>Buckner Corp. v. NLRB</td>
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ADDENDUM

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