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Interrogations in New Haven: The Impact of *Miranda*

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I. Introduction*

The Supreme Court decision in *Miranda v. Arizona*[1] has been a touchstone of debate over the rules protecting the rights of suspects. The debate, begun even before *Miranda*,[2] ranges from courts to police academies, from law reviews to popular magazines.[3] Myriad claims regarding the likely impact of the ruling on law enforcement and "crime in the streets," are bandied about. Although the controversy has been singularly lacking in facts to support any position,[4] some critics of the decision are sufficiently upset to recommend a constitutional amendment reversing the decision.[5]

Impressed by the need for systematic answers to the questions and claims cast up by the controversy, we undertook a study of the implementation and effect of *Miranda*. The core of the effort involved stationing observers at the New Haven, Connecticut, police headquarters

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1. 384 U.S. 436 (1966). The decision actually covered three cases besides *Miranda*: Vignera v. New York, Westover v. United States, and California v. Stewart.

2. Many of the earlier arguments are summarized in Escobedo v. Illinois, 378 U.S. 478 (1964), and in *Developments in the Law—Confessions*, 79 HARV. L. REV. 935 (1966). *See also* Inbau, *Police Interrogation—A Practical Necessity*, 52 J. CRIM. L.C. & P.S. 16 (1961); *A Forum on the Interrogation of the Accused*, 49 CORNELL L.Q. 382 (1964); Sobel, *The Exclusionary Rules in the Law of Confessions*, 154 N.Y.L.J. 1, col. 4, Nov. 22, 1965; Sutherland, *Crime and Confession*, 79 HARV. L. REV. 21 (1965); Kamisar, *Equal Justice in the Gatehouses and Mansions of American Criminal Procedure*, in CRIMINAL JUSTICE IN OUR TIME I (A. Howard ed. 1965). Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 CALIF. L. REV. 929 (1965).

3. *See, e.g.*, TIME, Mar. 3, 1967, at 49; TIME, Nov. 11, 1967, at 79; NEWSWEEK, June 27, 1966, at 21-22; U.S. NEWS AND WORLD REPORT, June 27, 1966, at 32-36; LIFE, June 24, 1966, at 37; Kamisar, *A Dissent From the Miranda Dissents*, 65 MICH. L. REV. 59 (1966); Warden, *Miranda: Some History, Some Observations and Some Questions*, 20 VAND. L. REV. 39 (1966); *The Supreme Court, 1965 Term*, 80 HARV. L. REV. 91, 201 (1966).

4. This has been recognized by many of the participants in the controversy. *See, e.g.*, Brief for New York as Amicus Curiae at 21-24, Miranda v. Arizona, 384 U.S. 436 (1966). *See also Developments in the Law—Confessions*, 79 HARV. L. REV. 935, 945 (1966), opining, characteristically, that the factual questions are "unanswered and perhaps unanswerable."

5. *See, e.g.*, N.Y. Times, Aug. 15, 1966, at 26, col. 2; N.Y. Times, Aug. 6, 1966, at 9, col. 2.

around the clock for an eleven-week period during the summer of 1966.[6] These observers witnessed all the interrogations conducted by the police during this period. In addition to the observations, interviews provided additional data for our study of the likely impact of *Miranda*, supplying the perspectives of the various participants in the criminal process—the detectives, prosecutors, defense lawyers, and suspects themselves.

The project attempts, essentially, to evaluate the claims that interrogations are inherently coercive and that *Miranda* will substantially impede successful law enforcement.[7] Four general questions are explored: What is the interrogation process like? What has been the impact of *Miranda* on the suspect's willingness to cooperate? How important are interrogations for successful solution of crime? Finally, what would be the impact of a lawyer in the stationhouse? The practical problems of implementing the decision are explored only briefly. No attempt is made to defend or attack the value judgements underlying the positions involved.[8] For some people, our approach is probably irrelevant, although, we hope, interesting. *Miranda* can be supported without any knowledge of the potentially adverse effects of the decision: some commentators argue that the constitutional bar against compulsory self-incrimination is absolute and decisive;[9] others contend that to promote overall justice in the criminal process we must provide warnings to suspects, regardless of impact.[10] However, most critics and

6. New Haven was selected as the locale because of its proximity and the extraordinary interest shown in the project by New Haven police authorities.

7. The decision raises questions about the constitutional basis of the holding, the competence of the Court for such specific rule-making, the values underlying the decision, the effects the decision will have on law enforcement, and the problems of implementation.

The approach of this study is directed to the positions taken by those critics and supporters of the decision whose arguments are based on factual issues, since these are the only testable ones. While supporters of *Miranda* rely primarily on constitutional and value arguments, they also claim that interrogations are coercive and unnecessary. *See* 384 U.S. at 436-60; N. SOBEL, THE NEW CONFESSION STANDARDS (1966).

The critics claim *Miranda* will severely hamper law enforcement. This position is set forth in the brief for government in Westover v. United States, 384 U.S. 436 (1966), at 17: "We start from the premise that it is essential to the protection of society that law-enforcement officials be permitted to interrogate an arrested suspect." It was adopted by the dissenters in *Miranda*: "There is every . . . reason to believe that a good many criminal defendants who otherwise would have been convicted . . . will now . . . either not be tried at all or will be acquitted . . . ." 384 U.S. at 542 (dissenting opinion of White, J.). This position has been advocated by many commentators. *See* note 151 *infra*.

8. Various value positions underlie the claims of both critics and supporters. For example, the supporters claim interrogations without warnings threaten human dignity and that a system without such safeguards is unjust. The critics, on the other hand, assert that law-abiding citizens are the primary people about whom to be concerned and that they should not be denied protection in order to safeguard rights of "known" criminals.

9. This position is inherent in the majority opinion in *Miranda* 479. *See also* E. GRISWOLD, THE FIFTH AMENDMENT TODAY 75 (1955).

10. Weisberg, *Police Interrogation of Arrested Persons: A Skeptical View*, in POLICE

supporters alike rely on factual as well as value positions. This study attempts to provide some data for their discussion.

Since the setting of the study and our methods of obtaining evidence are crucial to the validity of our findings, and to the degree to which they can be generalized, we begin by describing New Haven and outlining our methodology. Our principal findings are presented in four sections.

First, we present a picture of the interrogation process—primarily from the perspective of our observers—and investigate the claim that "coercive" practices are frequent in interrogations. We conclude that, from the perspective of a law student observer, interrogations in New Haven were typically low-pressured, but in a number of cases police conduct violated the norms established in *Miranda*.

We next examine the effect of the *Miranda* warnings on the suspects' behavior. In a primarily statistical analysis, we conclude that there is no evidence indicating that the warnings given this summer caused many suspects to refuse to talk or ask for counsel. Our observations suggest that from the vantage point of the suspect there was probably substantial pressure to confess, and that the *Miranda* warnings, as given, did not alleviate the pressure.

The third principal section explores the question of the need for interrogations. We examine the importance of interrogations for solving crimes, catching accomplices, and clearing other crimes. Relying on both our own and the detectives' evaluations, and accepting police practices as they now are, we conclude that questioning was necessary to solve a crime in less than ten percent of the felony cases in which an arrest was made and that *Miranda* may have adversely affected a necessary interrogation for only six of the 127 suspects whose interrogations we witnessed this summer.

The fourth main part of our study discusses the impact of *Miranda* on the role of the defense attorney. Based primarily on interviews with 55 New Haven lawyers, this section concludes that *Miranda* will probably not bring many lawyers into the stationhouse, that those who come will generally recommend silence to the client, and that some suspects would benefit by such immediate access to an attorney.

In addition to these four principal sections, we discuss briefly the effect of the decision on the attitudes of the New Haven detectives.

POWER AND INDIVIDUAL FREEDOM 153, 179-80 (C. Sowle, ed., 1962). *See also* Escobedo v. Illinois, 378 U.S. 478, 488-89 (1964) (Goldberg, J.); Z. CHAFEE, THE BLESSINGS OF LIBERTY 186-88 (1956).

In all of these sections we attempt to present our data and analysis without interjecting our opinions about the process. In the conclusion we discuss from our own perspective the various issues raised in the previous sections and make recommendations for changes in the system.

Copies of our questionaires, a detailed methodological description, a discussion of other empirical studies about confessions, and an analysis of the people who confessed are appended to the study.

II. The Setting

A. *The City*

New Haven, Connecticut, is a middle-sized American city. With 152,000 inhabitants, placing it 81st in population nationally, this New England industrial city resembles in size 68 cities with between 100,000 and 200,000 people.[11] Sixteen per cent of the population is non-white. The foreign-born population is relatively a large—11.2 per cent.[12] The median income and education levels are about average for cities of its size.[13]

Aside from the presence of Yale University, the chief factor setting New Haven apart from other similar-sized cities is a massive urban renewal effort which has eliminated many of the worst slum areas. In addition, an extensive, well-financed anti-poverty community action program—Community Progress, Inc.—channels money into programs to reduce juvenile delinquency.

The crime rate in New Haven is low and has remained relatively

11. U.S. Bureau of the Census, *U.S. Census of Population: 1960*, Vol. I, *Characteristics of the Population, Pt. A, Number of Inhabitants*. Table 28—Population of Cities in the United States and the Commonwealth of Puerto Rico Having, in 1960, 100,000 Inhabitants or More: 1790 to 1960, at 1-66. For a fuller demographic comparison of New Haven with other cities see App. G.

Due to the great variation among cities, such summarizing data can only give a very general picture. It is possible that New Haven is typical of many cities not in this size range as well.

12. U.S. Bureau of the Census, U.S. Census of Population: 1960, Vol. I, *Characteristics of the Population*, Pt. 8, Connecticut. Table 77—Nonwhite Population—Social Characteristics and Employment Status, for Selected Standard Metropolitan Statistical Areas, Urbanized Areas, and Urban Places and Selected Towns of 10,000 or more: 1960, at 8-150, and Table 32—Summary of Social Characteristics for Standard Metropolitan Statistical Areas, Urbanized Areas, and Urban Places of 10,000 or more: 1960, at 8-75.

13. U.S. Bureau of the Census, U.S. Census of Population: 1960, Vol. I, *Characteristics of the Population*, Pt. 8, Connecticut. Table 76—Income in 1959 of Families and Persons, and Weeks Worked in 1959, For Standard Metropolitan Statistical Areas, Urbanized Areas, and Urban Places and Selected Towns of 10,000 or More: 1960, at 8-141-147, and Table 73—Education, Employment Status, and Selected Labor Force Characteristics of the Population, For Standard Metropolitan Statistical Areas, Urbanized Areas, and Urban Places and Selected Towns of 10,000 or More: 1960, at 8-120-126.

constant over the past few years.[14] The incidence of major crimes is particularly low: in 1965 arrests were made for only 2 murders, 19 armed robberies, 9 forcible rapes and 42 major narcotics offenses.[15]

Since a disproportionate amount of the nation's crime is concentrated in the very large cities, the temptation is strong to equate the "crime problem" in this country with that existing in, say, New York. Actually, New Haven and its law enforcement problems are probably typical of a large number of cities. The crime patterns are similar to those of many cities, and the patterns of police training, investigation and activity are also apparently typical.[16] If cities like New Haven present the normal problems of law enforcement which characterize most of the nation, it is important to understand the impact of Supreme Court decisions such as *Miranda* in these cities. Whether the generalizations of our study apply to other cities can, of course, only be determined by empirical investigation.

B. *The Department*

New Haven's police department employs 408 men (other than civilians) or about 2.7 policemen for every 1,000 citizens.[17] This ratio is among the highest in the nation for cities with populations between 100,000 and 250,000, and is considerably higher than the average for all cities in New England.[18]

During the observation period, the Department was organized into six separate operating bodies, the uniformed patrolmen, the Communications Division, the Children's Bureau, the Traffic Division, the Special Services Division (vice squad), and the Detective Division.

Interrogations were conducted by the Detective Division and the Special Services Division, which had 35 and 11 men respectively. The former was in charge of investigations, arrests and interrogation for all felonies in the city except narcotics, sex, and gambling offenses, which were the domain of Special Services.

14. Comparative statistics are extremely unreliable in the area of crime reports. Almost every department uses a different reporting method. The only comparable statistics are for murders and forcible rapes and we base our comparison on these figures.

15. NEW HAVEN POLICE DEPARTMENT, ANNUAL REPORT FOR 1965, 10-12. The column erroneously labelled "1964" should be labelled "Number of Crimes." The 43 rapes listed include 34 non-forcible statutory rapes.

16. *See* PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 36-37, 57 (1967) [hereinafter cited as PRES. COMM'N: POLICE]; N.Y. Times, July 10, 1967, p. 21, col. 1.

17. FBI, UNIFORM CRIME REPORTS FOR THE UNITED STATES—1965, 156 (1966).

18. *Id.* 150.

C. *The Day-to-Day Activities of the Detectives*[19]

Our study of the impact of *Miranda* should be placed against the backdrop of the day-to-day activity of the New Haven police. During our observation of the Detective Division, the men on the day shift reported to the station at about eight o'clock; for about an hour the captain read off all the complaints from the previous day, the license plates of all stolen cars, and descriptions of wanted and missing persons. Each team of two men then spent its day investigating the cases assigned it, usually breaking-and-entering cases from the previous day. Occasionally the detectives might devote the better part of a day to one serious case; most of the time, though, their investigative activities could be finished early, and the rest of the shift would be spent cruising around the city on patrol.

The evening and night shifts, on the other hand, virtually never made any investigations. After spending an hour or so at the stationhouse cleaning up paper work, pasting teletype messages into a log book and reading the day's reports, they went out to patrol the city. Whenever they arrested someone, usually as a result of a call from a patrolman, they returned to the station for booking, fingerprinting, and whatever interrogation was necessary.

The Special Services detectives patrolled less aimlessly than those from the Detective Division, primarily because the offenses they dealt with were concentrated in a few known areas of the city. Between five and six p.m., several of them often went looking for deviates at well-known trysting places. On weekend nights, the entire squad left headquarters at about ten o'clock to look for illegal gaming, sex, and sales of liquor. As in the Detective Division, routine patrols were interrupted by interrogations. When a suspect was arrested and brought to the stationhouse, two detectives would also return to conduct the questioning.[20] The detectives spent the bulk of their time responding to violations they themselves witnessed or answering citizen complaints. Most arrests occurred very shortly after the offense occurred; arrests following extensive investigations were rare. Almost all arrests were based on a positive indentification of the suspect by a victim or witness.

We believe that many of our findings regarding the need for inter-

19. This is, of course, a general description, and substantial variation from these patterns may occur.

20. While there is little reported evidence about the procedures in other police departments, the members of the New Haven force say that their activities are typical of those in other forces with which they are familiar. *See also* PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY, ch. 4 [hereinafter cited as PRES. COMM'N].

rogations can be explained by this pattern of enforcement, which, based on the reports of the President's Commission on Law Enforcement and Administration of Justice, apparently predominates in almost all cities.[21] Thus, our findings may well be valid for metropolises as well as smaller cities.

III. Sources of Data and Methodology

The prime purpose of our study, as indicated above, was to evaluate the claim that *Miranda* would hamper law enforcement. Our methods reflect this objective: we concentrated our efforts on obtaining data about the need for interrogations and the likely impact of *Miranda* on these needs. Consequently, many other aspects of the process were not explored.

The foundation for this study was our observers' reports of the interrogations witnessed last summer. To supplement this data and round out our knowledge of police practices in New Haven, we interviewed at various times the detectives, defendants who had been interrogated, and local attorneys.[22] We also examined the police prosecution files and attended the police training school.

This section describes in general terms the procedures followed in collecting this data and the techniques used in analyzing it. A detailed discussion of the methods employed in designing our interviews, the techniques used in training our interviewers and observers, and the statistical procedures followed in analyzing the data is presented in Appendix H.

A. *Observations*

Since the project was conceived before the *Miranda* decision, trial observations began two weeks prior to its announcement.[23] However, a three-week period was planned for testing and revising the observation forms; thus, the period for which we report data began one week after the *Miranda* decision.

Two students were in the police station at all times. They spent most of their time in the detective division, waiting for suspects to be brought in for questioning. Whenever a suspect was brought in, our observer was present in the interrogation room. The suspects were not told that

21. PRES. COMM'N, vi, 96-7.
22. The questionnaires used in these interviews are found in Apps. B through F.
23. In anticipation of the *Miranda* decision, we had decided to explore the question of how important interrogations were, hopefully to provide some data to the Court. The decision, of course, led us to change our focus.

the observer was a student and, as far as we can tell, most thought we were detectives.[24] After the questioning the observer completed a questionnaire recording the events of the interrogation (See Appendix A for questionnaire.)

Since activity is often desultory at the station,[25] the observers spent much of their time talking with the detectives, learning about their work and attitudes. The information gathered from these discussions was reported in papers written by the observers at the end of the summer.

B. *Police Interviews*

After most interrogations observed, the detectives involved were interviewed to ascertain their opinion of the importance of the interrogation. In addition, six months after observations ended we interviewed 25 of the detectives to probe their opinions about the effect of *Miranda*.[26] By this time they had adjusted to the decision and their attitudes should have solidified. These latter interviews, which averaged approximately three hours each, were generally conducted in the detectives' homes, on their own time. The detectives, extremely cooperative, seemed anxious to discuss their opinions with us.

C. *Lawyer Interviews*

We also interviewed 55 New Haven lawyers to discover how they thought *Miranda* would affect their role.[27] These attorneys had tried virtually all of the criminal cases in the Superior Court—which handles the more serious felonies—between February and June 1966. They were also asked to evaluate the importance of a confession in the specific cases they had tried. These interviews, conducted during both the summer and the school year, generally lasted about an hour and took place

24. Occasionally detectives mentioned that we were students. In two cases this appeared to give the suspect additional fortitude. On the other four occasions the suspects apparently ignored our presence.

25. There were generally only one or two interrogations each day. Often there were none on the evening shifts. Thus, there was considerable time for discussion.

26. In some cases the detectives did not have time after the interrogation, or it was the end of a shift and we were therefore unable to obtain interviews. When possible interviews with these detectives were held the next day. In the later set, we interviewed almost all of the detectives who had been active during the summer. Some of the 46 detectives do no interrogating and they were not interviewed. Several others were unavailable at the time of our interviews. We have no reason to suspect their attitudes would have differed greatly from those of the detectives we interviewed.

27. All of the attorneys who specialize in criminal law were interviewed, some twice. A few other lawyers who handled cases during this period felt that they could not ethically reveal any information without their clients' consent. Since we were unable to locate most of their clients we did not obtain interviews from these attorneys.

at the attorney's office. When we were unable to arrange an interview, we mailed a questionnaire to the attorney who completed it himself.[28] In addition to these interviews, we had several general interviews with the three State's Attorneys connected with the New Haven Superior Court.

D. *Police Files*

We were given access to the detectives' reports of all cases handled by the division. We examined two hundred of these cases, randomly selected from the felony cases handled in 1960 and 1965, as well as the reports for all cases last summer. These reports contain the complaint, all statements by complainants, witnesses, and suspects, a complete description of any investigation done by the detectives, and the disposition of the case. The information from these files provided comparison data for that obtained over the summer.

E. *Data Analysis*[29]

The data gathered in each part of the study were coded on IBM cards. We then cross-tabulated virtually all recorded variables to determine whether there was an apparent relationship between, for example, confessions and length of interrogation, type of crime, giving of warnings, etc. When a statistically significant relationship was found, we tested to see if any third variables might account for it.[30]

Statistical techniques help to summarize different aspects of our data. They cannot, however, identify the causes underlying these relationships, if any.[31] A mathematical relationship between two variables does not necessarily imply a causal relationship. But if a strong relationship exists which seemingly cannot be explained in terms of other variables, we may consider ourselves closer to an adequate, if partial, causal explanation.

In any case, analysis is most meaningful in terms of theories that are brought to the data. Some of our theories were developed prior to our observations; others are based on impressions gathered throughout the observation period. We believe that our own impressions of the system

28. Fifteen interviews were obtained by mail. None of these attorneys handled more than three cases.

29. For a general discussion of methodological techniques, see H. BLALOCK, SOCIAL STATISTICS 3-7, 89-96, 119-30, 212-34 (1960).

30. We controlled for additional variables for every relationship reported. We shall only report those additional variables which seemed significant. See H. BLALOCK, SOCIAL STATISTICS (1960), for a discussion of controlling for third variables.

31. H. BLALOCK, CAUSAL INFERENCE IN NON-EXPERIMENTAL RESEARCH ch. 1 (1964).

are important in understanding what happened and therefore we will emphasize them where appropriate throughout the study.[32]

F. *Controls and Limitations*

Any empirical study necessarily has methodological shortcomings. For example, observers will make mistakes; information must be condensed to be comprehensible and consequently it may mislead; samples will never be exactly representative. We have tried with care to avoid such difficulties, but recognize that some errors—we hope not egregious—inevitably survive.

Three limitations in particular were apparent from the beginning: our confinement to the New Haven environment, the possibility that the behavior of the police would be affected by our presence, and the small size of our samples. We have tried to control or allow for each of these limitations. The first of these has already been discussed.[33]

1. *Changes in Police Behavior*

To test whether our presence substantially affected police behavior, we tried to find out how the police acted before and after our observations. We interviewed 40 persons who had been interrogated during the four months preceding and following our three-month study.[34] We asked them to describe the same features of their interrogations that our observers recorded in the police station. Assuming that the process might be perceived differently from the suspect's perspective, we also interviewed 20 of the people whom we saw questioned last summer. By asking them questions to which we already had answers, we could tell how much, and on what points, their reports differed from those of our observers. This factor could then be applied to the interviews with the other suspects to estimate how accurate their reports were likely to be.[35]

Almost half of the interviewed suspects whom we had observed described their interrogations differently than our observer. The dis-

32. The unsystematic impressions of the observers corresponded closely to the statistical findings.

33. *See* p. 1524-25 *supra.*

34. We had hoped to be able to interview a larger number of suspects. Unfortunately, we were denied access to the state prison and reformatories and this limited our sample to those people in jail or on probation. Many of those that were on probation were hard to find. It was not until we obtained the services of a former convict, now working for the Legal Assistance Association, that we were able to locate any defendants whatsoever. Fortunately, a number of those interviewed had been arrested several times over the past five years so we were able to get a comparison over a fairly long period. *See* App. F for questionnaire.

35. This is, of course, a crude test. However, since the test indicated there was no significant change, problems with the test do not affect the validity of the findings.

crepancies followed no pattern; some even reported the process more favorably, saying, for example, they had received *Miranda* warnings when our observer had not recorded any such warnings. However, most respondents reported a more hostile interrogation than our observer recorded. Two suspects reported falsely that they were hit at the Detective Division. From this evidence, it seems probable that the responses of the people questioned before and after our observation period were also somewhat inaccurate.

Yet, even if we do not assume any exaggeration by the groups we did not observe, their description of the process was so similar to what we did observe that we feel justified in assuming our presence did not markedly affect the detectives' behavior.[36] If there were any changes, they appear to have been in the interrogation tactics used by the police. As we discuss below, during the summer the atmosphere at interrogations seemed generally friendly or businesslike to our observes; the police employed very few tactics such as threats, promises or trickery. From the reports of those we interviewed it appears that the detectives frequently displayed a more hostile air before and after our months of observation. The police told suspects more often that they would be "worse off" if they did not talk, played down the seriousness of the crime, swore at the suspects, and made promises of leniency. However, last summer we did find such tactics used frequently in the cases which the police considered most serious. The large proportion of serious crimes in the unobserved sample may therefore account for the more frequent use of such tactics.

Our belief that our presence had but slight effect is further supported by the impressions of our observers. Initially, our presence was viewed skeptically. The detectives treated us with suspicion, greeted us by silence, and locked the observers out of the detective headquarters when they left. Within two weeks, however, the attitudes of the detectives had changed markedly. They became friendly with the observers, talked and joked freely, and gave us free run of the station. The people on the night shift particularly seemed to enjoy having someone to talk with.

Aside from their apparently unguarded behavior, several other

36. From these interviews we learned that interrogations had been conducted in the same rooms throughout. Almost all interrogations were about the same length as our summer average. No suspect indicated he had been denied a lawyer, either before or after *Miranda*, although a number of post-*Miranda* suspects indicated no warnings had been given them. This was also true during the summer. Even before *Miranda* most suspects were allowed to call friends and relatives, and were offered cigarettes and food. Only six of the people reported they had been treated badly; the others said their treatment was "o.k."

factors suggest that the police acted naturally after the first few weeks. The detectives frequently did not follow the letter of the law, and often gave no warnings despite our presence. As the summer progressed they also became more candid in their conversations. They tried, for instance, to justify, not to hide, their various prejudices.[37] Some detectives also admitted that coercive interrogations were sometimes useful, though this was invariably qualified—"of course, it doesn't happen any more."[38]

Since there is only one precinct in which interrogations are conducted, we were able to see all the cases handled by the police during the summer. A check of our observers' reports against the number of arrests submitted by the police to the F.B.I. substantiated that we had reports for all cases recorded by the police.

2. *Size of Sample*

Because of the low crime rate in New Haven our sample includes only 127 interrogations (although we saw 40 more while testing our questionnaire). Moreover, we had police interviews for only 85 of these suspects. Our samples were thus small, making statistical analysis more difficult. While unable to increase our sample size, we attempted to maximize our mileage from the data without obscuring limitations. We report data in absolute numbers rather than percentages to make explicit and apparent the sometimes small number of cases supporting a tentative theory or conclusion. Only relationships significant at the .05 level or better are treated as significant;[39] where a statistically insignificant relationship is reported, the fact is carefully noted. Useful results can be obtained from samples of this size; however, the reader should consider this limitation in evaluating all conclusions.

The size limitations pertain to only some uses of the data, however; many generalizations should be quite valid for New Haven. The 127 interrogations constitute approximately 20 per cent of all the interrogations conducted during a year. It is likely that practices observed over a three-month period accurately reflect the general practices of the police. Also, the sample of 55 attorneys, including all of the active criminal bar, is likely to reflect the general attitudes of the bar. Thus, we have confidence in the picture of the process in New Haven.

37. Almost all of the detectives were extremely biased against Negroes. However, this bias, while often voiced, was seldom evidenced during interrogations.

38. For a similar conclusion for a different police department see J. SKOLNICK, JUSTICE WITHOUT TRIAL 36 (1966). Skolnick's presence was less likely to affect behavior since he was with the police only sporadically.

39. *See* note 81 *infra* for a discussion of the meaning of significance.

A more significant limitation is the extent to which our conclusions about New Haven can be generalized to other cities. This depends on the representativeness of the crime and police behavior patterns in New Haven. As indicated above, we believe there are good reasons to assume that these patterns are reasonably typical. However, the reader should consider whether his city demonstrates these patterns.

Three other limitations must be noted. Our study took place immediately after the *Miranda* decision. It is quite possible that some of our findings, particularly with regard to the giving of warnings and the impact of warnings on suspects, would have changed had we begun six months later. However, most of our conclusions should not be affected by time. Secondly, we observed only stationhouse interrogations. It has been suggested that questioning at the scene of the crime may be even more important than later interrogations. Although the data we have indicate that little information was obtained on the street, this subject deserves further investigation.[40] Finally, the reader should always be aware that our data reflect our assumptions and the questions we have asked. We have tried to specifiy our assumptions and we have presented our questionnaries so that the reader can take both into consideration.

IV. Interrogations in New Haven

In part, the *Miranda* decision rests on the majority's conception of the interrogation process—a process which, they felt, often compels a suspect to incriminate himself. Because so little is known about what typically occurs in an interrogation room, one of our major objectives was to observe and evaluate the interrogation procedures in New Haven.

The model against which we shall compare our findings is the Supreme Court's picture of an interrogation in *Miranda*. In the absence of other data concerning interrogations, the Chief Justice turned to the manuals for interrogators written by Inbau & Reid and by O'Hara.[41]

40. Of the 33 suspects who were questioned on the street, ten gave information.

41. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics. These texts are used by law enforcement agencies themselves as guides. . . . *By considering these texts and other data, it is possible to describe procedures observed and noted around the country.*

384 U.S. at 449 (emphasis added). The manuals cited were: F. INBAU & J. REID, CRIMINAL INTERROGATIONS AND CONFESSIONS (1962); C. O'HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION (1956).

Although the court indicated that these descriptions were unlikely to fit all interrogations, the *Miranda* decision leaves the reader with the impression that the interrogation procedure described is the normal one in most cities.

The Court culled from the manuals a picture of coercive questioning in which detectives browbeat the suspect with psychological techniques and occasionally resort to physical force,[42] meanwhile preventing him from contacting anyone outside the police station. In particular, the Court's description emphasized the coerciveness of commonly-used psychological techniques. The opinion stressed the manuals' prescription for isolating the suspect[43] and tricking him into confessing his guilt. According to the manuals, once the suspect has arrived at the police station the police should try to prevent him from calling his family, friends or a lawyer, even if he requests to, by "suggesting the subject first tell the truth to the interrogator rather than get anyone else involved in the matter."[44] The policemen are instructed to highlight the suspect's isolation by displaying an air of confidence in his guilt and an apparent interest only in confirming certain details. They are told to "rely on an oppressive atmosphere of dogged persistence."[45]

42. The Chief Justice documents his discussion of physical brutality from the report of the Wickersham Commission, now thirty years old, notes numerous cases decided since then involving physical brutality, and quotes from the 1961 *Report of the Commission on Civil Rights* to show that "some policemen still resort to physical force to obtain confessions." 384 U.S. at 446. And though he "stresses" two pages later that "the modern practice of in-custody interrogation is psychologically rather than physically oriented," *id.* 448, he concludes that:

> The use of physical brutality and violence is not, unfortunately, relegated to the past or to any part of the country.

Id. 446.

43. The Court asserts that policemen are told to isolate the suspect from familiar surroundings, his friends or family:

> The officers are told by the manuals that the "principal psychological factor contributing to a successful interrogation is privacy—being alone with the person under interrogation." . . . :
>
> ". . . In his own home [the suspect] may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and more reluctant to tell of his indiscretions or criminal behavior within the walls of his home. Moreover his family and friends are nearby, their presence lending moral support. In his office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law."

384 U.S. at 499-50, *citing* C. O'HARA, *supra* note 41, at 99.

44. 384 U.S. at 454, *citing* F. INBAU & J. REID, *supra* note 41, at 185.

45. [The detective] must rely on an oppressive atmosphere of dogged persistence. He must interrogate steadily and without relent, leaving the subject no prospect of surcease. He must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for a spell of several hours pausing only for the subject's necessities in acknowledgement of the need to avoid a charge of duress that can be technically substantiated. In a serious case, the interrogation may continue for days, with the required intervals for food and sleep, but with no respite from the atmosphere of domination.

384 U.S. at 451, *citing* C. O'HARA, *supra* note 41, at 112.

The Court also listed a number of tactics recommended by Inbau & Reid to trick a suspect into confessing his guilt. The suspect may "be offered a legal excuse for his actions in order to obtain an initial admission of guilt" which the detective later uses to pry out a full confession;[46] or the detectives may use the "Mutt and Jeff" act;[47] or the suspect may be falsely identified in a line-up.[48] Most important, the detective may trick the suspect into not exercising his constitutional rights.[49]

Having presented this theory of interrogation, the majority concluded that in view of the secrecy of interrogations and the consequent lack of knowledge about actual police practices it was essential to adopt strict regulations to prevent the coercion otherwise possible in the police station:

> Accordingly, we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation. . . . As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. . . . [I]t is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. . . . If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.[50]

Although the New Haven detectives employ many of the tactics described by the Court, its picture of the typical interrogation was

46. Thus, the interrogator may suggest to the subject that he acted in self-defense, and then confront him with facts inconsistent with this explanation once he has begun to speak. The manual points out that:

> Even if he fails to . . . [tell the whole story], the inconsistency between the subject's original denial of the shooting and his present admission of at least doing the shooting will serve to deprive him of a self-defense "out" at the time of the trial.

384 U.S. at 452, *citing* F. INBAU & J. REID, *supra* note 41, at 40.

47. In this technique, two agents are employed, Mutt, the relentless investigator, who knows the subject is guilty and is not going to waste any time. He's sent a dozen men away for this crime and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kindhearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. . . . The technique is applied by having both investigators present while Mutt acts out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room.

384 U.S. at 452, *citing* C. O'HARA, *supra* note 41, at 104.

48. "The witness or complainant (previously coached, if necessary) studies the line-up and confidently points out the subject as the guilty party." Then the questioning resumes "as though there were now no doubt about the guilt of the subject."

384 U.S. at 453, *citing* C. O'HARA, *supra* note 41, at 105-06.

49. 384 U.S. at 453-54.

50. 384 U.S. at 471, 473-74.

inapposite for many of the questionings we observed. The police were not even particularly interested in interrogating a sizable proportion of the suspects. Their interrogation room was far from the austere one described in the manuals. The detectives seemed friendly or business-like more often than hostile and relentless. In a minority of cases they did use many of the tactics described by the Court—usually effectively. In most cases, however, they employed few or no tactics, and the tactics were usually rudimentary and carried out with little sensitivity to the suspect's state of mind. Interrogations were seldom long, and the detectives frequently offered the suspects such amenities as food, drink, or cigarettes.

As the detectives learned more of what *Miranda* required through the summer, they increasingly informed suspects of their rights. They were markedly more likely to give some advice when the suspect was accused of a serious crime. However, they did not heed *Miranda's* requirement that a suspect must be allowed to terminate his interrogation whenever he wishes in about half the cases; compliance here did not increase during the summer.[51]

We did consider a number of interrogations coercive, in the sense that the police applied a great deal of pressure on a seemingly unwilling suspect. In these cases the interrogation typically lasted more than an hour, many tactics were used, and the police discouraged the suspect from exercising his rights. Moreover, the *Miranda* warnings, when given, seemed to provide no support to these suspects.

The sections that follow examine in detail the interrogations carried out last summer in New Haven. We shall describe the usual procedure in detail, although it is not necessarily the "typical" interrogations which are or should be the basis for court decisions.

A. *Psychological Coercion*

1. *General Description of Interrogations in New Haven*

All but nine of the 119 suspects brought into the Detective Division were interrogated. The Special Services Division, on the other hand, questioned only eight of the almost 200 suspects they arrested.[52] In the

51. It is possible that warnings were given in some cases before the suspect was brought to the station. However, in these cases, such warnings might be too far removed from the questioning to be valid.

52. Many of the suspects arrested by Special Services were arrested for misdemeanors, particularly gambling and sex offenses. The arrests by each division for the three months we observed were as follows:[a] (Figures for the summer are compared with 1965 yearly total of crimes cleared by arrest.)

Detective Division, when a suspect was to be interrogated he would be brought from the patrol car into the main room[53] of the detective headquarters and required to sit down while a detective familiarized himself with the case. If the detective himself had made the arrest, the suspect would be taken directly to the interrogation room for questioning. Occasionally the suspect would be made to wait in a small wire cage, if he was suspected of a violent crime, wanted by another police department, or waiting to be removed to hospital or reformatory authorities, so that he could be safely ignored. If the suspect waited at the detectives' desks in the main room, the uniformed officer often talked to him. Sometimes these conversations elicited routine information for the patrolman's report; more often they also disclosed to the suspect the evidence

Detective Division	Summer 1966	Total 1965	Special Services Division	Summer 1966	Total 1965
Murder	3	1	Gaming—Card playing	137	688[e]
Manslaughter	3	—	Numbers	21	
Burglary, B & E	30	297	Sex—Prostitution	2	369[f]
Robbery	11	8	Other	102[e]	
Larceny (Over $250)	37	104	Narcotics—Major	16	42[g]
Aggravated Assault	24	92	Marijuana	8	
Auto Theft	26[b]	200[b]	Total	286[a]	1099[d]
Arson	1	—			
Forgery	3	—			
Possession of Weapons	37	[h]			
Total	175[a]	702[d]			

[a] Total number of arrests exceeds our sample because cases during three weeks of June and two weeks of August were not included in the sample. Two of the weeks in June were observed during testing of our questionnaire, but the interrogations were not included in the sample analyzed because of incomparability of some questions, and because they occurred before *Miranda*. Totals in both parts of the table are for adult (16 or over) offenders.

For both divisions, categories of crimes from the Annual Report which were not comparable to any of our categories (e.g., "miscellaneous") are not included.

[b] Most of the arrests classified as auto theft were in fact for "operating a motor vehicle without owner's permission"—i.e., joyriding (a misdemeanor)—both during the summer and during 1965.

[c] "Other" includes "lascivious carriage" (fornication), "indecent assault" (sodomy), lewdness, indecent exposure, night walking, peeping. All except for indecent assault are misdemeanors in Connecticut.

[d] Totals taken from 1965 NEW HAVEN POLICE DEPARTMENT ANNUAL REPORT 10, 12. Categories are as reported there—further breakdown was unavailable.

[e] "Gaming" includes card-playing (a misdemeanor with a maximum penalty of a $5 fine), numbers, and bookmaking. No breakdown was available for the entire year.

[f] Includes prostitution and all crimes listed in note (c) above.

[g] Includes both major narcotics arrests and marijuana.

[h] No figures available.

53. The main room is a cavernous chamber (apparently once a court room), perhaps 80 feet by 100 feet, with a ceiling three stories high. Huge chunks of paint are peeling off the dirt-streaked walls. The room is filled with rows of old metal office desks in which the detectives keep their equipment and papers.

the Department had on him. Occasionally, a suspect gave incriminating information during this informal questioning.[54]

When the detective was ready, he took the suspect to the interrogation room. If there was a group of suspects, each suspect would be questioned separately; however, the detective might first talk to them together to ascertain who seemed least guilty or most likely to talk and that person would then be separated from the group and interrogated first.

In the interrogation room, the detective first tried to elicit the entire story. When the suspect was anxious to tell his story, usually because he felt it would exculpate him, the interrogation proceeded briskly, with the detective immediately typing up the story in response to his leading questions. If the suspect categorically refused to answer any questions, the interview usually ended almost immediately. When the suspect seemed reluctant but not adamant, as was most often the case, the detective might confront him with evidence, a witness, or have the suspect repeat his story while the detective searched for holes. The questioning would be gentle at first, but if the detective made no progress he often became sterner and demanded explanations. In such cases, the detective would usually draw on Inbau & Reid's list of tactics. Occasionally, the suspect confessed or made an incriminating statement at this point; more often the detective eventually accepted the suspect's story and gave up questioning.

When the detective had been successful in getting some story from the suspect, he would ask him if he "wanted to make a statement." If the suspect agreed, the detective and the suspect went back over the story, with the detective typing out in condensed form the questions and the suspect repeating the answers while the detective recorded them.

The detectives all seemed to consider the interrogation over after

54. About one-fourth of the subjects brought into the Detective Division were informally questioned either by the arresting patrolman or by the detective handling the case. Most of the time the questioning concerned routine information such as the suspect's name, age, and address. There was some small talk, which occasionally referred to the subject at hand. Only about one-third of those informally questioned in the main room were asked specific questions about the offense.

A similar number of suspects were reported by the detectives to have been questioned in the patrol cars on the way to the station. Usually, the detectives said that the suspect had revealed nothing of importance before his arrival at the Detective Division. Since we did not ride in the cars until late in the summer, we have no way of checking their assertions.

In the Special Services Division there appeared to be little separation between the informal and formal interrogation procedures in the few cases we witnessed. The detectives themselves made most of the arrests in Special Services, and therefore had no need to familiarize themselves with the cases before questioning the suspects.

completing the formal interview and typing a statement. They relaxed perceptibly when the suspect was taken into the photo-identification room to be pictured and fingerprinted. Although damaging admissions were sometimes made by suspects during picturing and printing, the detectives seemed not to notice; at least they never recorded them.

Unless the suspect was released for lack of evidence, he was taken after picturing and printing to be booked in the precinct headquarters downstairs from the Detective Division's offices. He was then either confined in the lockup overnight pending arraignment, or released on bail or his own recognizance.

Overall, the entire process *usually* appeared quite haphazard. Since most arrests were not for crimes the detectives considered very serious, and since they seldom arrested anyone without considerable evidence, they rarely felt a compelling need to pry information from suspects.[55] However, when the crime was particularly serious, when the detectives felt they needed information from the interrogation, or when for some reason the suspect antagonized them, the interrogation was markedly more like that described in *Miranda*.

2. *Physical Facilities for Interrogating Suspects*

The Detective Division questioned most suspects in one small interrogation room.[56] A few interrogations were conducted in three other rooms, none of which was designed especially for questioning. Superficially, the interrogation room bore little resemblance to the isolated and forbidding chamber recommended by Inbau & Reid and portrayed by the Court in *Miranda*.[57] Though small, perhaps 8 by 14 feet, it

55. The detectives showed virtually no interest in questioning 18 of the 127 suspects and only moderate interest in questioning another 32. Thus the police were seriously interested in questioning 77 suspects, approximately 61 per cent of the sample.

Our judgments of what constituted "virtually no interest," "moderate interest," and "serious interest," were very subjective. In order to include as many cases in the last category as possible, we always placed cases which seemed close to the border between "moderate interest" and "serious interest" in the latter category. The reason for this procedure will become clear in Section B, 8 *infra*, where some statistical analysis is done using only the cases in which interest in interrogating was "serious."

56. The Special Services Division carried out the eight interrogations we observed in a small room similar to the Detective Division's interrogation room.

57. The police conducted a few interrogations in a larger room adjacent to the interrogation room. This room, about 18 by 24 feet in size, was rimmed with desks on which typewriters stood. The detectives used the room to type their routine reports. But when the interrogation room was being used, or when several suspects were to be questioned simultaneously, the report room was utilized for questioning.

The detectives also occasionally questioned suspects in the Photo-Identification room, which was used as headquarters for the scientific crime detection staff during the day. Since it had the only air conditioner in the Detective Division, it was sometimes chosen on hot summer nights in preference to the regular interrogation room. We thought it, of all the rooms, gave the greatest feeling of being in the control of the detectives, since it

was carpeted and pleasantly lighted by a glarefree overhead fixture and two enormous windows, one of which faced the day-and-night activity of New Haven's post office across the street. Furthermore, despite the two-way mirror on one wall and the note of austerity introduced by a single grey metal desk and three straight metal chairs, a telephone on the desk provided frequent interruptions to questioning.[58]

In the ordinary situation, the room did not seem "inherently coercive" to the observer. The detectives seldom closed the doors; often questioning was interrupted by detectives wandering into the room, or asking the interrogator about the case. If no interruptions occurred in the interrogation room itself, people could be heard going in and out of the report room next door.

On the other hand, the atmosphere of the interrogation room seemed controlled by the conduct of the detectives rather than its appearance. When the detectives were hostile and all the doors were closed, we felt a suspect could be made to feel securely sealed in.[59]

3. *Attitudes of the Interrogators*

In contrast to the picture presented in *Miranda*, we thought most detectives acted in a friendly or businesslike manner toward most suspects.[60] To lend precision to the general remarks of the observers on this point, we asked each one to check as many descriptive words on a list supplied as applied to each of the interrogators for each suspect. We then classified these responses into four categories: "friendly," "businesslike," "hostile," and "ambiguous."[61] The last category included

had a low, soundproof ceiling, and the only window was filled with the air conditioner, whose noise tended to drown out the sounds from the main room. However, it was seldom employed by the detectives, and was never used tactically.

We also saw the office of the Captain of detectives used once for tactical effect, because it was the only quiet, attractively decorated room in the Detective Division. A suspect seemed reluctant to admit his crime until the Captain removed him to his office. There the suspect confided in the Captain, bargained about bail, means of returning stolen goods, and protection for an accomplice who had not been caught.

58. *Cf.* F. INBAU & J. REID, *supra* note 41, at 7-9. Most of the detectives in the Detective Division seem aware of the inadequacy, by the standards of Inbau & Reid, of their facilities for interrogation. When we asked them during the February interviews following the project what they would like to see changed in their work, a substantial number mentioned that they would like to have better facilities for interrogating.

59. Few of the suspects we interviewed depicted the interrogation room as isolated, but all its uncomfortable features were mentioned repeatedly. Several suspects mentioned the two-way mirror on the wall, indicating that they were not fooled by its appearance.

60. Some detectives, by nature, were generally less friendly and usually hostile in interrogations. Most detectives showed less sympathy for deviates than for others.

61. The words were classified as follows: friendly—"friendliness," "courtesy"; businesslike—"frankness," "businesslike manner," "calmness"; hostile—"hostility," "constant air of anger," "swearing," "abusiveness," "tenseness," "occasional anger," "unrelenting," "aggravation," "exasperation," "disbelief," "annoyance." Three of the words on the list were not classified, and responses on them not considered in placing a suspect into a

cases in which both friendliness and hostility were exhibited, sometimes because more than one detective questioned the suspect, sometimes because the interrogator's attitude seemed to change during the questioning. On this index, the detectives were categorized as friendly or businesslike toward more than half the suspects, and hostile toward slightly less than one-third.

4. *Length of Interrogations*

Most of the interrogations were short,[62] averaging about 30 minutes of actual questioning. However, most suspects spent more than an hour, often two hours or more, in the stationhouse before they were released on bail or locked up, although this time was seldom devoted to intensive questioning. Some time elapsed as the suspect waited at the desks in the main room while the detectives familiarized themselves with the case. Photographing and finger-printing after questioning usually took about 30 minutes. Often interruptions and breaks in the questioning for one reason or another took most of the time the suspect spent in the interrogation room.[63]

category. They were: "stern," "confident," and "bigotry." These words did not seem to fit the continuum on which we distributed the others. They were also distributed quite differently from the other responses, and so would have complicated considerably the task of forming the index.

When responses in more than one category were checked, we used the following method, designed to maximize the variability of the sample, and minimize the number of ambiguous cases. When all responses fell into adjacent categories (*i.e.*, friendly-businesslike or businesslike-hostile) the interrogation was classified either friendly or hostile (whichever was appropriate). When responses fell in all three categories, the interrogation was classified "ambiguous." In each of these cases, we later examined carefully the entire questionnaire, including the observer's remarks, and reclassified those where the remarks indicated clearly that the detectives had manifested either friendliness or hostility. About five cases were reclassified into each of the other two categories.

62. Short, of course, is very subjective. While 30 minutes seemed "short" to an observer, it might be an eternity to the suspect.

63. When a statement was taken, the suspect was almost sure to spend more than an hour simply because none of the detectives could type quickly. We have recorded typing time as time spent questioning.

A more detailed breakdown of the *total* time spent at the Detective and Special Services Divisions (including both time spent in questioning and frictional time) by suspects is as follows:

Time	Number of Suspects	%
0-½ hour	8	6
½-2½ hours	104	83
2¼-10 hours	11	9
Overnight	2	2
Total	125*	100

Total Time Not Ascertained: 1

* One suspect held overnight had two interrogations, each considered separately throughout the rest of the article.

Recognizing after our initial three-week test observation how much frictional time was lost, we asked our observers to record the time devoted to active questioning, either before or during the taking of a typewritten statement, separately from the time spent in interruptions, breaks, picturing and printing. The results are summarized in Table 1.

TABLE 1
LENGTH OF ACTUAL QUESTIONING

	#	%
Less than 15 minutes	38	36
16 minutes to 1 hour	55	49
1 hour or longer	16	15
	109	100
Not ascertained: 9		
Not questioned: 9		

5. *Granting of Amenities to the Suspect*

One-third of the suspects were offered cigarettes, food, or drink during questioning, and more than one-fourth were offered all three. Eighteen of the suspects asked for one or more, and all but two were granted them. Only in a few cases did the detectives even delay giving amenities to preserve the flow of the questioning. This contrasts sharply with the picture drawn in *Miranda* of suspects being grilled for long hours with such minor comforts denied or given grudgingly to prevent "a charge of duress that can be technically substantiated."[64]

6. *Use of Tactics*

The Court's description of interrogations in *Miranda* dwelled with mingled horror and fascination on the various psychological "tactics" the police are instructed to use in breaking down a suspect. New Haven detectives employed most of the tactics listed by Inbau & Reid on occasion, thus in a sense justifying the Court's fears. Moreover, when concentrated and combined with other interrogating techniques—such as a hostile attitude and a lengthy interrogation—the tactics succeeded, as we will show below in Section C. However, tactics were ignored in the typical interrogation. Even when tactics were used, they were generally rudimentary and were woodenly applied.[65] The police seemed to re-

64. 384 U.S. at 451, *citing* C. O'HARA, *supra* note 41, at 112.

65. Most of the detectives seemed insensitive to the suspects' states of mind, and thus for the most part incapable of applying effective psychological coercion. In part, their lack of sensitivity was probably owing to their poor training. The manual which purports to teach them how to interrogate effectively is full of heavy-handed discussions of how

gard most of the tactics they had been taught as interchangeable, so that if they really wanted a statement they tended to try one tactic after another through their entire repertoire until one was successful or it became clear that none would be. Few of the detectives seemed to apply effectively any of the tactics recommended in police manuals; they were far more successful when following their personal responses to the suspect. Even those who were skilled with one or more "hornbook" tactics seemed effective mostly because the tactic suited their personalities. Thus, the opposing actors of the two or three effective "Mutt and Jeff" combinations among the detectives contrasted physically, with one appearing forbidding and the other jovial even to our observers; the best detective with threats and trickery seemed an abrasive personality even while off duty; and the best men with sympathetic tactics seemed genuinely concerned with the fates of the men they dealt with.

Our observers recorded the use of tactics on a form covering all the tactics described by Inbau & Reid.[66] The observers recorded the use of no tactics at all on 44 of the 127 suspects and one or two tactics on another 36. Only 38 of the suspects were the objects of three or more tactics. A detailed breakdown of the use of tactics shows that a very large proportion of all the tactics used occurred in a very small number of the interrogations. For the entire sample of 118 suspects,[67] the police used 238 tactics. But 18 of the suspects were the targets of 110 of the tactics, an average of slightly more than six tactics each. By contrast, the remaining 100 suspects faced only slightly more than one tactic on the average.

In applying tactics, the most common approach was to confront the suspect with evidence or with the assertion that there was a witness, probably because the usual abundance of evidence made this tactic often available. The confrontation might be accompanied with the

best to get different "types" of suspects to talk, and reads as if it could only be taught by rote. Probably the detectives were insensitive also by nature. Although talkative, most were not good listeners, and few were sympathetic enough to listen carefully to what a suspect said. Nevertheless, occasionally detectives were very good at sensing the weaknesses of suspects. In one case, for example, a team of detectives spent 45 minutes unsuccessfully quizzing a recalcitrant suspect. A more sensitive detective, who came on with the next shift, almost immediately realized from the suspect's vague hints that he was willing to talk if he could be sure of protection for an accomplice. Within a few minutes of sparring over "hypothetical" bargains, the detective had obtained a highly incriminating statement in return for an implied pledge not to investigate the case further.

66. F. Inbau & J. Reid, *supra* note 41. They noted on another schedule whether the detectives had used threats, promises, pleading, trickery, or some combination of these. One or more of these was recorded in about 30 per cent of the interrogations. *See* App. A, question 52.

67. Nine suspects were not questioned at all, so that any discussion of tactics is not applicable to them.

admonition that the detectives had all the information they needed to convict the suspect, and that he would make it easier for all concerned if he would fill in the rest of the story. Sometimes the detectives showed the suspect the evidence to prove they knew his original story to be false.

Another tactic was to play off co-suspects. It was almost always employed in multiple-suspect cases unless both parties confessed immediately or the police were not interested in questioning either of them.

When no evidence, witness, or co-suspect was available, the detectives usually had the suspect repeat his story over and over, while they looked for discrepancies. If none could be found, a detective would pounce on that fact. "No one telling the truth," he would say, "maintains the same story word for word; you must be lying."

When a defect in the suspect's story was found, the practices of individual detectives varied widely. One detective dealt with inconsistencies as would a father reprimanding a four-year-old child for a half-truth. In one case, for example, he stopped the suspect in the middle of his second story with a twinkle in his eye and a "Whoops, there's something wrong here!" Another would turn reasoningly to the suspect to say, "John, let's go back and start over again—there's something inconsistent in that last statement," his manner suggesting that he was only interested in getting a plausible story.

Often the detectives would couple their disbelief in the suspect's story with a show of sympathy and the suggestion that things might go better for the suspect if he told the truth.[68] Especially to first offenders, the approach was often "anyone could have done it." The detective might help the suspect shoulder off the blame on the victim. For example, to a suspect who had broken into a liquor store, one detective said, "That guy should never have left all that liquor in the window to tempt honest guys like you and me." He might also add to his sympathy some ego-boosting remark. A detective remarked to a suspect accused of breaking and entering that it was hard to believe such an inexperienced burglar could have pulled off such a professional job. One detective congratulated a suspect accused of statutory rape on his taste: "Say,

68. In the case of juveniles, this technique was usually employed. The detective was likely to assume a fatherly pose, alternating a stern, lecturing style, with an occasional quiet, condescending bit of moralizing. In one interrogation, an especially insensitive detective urged a poor Negro to get a job shining shoes or delivering newspapers. The latter suggestion was particularly inapposite, since no newspapers were delivered in the suspect's part of town.

she's pretty nice. I probably would have done the same thing myself." He also encouraged the suspect to shift the blame to the complainant —"She probably just let you have your way, and now she's making this charge because she's mad at you. So just tell me how it really happened and I'll see what I can do."

Sometimes, as in the last example, the show of sympathy was coupled with hints of better treatment later in the process if the suspect would cooperate. The police suggested to four suspects that they might obtain lower bail; to nine that the judge might be more lenient; and to ten that they might obtain a lower charge, or have several charges combined, if they cooperated.[69]

Threatening tactics were roughly as common as promises. Ten suspects were threatened vaguely that they would get into trouble if they did not tell the detective all about their misdeed. A similar number (some the same suspects) were told that it would look bad for them if they remained silent. Three suspects were told the police would make trouble for their families or friends if they did not talk.[70]

Generally, threatening tactics indicated that the detective thought he had failed to get what he wanted. He might then become abusive and try to bully the suspect. Most of the time these tactics merely hardened the suspect, and the detectives who used them most were seldom successful. They would finally give up in frustration, or begin talking to themselves. Only one detective seems to have been an exception. Blending simple abuse, disbelief, and threats into an effective image of a "tough cop," he kept one step ahead of the suspects and often wore them down until they finally told him what he wanted to know. A few other detectives tried the same approach, but they seemed such obvious

69. The detectives seemed honest in making these promises. They had the power to set bail for the suspect for the period between his arrest and arraignment; although this period was almost never longer than one night, most of the suspects appeared to prize their freedom very highly, and were willing to bargain for it with the detectives.

The detectives' recommendations, according to the prosecutor, may also influence the final disposition of cases. Thus when the detectives told the suspect they could only recommend leniency if he showed his penitence by telling them the truth, they seemed to intend to be bound by the bargain. Pragmatic considerations reinforced honor; they all felt they must maintain the credibility of their promises in order to keep them effective. Of course, each of these tactics probably violated the suspect's constitutional rights.

70. Because of the interest of the Supreme Court in this tactic in previous coerced-confessions cases, we note here the situations in which it was used by the New Haven detectives. In one of the three cases, a woman had allegedly shot another woman. During questioning, the detectives suggested that they would arrest her husband for giving her the gun unless she told them where she had hidden it. The woman confessed.

In the second case, one detective induced a burglar to confess by threatening to arrest his brother as an accomplice. In the third, a woman had been shot, apparently by her boyfriend. The woman then refused to complain. The detectives tried to induce the boyfriend to confess by implying that they would cause trouble for the woman for not complaining. The suspect, undaunted, refused to give evidence, and was released.

bullies that the suspects were able to ignore them; in one case a suspect was actually amused by such a heavy-handed approach.

The police accused eight suspects of other crimes. Sometimes their accusation constituted an implied threat that unless the suspect told them all about the present crime, they would pin a whole list of other crimes on him.[71] At other times an accusation was more or less clearly part of an implied bargain to recommend leniency in return for the suspect's help in clearing some similar crimes. Particularly if the suspect were a first offender the detective would offer the "advice" that the suspect should get all his past misdeeds off his chest, so that he could start over with a clean slate. The detective would appear confident that the offender had committed other crimes. Sometimes he would even say that the police had fingerprints or an identification by a witness, and all that was needed was to match up the prints or bring in the witness. However, the suspect could save time and show the judge that he was penitent if he would cooperate and tell the detectives about all the other crimes.[72]

A variation of this tactic was very successful with juveniles close to reaching adult status. The detective would point out that once the suspect became an adult he could be prosecuted for all uncleared offenses he had perpetrated as a juvenile. Sooner or later, the detectives would say, they were going to find out about his crimes anyway; therefore, the suspect would be smart to confess all his past crimes, keeping them off his record[73] and avoiding prosecution for them.[74]

In addition to the tactics suggested by Inbau & Reid,[75] the New

71. This threat was probably particularly effective against suspects with previous convictions. Since they could be liable for heavy sentences under Connecticut's recidivist statute, many previous offenders believe it is wiser to plead guilty in return for a promise of a suspended sentence than to risk receiving a heavy sentence after being convicted by a jury which they feel would not believe them because of their previous convictions.

72. If the suspect refused to confess to any additional offenses himself, the detectives might try to get him to implicate other persons. He might be told that even if he were innocent of other offenses, he was going to take a rap for some of them anyway, and it would be too bad to let the real culprit get away free. The detective would indicate that he was sure the suspect knew "who had pulled such-and-such a job." If the suspect took the hint, he might identify someone else or give information about other offenses he claimed to know about.

73. The New Haven police do not keep arrest records on juvenile offenders under 16 years of age.

74. Juvenile suspects were never told, however, that they could be sent to Wethersfield, the Connecticut reformatory, as a result of their confessions.

75. Other tactics described by the manuals were used less frequently than the ones described above. References to a suspect's mannerisms, such as nervousness, occasionally occurred, as did Mutt and Jeff routines. *See* 384 U.S. at 452. *See* p. 1535 *supra*. Relay questioning also occurred. *Cf.* 384 U.S. at 451. As practiced by the New Haven police, however, these techniques appeared far less coercive than their portrait in *Miranda* indicated. For example, most of the interrogations in which relays were used lasted only an hour

Haven detectives relied on some of their own invention. One was to bluff the suspect about what fingerprints, paraffin, or urine tests would reveal. It would then be suggested that since the police already had conclusive evidence of his guilt, he might as well clear the offense immediately to show how cooperative he was. The detectives seldom suggested more than the evidence might have shown, had it been scientifically analyzed. But given the limitations of the Department's facilities, the threat of analysis was usually a bluff.

Another technique employed by a few of the more sensitive detectives might simply be called out-thinking the suspect. The secret to this approach was figuring out why the suspect was evasive or refused to talk. The detective would engage him in conversation about his situation and present him with a series of possible alibis, sentences, and accomplices. Then he would see which of the possibilities the suspect began to explore. If the suspect selected an alibi, the detective would get him to tell it over several times, trying to catch clues from the suspect's elaboration. If the suspect seemed most worried about the possibility of a long sentence, or about protecting someone, the detective might discuss the sentences in various "hypothetical" cases with him until they reached an implicit bargain; then the detective would make the bargain explicit and ask for a statement.

7. The Use of Interrogation Techniques in Combination

The preceding sections discuss each of the interrogation techniques separately. One measure of coercion is the degree to which they were combined in any one interrogation. In Section D we will focus on the interrogations in which all these techniques were blended with a disregard for the legal norms. But in this section we will look at the sample of interrogations as a whole, to see how often the detectives coordinated the techniques of coercion we have discussed above.

Table 2 shows that the detectives seldom combined techniques. To construct the table, each interrogation was assigned a value for each technique—0, 1 or (except for offer of amenities) 2—according to the intensity with which it was employed. For example, if the police were hostile toward the suspect, interrogated him for 30 minutes, offered him amenities, and used two tactics, the respective values for that case would be 2, 1, 0 and 2. Each number in the matrix then represents the average value of the column variable for cases in the horizontal subcategory.

or two. Thus even though the suspect was questioned by several detectives, it is unlikely that he felt relentlessly oppressed as suggested by the authors of the manuals.

TABLE 2
USE OF PSYCHOLOGICAL TECHNIQUES IN COMBINATION

		Police Att.	Length	Amenities	Tactics
Police Attitude					
Friendly	= 0	—	.8	.4	.8
Businesslike	= 1	—	.6	.3	.5
Hostile	= 2	—	.8	.4	1.1
Length of Interrogation					
Short—Less than 15 min.	= 0	.9	—	.6	.6
Medium—15 min. to 1 hr.	= 1	1.0	—	.6	1.1
Long—More than 1 hour	= 2	.6	—	.4	1.6
Offer of Amenities					
Yes	= 0	.9	.9	—	1.1
No	= 1	.9	.8	—	.9
Use of Tactics					
None	= 0	.8	.4	.6	—
1-2	= 1	.8	.4	.8	—
3 plus	= 2	1.2	1.1	.5	—

Thus, the figure in the second column of the first row shows that when the police were "friendly" the average value of the length of interrogation variable was .8. This indicates that the average interrogation in these cases was not quite "medium" (value 1).

If coercive techniques had been applied together we would have found that in most of the horizontal subcategories where the assigned number was high, the corresponding number in the box would also have been high. Thus, to support the thesis that the detectives used all their techniques together, the averages for each of the column variables should increase reading down each horizontal category.

As already suggested, the data do not support the hypothesis that the detectives coordinated their use of techniques. Indeed, the values of the column variables show a net decrease reading down from the least to the most intensive horizontal sub-category for 5 of the 12 possible two-way combinations. Net increases are shown in the "tactics" column for police attitudes and length of interrogation; the same is true, not surprisingly, reading down the tactics subcategories in the "attitudes" and "length-of-interrogation" columns. Moreover, the increase is monotonic—that is, the second value is higher than the first and the third higher than the second—only in the comparison of tactics against length of interrogation (and vice-versa).

The remarks of the observers reinforce the evidence of the data that the detectives did not often create a coercive atmosphere by combining

all their techniques against a suspect. This conclusion does not preclude the finding that many of the techniques of interrogation were used together in some interrogations, or that the use of a single technique created a coercive interrogation. What it does mean, however, is that most suspects interrogated in New Haven do not face the massed array of interrogation techniques paraded by the Court in *Miranda*.[76]

B. *Adherence to Legal Norms*

1. *Physical Coercion*

We saw no undue physical force used by the detectives.[77] From what we sensed about the attitudes of the detectives in both divisions, we doubt that many of them would employ force as a calculated tool to pry out a confession.[78]

In the first place, neither division often needs a confession badly enough to beat someone up for it, because both usually have so much evidence when they arrest suspects and because the crimes are not generally very serious. Second, few of the detectives are calculating or ruthless in their attempts to extract a confession. They find interrogating a challenging game in which they try hard to outwit the suspect. But few are such crusaders against crime that they feel physical violence is justified to get a confession.[79]

76. To discover if there was any pattern in the different techniques used against suspects, we cross-tabulated a number of possible explanatory variables with each of the psychological techniques discussed in the previous sections. The explanatory variables tested were the seriousness of the crime, the amount of evidence available to the police at the time of the interrogation, the suspect's attitude towards the police, the prior arrest record of the suspect, and the suspect's age and race. Whenever one of these variables appeared to be significantly related to one of the interrogation techniques we analyzed the apparent relationship further by controlling for third variables. *See generally* H. BLALOCK, SOCIAL STATISTICS (1960). Although there were some statistically significant relationships between some of these explanatory variables and one or two of the techniques no pattern of behavior was isolated in the data.

77. At the Detective Division the policemen sometimes were forced to subdue an unruly suspect, but this was accomplished without relish. None of the detectives ever threatened violence overtly, though a few appeared threatening whenever they lost their tempers. We were not present in the police cars between the time suspects were arrested and when they arrived at the Detective Division headquarters, but there was no evidence that they were taken elsewhere for question or that they were physically abused before being brought to the station.

78. Of course, our presence may have affected their behavior. Several of the detectives in the Detective Division said that they had transferred from the Special Services Division because they "didn't like the way things were done over there." One candidly told an observer that he had left the Special Services Division because they used too much force on suspects. In one case during the summer, a Special Services detective used excessive force in arresting a woman suspect. Other isolated incidents of such conduct were disclosed to us through several conversations with detectives.

79. Special Services belies the generalization. In this division most of the detectives seemed to feel they were the protectors of the public against vice and morals offenders.

2. *Giving Advice of Rights*

According to the detectives, before *Miranda* suspects were advised that they might remain silent and that anything they said could be used against them.[80] The *Miranda* decision therefore meant that the detectives had only to include advice about counsel to fulfill the new requirements. The new rules were not adhered to in most of the cases we observed—nor were the old. Despite the presence of our observers in the police station, the detectives gave all the advice required by *Miranda* to only 25 of 118 suspects questioned. Nonetheless most suspects did receive some advice; only 22 per cent of the suspects were not advised at all of their constitutional rights. The most frequently given warning was the right to silence—90 of the suspects were told. While only 51 were advised that anything they might say could be used against them, 81 were told they had a right to counsel, but only 27 of their right to appointed counsel.

The detectives clearly gave more adequate advice later in the summer, however, as they became more accustomed to the *Miranda* requirements; much of the non-compliance may therefore have been transitional. (See Table 3.) During the two weeks of June after *Miranda*

TABLE 3

ADVICE OF RIGHTS, BY MONTH, FOR ALL INTERROGATIONS[81]

	Month			
Advice of Rights	June	July	August	Total
0-2 warnings	14	31	14	59
3-4 warnings	9	22	28	49
Total	23	53	42	108
Full *Miranda* advice	0	8	17	
Not ascertained: 2				
Not questioned: 9				

Chi Square significant at .05 level.[82]

80. Our impressions during the two weeks of observation before *Miranda* were that suspects were rarely warned and never at the outset of questioning.

81. In this table, as in others throughout the article, we will often divide the measure of the adequacy of the advice given the suspect into two caegories. The category of less adequate warnings includes those in which the detective told the suspect nothing about his right, or gave him one or two parts of the four-part *Miranda* warning. *See* p. 1535 *supra*. In nearly every case in this category the detective advised the suspect of his right to silence and/or to counsel. The category of more adequate warnings includes those incorporating three or four parts of the *Miranda* advice. The usual three-part warnings included the statement that anything the suspect said could be used against him; the advice of the right to appointed counsel was almost never given unless all other parts of the *Miranda* warning were also recited.

The last figure on the chart shows the number of interrogations in which the detectives repeated all four parts of the *Miranda* advice of rights.

82. For our study we adopted Chi-square as the measure of significance. Our reasoning

less than half the suspects received a warning which included more than half the elements of the *Miranda* advice,[83] but by August more than two-thirds of the suspects received such a warning. More important, the number of full *Miranda* statements increased even more dramatically. No suspects received the full *Miranda* statement in June, while more than one-third of those questioned in August received the complete warning.

Undoubtedly the detectives' initial failure to give the *Miranda* advice was partly attributable to ignorance. Although the detectives were told of the decision by their superiors, few of them seemed to understand its requirements. Only one of the line detectives, so far as we could tell, had read the decision by the time we left the stationhouse. Toward the end of the summer, those who took the department's in-service training course began to receive more complete lectures on *Miranda,* so that by the end of last year all the detectives should have known what advice of rights they were required to give. Near the end of the observation period, cards giving the *Miranda* advice were passed out by the department to all the detectives and patrolmen with instructions to read one to each suspect at arrest. At the same time all detectives were given a waiver-of-rights form which they were to have the suspect sign before they questioned him.[84]

These remarks must be qualified for the Special Services Division. There the detectives were more conscious of the letter of the prescribed advice soon after it was promulgated. Consequently, their omissions generally seemed to be intentional.[85]

Despite increasing adherence to the letter of *Miranda,* however, both groups of detectives complied less readily with its spirit. By and large the detectives regarded giving the suspect this advice an artificial im-

is discussed in Appendix H. In using Chi-square we have adopted the usual convention that an apparent relationship which could occur only once in twenty samples if no such relationship existed in the universe was statistically significant. To have such a relationship Chi-square must be significant at the .05 level or lower.

83. The detectives may have had little chance to adjust to the *Miranda* decision in June.

84. The card read as follows:

WARNING

I am a Police Officer. I warn you that anything you say will be used in a Court of law against you; That you have an absolute right to remain silent; That you have the right to advice of a lawyer before and the presence of a lawyer here with you *during* questioning, and

That if you cannot afford a lawyer, one will be appointed for you free before any questioning if you desire.

85. The detective who had read the decision, and who seemed to understand most fully its implications, was a member of Special Services. Perhaps his knowledge was responsible for that of his comrades.

position on the natural flow of the interrogation—an imposition for which they could see little reason. Most incorporated into their tactical repertoire some sort of hedging on the warnings, when they were given. Some changed the warning slightly: "Whatever you say may be used *for* or against you in a court of law." Often, the detectives advised the suspect with some inconsistent qualifying remark, such as "You don't have to say a word, but you ought to get everything cleared up," or "You don't have to say anything, of course, *but* can you explain how . . . ."[86]

Even when the detective advised the suspect of his rights without these undercutting devices, he commonly de-fused the advice by implying that the suspect had better not exercise his rights,[87] or by delivering his statement in a formalized, bureaucratic tone to indicate that his remarks were simply a routine, meaningless legalism. Instinctively, perhaps, the detectives heightened the unreality of the *Miranda* advice by emphasizing the formality of their statement. Often they would bring the flow of conversation to a halt and preface their remarks with, "Now I am going to warn you of your rights." After they had finished the advice they would solemnly intone, "Now you have been warned of your rights," then immediately shift to a conversational tone to ask, "Now, would you like to tell me what happened?"

In the few cases where a suspect showed an interest in finding a lawyer and did not already know one, the police usually managed to head him off simply by not helping him to locate one. Sometimes they refused to advise the suspect whether he should have a lawyer with him during questioning; more often they merely offered him a telephone book without further comment, and that was enough to deter him from calling a lawyer.

What Circumstances Influenced the Detective's Compliance with Miranda? Only one explanation for the varying compliance by the detectives—other than the change over time—survived statistical testing. For the sample as a whole, persons suspected of more serious crimes were given more adequate advice of their rights than those suspected of less serious crimes.[88] (See Table 4.) Our data showed no

86. Sometimes the advice was not given until extensive questioning had occurred.

87. This was usually conveyed by tone or manner of delivery.

88. "Serious" is used here to denote the New Haven detectives' evaluation. To obtain the evaluation, each detective interviewed was given a stack of cards with crimes printed on them and asked to place each under one of four headings: Least Serious, Fairly Serious, Serious, and Most Serious. *See* Police Interview Questionnaire, App. C, *Infra*. The average results provided a basis for ranking crimes on an ordinal scale from 1 to 4. "Ordinal" implies that we know only that category (2) is more serious than category (1), not how much more, and that the scale is not absolute. The latter point is important because New Haven has a relatively low rate of violent crimes against the person. On another scale some of the crimes ranked "Serious" by the detectives might appear relatively trivial.

TABLE 4
ADVICE OF RIGHTS, BY SERIOUSNESS OF CRIME, FOR ALL INTERROGATIONS

Advice of Rights	Seriousness of Crime: Less Serious	Seriousness of Crime: More Serious	Total
0-2 Warnings	36	21	57
3-4 Warnings	20	36	56
	56	57	113

Not ascertained: 5
Not questioned: 9

Chi Square significant at .01 level.

statistical relationship between the availability of evidence and the giving of warnings.[89] But if we look only at the 56 suspects accused of more serious crimes, our data suggest—although not to a statistically significant degree—an interesting and highly rational set of priorities for giving the advice of rights.[90] (See Table 5.)

TABLE 5
ADVICE OF RIGHTS, BY EVIDENCE AVAILABLE, FOR SUSPECTS OF SERIOUS CRIMES

Advice	Evidence: Enough To Convict	Evidence: Enough for Trial	Evidence: Not Enough for Trial	Total
0-2 Warnings	10	4	6	20
3-4 Warnings	14	14	8	36
	24	18	14	56

Not ascertained: 8
Not questioned: 9
Less serious crime: 54

Chi Square not significant at .05 level.

89.

TABLE F-1
ADVICE OF RIGHTS, BY EVIDENCE AVAILABLE, FOR ALL INTERROGATIONS

Advice of Rights	Evidence Available: Not Enough for Trial	Evidence Available: Enough for Trial	Evidence Available: Enough To Convict	Total
0-2 Warnings	16	13	26	55
3-4 Warnings	13	19	24	56
	26	32	50	111

Not questioned: 9
Not ascertained: 7

Chi Square not significant at .05 level
See notes 166-67 and p. 1582 *infra* for a discussion of how we coded available evidence.

90. Another possible explanation for the variations in adequacy of the detectives'

The suspect of a serious crime was most likely to get a more adequate warning in the cases where the police had enough evidence to go to trial, but not enough for a conviction. Thus, the police seemed most careful to insure the admissibility of the suspect's statement when they had a case against the suspect but when it was not clear that he could be convicted without an incriminating statement as evidence. The detectives apparently worried less about the admissibility of the statement if the case seemed open and shut. They were also apparently more willing, from sheer necessity, to take a chance on admissibility when they did not have enough evidence to get to trial unless the suspect incriminated himself.

This pattern is consistent with the conception of their job which many of the detectives seemed to hold. Perhaps as a result of past experience with the prosecutor's office, they often seemed to feel that their job was to produce some written evidence against the suspect and let the prosecutor handle the case after that. Given the detectives' rather narrow conception of their part in the criminal process, it would not be surprising to find them more interested in obtaining some kind of statement to present to the prosecutor than in the statement's admissibility at trial.

3. *Allowing the Suspect to Terminate the Interrogation at His Own Will*

The *Miranda* decision requires the police to stop questioning if a suspect shows any desire to terminate or suspend the interrogation.[91] In New Haven, although we found that 90 of the suspects were told of their right to silence, the detectives did not feel they were required to tell the suspect that they must cease questioning at his request. Most of the suspects were too passive to try to end the questioning. Of the 118

advice of rights is that it depended on whether the policeman liked or disliked the suspect. The data do not support this theory. We tested several indicators of the personal interaction between the suspects and the detectives, and found that none of them related to the adequacy of the advice of rights, either for the sample as a whole, or for the interrogations in serious cases. The indicators tested were the race and age of the suspects, the suspect's attitude toward the detective, and the attitude of the policeman toward the suspect.

91. Although *Miranda* is not totally clear on this point. *Compare*, "Once warnings have been given, the subsequent procedure is clear. If the individual *indicates in any manner*, at any time during questioning, *that he wishes to remain silent*, the interrogation must cease . . . ," 384 U.S. at 473-74 (emphasis added) *with* "If the individual *states* that he wants an attorney, the interrogation must cease until the attorney is present." *Id.* at 474 (emphasis added).

The Court's use of "states" in referring to requests for attorneys implies that the police are not required to read the suspect's mind or to make inferences from behavior that is frequently ambiguous. However, "indicates in any manner" may mean just what it says. If so, the police are required to make these inferences—inferences that are contrary to the interpretation the police would naturally like to place on the events.

suspects interrogated, nearly all responded in some manner to the detectives' questioning at the outset, and 75 made no attempt to halt the interrogation while it was underway. In a very few cases the suspect made it plain, either at the beginning or during the interrogation, that he was determined not to answer questions, and the police quickly gave up questioning.[92]

But many of the suspects who tried more half-heartedly to end the questioning were coaxed into talking.[93] Forty-three suspects expressed some wish to terminate their interrogations. The detectives continued to question 17. The detectives' compliance with this aspect of the *Miranda* decision was strongly related to the seriousness of the crime and the amount of evidence available prior to questioning. Whenever the detectives were dealing with a less serious crime, or had sufficient evidence to ensure the suspect's conviction, they were very likely to allow him to end the interrogation at his own will. But they were unlikely to let him terminate it when they needed information to ensure his conviction for a serious crime. (See Table 6.)

Whether the detectives allowed the suspect to terminate the questioning was also strongly related to the attitude of the detective toward him. (See Table 7.) In fact, this relationship was stronger than the one between the seriousness of the crime and the amount of evidence. When the detectives were friendly or businesslike, the suspects were almost always allowed to call a stop to questioning. But where the detective was hostile or ambiguous the suspect was seldom allowed to terminate the interrogation.

The compliance with this part of *Miranda* did not increase during the summer as the detectives became more familiar with the new ruling. This finding contrasts sharply with the discovery that advice about rights was given more often as the summer progressed. Perhaps the

92. On a few occasions one or two of the detectives told their partners to stop questioning in order not to "blow a good case." It is difficult for us to say whether these remarks indicated a real fear of crossing the *Miranda* boundary. Sometimes the remarks seemed to be used as part of a Mutt and Jeff routine by the "tough-guy" detective; other times they seemed to be nothing more than complaining commentary on the Supreme Court's new ruling.

In a few instances we observed that suspects who refused to talk further during an interrogation would be taken downstairs to the main desk and booked for "intoxication" or some other minor charge. The desk sergeant would then make a note to "hold for the detective division" and the suspect would not be put in touch with a bondsman. Subsequently he would be interrogated again after he had reflected for a few hours in a cell.

93. This group provided an important test of the detectives' desire to comply with the *Miranda* rules, and the Court's realism in formulating them. That the police should not beat a statement out of an unwilling man, they could understand; that they should not nudge an almost-willing man into telling them about the crime he had almost surely committed, because to do so would be "coercion," they could not understand.

TABLE 6

WHETHER SUSPECT WAS ALLOWED TO TERMINATE QUESTIONING, BY SERIOUSNESS OF CRIME AND EVIDENCE AVAILABLE, FOR SUSPECTS WHO ATTEMPTED TO TERMINATE QUESTIONING

Whether Allowed To Terminate Questioning	Less Serious Crime, or Serious Crime, Enough Evidence to Convict	Serious Crime, Not Enough Evidence To Convict	Total
Yes	18	4	22
No	8	8	16
	26	12	38

Made no attempt to terminate: 75
Not ascertained: 5
Not questioned: 9

Chi Square significant at .01 level.

TABLE 7

WHETHER SUSPECT WAS ALLOWED TO TERMINATE QUESTIONING, BY DETECTIVE'S ATTITUDE, FOR SUSPECTS WHO ATTEMPTED TO TERMINATE QUESTIONING

Allowed To Terminate	Attitude				
	Friendly	Businesslike	Hostile	Ambiguous	Total
Yes	10	7	8	0	25
No	1	1	11	4	17
	11	8	19	4	42

Made no attempt to terminate: 75
Not ascertained: 1
Not questioned: 9

Chi Square significant at .01 level.

detectives began to realize, if only subconsciously, that suspects could be advised of their rights with no effect on the subsequent interrogation.

4. *Telling the Suspect of His Right to Call or See Friends or His Family*

The right to call or see friends and family at the police station has not been raised to the status of a constitutional right by *Miranda* or any of the previous coerced-confession cases. However, under the old standard for coercion, the Court often held that a suspect's will was overborne on a record showing, among other things, that the suspect was denied such contact with the outside world.[94] In the *Miranda* decision, the Court again frowned in dictum on such police conduct.[95]

94. *E.g.*, Haynes v. Washington, 373 U.S. 503 (1963); Gallegos v. Colorado, 370 U.S. 49 (1962); Spano v. New York, 360 U.S. 315 (1960).
95. 384 U.S. at 453-54.

Our observers agreed with the Court's unstated premise that a suspect who had friends or family, or even accomplices, with him in the stationhouse is markedly more able to resist the tactics employed by the police. The police seemed to recognize this also, since they always interrogated separately suspects who had been arrested together.

Nonetheless, in most cases the degree of the suspect's isolation was determined by the inertia of the detective or the suspect or both. The detectives rarely explained to suspects that they might call friends or family, or have them at the station during questioning, but the omission seemed to stem more often from inadvertence than design.

TABLE 8
WHEN SUSPECT WAS TOLD HE COULD CONTACT FRIENDS

	#	%
Told before questioning	22	23
Told during questioning	8	9
Told after questioning but before statement	12	13
Not told	52	55
	94	100

Not applicable (friends or relatives present at beginning of interrogation): 4
Not ascertained: 20
Not questioned: 9

The detectives virtually never forbade a suspect to use the phone, even when they did not want him to call family or friends. We noted only three such cases.[96] Rather, the common technique was simply not to offer to allow the suspect to make a call, or to make such an offer only after some or all of the questioning had occurred. Sixty-one of the

TABLE 9
WHEN SUSPECT SAW VISITORS

	#	%
Saw someone before questioning	12	12
Saw someone during questioning	9	9
Saw someone, time not ascertained	2	2
Did not see anyone	78	77
	101	100

Not ascertained: 14
Not applicable: 3
Not questioned: 9

96. In one case the detectives refused to allow a suspect to call a member of Special Services. The suspect was apparently an informer who wanted to call the detective who utilized his services.

105 suspects for whom we have this data were not offered the opportunity to make a call at all, while 21 were told only that during or after the interrogation they could call.

If friends or family arrived, either as a result of a call or for some other reason, the suspect would be allowed to see them; however, 9 of the 32 visitors who arrived were prevented from seeing the suspect immediately. (See Tables 8,9.)

C. *The Most Coercive Interrogations*

Throughout the preceding discussion we have dealt with each aspect of psychological interrogation and adherence to legal norms in isolation, stressing the low level of coerciveness in most questioning. Here, we shall examine the 17 interrogations where the police put most of the elements of psychological interrogation together, isolated the suspect from friends, and disregarded his right to end questioning.

Although we shall call these interrogations "coercive," we should note at the outset that some of them might not be legally coercive under *Miranda* and past coerced-confession decisions.[97] In four of the cases the full *Miranda* warning was given, and the suspect was either allowed to terminate the interrogation or made no attempt to do so. The police used more than three tactics in 16 of the 17 interrogations, and many more in several of them. But under the traditional due process standard for coercion, probably few of these interrogations were coercive enough to invalidate the evidence elicited. For example, the police questioned only two of the 17 for as long as seven hours, and only eight for more than one hour. Even though the detectives' procedures in these interrogations were certainly less than a civil-libertarian's ideal, some of them would have been difficult to challenge successfully in court.

To isolate these interrogations, we used as many as possible of the indexes of interrogation techniques and adherence to legal norms discussed in the previous sections. We felt that we could not consider coercive the detective's failure to offer a suspect amenities. Rather, it was more likely to mean that the interrogation had been short, or that the detective had simply forgotten to make the offer. We also did not use the index of the detective's advice of rights, since we felt that inadequate advice was largely a function of the date of the interrogation.

97. On the other hand, suspects in some of the cases not labeled coercive may have been legally coerced into confessing—*e.g.*, some with short interrogations were not given warnings.

Five indicators of a coercive interrogation were used: (1) whether the attitude of the police towards the suspect was "hostile" or "ambiguous";[98] (2) whether the detectives employed three or more tactics; (3) whether they questioned the suspect for more than one hour; (4) whether they refused to stop questioning after the suspect indicated that he wanted to terminate the interrogation;[99] (5) whether they neglected to tell the suspect he could contact friends or family until after questioning was completed.[100] None of the interrogations in our sample included all five of these indicators; only three interrogations included four of the five. We decided to examine closely the 17 interrogations wherein we found three or more of the indicators.[101] As shown in Table 10, the detectives were hostile or ambiguous, and used three or more tactics, in most of the interrogations chosen by this method. The other three indicators were erratically distributed.[102]

98. The latter was included because of our feeling that the ambiguity arising from the use of contrasting adjectives to describe the detectives' conduct may have meant that the detectives had gone to considerable trouble to ensnare the suspect with a tactic.

99. We did not include the cases in which the suspect had made no attempt to terminate questioning, since in these cases the detective had not violated the rules of *Miranda*.

100. We did not include interrogations in which the detectives had simply not told the suspect at all that he could contact friends and family because of our feeling that the failure to mention the privilege was often a mere oversight on the part of the interrogator, or resulted from the brevity of the interrogation. Furthermore, we had noted that when the detectives apparently wanted to prevent the suspect from calling, but also wanted to say that he had been offered the chance to call, they generally advised him after the interrogation.

The detectives virtually never denied a suspect amenities after he had requested them, so we could not use the denial of amenities as an indicator of coercion.

Furthermore, as we note above, *see* p. 1540 60 *supra*, we felt that amenities were sometimes offered, as well as withheld, to induce the suspect to talk, so that it was not clear in any given case what meaning could be attached to the fact that the detectives had not offered amenities. As it turned out, our feelings appear justified; 8 of the 17 suspects selected by the five indicators we used had been offered cigarettes.

101. One or more of these indicators was found in 85 of the 121 interrogations we had watched, but most interrogations included only one or two of them. The large number of interrogations in which one or two indicators of coercion appeared corroborated our earlier conclusion that the detectives employed these devices half-heartedly most of the time.

Our confidence in the value of the method of selecting the 17 interrogations for analysis was increased when we discovered that all seven of the interrogations from which the detectives tried to exclude us were selected by it.

102. One observer conveniently recorded, immediately after the interrogation, a conversation which formed one of these 17 interrogations. We repeat it here to give some of the flavor of the "most coercive" interrogations:

> Subject had been picked up at 5 A.M. Car 15 had gone up the street and patrolman had followed to give possible assistance. Subject and another youth came running down the street. Patrolman apprehended subject. Stolen car was then found parked on the street in front of subject's home. Subject was accused of having taken the car. Interrogation proceeded as follows:
>
> Detective: "It's pretty obvious you were in the stolen car. You were running away from it and from the policeman. Taking a car for a joyride [taking a car without owner's permission] is a lot less serious offense than car theft, so relatively what you did was a pretty minor offense. You were running away, we have you I'd say, so it'll go a lot easier for you if you just tell me now exactly what you did. You'll be charged with the lesser offense, and the judge will go easier with you if you say: 'I made a

TABLE 10

DISTRIBUTION OF INDICATORS OF COERCION, FOR 17 MOST COERCIVE INTERROGATIONS

Case Number Ia	Policeman's Attitude Hostile II	Three or More Tactics Used III	Length Longer Than Hour IV	Not Allowed to Terminate Interrogation Vb	Told Contact Friends Only After Interrogation VIc
1	x		x	MNA	x
2	x	x	x	x	NT
3	x			x	NT
4	x	x		x	NT
5	x	x		x	
6	x	x	x	x	
7		x		x	x
8	x	x	x	MNA	NT
9	x	x		x	NT
10		x	x	MNA	x
11		x	x	MNA	x
12	x	x	x		
13	x	x	x	MNA	
14	x	x		x	NT
15	x	x		x	
16	x	x		x	
17	x	x		x	

a Interrogation numbers are arbitrary.
b "MNA" indicates suspect made no attempt to terminate questioning.
c "NT" indicates he was not told at all he could contact friends and family.

mistake and it won't happen again. . . .' Maybe you didn't even take the car, but were just a rider in it.

If we have to put you on a lie detector, well, that would take a lot of time and expense, and we wouldn't be too happy about that.

So, I'm being honest with you, and now I want you to be man enough to admit what you did. You don't have to tell me about the other guy, just yourself. Will you take a lie detector test?"

Suspect claims he knows nothing. Detective's tone then gets tougher, aggravation enters his voice, and a few flares of temper. Indicates that he doubts the suspect's story. Calls the home of a girl the suspect says he was talking to at the time of the car theft—the line is busy. Threatens to confront the suspect with the girl or her mother. Gets the name of the other kid who ran away from the police, threatens confrontation with him.

Detective: "If the other kid says the car was taken and you took it or were in it, I'll tell the judge how uncooperative you were. It'll be tough on you, and I'll try to give the other kid a break. (A moralistic tone enters his voice.) What were you doing out at 5 A.M. anyhow? We've got you, I'm certain, and you know it."

Then he locks the boy in the wire cage in the main room of the Detective Division. After a minute or two, he returns to the cage and talks to the subject. Buys him a soda. Subject says that only other kids were involved. Detective brings him to the fingerprint room to talk further. Subject says he was sitting on his porch, when the car drove up, some kids got out and ran off. When the patrol car came by, subject ran because he knew the police would pick up anyone around for questioning. Subject says he knows the kids—he gives the detective their first names. Detective says he doesn't want subject to be hurt by a record, so will keep subject out of it if subject's story is true. Will let subject go home if he agrees to come back at 12:30 P.M.

Subject doesn't appear at 12:30, and detective has only the first names of the other kids. Detective says he figures the subject fell asleep, and can always be picked up later. Detective believes him to be telling the truth.

Having isolated these interrogations, we tried to determine why the detectives had been more coercive in them. We found here, as in previous sections, that the detectives interrogated aggressively in serious crimes when they needed evidence to insure the suspect's conviction, when they needed the name of an accomplice, or when they felt the suspect could help them clear other crimes. In nine[103] of the 17 interrogations, the police needed a confession or admission to assure conviction.[104]

Five of the remaining eight were directed toward solving other crimes, primarily breaking-and-enterings.[105] In the other three interrogations, we could find no reason for the use of coercion. In each the police had enough evidence to convict before questioning, and the questioning was directed only toward obtaining evidence against the suspect himself.

Almost all the suspects in these interrogations had been arrested for relatively serious crimes. Only five of the 17 crimes were among those ranked "fairly serious" by the police; the other 12 were all among those ranked "serious" or "most serious."

We found no evidence that the police had used coercion in response to the personal characteristics of the suspects. Nor did they react to hostility from the suspects; in fact, this group of suspects was significantly more cooperative with the detectives than the sample as a whole. The proportion of Negroes and suspects with prior records was not significantly different from the sample as a whole. The 17 suspects were significantly younger than the sample as a whole; all were less than 30 years of age, and nine were less than 21. The large number of younger suspects, however, is probably accounted for by the fact that the crimes involved were more serious than those in the sample as a whole, since younger suspects tended to be arrested for more serious crimes.

The police gave noticeably more adequate advice of rights to these 17 suspects than to the sample as a whole.[106] Eight of the 17 received the full four-part *Miranda* advice, one received three of the elements

103. In two of these nine cases the primary objective of the questioning was not to gather information to convict the suspect himself, but to obtain the names of accomplices.

104. The detectives needed the confession or admission in these cases if we assume that they would not have investigated further—the most realistic assumption. *See* p. 1597-99 *infra*. If we were to judge the detectives by a more exacting standard, assuming they would have investigated further wherever investigative alternatives existed, then a confession or admission was necessary to convict only three of the nine.

105. In one of the five, the detectives questioned a person suspected of purse snatching about a rash of other snatchings in the city which were particularly troublesome to the police.

106. For a full discussion of the effect of warnings, see Pt. V *infra*.

of the *Miranda* advice,[107] six received one or two of the elements,[108] and only two received no advice at all.

Despite the more adequate advice of rights given these suspects, the police were disproportionately successful in interrogating them. Seven of the suspects confessed; two admitted to their crimes; and two made incriminating statements. Only six of the 17 interrogations were unproductive. By comparison, only 21 suspects in the entire sample of 127 confessed, and only 11 made admissions.[109]

Surprisingly, the police were no less successful in the interrogations where they had given relatively adequate advice than in the others.[110] Of the nine suspects given the full *Miranda* warning or three parts of it, four confessed, one made an admission, and another made an incriminating statement.[111] Similarly, three of the eight suspects given less adequate advice confessed; one made an admission; and one made an incriminating statement.

Our analysis of these 17 coercive interrogations thus indicates that the Court's fears of coerced confessions in *Miranda* are not groundless in New Haven, despite the lack of coercion in the typical interrogation. Aggressive interrogation pays off in confessions. Moreover, these cases suggest that the *Miranda* advice of rights does not reduce the value of coercion in obtaining confessions.

V. The Effects of Warnings

The *Miranda* majority stated that warnings are necessary to protect individuals "who in other circumstances might have exercised their constitutional rights."[112] Critics of the decision maintain that whatever protection is provided by the warnings is purchased at too great a

107. Right to silence; right to counsel; anything he said could be used against him.

108. Usually right to silence and right to counsel, or right to silence alone.

109. Furthermore, some of the uncoerced confessions were virtually spontaneous. The police were not seriously interested in questioning two of the 14 suspects who made uncoerced confessions and three of the nine who made uncoerced admissions. Thus of all of the confessions and admissions which the police sought at all vigorously, one-third (nine of 27) occurred in the 17 coercive interrogations.

110. *See* p. 1567 *infra*.

111. Although the other three gave no statement, it is not clear that the interrogations were failures. All three were co-suspects with one of those who confessed after being given the full *Miranda* advice. As soon as one of the four confessed, incriminating the other three, the police stopped questioning them.

112. 384 U.S. at 456. Making the fifth amendment an "effective" right may not have been the only purpose of the introduction of warnings. The Court may have felt that warnings will make the interrogation process appear fairer to suspects whether or not it effectively protects an ill-articulated desire to remain silent, or that they will produce a more equal treatment of suspects.

price: a crippling of the interrogation process and a consequent reduction in ability of the police to solve crimes, convict criminals, and recover stolen property.[113] Their position rests on the assumption that a number of suspects who would have cooperated with the police will no longer do so after receiving the warnings, either because they will remain silent or because they will request a lawyer who will advise silence. In this section we examine the impact of the warnings[114] on the behavior of suspects, and consequently on the success of interrogations.

We conclude that warnings had little impact on suspects' behavior. No support was found for the claim that warnings reduce the amount of "talking." Other factors such as the seriousness of crime involved, the amount of evidence available, and whether or not the suspect had a record seemed much more determinative of interrogation outcome.[115] We have also concluded that warnings failed to protect some of the suspects they apparently were particularly designed to help.[116]

Three tests were devised for the conventional hypothesis that warnings will cause a decline in successful interrogations. We first tested statistically to see whether those who were warned this summer incriminated themselves less often than those who were not warned. These tests were run, first assuming the composition of each group to be the same, and then controlling for differences between the groups which might affect the outcome. By any measure of a "successful" interrogation, the police were as successful with those receiving one or more warnings as with those receiving none of the four warnings required. Nor did success decrease as the number of warnings increased. Among those receiving some warning, the police were only marginally more successful when the warning was given unclearly.

Second, we evaluated each case individually, taking into account all of the observer's impressions, to determine in a more subjective manner whether the warnings influenced the suspect's behavior. In our estimation, warnings were a factor in reducing the success of interrogation in only eight of the 81 cases which could be evaluated.

113. *See* notes 2, 3 *supra*. As indicated there, the claim that *Miranda* warnings will impair law enforcement objectives depends upon the truth of two factual assertions: (1) warnings will reduce the amount of "talking," and (2) the information lost thereby is essential or at least important to attaining those objectives. This section examines only (1). For a full discussion of assertion (2) and a report of our findings, see Part VI *infra*.

114. This section examines the impact of the warnings actually given. As indicated elsewhere, these frequently fell short of the legal norm. *See* p. 1549 *supra*. Better warnings might have had different effects.

115. See App. J., *infra*, for a complete discussion of our findings.

116. The Court suggests explicitly that the ignorant and the indigent should be protected, and by implication indicates concern for the inexperienced. 384 U.S. at 469-73.

Our third test attempted to determine whether there was a decline in the percentage of successful interrogations from 1960 and 1965, years in which few or no warnings were given prior to questioning.[117] Several methodological problems prevented a full statistical analysis, but there was apparently a decline in success rates from 1960 to 1965 and a greater decline from 1965 to 1966. We hypothesize—and we can do no more—that this decrease was produced by changes in police behavior over this period and possibly by the general educative effect of Supreme Court decisions rather than by the impact of warnings in specific cases.

Finally, a case-by-case analysis was made to determine how many suspects needed protection—i.e., didn't know of their rights before interrogation—and to evaluate whether warnings effectively provided it.

A. *Statistical Evaluation of the Effect of Warnings*

Quantification requires the operational definition of categories and concepts which in ordinary usage would have rather fluid, qualitative meanings. A key concept in this section and in discussions of *Miranda* generally is the notion of a "successful" interrogation. It is often assumed that a successful interrogation is one which produces a written confession and an unsuccessful interrogation is one in which the suspect flatly refuses to talk. These polar categories, however, described only about one-third of the interrogations we observed.[118] Our experience suggested dividing "successful" into four categories: (1) a confession; (2) an oral admission of guilt without a signed statement; (3) a signed statement that was incriminating but less than a full admission of guilt; or (4) oral evidence constituting less than a full admission of guilt without a signed statement.[119] Obviously, the sub-confession "successes" may or may not have been truly successful in the sense of providing all that the police needed or wanted from the interrogation.

Similarly, we observed suspects who did not flatly refuse to talk, but for whom questioning was unproductive in the sense that no evidence was obtained. This "unsuccessful" category included situations as

117. The detectives claim to have warned suspects prior to *Miranda* that they had the right to remain silent and that what they said could be used against them. As indicated in note 80 *supra*, if they were giving warnings, it seems likely that many of them were given after questioning and before recording the statement, rather than before interrogation.

118. We observed the processing of 127 suspects. Of the 118 questioned, 21 confessed and 23 refused to talk.

119. A fifth category is logically possible. A suspect could have orally admitted his guilt and signed a written incriminating statement that did not include the admission. We saw no such cases.

diverse as vigorous questioning met with "the run-around" and desultory questioning that was dropped after the suspect showed no immediate desire to "clear this matter up."[120]

1. *Outcome of Interrogation for Various Groups: Warned vs. Not Warned*

Twenty-seven of the suspects questioned received none of the *Miranda* warnings; 87 suspects received at least one.[121] Our test hypothesis was that, all other things being equal, the detectives should have been more successful with the group not warned.

Considering as successful all interrogations that produced some evidence, our data suggests paradoxically that the detectives were more successful when some warning was given. (See Table 11.) While more

TABLE 11

RESULT OF INTERROGATION (SUCCESSFUL-UNSUCCESSFUL), BY WHETHER SUSPECT WAS WARNED, FOR ALL INTERROGATIONS

Result of Interrogation	Warned	Not Warned
Unsuccessful	37	19
Successful	50	8
	87	27
Not ascertained: 4		
Not questioned: 9		

Chi Square significant at .01 level.

than half of those who were given some warning incriminated themselves, only eight of the 27 unwarned suspects gave incriminating evidence.

Table 12 provides a detailed breakdown of interrogation outcomes. The most striking characteristic is the high proportion of unproductive questioning, particularly among the unwarned. In many of these cases, the suspect was questioned only in a desultory manner. Since desultory questioning was often an indication that the interrogation was unnecessary, the police may actually have been successful in a higher proportion of the unwarned cases where information was needed than our figures might suggest.

120. This statistical evaluation presented no additional important methodological difficulties. The Observer Questionnaire provided elaborate information on the giving of warnings. A copy can be found in App. A, *infra*. The statistical techniques employed are explained in App. H, *infra*.

121. *See* p. 1550 *supra* for a detailed breakdown of the number of suspects given each type of warning.

TABLE 12
RESULT OF INTERROGATION, ALL OUTCOMES, BY WHETHER SUSPECT WAS WARNED FOR ALL INTERROGATIONS

Result of Interrogation	Warned	Not Warned	Total
1. Refused to talk	22	1	23
2. Unproductive questioning	15	18	33
3. Oral incriminating evidence	15	6	21
4. Incriminating statement	4	1	5
5. Oral admission of guilt	10	1	11
6. Confession	21	0	21
7. Not questioned	4	5	9
8. Not ascertained			4
Total	91	32	127

Chi Square significant at .001 level.

Since these groups were not alike in all respects, we controlled for other recorded variables to see if they might account for the apparent positive relationship between warnings and success. Our first hypothesis was that the unwarned group had more people with prior records.[122] Surprisingly, we found that 66 per cent of the warned group had prior records compared with only 52 per cent of the unwarned. Moreover, even within the unwarned group, having a prior record did not seem to matter; questioning failed for 10 of the 12 suspects with prior records and eight of the 11 suspects without.

On the other hand, the positive relationship between warnings and success in interrogation may be partially explained by differences in the crimes of which each group was accused. Since interrogations were more successful for more serious crimes,[123] the fact that the warned group had more often been arrested for more serious crimes may partially account for the finding that success increased when warnings were given. (See Table 13.) The greatest disparity between the two groups was with the "least serious" crimes. When warnings were given, the police were successful in nine of 14 cases; when no warnings were given they were successful in only one of 11. This suggests the questioning was not very rigorous. For the more serious crimes, the police still were more successful with the warned group than with

122. We had earlier found that people with prior records were less likely to give evidence during questioning, a finding which suggested that they had been educated by their earlier experiences with interrogation. *See* App. J. *infra.*

123. For our definition of "serious" see note 88 *infra. See* App. J. *infra.*
We suggest that this is because the detectives interrogate more vigorously those suspected of serious crimes.

TABLE 13
RESULT OF INTERROGATION, BY SERIOUSNESS OF CRIME, AND BY WHETHER THE SUSPECT WAS WARNED, FOR ALL INTERROGATIONS

	Least Serious Crimes		Fairly Serious Crimes		Serious and Most Serious Crimes		
	Warned	Not Warned	Warned	Not Warned	Warned	Not Warned	Total
Unsuccessful	5	10	12	5	16	4	52
Successful	9	1	11	4	31	4	60
Total	14	11	23	9	47	8	112

Not Ascertained: 6
Not questioned: 9

Chi Square significant at .001 level.

those not warned (Table 13), but the difference was not as great as when seriousness of crime was not controlled for (Table 11).[124]

2. *Number of Warnings*

Those receiving some warnings did not all receive the full number required.[125] Our test hypothesis was that, all things being equal, the detectives should have been progressively less successful as more warnings were given.[126] When we compared interrogation results with number of warnings given, however, the results did not support the hypothesis: refusals to talk and unproductive questioning did not increase as the number of warnings increased; confessions, admissions etc. did not decrease as warnings increased.[127]

124. The groups also differed somewhat in the amount of evidence available against the suspect at the time the interrogation commenced, but the police were less successful with the unwarned group in every evidence category.

The evidence available against a suspect at the time of interrogation was described by one of four categories: (1) nothing, (2) little, (3) enough for trial, *i.e.*, enough so that there was a high probability against a directed verdict for the defendant, and (4) enough for probable conviction, *i.e.*, enough that it seemed likely a jury would be convinced. We had hoped these categories would be discrete. They are almost certainly ordinal, *i.e.*, (2) is greater than (1), (3) is greater than (2), and so on.

125. "Number" refers to those of the four required warnings a suspect received, not to how often he was warned.

126. The plausibility of the hypothesis does not depend solely on the view that the effect of the individual warnings is additive, *i.e.*, that each warning will have a distinct and independent attraction for suspects. The prolonging of the warning process would be ample justification for the effect. However, the fact that the warnings do cover the distinct categories of silence and counsel has led some critics to the view that the effects would cumulate.

127. If the results suggest anything, they suggest that success increases as the number of warnings increases. We attempted to control for third variables, but the subcategories produced included so few suspects that the results were inconclusive. What does seem clear is that if the number of warnings is related other than randomly to the success of interrogations, it is not in the direction of decreasing success as the number of warnings increases.

TABLE 14
RESULT OF INTERROGATIONS, BY NUMBER OF WARNINGS, FOR ALL INTERROGATIONS

Result	Number of Warnings 0	1	2	3	4	Total
Unsuccessful	19	5	13	9	9	55
Successful	8	3	13	22	13	59
	27	8	26	31	22	114
Not ascertained: 4						
Not questioned: 9						

Chi Square significant at .02 level.

3. *Clarity of Warnings*

In 20 cases the warnings, from our observer's perspective, were not clear.[128] Although this is a small group to work with statistically, we attempted to test the hypothesis that the detectives would be more successful with the group given unclear warnings, all other things being equal. Defining success as obtaining some evidence, our results show that the police were more successful with the unclearly warned groups, although the correlation was not statistically significant. (See Table 15.) The group receiving unclear warnings also confessed more frequently and refused to talk less frequently than the group receiving clear warnings.[129]

Controlling for third variables reduced the apparent importance of this finding. The groups differed somewhat in the incidence of serious crimes. Although when only serious crimes are considered the police still were more successful with the group given unclear warnings, the

We also investigated whether any of the warnings were more important than the others, and found that none was. We also asked the detectives for their views as to which warnings were more important. Although many ventured opinions, no consensus emerged. One of the more astute detectives suggested that the warning of the availability of appointed counsel would become the most important as the "criminal classes" became aware of its significance.

128. *Miranda* requires that before a person may be questioned, "he must first be informed in *clear and unequivocal terms* that he has the right to remain silent." 384 U.S. at 467-68 (emphasis added).

We evaluated the clarity of every warning given. *See* the Observer Questionnaire Question 16, at App. A *infra*. The observer could only evaluate the clarity of the warnings subjectively. Thus even if the observer thought the warning was unclear, the suspect may have understood it.

Unclear warnings were not always a deliberate tactic designed to reduce the impact of the warnings. Accidental lack of clarity seemed particularly prevalent in the early stages of our observation when the detectives were still adapting to the new procedure.

129. Of the 20 suspects given unclear warnings, one refused to talk and eight confessed. Twenty-one of the suspects given clear warnings refused to talk and 13 confessed.

TABLE 15
RESULT OF INTERROGATION, BY CLARITY OF WARNINGS, FOR ALL WARNED SUSPECTS

Result	Clear Warnings #	Unclear Warnings #	Total Warned
Unsuccessful	32	5	37
Successful	35	15	50
Not ascertained: 4			
Not questioned: 9			
Not warned: 27			

Chi Square not significant (.20 level).

difference was not so great.[130] The groups also differed somewhat in the amount of evidence available, but the police were more successful with the unclearly warned group in every evidentiary category. Finally, the groups differed somewhat in the proportion of suspects with prior records;[131] but since it was the suspects in the unclearly warned groups who most frequently had a record, this means the police were more successful in spite of this factor.

Another way of looking at this data is to consider unclear warnings together with no warnings as comprising a single larger group best designated as "bad" warnings. Comparing this group with the group of "good" or clear warnings suggests that warnings are irrelevant in determining the success of interrogations. (See Table 16.) The two groups were broadly comparable in terms of seriousness of crime, available evidence, and prior records.[132]

Thus, however grouped, the data do not support the claim that the warnings will cause a decline in success. While this finding is surprising, it makes sense in light of our impressions about when the detectives gave warnings. All the observers felt that the detectives, often

130.

TABLE F-2
CONTROLLING FOR SERIOUSNESS OF CRIMES

	Less Serious		More Serious	
	Unclear	Clear	Unclear	Clear
Unsuccessful	2	15	3	16
Successful	6	15	9	22

131. Fourteen of the 20 suspects warned unclearly had previously been arrested compared to 42 of 65 of those warned clearly.

132. The larger sample size also increases the probability that the groups were more comparable in terms of variables for which we were unable to control.

TABLE 16
RESULT OF INTERROGATION, BY WHETHER WARNING WAS GOOD OR BAD, FOR ALL INTERROGATIONS

Result	Warnings: Good #	Warnings: Bad #	Sample
Unsuccessful	32	24	56
Successful	35	23	58
Not ascertained: 4 Not questioned: 9			

Chi Square not significant (.70 level).

relying on intuition, always warned those they felt would confess, possibly to insure the admissibility of the confession. Moreover, they often consciously did not warn those suspects against whom they had the least evidence, and who were the least likely to confess. Thus, the police behavior, rather than anything about the warnings, might be the explanation for our finding.

B. *Case-by-Case Evaluation*

The cases were also evaluated individually to estimate subjectively the effect of warnings on suspect behavior. While we could only measure effects from the observer's viewpoint, this evaluation served in some measure as an independent check on the findings of the statistical analysis.[133]

To determine whether warnings had an impact we relied both on specific questions in the questionnaire and on the subjective comments included by each observer. Our observers recorded whether the suspect reacted to the warnings about counsel. However, they could not determine objectively whether warnings had induced silence. In the latter case we referred to a variety of factors rather than answers which our observers had simply checked off from a list of responses on the questionnaire. Basically, we were looking for a "reaction" to warnings that contributed—alone or in conjunction with other factors—to a change in behavior at least potentially related to the outcome of the interrogation. Unless there was some indication that a suspect was quite set on behaving the way he did, we generally assumed warnings

133. Given reliable data, statistical tests have the advantage of producing relatively objective conclusions. They lose, however, much detailed and subtle information about individual cases. A case-by-case evaluation compensates for this loss at the price of greater reliance on the evaluator's judgment.

were at least partially responsible for his behavior. Indications to the contrary might be that the suspect stated before being warned that he knew his rights and was not going to talk, or called a lawyer before being warned.

An effect on behavior might be, for example, a request for a lawyer after the suspect received the advice of his right to counsel. Also included were situations in which suspects who had orally incriminated themselves refused to sign statements after being told they were not required to sign a statement (usually they were told directly before signing).

In our judgment, warnings affected the interrogation result for only eight of 81 suspects whose conduct could be analyzed.[134] Three of the eight refused to talk, two after advice from counsel; three incriminated themselves but refused to sign statements; one admitted his guilt but refused to sign a statement or implicate his co-suspects; and one confessed after being advised to do so by the lawyer he had requested.

TABLE 17
EFFECT OF WARNINGS, CASE EVALUATION, FOR ALL INTERROGATIONS

	#	%
Warnings affected result	8	6
Warnings did not affect result	73	57
Effect not ascertained	10	8
Suspect not warned	27	22
Suspect not questioned	9	7
	127	100

Approximately half of the remaining 73 suspects apparently unaffected by warnings did not incriminate themselves. Many of these apparently knew their rights when arrested or were completely defiant before any warnings were given.[135] The other suspects incriminated themselves despite some warnings.

The conclusion that warnings had little impact is not surprising in view of our impressions of the process. In the first place, although most interrogations were not intimidating, they were designed to discourage any initiative on the part of the suspect. We have indicated previously that the warnings, when given, were often intoned in a

134. Ten additional suspects' behavior was affected, *see* p. 1578 *infra;* ten others could not be evaluated.

135. For example, 20 of these suspects immediately refused to talk and 18 suspects asked to see a lawyer or friend before receiving any warnings. Nearly one-third of the suspects were described as uncooperative and evasive by the observer. Sixteen asked for amenities without being told they could have them. However, no suspect did all of these things and only nine did two.

manner designed to minimize or negate their importance and effectiveness. Since most suspects had little education—many could not even read—and appeared both ill-at-ease and dazed by the process, the warning so given seemed to have little impact. This was even true for many previous offenders who, despite their previous brushes with the law, often seemed to have little appreciation of the legal consequences of their action.[136] Many seemed to operate under the misconception that talking to the police could not hurt them as long as they did not put anything in writing. Several said, when advised of their right to counsel, that they would get a lawyer at arraignment or trial. Thus, unless the detectives made it absolutely clear what the warnings meant—which they rarely did—most suspects appeared unable to grasp their significance.

Perhaps equally important, almost every person arrested this summer had committed the crime for which he was arrested and knew that the police had evidence of this. When he remained silent, the police would confront him with the evidence. Most suspects apparently felt compelled to give some alibi. Usually they lied and in so doing were caught in their lie. From then on the process was all downhill—from the suspect's point of view. Once a suspect said anything he usually had taken the first step towards incriminating himself.

In addition to these two factors, the warnings did not have an impact[137] on a number of suspects who, knowing they were guilty, apparently saw no point in denying their guilt. Perhaps previous exposure to the process made them believe silence was futile—several of the defendants we interviewed expressed this belief.

Finally, the warnings had no apparent impact on the behavior of the 26 suspects who seemingly believed they were giving exculpatory statements. Such statements were particularly common in assault cases, where a suspect would admit his participation but blame the fight on someone else. Most of those who began by attempting to justify their actions ended by incriminating themselves to some degree.

It is even possible that our seemingly paradoxical finding in the statistical analysis—i.e., that warnings tend to correlate with success—makes sense for reasons other than the detectives' practice of giving

136. About one third of the suspects we interviewed in the jail and on probation still did not know what they were legally required to tell the police.

137. In this discussion, we are using the term "impact" somewhat differently than before. We use it to mean making a suspect aware that anything he said might hurt him. Some of these suspects may have understood the warnings—although we have no evidence of this—but still decided to talk for the reasons listed in the text.

warnings when they would have no effect. On several occasions we noted that a suspect seemed to be thrown off guard by the warnings. He apparently thought that if the police could give these warnings they must have him. In such cases—albeit a small number—warnings may actually have aided in obtaining a statement.

C. *Time-Series Study*

We had hoped to compare the interrogations observed in 1966 with a sample of cases from the police files to ascertain whether there had been a decline in the rate of successful interrogations since *Miranda*. Although it was evident that any decline could not be totally attributable to *Miranda* itself—the police claim they had advised on the right to silence since *Escobedo*[138]—any radical drop after *Miranda* would indicate that the decision might be related to the decline.

It proved impossible to select a sample suitable for formal statistical comparison. The police files were not kept in such a way as to provide a basis for statistical sampling. There were two major problems. First, we were interested in the cases in which a suspect had been interrogated. It was easy to tell if there had been a successful interrogation because the statement would be appended to the report. But we could seldom be certain that the absence of a statement or other indicators meant there had been no interrogation. Second, the files contained no records of some of the minor crimes for which we had seen interrogations. As a result, it was impossible to obtain a sample of cases from the files with the same profile as the summer sample.

Aware of these problems, we examined approximately 200 cases selected from the files for the years 1960 and 1965, and perused many more. Although the methodological difficulties make us very cautious about our findings, the evidence from the files indicates that there was a decline in success from 1960 to 1965 and probably a greater decline from 1965 to 1966. The data suggest a decline of roughly 10 to 15 per cent from 1960 to 1966 in the number of people who gave some form of incriminating evidence over the entire time. The greatest drop was in written statements.[139]

Controlling for variables other than warnings that might account for any decline, we discovered that three variables correlating positively with successful interrogations were more heavily represented in

138. *See* note 80 *supra*.

139. This decline has probably been a steady one, reflecting the impact of many decisions. However, particularly important in understanding changes in New Haven is the fact that in Rogers v. Richmond, 365 U.S. 534 (1960), the Supreme Court ruled that an interrogation obtained by the New Haven Police had been coerced.

the 1960 and 1965 samples. In these samples there were more serious crimes, more cases with a large amount of evidence available at the time of arrest, and more juveniles. Each of these factors might explain the apparent decrease, since they all correlate highly with interrogation success.

In addition to these three factors, and the possible biases in the samples themselves, several other explanations for a decline seem plausible. First, the *Miranda* rules may have provided the detectives with an excuse for avoiding the laborious process of statement-taking when they felt it unnecessary for obtaining a conviction. Although the stated policy of the detectives was and is to request a written statement of each suspect interrogated, we found that no statement was requested in over 25 per cent of the cases last summer. This may have occurred because the detectives assumed that they could blame unsuccessful interrogations on *Miranda*. If in the earlier years, statements were requested in every case, the decline in success over this period may merely reflect a decline in requests.[140]

Secondly, suspects may be generally less cooperative—not because of specific warnings but because mass-media publicity and grapevine communication concerning Court decisions expanding protection of criminal suspects have made citizens generally more aware of their rights. Such an effect would not be restricted to *Miranda*; indeed, one would expect that our study came too soon after the decision for *Miranda* to have had this sort of effect. Moreover, any general rise in awareness of rights would not be revealed by a study of warnings given in individual cases, nor would it necessarily be related to specific warnings.

Perhaps most importantly, we learned from our interviews with both detectives and suspects that there seemingly has been a substantial change in police attitudes and practices from 1960 to 1966. Both groups believe the interrogation process has become considerably less hostile; detectives are unwilling to use tactics approved seven years ago. For example, we found several instances where detectives stopped an interrogation when the letter of *Miranda* did not require them to do so. This change is probably attributable both to court decisions on the criminal law and to changes in administration within the department.[141]

140. Of course, even if this theory is correct, the failure to interrogate might have no effect on convictions, because the detectives might fail to interrogate in cases where confessions are unnecessary. *See* Pt. VI *infra*.

141. A recent book by a sociologist with 20 years experience in the New York Police

D. *Protection Provided by Miranda*

The stated purpose of *Miranda* is to protect those who "in other settings . . . might have exercised their constitutional rights."[142] In the previous sections we have shown that warnings do not seem to lead to silence; however, this does not necessarily mean they failed to protect the class they are designed to aid.[143] In this section we attempt to evaluate how successful warnings were in accomplishing this purpose.

1. *Categorization of Suspects*

We have categorized the suspects into two groups: those who wanted protections in the police station and those who did not. We looked at the former group to determine whether or not they needed warnings in order to be aware of the protection *Miranda* afforded. For most suspects, the observer questionnaires provided considerable information about whether a suspect wanted protection and needed the knowledge provided by warnings, but insufficient data prevented classification of 34 of the 118 suspects evaluated.[144] It should also be emphasized that our judgments were made from the observer's point of view; our inferences were made from a suspect's overt behavior, not from interviews during or after the interrogation.

If a person obviously wanted to confess—and obviously would want to whether or not he knew his rights—he was considered not to want protection.[145] On the other hand if a suspect showed any unwillingness to help convict himself—whether or not it was sufficiently explicit to require the police to stop questioning[146]—he was deemed to want protection. Such a manifestation might be a protest of innocence, a claimed lack of knowledge of the relevant events, or an obviously fabricated story.

Department suggests that alterations in the outlook of police administrators may have been more important in producing such changes than court decisions. *See* note 268 *infra*.

142. 384 U.S. at 456.

143. Theoretically, the finding that warnings had little impact could mean that few of the suspects the Court hoped to protect wanted this protection.

144. In addition, nine of the suspects observed were not questioned at all.

145. "The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently." 384 U.S. at 444.

146. *See* note 91 *supra*.

In determining that *Miranda* protected less than half of the suspects who needed protection, we assumed that behavior such as protesting innocence or claiming lack of knowledge of relevant events did not require an inference by the police that the suspect "wishes to remain silent." We assumed, of course, in deciding whether a suspect needed protection, that we could make similar inferences. However, we used a test that may be broader and hopefully is more meaningful than "wishes to remain silent," *viz.*, did the suspect manifest a desire to assist in his own conviction. A suspect could fail to satisfy this test without silence ever having occurred to him as a realistic alternative.

A suspect was deemed to need warnings if he was ignorant of his rights, unaware of the consequences of talking, apparently susceptible to tactics, or otherwise emotionally unable to cope with the "compulsion inherent in custodial surroundings."[147] Obvious knowledge of rights and consultation with an attorney before questioning were factors indicating a suspect did not need warnings to assert his rights.

Only six suspects clearly wanted to confess regardless of their rights.[148] Of the 78 remaining suspects who wanted protection, 32 apparently needed no warnings to claim the protection of their constitutional rights, while 46 suspects did need warnings.

We attempted to classify suspects without considering the result of the interrogation, since the outcome of questioning is produced by the interaction of police and suspect, whereas our aim was to isolate suspect characteristics alone. However, assuming police behavior is the

TABLE 18
RESULT OF INTERROGATION, BY WHETHER SUSPECT NEEDED PROTECTION, FOR ALL INTERROGATIONS

Result	Did Not Need Protection	Needed Protection	Did Not Want Protection
Refused to talk	14	4	1[a]
Unproductive questioning	11	7	0
Oral incrim. evidence	4	9	0
Incriminating statement	1	9	1
Oral admission	1	1	0
Confession	1	16	4
	32	46	6

Result	Did Not Need Protection	Needed Protection	Did Not Want Protection
Unsuccessful	25	11	1
Successful	7	35	5

Not questioned: 9
Not ascertained: 34

a This suspect consulted a lawyer who advised the suspect to remain silent—advice known to the police. The suspect wished to confess so strongly, however, that the detective had to insist repeatedly that he remain silent.
Chi Square significant at .001 level.

147. 384 U.S. at 457.
148. This figure would seem to support the view that, "there is rarely . . . an intelligent, voluntary waiver of the fifth amendment privileges." Kuh, *Interrogation of Criminal Defendants—Some Views on* Miranda v. Arizona, 35 FORDHAM L. REV. 233 (1966). And it would seem to contradict the apparent assertion that many people want to confess. *See, e.g.*, Warden, *Miranda—Some History, Some Observations, and Some Questions*, 20 VAND. L. REV. 39, 52 (1966).

same in both cases, one would expect that the police would be successful with those who need protection more often than with those who do not. The data support that expectation. Although seven of the people classified as not needing protection did give incriminating evidence, this does not necessarily indicate that our subjective impressions were inaccurate since these suspects may consciously have cooperated, believing cooperation would help them.

2. *Who Needs Protection*

It is often suggested that *Miranda* is primarily an equal protection decision—the assumption is that first offenders, younger suspects, and minority groups were unequally protected by our legal system before the decision.[149] We did find that those needing protection tended to be first offenders. Only 36 per cent of our entire sample of 127 had not been previously arrested, while 55 percent of the group needing protection were first offenders. This finding indicates that a previous trip through the criminal process is an experience which seems to provide some education about rights and consequences of conviction, and seems to bolster the will. However, the "value" of this experience should not be exaggerated. Forty-five percent of the group needing protection did have a previous arrest record and our interviews with jailed defendants indicated that even many of those with substantial experience remained woefully ignorant.[150]

On the other hand, we found no indication that race was related to the need for protection. The data on age was varied. The group least needing protection was the suspects between 22 and 30. Suspects under 21 needed protection slightly more; however, those over 30 were in considerable need of protection. These findings make sense in light of our other data: suspects between 22 and 30 were generally more composed and apparently aware than those of other ages.[151] Younger suspects, particularly those under 21, tended to have prior records more often. Thus, our evidence provides only partial support for an equal protection rationale.

3. *Success of Warnings in Protecting*

The giving of warnings did not succeed in protecting many suspects who apparently did not want to incriminate themselves. Nine of the

149. 384 U.S. at 516 (dissenting opinion of Harlan, J.).
150. *See* note 136 *supra*.
151. Older suspects often seemed quite ashamed by what they had done and bewildered by the process. They were usually first offenders and often had committed sex crimes.

46 people who needed protection were not warned; the warnings succeeded in protecting the suspect's constitutional rights in only eight of the 37 other cases.[152] However, in 10 other of these 37 cases the suspects indicated after warnings that they wanted to terminate the interrogation, but the police violated *Miranda* by continuing the interrogation and obtained incriminating evidence.[153] The other 19 did not react to the warnings and eventually incriminated themselves, although from their behavior they apparently did so reluctantly.

In sum, our data indicate that the *Miranda* warnings have not been notably successful in protecting those who needed them, regardless of who they are. In part this may be attributable to the inadequacy of mere verbal warnings which the police may by their tone or manner geld of meaning. Whatever the reason, however, it seems from all of our data that the *Miranda* warnings will not silence suspects and therefore will not cripple law enforcement as critics have claimed. The opposite side of this coin, however, is that warnings do not seem significantly to help the suspect to make a "free and informed choice to speak or assert his right to stand silent."[154]

VI. The Role of Interrogations and Confessions in Criminal Law Enforcement

Miranda provoked an immediate rash of comment from prosecutors, police officials and commentators about the role of interrogations in crime prevention.[155] The overwhelming majority warned that interrogations are essential to effective law enforcement.[156] This assumption, coupled with the assumption about the impact of warnings on suspect behavior, led them to conclude that law enforcement would be substantially hampered by the *Miranda* rules.

152. These are the eight cases discussed at p. 1571 *supra*. In some cases the suspects did not incriminate themselves but this appeared to be more a case of detective failure than suspect desire.

153. These suspects were, in a sense, protected by the warnings. If the rest of Miranda's rules also worked they would be protected because their confessions would be inadmissible. Of course, had they decided to plead guilty, the exclusionary rules could have offered no protection.

154. 384 U.S. at 467-68.

155. *See, e.g.*, U.S. NEWS & WORLD REPORT, June 27, 1966, at 32-36; N.Y. Times, June 20, 1966, at 1, col. 2. The Times noted, however, that the response to *Miranda* was "more muted than usual." N.Y. Times, June 19, 1966, § 4, at 1, col. 1.

156. Such diverse authorities as Aaron E. Koota, Kings County District Attorney (N.Y. Times, Aug. 13, 1966, at 1, col. 1), Truman Capote, author of the best selling *In Cold Blood* (N.Y. Times, July 22, 1966, at 11, col. 1), and U.S. Senator Sam J. Ervin, Jr. of North Carolina (N.Y. Times, July 23, 1966, at 54, col. 6) endorsed this position. *See also* Inbau, *The Playboy Panel: Crisis in Law Enforcement*, PLAYBOY, Mar. 1966, at 47, 49. Numerous earlier decisions, especially Escobedo v. Illinois, 378 U.S. 478 (1964), evoked a

In the year since the decision, however, a small but growing number of officials and commentators have come to the conclusion that "the value of confessions in law enforcement has been grossly exaggerated."[157] They argue that most cases can be solved by other investigative techniques.

Several empirical studies have considered this issue, but a number of questions remain unanswered.[158] By focusing only on confessions and admissions, these studies neglect cases in which other evidence is already available or where interrogation provides new leads which eventually bring a conviction.[159] There is, moreover, little information

chorus of condemnation from police and prosecuting officials. As if to anticipate the new round of controversy, each of the opinions in *Miranda* alludes to the role of interrogations in effective criminal law enforcement. Speaking for the Court, Chief Justice Warren asserted: "Although confessions may play an important role in some convictions, the cases before us present graphic examples of the overstatement of the 'need' for confessions." 384 U.S. at 481. In the first of four dissents, Justice Clark noted that "Custodial interrogation has long been recognized as 'undoubtedly an essential tool in effective law enforcement.'" *Id.* at 501. Mr. Justice Harlan asserted that "some crimes cannot be solved without confessions, [and] that ample expert testimony attests to their importance in crime control. . . ." *Id.* at 517. In a footnote Mr. Justice White warned that "Those who would replace interrogation as an investigatorial tool by modern scientific investigation techniques significantly overestimate the effectiveness of present procedures, even when interrogation is included." *Id.* at 541 n.5. The majority opinion never explicitly denied that warnings would reduce the amount of talking. The claim that "[t]he limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement," *id.* at 481, seems based on the view that confessions are not terribly necessary. FBI experience and English experience under the Judge's Rules, CRIM. L. REV. 166 (1964), were given as examples. *Id.* at 483-87. Indeed, the majority would seem bound to the position that warnings will eliminate at least coerced talking, or the imposition was an absurdity.

The dissenting Justices were naturally quite explicit. Justice Harlan insisted that "[t]here can be little doubt that the Court's new code would markedly decrease the number of confessions." *Id.* at 516. Justice White felt the Court knew what it was doing: "The rule announced today will measurably weaken the ability of the criminal law to perform these tasks. It is a *deliberate calculus* to prevent interrogations, to reduce the incidence of confessions and pleas of guilty and to increase the number of trials." *Id.* at 541 (emphasis added).

157. N. SOBEL, THE NEW CONFESSION STANDARDS: MIRANDA V. ARIZONA 140 (1966). Other proponents of this position include Attorney General Clark, former Attorney General Katzenbach, and Attorney General Lynch of California (N.Y. Times, May 1, 1967, at 24, col. 4; U.S. NEWS & WORLD REPORT, June 27, 1966, at 32; N.Y. Times, May 18, 1966, at 27, col. 1).

158. *E.g.*: Detroit Police Dep't, Confessions in Felony Prosecutions for the Year of 1961 as Compared to January 20, 1965 through December 31, 1965 (July 27, 1966) (unpublished report); E. Younger, Dorado-Miranda Survey, Aug. 4, 1966 (available from the Office of the District Attorney for the County of Los Angeles); N. SOBEL, *supra* note 157, at 136-150. For a discussion of these studies, *see* App. I.

159. Information divulged by a suspect during questioning can be presented at trial through the testimony of police officers who witnessed the interrogation. The findings of the Chicago Jury Project, reported in H. KALVEN & H. ZEISEL, THE AMERICAN JURY (1966), indicate that policemen are the most common witnesses for the prosecution. *Id.* 137, table 34. (Reproduced *infra* as Table F-3.) Although policemen may testify about things other than defendants' statements, this finding does suggest that studies which consider only neatly packaged confessions and admissions inadequately measure the role of interrogations in the enforcement process.

about the role of interrogations in achieving other law enforcement objectives, such as convicting accomplices or retrieving stolen goods.[160] No study has considered whether the police could use other methods of investigation to obtain conclusive evidence without reliance on confessions.[161] Finally, there is no evidence about the effect of *Miranda* on the success of interrogations in the crucial cases where there are no investigative alternatives to police questioning.

We have tried to explore these questions in estimating the im-

TABLE F-3
EVIDENCE FOR THE PROSECUTION

Witness	%
Police	78
Complainant as witness	57
Eyewitness	25
Expert	25
Alleged confession	19
Family and friends of complainant	18
Accomplice—turned state's evidence	9
Other witnesses	7

Percentages indicate per cent of cases each source of evidence was utilized. Since several sources might be used in one case, the percentages do not total 100.

160. The role of interrogations and confessions in the early stages of the criminal process is considered in Barrett, *Police Practices and the Law—From Arrest to Release or Charge*, 50 CALIF. L. REV. 11, 35-45 (1962). This study provides some interesting statistics about the screening function of questioning. The data was obtained in two surveys conducted by the chiefs of police in two unidentified California cities during two three-month periods in 1960. The members of the detective division in each city were required to complete a form for each adult arrested on felony charges and processed by them during the particular three-month period.

In "City A" detectives interrogated 391 of the 399 suspects comprising the sample (98%); in "City B" all 59 suspects studied were interrogated by either the detectives or the arresting officers. Confessions or admissions (undefined) were reported to have been obtained from 58.1% of the 399 suspects arrested in City A and 88.1% of the 59 suspects arrested in City B. When consideration was limited to suspects arrested and subsequently charged, excluding those subsequently released, these figures rose to 75.6% (198 of 262) and 89.6% (43 of 48) respectively. A surprisingly high number of the suspects released in each of these cities also gave confessions or admissions. In City A, 34 of 137 did so (24.8%); in City B, 9 of 11 did (82%). Barrett suggests that the suspects were released in these cases because of insufficient evidence, a refusal to prosecute by the complaining witnesses, or a refusal to issue a complaint by the prosecuting attorney "in the interests of justice." *Id.* 39.

161. Several comparative studies of clearance rates imply that investigative alternatives to interrogation are not only available but are successfully resorted to by law enforcement agencies when judicial rulings restrict or inhibit the use of interrogations and confessions. Thus the percentage of solutions of major crimes in the District of Columbia increased after 1957, despite the restrictive rule laid down that year in Mallory v. United States, 354 U.S. 449 (1957). *See Hearings on District of Columbia Appropriations, 1960, Before a Subcomm. of the House Comm. on Appropriations*, 86th Cong., 1st Sess. 440-41 (1959) (testimony of Deputy Chief Executive Officer Covell of the Metropolitan Police Department); *Hearings on District of Columbia Appropriations, 1961, Before a Subcomm. of the House Comm. on Appropriations*, 86th Cong., 2d Sess. 619 (1960) (testimony of Chief Murray); Rogge, *Proof by Confession*, 12 VILL. L. REV. 1, 101 (1966). *But cf. Hearings on District of Columbia Appropriations, 1961, Before a Subcomm. of the House Comm. on Appropriations*, 86th Cong., 2d Sess. 621-23 (1960). The results of these studies are far from conclusive, however, because clearance rates are affected by many factors, not the least of which is statistical manipulation.

portance of interrogations in meeting several major goals of law enforcement. We also have tried to determine the impact of *Miranda* on the success of those interrogations we ultimately considered important. Our information was obtained from three sources: our observers, the detectives, and police records.[162]

In each of the cases witnessed this summer, the observer recorded the amount of evidence against the suspect prior to interrogation, the evidence obtained from the interrogation, and any investigative alternatives that seemed feasible to him or the detectives at the time of questioning. In 70 of these cases the interrogating detectives were interviewed immediately after the questioning. From the Department's files we obtained additional information about the evidence available prior to questioning and learned what interrogation, if any, was subsequently conducted by the detectives.

Our discussion will focus on the three law enforcement objectives most important to the police: (1) solving crimes and acquiring information for prosecution and conviction; (2) identifying and implicating accomplices; (3) clearing other crimes committed by the suspect.[163]

A. *Solving Crimes Through Interrogation*[164]

To avoid confusion, our discussion uses a special vocabulary to classify interrogations. Interrogation is considered "necessary" to crime solution when there is both (1) insufficient evidence at the time interrogation begins to solve the crime, and (2) no alternative investigative means available to obtain such information. An interrogation is considered "successful" if a confession, admission, or incriminating statement is obtained. The number of necessary and successful interrogations reflects the actual current importance of questioning.

162. *See* Apps. A-D for the questionnaires used in these interviews.

163. We choose these objectives for three reasons: 1) almost all of the interrogations last summer were carried out to accomplish these purposes; 2) the police mentioned them as the most important reasons for interrogating; 3) these objectives relate most directly to the purported effect of *Miranda* on law enforcement—an increase in crime committed by suspects who might otherwise have been convicted and sent to jail. We will also discuss, though less comprehensively, several other functions interrogations may serve.

164. In studying interrogations we have used as our unit of analysis the specific offense. It is the standard unit used in empirical studies of crime, although some commentators have used the individual suspect. The two approaches lead to different results when a crime committed by several persons is solved but only one of the suspects is convicted. If emphasis is placed on the number of offenders apprehended and removed from society, the importance of interrogations must be determined by studying individual suspects. If, on the other hand, the primary concern is solving or "clearing" crimes, the importance of interrogation should be measured in terms of the crimes themselves. Both objectives are important, but official statistics emphasize the number of reported crimes solved. We footnote parallel statistics for individual suspects.

All three studies discussed in Appendix I are unclear about the unit of analysis they use; they speak of "suspects," "defendants," "prosecutions," and "cases."

Using these definitions, we analyze three questions relevant to the claim that interrogations are essential to law enforcement: In how many cases is questioning necessary? What is the current importance of interrogations—that is, in how many cases is questioning both necessary and successful? How many necessary interrogations are unsuccessful due to the *Miranda* warnings?[165]

1. *The Need for Interrogation: The Evidence-Investigation Scale*

From information gathered at the stationhouse by the observers and from police files, each member of the project independently rated the amount of evidence available in each case into one of four categories.

(1) None;
(2) Some;
(3) Enough to take the case to trial;
(4) Probably enough to obtain a conviction.[166]

These categories correspond to evidentiary standards commonly used in criminal cases.[167] A case was coded "None" when the evidence seemed insufficient to establish probable cause for making an arrest. "Some" evidence would justify arrest and perhaps an indictment or information, but would not preclude a directed verdict. Cases were placed in the third category when the evidence would get the case to the jury but a guilty verdict did not appear certain. For cases in the fourth category, conviction would almost certainly result absent a strong defense by the suspect.

An estimate of investigative alternatives was obtained from the interrogating detectives in the interviews and supplemented by a check of the police files six months later. Any other alternatives recognized by our observers were also included.[168] Only investigative facilities cur-

165. In assessing the effect of *Miranda* we will also consider those cases in which interrogation was *necessary and successful* and in which warnings were not given because the warnings, had they been given, might have induced the suspects to remain silent.

166. In our analysis, the "amount of evidence" measures the evidence possessed by the police at the time of arrest plus that uncovered by investigation between arrest and the commencement of interrogation. To a degree, therefore, it measures the success of available investigative substitutes for interrogations.

167. The observers asked the detectives and patrolman what evidence was available as soon as the suspect was brought in. We checked the observer's report against the police reports for each case. Where the project members differed on the correct coding of a case, it was discussed until a consensus was reached. The coders agreed in almost all cases, however, even before discussion. The standards were legal, *i.e.*, taken from case-book cases, not empirical.

168. We used the detectives as our primary source of data about investigative alternatives in order to benefit from their investigative experience. We assumed that their responses would reflect more accurately than those of the observers and project members

rently available to the Department were considered. The investigative alternatives were coded in four categories:

(1) None;
(2) Available but probably inadequate for conviction;
(3) Available and probably adequate for conviction;
(4) Further investigation unnecessary.

The first and fourth categories are self-explanatory. Cases were coded in the second category when extensive investigation was necessary but the detectives were noncommittal or pessimistic about its likely success. A case was coded "available and probably adequate" when further investigation seemed necessary and the detectives thought it would succeed. All coding took into account any investigation which actually took place, whether or not it was anticipated by the detectives.

A cross-tabulation of the four "evidence available" and four "investigative alternatives" categories would produce a confusing maze of 16 categories to describe the need for interrogation. To simplify presentation we devised an Evidence-Investigation Scale which distributes these 16 categories into four categories: (1) interrogation essential; (2) interrogation important; (3) interrogation not important; (4) interrogation unnecessary. (See Table 19.) Interrogation was termed "essen-

TABLE 19

DISTRIBUTION OF CATEGORIES FOR AN E-I SCALE ANALYSIS OF THE NEED FOR INTERROGATION TO OBTAIN CONVICTION

		Amount of Evidence			
		None	Some	Trial	Conviction
Investigative Alternatives	None	Essential			
	Available but probably inadequate	Important			
	Available and probably adequate	Not important			
	Further investigation unnecessary			Unnecessary	

whether additional information would be available in each case, and whether it could be obtained by further investigation. Use of the detectives' estimates does involve several possible biases, however. First, several officials have suggested that the police consistently underestimate the value of investigation. By checking the files and adding our observers' opinions we attempted to minimize this danger. Second, since the detectives were asked about investigative alternatives *after* questioning, their perceptions may have been influenced by the success of the interrogations. If this were true, one would expect them to respond that further investigation was unnecessary more frequently when interrogation was successful than when it was not. But the percentages of negative responses were the same for both sets of cases.

tial" on this scale when no feasible investigative alternatives were perceived and there was little or no evidence against the suspect prior to interrogation. If the police had little or no evidence against the suspect, and if investigative alternatives were available but probably inadequate, interrogation was "important." It was considered "unimportant" either when the suspect was already implicated by substantial evidence or when little difficulty was anticipated in accumulating the necessary evidence by alternative methods of investigation. Interrogation was classed as "unnecessary" when the police had substantial evidence against the suspect and foresaw either no need for further investigation or merely perfunctory processing of available information.

If all investigative alternatives deemed "probably inadequate" were in fact inadequate,[169] our analysis indicates that interrogations were an "important" or "essential" method of investigation in 12 of the 90 cases observed.[170]

169. The E-I scale, as defined, maximizes the possibility of finding a case important in terms of solution of crimes. But a crime may be solved in the sense that the detectives are certain who did it, but there may not be enough evidence for a certain conviction. To maximize the possibility of an interrogation being classified as "necessary" for conviction the cases where there is "none" or "some" or "trial" evidence and "probably adequate investigative alternatives" would be considered "important," and only interrogations where there was "enough evidence for conviction" or "further investigation unnecessary" should be considered "unnecessary." If defined in this manner, interrogation was important or essential in three additional cases. In each of these cases, there was enough evidence to go to trial and probably adequate investigative alternatives.

170. The police lacked substantial evidence against suspects prior to interrogation in 21 cases (23%). *See* Table F-4. They perceived no (or inadequate) investigative alternatives to interrogation in 16 cases (18%). *See* Table F-5.

TABLE F-4
AMOUNT OF EVIDENCE AGAINST THE SUSPECT PRIOR TO INTERROGATION (90 CASES)

	#	%
Minimal		
None	6	7
Some	15	16
Substantial		
Trial	18	20
Conviction	49	55
Not ascertained	2	2
	90	100

TABLE F-5
INVESTIGATIVE ALTERNATIVES TO INTERROGATION (90 CASES)

	#	%
None	9	10
Available but probably inadequate	7	8
Available and probably adequate	7	8
Available and only routine processing needed	11	12
Further investigation unnecessary	56	62
	90	100

TABLE 20
NEED FOR INTERROGATION: E-I SCALE ANALYSIS, ALL CASES[171]

	#	%
Necessary	12	13
Essential	3	3
Important	9	10
Not important	8	9
Unnecessary	69	77
Other*	1	1
	90	100

* Interrogation revealed that the suspect was innocent.

Each of the 12 cases classified "essential" or "important" on the E-I Scale was individually examined. In four cases witnesses had positively identified the suspects prior to interrogation. But the police would not allow two of these witnesses to testify at trial because they were informers.[172] In another the victim identified her boyfriend as her assailant, but later refused to testify against him. In the fourth case a victim who had previously identified his assailant in the department's mug files would not positively do so when confronted with the suspect. Thus the police had already "solved" at least three of these cases before interrogation had even begun, but interrogation seemed necessary to insure having evidence at trial.

In three other cases the detectives had sufficient evidence before interrogation to obtain convictions for lesser offenses. The detectives, however, were interested in pressing the more serious charges, and needed to interrogate for this purpose.[173]

171. The table in the text indicates the need for interrogation by cases. Table F-6 indicates the need by suspect. The 12 cases where E-I analysis showed questioning to be important involved 22 suspects.

TABLE F-6
THE NEED FOR INTERROGATIONS: E-I SCALE ANALYSIS: 127 SUSPECTS

	#	%
Necessary	22	17
(Essential)	(5)	(4)
(Important)	(17)	(13)
Not important	22	17
Unnecessary	82	65
Other	1	1
	127	100

172. *See* p. 1586 *infra.*

173. In one of these cases the suspects were apprehended in possession of stolen goods, which is sufficient evidence to secure a conviction for receiving stolen goods. The police, however, sought evidence of the theft itself. In another case the detectives possessed sufficient evidence to convict the defendant of assault. The issue was whether the suspect had used a knife and, therefore, was guilty of aggravated assault. The interrogation

In the remaining five cases[174] there seemed to be no chance for convictions unless the suspects confessed. In two cases there was probably insufficient evidence even to justify arrest, and the suspects probably were innocent.[175] In the other three cases there was sufficient evidence to implicate the suspect but not enough to obtain a conviction.

Our analysis is qualified by several assumptions and reservations. First, several of the cases classified as important could, by other standards, be classified unimportant. We have included cases where the interrogation was important solely because the police would not use an informer at trial. In can certainly be argued that questioning is not really necessary in this situation.[176] Second, we have also assumed all

concentrated on this point. In the remaining case the suspect was apprehended in possession of a motorcycle stolen five days earlier, but the detectives sought information to secure a conviction for theft.

174. In one of these five cases, involving a narcotics violation, dope was discovered on the floor of a car in which the suspects were riding. The interrogating detective claimed that if one of the suspects had not talked (one did), the police "*probably* (emphasis added) wouldn't have been able to pin a definite charge on any of them." His evaluation seemed correct.

In another case, involving a mail tampering charge, a government check was stolen from the hallway of an apartment house. A note with one suspect's name on it was found behind the building with the torn fragments of the envelope which had contained the check. During interrogation, the suspects gave an explanation for this coincidence plausible enough to suggest that they may have been innocent. The police, however, believed them guilty. The case was turned over to the postal inspector for further investigation, but the suspects never were charged. Assuming that these suspects were guilty, interrogation appears to have been important in this case.

In the last three cases, although interrogation was classified "important," the suspects were eventually convicted despite unsuccessful questioning. One case involved the disappearance of $250 carried by the suspect for his employer. Throughout the interrogation the suspect maintained that he had been held up. But information obtained from other persons together with the details of the suspect's story convinced the detectives that the hold-up story was fabricated. The detectives planned to investigate this case further and the suspect eventually pleaded guilty. But we were unable to ascertain if this investigation was successful (or even conducted), or why the suspect pleaded guilty.

In the second case the suspect was accused by his mother-in-law of stealing a pistol from her home. At the time of questioning, the detectives possessed no evidence against the suspect other than this accusation. The suspect insisted he was innocent; after the end of the questioning the accuser telephoned the Detective Division and reported that other people might also have taken the weapon. The detectives planned to investigate this case further, but neither the police files nor our own reports contain anything more about the case except that the suspect was eventually convicted of the theft at trial and received a 1-4 year sentence at the state prison.

In the final case, the defendants were picked up together a few doors from a burglarized dwelling. The police had no evidence linking them to the crime, despite a thorough search for the missing money. The detectives closely examined their apparel in an attempt to find chips of paint matching that of the home broken into, and compared the suspects' shoes with a footprint on the door through which the house was entered. All of these efforts were unavailing. The police did hope to obtain a good set of fingerprints at the house, but the success of this effort was not reported in the police files. The suspects refused to talk during interrogation, but all four eventually pleaded guilty to breaking and entering.

175. We have assumed all guilty.

176. On the other hand, protecting the identities of informers might be considered an important enough goal to make these interrogations necessary, since informers may be crucial to many arrests. Again, we have chosen to follow the police view in this situation since our findings are contrary to their claims.

people guilty, although at least two were probably innocent, and have made our classification in terms of the most serious crime chargeable, although in several cases convictions were likely on lesser charges. We have made these assumptions in order to maximize support for the critics of *Miranda*, whose views our findings seemingly refute. Without these two assumptions, interrogation was necessary in only five cases all summer.

The E-I Scale evaluations of the need for interrogation are based almost entirely on information and perceptions *at the time* of interrogation. The ultimate outcomes of some cases belie our analysis. For example, there were four cases where the suspects were convicted after an unsuccessful interrogation deemed "necessary" on the E-I Scale. Such incongruities can arise for several reasons. First, a suspect may have pleaded guilty despite the weakness of the state's case. His decision to plead guilty can be motivated by many things other than his guilt or his perception of the strength of the prosecutors' case against him.[177] Second, the amount of evidence needed to convince a jury is not entirely predictable. Several law enforcement officials have suggested to us that considerably less evidence is often needed to convict a suspect than an observer would think, especially if the defendant has a prior record.[178]

In addition to the above assumptions, it should be noted that these numbers reflect only felony cases brought to the Detective or Special Services Divisions for questioning. In a number of felony cases, and almost all misdemeanors, the police did not even think it necessary to question the suspect. Thus, while Special Services interrogated only eight suspects during the observation period, they made almost 200 arrests, almost all of which resulted in convictions.[179]

Two reservations are also worth noting. These estimates are relevant only in the context of the investigative techniques currently available to the New Haven detectives. We could make no estimate of the

177. Innocent suspects with two convictions on their records might plead guilty to avoid a possible conviction at trial. *See* note 71 *supra*.

178. This was suggested to us by the State's Attorney for New Haven Superior Court. Other commentators have expressed contrary opinions:

> After the trial of cases in which there were no confessions, I have seen jurors cluster around the judge or counsel and ask whether the defendant ever admitted his guilt. There is always that seed of doubt that remains until the defendant, in effect, rises and admits his guilt.

Kuh, *Interrogation of Criminal Defendants—Some Views on* Miranda v. Arizona, 35 FORDHAM L. REV. 233, 240 (1966).

179. Actually, most arrests in both divisions, but especially Special Services, are for misdemeanors for which there is rarely any questioning. 1965 NEW HAVEN POLICE DEPARTMENT ANNUAL REPORT 6, 8, 10, 12. *See* note 52 *supra*.

changes which would result from improved investigative techniques. Consequently, the findings are not valid for law enforcement agencies with investigative capabilities significantly superior or inferior to those of the New Haven Police Department. If the department had better facilities, it might, with probable cause, be able to arrest a larger percentage of offenders than it does now. However, in many of the additional cases there might be enough evidence only to arrest, not to convict. Thus, scientific investigation might even increase the importance of interrogations.[180]

Second, our conclusions are qualified by the investigative practices of the New Haven detectives. During the summer suspects were brought to the detective division only if they were directly connected with the crime. We observed no dragnets. In contrast the police in some cities may pick up all known criminals in an area where a crime has been reported, or all ex-convicts who have used a similar *modus operandi*.[181] In these cases interrogation may be important—some guilty parties may confess or important clues may be obtained.[182]

Taking all assumptions and reservations into account, it appears that interrogations may be even less necessary than our figures indicate. In almost every case last summer the police had adequate evidence to convict the suspect without any interrogation. Interrogation usually just cemented a cold case or served to identify accomplices.

This finding is probably explained by the fact that the police were rarely able to arrest even a single person for crimes where no witnesses were available. Significantly, the evidence obtained by the President's Commission indicates that this is true of other cities as well.[183] In a study of 1,905 crimes reported in Los Angeles the Commission research showed that 86 per cent of the crimes where a suspect was named were solved while only 15 per cent for which no suspect was named were solved. In most of these later cases no arrests were ever made. Thus, even in a force as scientifically advanced as Los Angeles', there is strong evidence that confessions are of small importance, since arrests can be made only where the crime is for the most part already solved because such substantial evidence is available before interrogation.

180. This idea has been suggested by Professor Jan Deutsch of Yale Law School, among others.

181. *See* LaFave, *Detention for Investigation by the Police: An Analysis of Current Practices*, 1962 WASH. U.L.Q. 331, 335-38.

The New Haven detectives continually told us they were picking up considerably fewer people because they could not question them effectively. Insofar as fewer arrests are made police may be hampered by *Miranda*. However, the police hardly need stop picking up suspects for questioning solely because they must be warned.

182. We do not mean to imply any approval of this practice.

183. PRES. COMM'N 96-97.

2. *The Current Importance of Interrogations for Solving Crimes: Necessary and Successful Interrogations*

The only successful interrogations currently important for solving crime are those which provide substantial evidence against defendants which was not available prior to questioning, and which could not have been obtained through other investigative techniques. Questioning was successful in 49 of 90 cases[184] this summer. It was both successful and, we concluded, necessary in only four cases.[185] In all other cases where information was obtained there was enough evidence prior to the questioning to convict the suspect.[186]

184. The figures are broken down in Table F-7.

TABLE F-7
OUTCOME OF FORMAL INTERROGATION: SUMMER SAMPLE (90 CASES)

	#	%
Suspect not questioned	2	2
Suspect refused to talk	11	12
Interrogation unproductive	27	30
Signed confession	18	20
Oral admission	7	8
Signed statement	2	2
Oral incrimination	20	22
Insufficient data	1	1
Interrogation productive; form not ascertained	2	2
	90	99*

* Percentages do not total 100 because of rounding.

185. In two of these cases, suspects admitted commiting the crime; in the other two the suspects gave information under interrogation which tended to incriminate them, but did not confess. One of the suspects who gave an admission was convicted of the crime under investigation; the other was never prosecuted. The third case is still pending trial. In the remaining case the suspect was apprehended in possession of eight pairs of trousers stolen from a clothing store. During interrogation the detectives elicited information which clearly indicated that the suspect was the burglar. The suspect, however, refused to sign a confession or orally admit the theft. He was prosecuted for breaking and entering and theft, but was convicted only for receiving stolen goods.

186. This finding relates only to the importance of confessions after *Miranda*. To learn about the significance of confessions prior to *Miranda* at least from the defense attorneys' view, we asked 55 lawyers who had defended 75 cases during 1966 to evaluate the importance of statements in these cases. The sample consisted of cases decided in New Haven Superior Court from February through June 1966. Incriminating information in some form was obtained by interrogation in 49 of the 75 cases; signed confessions were given in 29 of these. We consider here only the cases in which there were successful interrogations since this is parallel with the text discussion. *See* p. 1600 *infra* for full discussion of our methods.

The attorneys believed that the police had sufficient evidence to convict the defendant of the same crime without using the results of interrogation in 35 of the 49 cases in which interrogation was successful. The independent evidence was thought insufficient for conviction of any crime in five cases, and sufficient only for conviction on a lesser charge in four cases. In four other cases, the attorneys were uncertain about the sufficiency of the evidence but thought a conviction was probable. Thus sufficient evidence to convict was not available at the time of interrogation in a maximum of 13 cases. But in four of these cases, the attorneys said that the police could have obtained such evidence from further investigation. Therefore, the attorneys believed interrogations were "necessary"—in the sense we have defined that term—in 9 cases of the 49.

TABLE 21
CURRENT IMPORTANCE OF INTERROGATIONS (90 CASES)

	#	%
Necessary and successful	4	4
Interrogation necessary but unsuccessful	8	9
Interrogation successful but unnecessary	45	50
Interrogation unsuccessful and unnecessary	33	37

3. *The Effect of Miranda*

Miranda most obviously impedes crime solution when the warnings lead a suspect to remain silent in a case where interrogation is necessary. Ideally, in order to measure the impact of *Miranda* on necessary investigations, we would isolate cases in which interrogation is necessary and unsuccessful, and then ask the suspects involved if they were silent because of the warnings. Since we could not do this,[187] we chose to measure the *maximum* possible effect of *Miranda* by considering two sets of cases: (1) Those in which interrogation was necessary and unsuccessful, and where the required warnings *were* given; (2) Those in which interrogation was necessary, successful, and where warnings were *not* given. An assumption underlies each category: (1) Interrogation was unproductive solely because of the warnings when they were given; (2) The warnings *would* have induced the suspects to remain silent in all the necessary-successful cases where they were not given. Neither of these assumptions is plausible,[188] but the estimates thereby produced show the greatest possible effect of *Miranda* on the solution of crimes. We also assumed that all suspects were guilty, again maximizing the need category to determine the largest possible effect of *Miranda*.

This sample is limited in several respects. It consists only of cases decided in Superior Court during the period selected, not all of the cases in which suspects were brought to the detective division, as the summer sample does. It excludes cases not prosecuted, or in which no arrests were made, because of unsuccessful interrogations. It also omits all cases successfully prosecuted in Circuit Court, a lower court, during this period. These would include most minor felonies and all misdemeanors. And, for most cases, the sample excludes any analysis of investigative alternatives.

187. Many cases were not decided before we did our analysis. We had chosen not to interview any suspect until his case was decided since we did not want to become involved in the process.

188. It is very unlikely that the warnings would have induced all these suspects to remain silent since we found earlier, *see* p. 1565 *supra*, that warned suspects talked as frequently as unwarned suspects. Also, some of those interrogations undoubtedly would have been unsuccessful even had the warnings not been given.

Miranda might result in fewer convictions in two other ways, however. In some cases a confession might be introduced at trial although it was unnecessary and obtained without warnings. If such a confession were successfully challenged after the original trial, some convictions might be lost on retrial because evidence sufficient to convict without the confession at the time of the original trial had in the meantime disappeared. Secondly, some cases might be lost at trial if a judge found that adequate warnings had not been given even though in fact they had been. Both categories are likely to be so small in any sized sample that they probably can be disregarded. None of the confessions obtained this summer have so far been challenged in court.

Warnings were given in five of the eight cases in which interrogation was necessary and unsuccessful. They were omitted in only one of the four cases in which interrogation was necessary and successful. Combining these figures, *Miranda* could not have impeded crime solution in more than six cases this summer[189]—a slight proportion of our entire sample of 90 cases but half of the 12 cases where interrogation was necessary.[190]

B. *Detectives' Evaluation of the Need for Interrogation to Solve Crimes*

Our analysis can be compared with the detectives' views on the importance of interrogations. We obtained the detectives' opinions in 70 of the 90 cases.[191] After successful interrogations the detectives were asked: (1) How important was the information obtained during the questioning? (2) How might you have gotten information necessary for prosecution if the suspect had remained silent? Whenever interrogation was unsuccessful the detectives were asked: How are you going to proceed to get the evidence necessary to prosecute?[192]

In six of the 39 cases in which successful interrogations were followed by interviews, the detectives said that the information obtained was important and could not have been obtained otherwise.[193] In seven of the 31 interview cases in which interrogation was unsuccessful, they said that questioning was needed to solve the crime.[194]

Thus, the detectives considered interrogation important in 13 cases and unnecessary in 57.[195] Ten of these were also labelled "necessary" in

189. Three of these cases involved breaking and entering, one involved theft, one tampering with mails, and one misappropriation of funds.

190. Eighteen suspects were involved in the 12 cases.

191. We were unable to obtain interviews in the remaining 20 cases for two reasons. Sometimes the interrogation occurred at the end of the shift and the detective did not remain at the station to complete the interview. More often he was called out of the stationhouse to another case before we had time to talk to him.

192. *See* App. B, *infra*, questions 11-13.

193. The detectives responded that the information obtained from interrogation was important in ten cases. In two of these, however, they indicated that the evidence needed to solve the crime, absent the confession, could have been obtained merely by processing information already available prior to interrogation. This included fingerprints in one case and a laboratory analysis of narcotics in the other. In two other cases they considered the interrogation important for reasons other than solving the crime under investigation. In one of these cases questioning disclosed the identity of accomplices in the other, it cleared a series of other crimes.

194. In three of these cases the detectives believed they could not obtain the information by alternative methods of investigation. In the remaining four cases, the detectives perceived investigative alternatives for obtaining the necessary information, but thought that such efforts would be unsuccessful.

195. The detectives' evaluation of the importance of interrogation is reflected in the incidence of pre-arrival and informal questioning. Suspects were questioned during one or both of these periods in ten of the 13 cases (77%) in which the police considered interrogation important. In contrast, interrogation during one or both of these periods

our analysis, while the other three were classified as "unimportant."[196] One of the cases classified differently on the E-I Scale involved a weapon illegally hidden in a motor vehicle. The police had sufficient evidence to secure a conviction for the offense. The issue resolved by interrogation concerned the person to be charged—the driver, who was originally apprehended, or the owner, who was subsequently convicted. We considered the interrogation unimportant because the police already possessed sufficient evidence to convict either suspect. The second case involved a stolen auto found parked in front of the teen-age suspect's home. The suspect was caught by a patrolman who was chasing the car on foot after he had seen it run a red light. During interrogation, the suspect protested his innocence and identified three other youths he claimed got out of the car and ran away. The detectives investigated the case further and the suspect ultimately pleaded guilty and was convicted. We considered the evidence obtained in this interrogation unimportant because there was ample evidence against the suspect at the time of arrest. In the final case three suspects were convicted of using a motor vehicle without permission of the owner. The suspects confessed during interrogation, but the police also located

occurred in only 33 of the remaining 57 cases (58%) comprising the detective subsample.

In the interview conducted six months after the summer study, the detectives were also asked two questions concerning their evaluation of the importance of interrogations: "Are there ways investigation could replace interrogation?" and "Could you please [place these 37 crimes in five piles] according to how important the information obtained from interrogations is likely to be? Interrogation:—a) Always [necessary], b) Usually, c) Sometimes, d) Usually Not, e) Never." Their responses to both of these questions indicate that the detectives, when asked abstractly, consider interrogation an essential method of investigation in most cases.

In answer to the first question fifteen of 21 detectives stated that no alternative methods of investigation could substitute for interrogation. Seven of these 15 mentioned that interrogations and other methods of investigation were complementary and thus could not substitute for each other. Eight detectives felt that in many cases other evidence simply did not exist, and consequently, that further investigation would be futile.

Four detectives replied that interrogations were not absolutely necessary, but that other methods of investigation were too costly in terms of time and resources needed. They noted that the current resources of the department were inadequate to implement these investigative alternatives. Finally, two detectives felt that interrogations could be eliminated under present circumstances without a loss of law enforcement effectiveness.

In the second question, the detectives were asked to rank the need for interrogation under one of five categories for each of 38 crimes. The overwhelming majority of responses were in the "Always" or "Usually" category. A majority of the detectives felt that interrogation was important infrequently or never for only ten crimes. In contrast, interrogation was considered "always" important by every detective for 12 crimes.

196.

TABLE F-8

DETECTIVE EVALUATION OF THE NEED FOR INTERROGATION (101 SUSPECTS)

	No.	%
Necessary	21	21
Unnecessary	80	79
	101	100

witnesses who saw the suspects in the vehicle and placed them near the scene of the theft at about the time the truck was taken. We thought this evidence was sufficient to justify coding the interrogation unimportant.

Although we disagreed with the police on these three cases, the overlap—10 of 13 cases—is substantial. The two evaluations were not entirely independent; basically the same information was used to determine investigative alternatives for both samples. However, they are independent in that the E-I analysis explicitly considers the amount of evidence in finding an interrogation necessary while the detectives labelled an interrogation important without indicating how they decided on importance. The overlap of evaluations indicates, not surprisingly, that the detectives were also probably considering the amount of evidence available against the suspect in labelling a case "important." Most important, our interviews revealed that not even the detectives considered more than a small minority of interrogations "important," however they defined that term.

C. *Other Purposes of Interrogation*[197]

1. *Identification and Implication of Accomplices*

Interrogation is often used to obtain information about accomplices: the suspect can be asked to identify accomplices when the police know

197. In the interviews conducted 6 months after the summer, 21 members of the detective division were asked: "In what ways besides getting evidence for trial is the information from interrogations used?" Fourteen detectives responded that interrogations were important for obtaining information about accomplices, 16 said they were useful in solving crimes other than the one under immediate investigation. See Table F-9. In addition, a substantial number of detectives indicated that interrogation was used to recover stolen goods, understand criminal motivation, and acquire general information about crime patterns and methods of operation.

TABLE F-9
DETECTIVE DESCRIPTION OF THE PURPOSES OF INTERROGATIONS (21 INTERVIEWS)

Purpose	No. (not mutually exclusive)
Implicate accomplices	14
Solve other crimes	16
Recover stolen goods	9
Understand criminal motivation	8
General criminal intelligence	6
Eliminate narcotics sources	5
Remove weapons from circulation	3
Plea-bargaining	2
Help suspects clear themselves	2
Detour suspects into other processes	2
Personal satisfaction	2
Public relations	1
Lecture youths and first offenders	1

that he did not commit the offense alone, or to implicate an accomplice already identified. Occasionally, the suspect unexpectedly reveals an accomplice whose existence was previously unknown to the police.[198]

Multiple suspects were involved in at least 36 of the 90 cases observed this summer. They were apprehended together in 21 cases; in at least 13 other cases the police knew that accomplices were involved and questioned the suspect about them. Finally, in two instances interrogation uncovered the previously unknown involvement of other persons.

We have analyzed this function of interrogation from two standpoints: identifying accomplices and implicating previously known accomplices. In 25 cases the identity of each suspect was known to the police prior to interrogation. Little or no information about the identity of accomplices appeared to be available in the other 11 cases involving multiple suspects. When the suspects were not apprehended together our data indicate there were no investigative alternatives to interrogation for identifying them. Not one accomplice was apprehended solely on information obtained by independent investigation. None was arrested in the six cases in which interrogation concerning accomplices was unsuccessful, even though the police knew through witnesses that more than one person had been involved.

Interrogation was also necessary to implicate co-defendants when there is neither sufficient independent evidence to convict the accomplice nor investigative means to obtain it. Our analysis shows that interrogations were necessary for implicating co-defendants in 16 of the 36 cases. In 11 of these 16 cases the accomplices had not been identified prior to interrogation; in five cases all of the suspects were known but the police lacked sufficient evidence to convict all of them.

Questioning was successful in 10 of the 16 cases. Warnings were not given in one case in which interrogation was necessary and successful; they were given in three necessary cases where questioning about accomplices was unproductive. Thus, *Miranda* might have hindered the identification or implication of accomplices in at most four cases—11 per cent of the cases in which accomplices were involved.

Of course, the suspect need not implicate accomplices during formal interrogation. If the police have a strong case against a suspect, he will often find it worthwhile later in the process to trade a guilty plea and information on his confederates for a lenient charge or sentence. Thus, *Miranda* may not significantly hinder this enforcement goal.

198. Our observer questionnaires included no questions about whether the suspect was interrogated about accomplices, so we are not sure of the total number.

2. *Clearance of Other Crimes*

One of the most persistent claims of *Miranda*'s critics is that interrogations are needed to clear other crimes committed by a suspect, regardless of whether questioning is necessary to solve the immediate crime being investigated. The "clearance" rate is generally used as an index of the effectiveness of a law enforcement agency.[199] Since an overwhelming majority of crimes reported and on file in any given police department are unsolved,[200] an interrogator will frequently question a confessed suspect about other crimes he may have committed. This information may be sought for use in prosecution, either for the newly disclosed crimes or for the original crime. But clearance is also desired, rightly or wrongly, as a goal in itself. The police may want simply to close their books on as many cases as they can and improve the "record" of the department; or particular officers may seek the satisfaction of solving a crime.[201]

During the two months of observation New Haven detectives questioned suspects about other crimes in at least eight cases.[202] In three of these, the suspects admitted committing other crimes.[203]

The general case descriptions of the observers suggest that questioning was necessary for solving other crimes,[204] since the police seem to have had little evidence linking these suspects to other crimes prior to questioning. Interrogation was based more on the hunch of the interrogating officer than on any substantial evidence—he might recall unsolved crimes of the same kind or in the same neighborhood, or simply ask questions from his familiarity with the suspect.[205]

199. *See, e.g.*, J. SKOLNICK, *supra* note 38, at 167-68.

200. Only 24.6% of all crimes reported in the United States in 1965 were solved. FBI, UNIFORM CRIME REPORTS FOR THE UNITED STATES—1965, 18 (1966).

201. In addition to clearing other crimes the particular suspect has committed, the police will also try to clear others they think the suspect merely knows about or has witnessed.

202. Because of a lack of clarity in the questionnaire, we are uncertain whether our observers recorded all instances where suspects were questioned about other crimes.

203. The small number of cases in which interrogation was successful in clearing other crimes might suggest that interrogation is not important in accomplishing this objective. In fact, however, these cases cleared approximately one dozen previously unsolved crimes. This represents 10 to 15% of all crimes investigated by the Detective Division during the observation period. This percentage coincides with that found by the Deputy Commissioner for Community Relations of the New York City Police Department, Jacques Nevard, who attributed about a 10% drop in clearance in that city to recent Supreme Court decisions. N.Y. Times, Feb. 21, 1967, at 36, cols. 4-5.

204. Interrogation was the only investigative method successfully used to accomplish this objective during the three-month period of the study.

205. For example, four suspects were interrogated about other crimes because the detectives knew they had extensive records. Two of these cases involved thefts; the other two concerned narcotics violations. Four others were questioned about a number of similar crimes which had occurred near where the suspects had been apprehended. Two had been arrested for purse snatching; two others had been caught burglarizing homes.

While interrogations may be important for clearance, the importance of clearance to law enforcement seems debatable. Police officials claim that clearance gives policemen a sense of achievement, and our interviewers agreed. Clearance of crimes was the standard by which detectives measured their own accomplishments. Clearance is also supposed to be important for sentencing, and for convicting defendants of the additional crimes. But suspects generally do not receive higher sentences because more counts are brought against them. Actually, the suspect may benefit, since his cooperation in clearing other crimes may earn a recommendation of leniency from the prosecutor.[206] Finally, clearance is supposed to allow the police to concentrate their attention on other unsolved crimes. This argument makes sense only if investigations are a successful means of solving crimes. If not,[207] then moving a detective from one crime he will not solve to another crime he will not solve (the situation in New Haven) is at best questionable.[208]

3. Miscellaneous

These categories do not exhaust the uses of interrogations. In the interviews conducted six months after the summer field study, the detectives mentioned several other objectives sought through questioning.[209]

Recovery of stolen goods and the weapons used to commit the crime is facilitated by interrogation. The detectives are particularly anxious to remove weapons from the community. The discovery of stolen goods and illegal instruments also increases the likelihood of conviction by corroborating the evidence already available.

Interrogations are used to discover crimes and improve crime prevention. The detectives frequently mentioned that they can discover general patterns of criminal activity through questioning. They mentioned one case, for example, where a suspect said that he committed a burglary in a particular area because it was poorly policed. Interrogation is also used to discover "victimless crimes" such as gambling and narcotics violations. The police seek to identify people engaging in illegal activities such as operating bars and stores that sell liquor to

206. *See* p. 1602-03 *infra*. For a similar conclusion see J. SKOLNICK, *supra* note 38, at 175.

207. The most frequent argument made against recognizing clearance as a law enforcement goal is that the solution of other crimes has no effect on the number of criminals still on the streets. The results of this survey are consistent with this argument. None of the suspects who confessed to committing other crimes received stiffer sentences; all received suspended sentences, and therefore continued to "prowl" the streets.

208. *See* p. 1597-99 *infra*.

209. *See* note 198 *supra*.

minors, and individuals such as fences and narcotics pushers offering services to the criminal community. These people are usually quite difficult to discover without inside information.

Since we saw no instances of interrogations being used for any of the above purposes, we cannot say whether *Miranda* will result in loss of such information. However, it is possible that if the police have caught a suspect and he is aware that the police have evidence of his guilt, he will provide information of this type in order to enhance his position at sentencing.

As we have indicated, the vice squad operates quite differently from the Detective Division. According to one member of Special Services, the "detectives merely pick up offenders caught in the act while we do the real investigating." The major investigative facility of Special Services is the informer.[210] In the constant pursuit for new informers interrogations are claimed to be essential. Questioning can be used whenever a suspect is arrested to "convince" him to become an informer. Moreover, according to one narcotics user we interviewed, the detectives often pick up known users during periods when they are suffering withdrawal symptoms and attempt to get them to talk about other users and sellers.

Interrogation is also used to keep informers active. An informant who has not been productive will frequently be arrested and brought to the station for "questioning." This generally serves as warning that he had better raise productivity.

Such interrogation probably will not be affected by *Miranda*. It is designed to tell the informer something, not to ask him. The informer usually knows of his right to silence—he is called in merely to be told of its risks.

D. *Investigation*

The need for interrogation must be evaluated in the light of the investigative techniques used by the police. In New Haven there is ample room for improved investigative facilities and abilities. The police do little "scientific" investigation. Although the method of investigation varies from crime to crime the detectives outlined the general pattern:[211] First the complainant is interviewed. Then the scene is sealed off and a sight check is made for physical evidence. A

210. A number of the Special Services detectives told us this.

211. This pattern was the most frequently described during the police interviews. Like any summary, it does not reflect the investigative methods for each crime reported.

survey of the neighborhood through spot interviews is made, looking for eyewitnesses. Where feasible, mug-shot and method-of-operation files are checked. Finally, informers are questioned. Depending on the seriousness of the crime, this investigation is done more or less thoroughly.[212]

The detectives receive no special training for their work.[213] They become detectives through promotion from patrolmen ranks, in anywhere from three to 15 years. When they enter the detective division their learning comes through experience. A new detective is paired with an old one and learns the trade from him. Occasionally, some detectives go to special FBI schools where they are trained in certain specialities, such as handling narcotics.

Even if some physical evidence is left at the scene of a crime, New Haven's Detective Division probably has neither the manpower nor the skills and equipment to analyze it. Two men handle all scientific crime fighting. Both men are trained in police photography, read fingerprints, and have degrees in scientific crime detection from the School of Criminology in Chicago. As a result of the work of these men, the Department possesses a large file of fingerprints. Yet fingerprints, as our observers learned from the director of the laboratory, are much harder to obtain and much more difficult to analyze convincingly than is often assumed.[214] Although the police do have field kits, and can make ballistics and paraffin tests, as well as test chemicals for narcotics content, they cannot analyze blood stains, semen stains, paint chips, or hair.[215] All such work must be sent to the nearest laboratory of the Connecticut state police in Hartford. Although Department policy requires this work to be sent to Hartford, in most cases the inconvenience of making the trip twice and the wait of a week or more for the results discourages any effort to analyze the evidence.

For the most common crimes—burglary and larceny—investigation is especially perfunctory.[216] In some instances it amounts to little more

212. When investigating very serious crimes, the police, as far as we could see, were quite efficient and generally successful.

213. Although they attend a one-week course at the police academy, along with all other department members, no special training in detective work is provided.

214. Usually either no fingerprints can be found or they are indistinguishable. Tracing a fingerprint may also take days or weeks and the department could not expend this amount of time on one minor case.

215. Moreover, the detectives who perform "field tests" are not qualified to testify at trial as expert witnesses; thus, information gathered by these tests often cannot be presented as evidence.

216. Burglaries and larceny constitute the major portion of the investigation work. In 1965 they comprised 55% of the reported crimes. NEW HAVEN POLICE DEPARTMENT, ANNUAL REPORT FOR 1965, 10.

than cataloging the losses, noting the method employed, and assuring the victim that the Department is working on the case. For the detectives this procedure is utterly routine. At the end of his shift, the investigating detective returns to the Division, writes a report, and files it along with hundreds of others which will never be investigated further.

The lack of effort in these cases is not totally unjustified. There is rarely much evidence with which to work. Burglars are seldom seen by their victims, and when seen can virtually never be identified. Without an identification, the detectives must rely on the usually meager physical evidence.

Limitations on time and facilities for processing of evidence also contribute to the general failure by the detectives to observe closely the surroundings of a burglary for signs of evidence. Moreover, the limited manpower of the Detective Division itself accounts for some of the perfunctoriness. Probably the detectives could work more efficiently if not burdened by an inordinately inefficient system for handling records and reports.[217] But even with increased efficiency, the Division probably does not have the manpower to conduct thorough investigations of all crimes.

Although the Special Services Division interrogates less frequently and initiates more actions against criminal conduct than the Detective Division, it would be misleading to say that very many of their arrests were the result of investigations.[218] Sixty-four per cent of the arrests for the vice squad in 1965 were for gaming and sex offenses, for which virtually no investigation was ever necessary.[219] Even in their few narcotics arrests the Special Services detectives seldom seemed to need or use any investigation. For the most part, arrests for possession or sale of narcotics appear to be the result of the tips of informers.

In sum, improved investigative techniques might make some of the interrogations now considered "necessary" inessential.[220] But substantial budgetary increases and organizational changes would have to come first.[221] Facilities must be improved, manpower increased and trained. Until such changes are made there is little possibility that investigation efforts will contribute significantly to law enforcement.

217. Much of a detective's time is spent typing reports.
218. *See* note 52 *supra*.
219. These are almost always on-site arrests.
220. Or unnecessary. *See* p. 1588 *supra*. It should be emphasized that the situation in New Haven is typical of that in most cities. *See* PRES. COMM'N ch. 3.
221. Most of the detectives feel this way also, and they complain frequently about the lack of facilities.

VII. Lawyers

Our findings suggest *Miranda* will rarely bring lawyers to the stationhouse. Defendants, told of their right to counsel, usually neglect the offer and let interrogation proceed.[222] Nonetheless, in this section we assume that lawyers will be consulted during interrogation, and investigate their likely effect on the criminal process.[223] We attempted to determine if more defendants would remain silent if advised by counsel and, if so, whether they would stand a better chance of being acquitted or of obtaining reduced sentences.

Our study involved interviews with 55 of the most active members of the New Haven criminal bar and an examination of 75 cases decited before *Miranda* in which they had participated.[224] We concluded that a lawyer who appears at the police station would ordinarily—though not always—tell his client to say nothing. The client's silence, however, often has no effect on his case. The police typically have enough evidence to convict a suspect even before beginning interrogation. In such cases, the defendant who keeps quiet fares no better, and no worse, than the one who confesses. But in perhaps 10 per cent of the cases the police lack conclusive evidence against the accused. Then silence does make a difference, and a lawyer in the stationhouse can improve his client's prospects.

A. *Description of the Lawyer Survey*

The attorneys in the survey were all but 10 of those who handled felony cases decided between February and June, 1966, in the Connecticut Superior Court of New Haven.[225] Private defense attorneys, the

222. *See* Part V *supra*. This also appears true of other cities. A recent press release by the Georgetown Institute of Criminal Law and Procedure indicated that only 7.2% of the first 800 felony suspects arrested after *Miranda* called a lawyer, although all were advised of their right to do so. A copy of the release is on file at the *Yale Law Journal*.

223. Although it does not seem to be immediately likely that lawyers will participate more frequently at this stage of the process (most lawyers we spoke to wanted to avoid "stationhouse duty" at all costs), we have made this assumption because it is likely that either new court decisions or efforts to educate potential suspects will alter the current situation.

224. A copy of the questionnaire used in these interviews appears in App. E.

225. Our sample consisted of 75 felony cases drawn from the docket of the Superior Court for New Haven County. It contains all the cases decided between February and June, except those for which we were unable to contact the lawyer or obtain an interview. We interviewed the lawyer who had handled each case we used. The lawyers we reached represent most of the active criminal bar in New Haven, and the cases are typical of the major felonies committed in New Haven. New Haven, unlike many larger cities, has no exclusively criminal bar. Private attorneys generally take only a few criminal cases a year; most of them would prefer to take fewer, because of the general feeling that criminal cases are the least lucrative and the most troublesome. Approximately half of our respondents handled less than 10 criminal cases each last year, including misde-

public defender, and the three state Superior Court prosecutors in New Haven were included. For each case, we asked the defense attorney what general advice he would have given his client had he been present during interrogation, and how the presence or absence of a statement by the defendant affected his handling of the case.

The cases in this survey involved more serious charges than those in the summer study. Most of the summer cases dealt with minor felonies,[226] which are tried in an inferior court.[227] The Superior Court cases in the lawyer sample, however, involved the most serious crimes in New Haven.[228] The confession rate for these cases was somewhat higher than in our summer sample.[229]

B. *The Lawyers' Interviews*

We asked the defense attorneys what advice they would give to a client before interrogation. For most of the attorneys, the question was

meanors. Many of the older lawyers said they had had extensive experience with criminal cases when they were younger, but that as their practice matured they handled fewer and fewer such matters.

New Haven has only one full-time prosecutor. He has two assistants who work only half time, devoting the remainder to their private practices. The full-time State's Attorney has been a prosecutor for over 20 years and has a broad knowledge of the criminal process in the city.

226. *See* note 52 *supra.*

227. The inferior court, the Circuit Court of New Haven County, handles all misdemeanors and those felonies for which the maximum penalty is less than 1 year in prison. Upon a guilty plea, the Circuit Court may also take a case even though it involves greater maximum sentences. In most instances, however, serious crimes are bound over to Superior Court.

228. Table F-10 shows the charges originally placed against each of the defendants in the lawyer sample.

TABLE F-10
CHARGES PLACED AGAINST DEFENDANTS IN THE LAWYER'S SAMPLE

Theft; Breaking and Entering	19
Aggravated Assault	17
Burglary; Robbery	6
Possession of Narcotics	6
Indecent Assault	4
Statutory Rape	4
Using Narcotics–self-administration	3
Embezzlement	3
Use of Motor Vehicle Without Permission	2
Murder	2
Possession of Weapon	2
Rape	1
Injury to a Minor	1
Gambling	1
Lascivious Carriage	1
Possession of Stolen Goods	1
Prostitution	1
Abortion	1

229. The rate was 62.8% compared with the summer rate of 52%.

hypothetical: only 11 had ever entered a case at such an early stage.[230] Most of the respondents who had met with clients at the stationhouse disliked doing so—not because the police denied them access to their clients or adequate time for consultation,[231] but simply because there is no suitable conference room at headquarters. Lawyers who were called after arrest usually preferred to advise their clients over the telephone.[232]

We expected the interviews to confirm Justice Jackson's dictum "Any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances."[233] Almost all lawyers did say that, on arrival at the stationhouse, they would counsel the client to "say nothing while I size up the situation." And even after discovering the facts, 51 of 55 lawyers said they would normally advise a client against making any statement at the time of arrest. Only four said they would frequently recommend cooperation—though one of these, the public defender, handles over 40 per cent of New Haven's criminal cases. The four felt that cooperation would generally improve the defendant's bargaining position.

But in further discussion, 40 of the lawyers admitted they would, under certain circumstances, advise a client to answer questions. Cooperation might be prudent, they said, given specified facts about the suspect's age, the nature and circumstances of the offense, and the strength of the evidence in the hands of the police. In appropriate situations the attorneys said they would tell their client that cooperation might help him, and then let the suspect decide whether to cooperate.

Many lawyers think that suspects picked up for narcotics and morals offenses, misdemeanors, and domestic disputes would be wise to answer

230. In the 75 cases in the sample, lawyers had seldom been called before their clients had been released on bond. Nineteen lawyers said they had never gone to the police station to assist their clients before *Miranda*.

231. Most lawyers believed they had had sufficient time to confer with clients in the police station even before *Miranda*.

232. Thirty-three lawyers indicated that they preferred to avoid going to the police station; they said they could accomplish as much over the telephone. They believed that so long as the client did not talk, a conference to plot strategy could wait until he had been released on bail.

The practical impact of *Miranda* depends largely on the way lawyers behave under the new rules. While giving advice by telephone may technically satisfy the constitutional mandate of *Miranda*, in many cases it will fall short of giving the suspect sufficient support to allow him to remain silent, judging by our findings in Part V. Since the police will generally continue questioning until the suspect says absolutely that he does not want to talk, advice by telephone may not deter confessions. According to one lawyer, advice by telephone might be worse than no advice at all, since it would often be misinterpreted. The response of lawyers to *Miranda* is an important area requiring further study.

233. Watts v. Indiana, 338 U.S. 49, 59 (1949) (separate opinion).

police questions. In narcotics cases, the prosecutor might be willing to recommend leniency in return for information about sources of supply. Several attorneys thought that the detectives would reward cooperation in sex cases, misdemeanors, and family squabbles by recommending leniency to the prosecutor because the detectives feel their time should be spent investigating more major crimes. The harshness of possible penalties for some of these offenses also induced the attorneys to consider cooperation.

The lawyers also said they might advise a minor to confess, hoping that the prosecutor would save a repentant youngster from a felony charge.[234] Also, they would advise cooperation where the police have substantial evidence or the suspect has a long record. Mercy, the only available plea, would most easily grace a defendant who had confessed, especially if he had identified accomplices or helped recover stolen goods.

Some experts have claimed that *Miranda* will delay the release of innocent suspects who could clear themselves if their lawyer had not told them to remain silent.[235] We found that almost all lawyers would advise a client to cooperate with the police if he could clear himself by doing so. A lawyer's presence may even help a client to tell his story coherently.[236]

Many attorneys will advise the type of cooperation most needed by the police—identifying accomplices, fences and suppliers, or aiding recovery of stolen goods—especially when their client was caught in the act and is obviously guilty. Moreover, they will advise co-operating immediately rather than waiting until plea bargaining, since in many cases only immediate cooperation will enable the police to apprehend accomplices.

234. A few lawyers said that the reasoning which applied to minors also applied to first offenders: cooperation with the police and a genuine air of repentance usually result in a suspended sentence for the first offender unless he is charged with a crime involving major violence.

If the client has a major criminal record, the lawyers reasoned that through cooperation the accused could avoid severe punishment. By placating the prosecutor, the suspect might be able to dodge the heavy penalties for second or third offenders, they felt.

235. 384 U.S. at 543 (dissenting opinion of White, J.); U.S. NEWS AND WORLD REPORT, June 27, 1966 at 32-36.

236. We were told of several instances in which innocent suspects were tripped up or confused during interrogation and failed to establish their innocence because they did not fully understand the detectives' questions. In one bigamy case the police had records of two marriages for a man legally divorced from his first wife. The divorce had not been recorded. The suspect gave contradictory answers to police questions, and was especially confused by the question "Are you married to two women?" He repeatedly answered "Yes," because he *had* been twice married. So the police took his response as a confession to bigamy. In 9 of the 17 cases where the prosecutor entered a nolle prosequi, innocent suspects were booked because they failed to give consistent answers to police questions.

Despite these majority views, 11 of the 55 attorneys told us they would never advise cooperation.[237] Some thought that cooperation was useless to the defendant because the police had no power over sentencing. Others said that the police do have influence, but never use it in favor of a defendant merely because he confesses. Also, cooperation may backfire. Invariably, the lawyers who would always counsel silence dislike the police and prefer not to deal with them.

We found no simple explanation for this sharp diversity of opinion. None of our background data such as age or experience[238] distinguished lawyers who would advise cooperation from those who would not.[239] The diversity probably reflects the varying experiences each lawyer has with the police, the prosecutors, and his own clients.

We found some evidence to support the view that cooperation can be helpful. In misdemeanor cases, for example, defendants who confessed generally received suspended sentences, while others got short jail terms. Minors charged with breaking-and-entering or theft, another large category, also did better if they confessed.[240]

Our interviews with prosecutors also suggest the value of cooperation. According to the prosecutors, the police do influence sentencing. Often the prosecutor will consult with the police officer involved in a case before making a sentence recommendation to the court. Judges, they say, respond favorably to a pre-sentence-report notation that the defendant cooperated fully with the police.[241] However, many of these benefits may also accrue to the suspect who is silent in the station but who cooperates with the prosecutor. A suspect who remains silent until this later part of the process may often be even better off. Only with the advice of a lawyer, however, can he make this decision.

In short, there are cases in which a lawyer familiar with all the facts might advise his client to cooperate. But the lawyer summoned to the

237. These lawyers handled approximately 524 criminal cases last year.

238. We tested each variable and found no statistically significant relationships. However, the lawyers from New Haven's Legal Assistance Association, a private organization aiding indigents, always advise silence.

239. Even the 75% of the lawyers who said that cooperation with the police might help in certain cases disagreed widely on what cases they thought most suitable for cooperation. For example, some lawyers asserted that helping the police in narcotics cases might result in a suspended sentence, but others said that they would not cooperate in narcotics cases because of the severe penalties possible.

240. In each case the attorney must make a difficult judgment whether cooperation will help. For example, defendants in the sample who implicated accomplices were not automatically treated more leniently. According to counsel, implicating accomplices benefited only five of the eleven suspects who did so; for the rest, a confession plus implication only made matters worse.

241. Interview with George R. Tiernan and David B. Salzman, State's Attorneys, Superior Court, New Haven, Connecticut, in New Haven, Feb. 7, 1967.

stationhouse might have to operate on ignorance. He would have to learn the facts from both his client and the police. If he had a good relationship with the police, he probably would be apprised of the evidence they possess. Depending on the facts, immediate cooperation might make more sense. But another lawyer, less comfortable with the police, might be unable to learn the strength of the state's case.[242] Without such knowledge, he would be able to protect his client's interests only by trying to prevent a confession. Thus, the effect of having a lawyer in the stationhouse might depend on which lawyer is called.[243]

The lawyer's advice, whatever it is, might not be the final word. Suspects apparently often mistrust their lawyers,[244] and fail to take their advice. Two-thirds of the lawyers interviewed indicated that suspects did not invariably follow their counsel. Several lawyers told us of clients who had talked after being told to remain silent. Some thought their client had a compulsion to confess;[245] others dealt with suspects

242. To produce uniformity in the representation received by suspects it would probably be necessary for states to pass laws requiring disclosure by the police.

243. The lawyers we interviewed entertained a wide range of opinions about their relations with the police. Some lawyers had very negative impressions both of policemen and police practices, but others were quite complimentary to the police. We found no significant differences between lawyers who praised the police and those who distrusted them. Differences may have depended on the lawyer's age and his personal relationships with the police. Generally, younger attorneys made up the group hostile to the police. As a general rule hostile lawyers had fewer personal relationships with members of the police force. Hostility was especially strong among the lawyers of the Legal Assistance Association. On the other hand, the attorneys most favorable to the police tended to have friends on the force and to have had numerous contacts with the officers.

The misunderstanding and hostility many lawyers felt toward the police was matched by the policemen's feelings towards lawyers. Many detectives respected lawyers but did not trust them. Usually the only circumstances in which policemen encountered lawyers were those in which defense counsel questioned them closely. The police often reciprocated by not cooperating with counsel at the stationhouse.

244. The suspect's distrust of his lawyer resulted in his withholding some of the facts from counsel and refusing to cooperate with the police even if advised to do so. One of our attorneys reported an illuminating example. Because the state had a virtually foolproof case, he had advised his client to plead guilty and take the light sentence the prosecutor had offered. Despite the continued advice of counsel, the suspect insisted on going to trial. During the trial the defense attorney had a long and successful argument with the prosecutor over admission of evidence. When he sat down the suspect said he wanted to plead guilty. The attorney, stunned, asked him why. The defendant said that when the lawyer had recommended a guilty plea, he had decided that his counsel must be in cahoots with the state. The fight with the prosecutor convinced the defendant that the lawyer really was on his side; now he would follow his advice and plead guilty. The defense counsel was then able to negotiate a sentence somewhat shorter than the one which the prosecutor would have recommended after trial, but certainly longer than the one first offered.

245. One of the prosecutors insisted that most confessions are a product of "conscience." He rejected the notion that police coerce confessions by pointing out that in most instances confessions result from the accused's desire to unburden himself. He cited a number of cases where a suspect had confessed and claimed to feel greatly relieved. Several of the private attorneys expressed similar views. A few of their clients, they felt, had a strong desire for self-punishment and they confessed to fulfill a real need when interrogated by the police. The prosecutor added that suspects seldom falsely confess in New Haven but do so frequently in New York City.

Still, in most of the cases we saw during the summer, conscience seemingly played no

who did not understand that an oral statement could do as much damage as a written confession[246] and would talk freely while obediently refusing to sign anything.[247] In some cases the suspect had not told the lawyer the full story; when the suspect discovered the evidence already available to the police, he confessed.[248]

C. *Effect of Silence*

To determine whether the suspect will benefit from the attorney's presence at the police station, we asked each of the respondents in the lawyer sample whether he thought the plea, outcome, charge, or sentence in the specific case(s) he had handled would have been more favorable to the defendant had he been present at the stationhouse.[249] Their responses indicate that the plea and outcome in most cases would have been the same but that many suspects would probably have received lighter sentences.[250]

Since the police generally have substantial evidence before interrogations, it is not surprising that we found that most lawyers felt their clients could only have pleaded guilty even had they not confessed. A "not guilty" plea would have been a realistic alternative in only seven out of 49 cases; the lawyers thought that plea might have succeeded in only five of these cases.[251] Of course, a client can choose to plead not guilty no matter how much evidence the police have against him. But in New Haven's courts, as elsewhere, the defendant who goes

part in the confession. Despite one exceptional case in which the suspect had a psychological compulsion to confess, our study in general substantiates the statement that in most cases people confess despite a desire not to do so. *See* Kuh, *Views on Miranda v. Arizona*, 35 FORDHAM L. REV. 233, 237 (1966).

246. *See* p. 1572 *supra.*

247. Another reason given for clients not heeding their lawyer's advice was that they thought they could repudiate the confession or statement in court and get away with it. Unless the lawyer stays by the client until trial, it is possible he will confess. For example, one lawyer was with a suspect when the police arrived to arrest him; the attorney advised his client to answer no questions. He even accompanied him to the police station and there advised him again to remain silent when the police resumed their questioning. The client followed instructions until the lawyer left. But then he turned to the policeman and said, "Well, my lawyer won't like this, but . . . ," and proceeded to make a full statement.

Even a lawyer at a suspect's side might not insure that he will remain silent. In one case related to us the lawyer agreed to let the suspect talk to a witness. When the witness said to the suspect "You know you did it," the suspect said "Yeah, I know."

248. Our conclusions in this section resemble the opinions of lawyers from other areas, including New York City. *See* Rothblatt & Pitler, *Police Interrogation: Warnings and Waiver—Where Do We Go From Here*, 42 NOTRE DAME LAWYER 479, 497 (1967).

249. *See* questions 13, 14, 15, 16 in App. E.

250. We have dealt here only with the outcome and sentence. It is possible that a lawyer in the stationhouse could help a suspect in other ways (e.g., getting bail).

251. These cases are discussed in note 186 *supra.*

to trial and loses—particularly with a frivolous or outlandish defense —risks a far more severe sentence than the guilty pleader.[252]

This finding is particularly significant since it has been claimed that confessions are essential to obtaining guilty pleas and "our system for the trial of criminal cases would be burdened to the verge of collapse if the per cent of guilty pleas were substantially reduced."[253] Disregarding the fact that collapse could be prevented with more resources, our findings indicate that, even under current conditions, at least in New Haven, the *Miranda* decision poses no threat to the viability of the criminal legal system.

Since most suspects probably will eventually plead guilty whether or not they confessed at the police station, *Miranda's* effect may simply be to postpone confessions from interrogation to the plea bargaining stage when the defendant's attorney may be able to turn his client's previous silence to tactical advantage in bargaining with the prosecutor.[254]

The New Haven prosecutor ordinarily has wide discretion to fix the charge and sentence—to decide whether the defendant must answer as a thief or a trespasser, a felony narcotics user or a misdemeanant; whether he goes to jail or gets a suspended sentence. How he makes that decision is the subject of sharp disagreement. The State's Attorneys claim there is little actual plea bargaining—reduced charges and sentence are a semi-automatic response to a guilty plea, not concessions wrested from the prosecutor by shrewd trading. Their recommendation, they say, is determined simply on the basis of the defendant's record, the nature of his crime, and his prospects for rehabilitation. The defense attorney can take it or leave it. Occasionally, when the defendant has turned state's evidence, the State's Attorneys concededly grant special leniency. Also, the prosecutors indicated that a genuinely repentant confession justifies softer treatment. But generally the process is a mechanical operation with set standards.

The defense lawyers see things differently. They picture plea determination as a true bargaining situation, in which the strength of the

252. It is common knowledge that the defendant who pleads not guilty and is found guilty at trial will receive a higher sentence than will a similar defendant who confesses in the first instance. *See* J. SKOLNICK, *supra* note 38; *Guilty Plea Bargaining: Compromises by Prosecutors to Secure Guilty Pleas*, 112 U. PA. L. REV. 865 (1964). *See also* United States v. Wiley, 184 F. Supp. 679 (N.D. Ill. 1960).

253. Barrett, *Police Practices and the Law*, 50 CALIF. L. REV. 11, 45 (1961). *See also* Brief for Government at 17, Westover v. United States, 384 U.S. 436 (1966).

254. That plea bargaining between the prosecutor and the defense attorney occurs is a well-documented fact. For other descriptions of the bargaining process, see D. NEWMAN, CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL (1966); Note *Guilty Plea Bargaining: Compromises by Prosecutors to Secure Guilty Pleas*, 112 U. OF PA. L. REV. 865 (1965).

prosecutor's evidence plays a crucial role. One lawyer, for example, claims to have bargained in one case on the basis of his power to force the State's informer to testify, and his ability to object to the confession and the search and seizure. Most defense lawyers think that the prosecutors are anxious to avoid trial and willing to make substantial concessions when a defendant can credibly threaten to plead not guilty.

The apparent discrepancies between plea bargaining as seen by the State's Attorneys and defense counsel probably is accounted for by the tendency for each group to present its role in the most favorable context. When the State has a strong case the system apparently works as the prosecutors say:[255] the defendant knows the score and plans to plead guilty; the State's Attorney makes one firm offer and generally will bargain very little.[256] Where the suspect's guilt is not so evident, real bargaining can flourish and the picture painted by defense counsel is more accurate: the defense can realistically threaten to put the prosecutor to his proof at trial; and the weaker the State's evidence, the more anxious the prosecutor will be to avoid trial.

The presence or absence of a confession will be an important determinant of which of these situations obtains. Predictably, defense lawyers said that a confession significantly affected their success in plea bargaining for a lower charge or a reduced sentence. In nine cases where the defendant had confessed and plea bargaining for a lower charge was unsuccessful, the lawyers attributed their failure to the confession. Moreover, in 16 more cases where a confession was present, the prosecutor refused to bargain over the charge at all. Overall, plea bargaining over charge succeeded in only 15 of the 49 cases in which the defendant had confessed.

When the defendant had remained silent, on the other hand, plea bargaining succeeded and charges were lowered or nolled in 16 of 26 cases. Of course, since the defendant was more likely to confess when

255. Where a strong case is based on a confession, the threat of retraction does not disturb the prosecutor. In only 6 of 49 cases in the lawyer's sample where the defendant confessed did his lawyer advise retraction. (Retraction here means denying having made the confession or denying the truth of the statement.) Many lawyers said retraction was far more common in Connecticut criminal cases twenty years ago than today. In the past lawyers willingly argued that the police intimidated the defendant into confessing. But these days, they said, this tactic does not work. The police rarely physically coerce a confession and juries almost always disregard the retraction as a self-serving statement by the defendant.

256. Even where there is strong evidence some lawyers claim they can bargain over length of trial, availability of witnesses, likelihood of appeal and a number of other factors. Since these lawyers are generally the most determined opponents of the prosecutor (e.g., they often try to win a case by "continuing the prosecutor to death,") it is probable that their claims are valid.

other strong evidence was in the hands of the police or was obviously available, part of this variation in success ratios is accounted for by the overall strength of the state's cases and not merely by confessions. But the police had—by our estimation—enough evidence to convict the defendant with or without a confession in as high a proportion of cases where bargaining succeeded as where it failed. Other factors—such as the age and prior record of the defendant, or the difficulty the prosecutor would encounter in collecting his available evidence for an actual trial—may account for the apparent irrelevancy of other evidence in plea bargaining. The conclusion nevertheless emerges that the presence or absence of a confession is an important factor in bargaining over the charge independent of the evidence available.

A confession generally reduced the defense attorney's ability to bargain with the prosecutor over the recommended sentence (usually accepted by the judge).[257] The defense counsel in 30 of the 49 cases where the defendant confessed reported that bargaining was made harder or impossible because of the confession. Thirteen, however, said that the confession had no effect since the prosecutor already had enough evidence to convict without the confession; and six even reported that bargaining was made easier, because the prosecutor accepted it as a token of repentance. Where the defendant had remained silent, the defense attorneys reported that sentence bargaining was helped in 10 of 26 cases; but in eight cases, again where there was substantial evidence, no effect was found.[258] From our data it appears clear

257. A lawyer's own relations with the prosecutor may account for some variance in bargaining. Plea bargaining, after all, is founded on just such a relationship. The chief prosecutor, the public defender, a representative of the legal aid society, and a private attorney, all agreed at a group meeting we held that the experienced lawyer who has talked often with the prosecutor will have a far easier time in bargaining than will the neophyte. Despite the absence of a formal criminal bar in New Haven, good personal relations between prosecutor and private attorney may have a significant bearing on the success in reducing his client's sentence at the bargaining stage.

258. We examined a number of other factors that might account for success in bargaining, since confessions are obviously just one, albeit an important, influence.

Age. We thought it likely that the prosecutors would be more willing to bargain where very young defendants were involved. But when we used charge-reduction as the measure of bargaining success, we found that youth was not served at all. (*See* Table F-11.)

TABLE F-11
LOWERING OF CHARGES OF THE CASES IN WHICH PLEA BARGAINING OCCURRED

	Charges Lowered	
	Yes	No
Age 16-20	5	16
21-30	12	7
Over 30	9	7
Total	26	30

that a lawyer, if contacted before interrogation, could be a substantial aid to suspects. The lawyer's presence would not affect the outcome of most cases in terms of a judgment of guilty or not-guilty, but he could substantially better the suspect's chances of an opportunity to plead to a reduced charge or of receiving a favorable sentence after a guilty plea. Most important, the lawyer would insure that the suspect would be treated equally by the system. By putting all suspects on equal footing during plea bargaining the lawyer would insure that the weaker, less experienced suspect who might have confessed will not be penalized during bargaining in comparison with the professional or sophisticated.

VIII. Detectives' Attitudes

In the previous sections we have suggested that *Miranda* will not adversely affect law enforcement. However, from our observations and interviews with the detectives it was apparent to us that the decision has substantially affected the attitudes and morale of the police themselves. The detectives see this decision as more than a change in the rules that they believe will merely hamper them—they feel it is a slap at policemen everywhere.[259]

Some of the detectives responded to *Miranda* by taking a more negative attitude toward their work. They combined their resignation toward the decision with an attitude that if the Court was going to make their job more difficult, they would let the judges figure things out for themselves. Moreover, some began to believe that interrogations and confessions were disfavored by the courts and therefore not worth pur-

Two explanations for this finding were suggested to us by lawyers. First, they felt that lawyers representing young suspects tended to bargain for advantages such as juvenile referrals, rather than a lower charge. Eight of the lawyers we interviewed said that when dealing with clients 16-20 years old, they concentrated on convincing the prosecutor to recommend the juvenile reformatory rather than state prison. Second, lawyers in these cases said they attempted to negotiate the ultimate disposition directly rather than through the intermediate steps of a charge reduction. We found that younger defendants received lighter sentences than their elders, even if they had similar records and had been charged with the same crime.

Race. We found no significant correlation between race and bargaining ability, although Negroes did bargain somewhat more than whites. Dealing with subjects with similar prior arrest records, we found that Negroes bargained slightly better than whites. But we think the difference not substantial enough to support a conclusion that race was a relevant factor.

Prior Arrest Record. The defendants were more likely to attempt a deal when they had a prior arrest record, but those with records were less likely to succeed than first offenders or men with only minor records. The lawyers argued that their bargaining position was seriously weakened if the suspect had an arrest record for serious crimes.

259. For a description of police attitudes towards criminal law corresponding closely with our findings, see J. SKOLNICK, *supra* note 38, at 182-203.

suing. Thus, although they are required by department rules to ask for statements from all suspects, the detectives did not ask for statements from many suspects, or just routinely asked questions, often stopping when they noticed any disinclination towards continuing on the part of the suspect.[260] Occasionally they would then comment to us, "We'll let the judge figure that one out, he gets paid for it."

A number of reasons accounting for the unhappiness with the decision emerged from our interviews. Most important, perhaps, the detectives see the *Miranda* decision as a personal rebuke by a Court that, in their eyes, knows very little about local police and their problems. To the detectives, *Miranda* is not merely a change in the rules to help the suspect—although the detectives unanimously believe it will unjustifiably do that. It is read as a statement that police are nasty people, who cannot be trusted to treat a suspect in a civilized manner. The court is so distrustful of policemen that it would rather see criminals released than allow the policeman to regulate his own conduct. While they recognize that a few police do commit "terrible" acts, acts they themselves deplore, they believe that the majority of police should not be censured for the sins of the few—especially if it means releasing criminals.

These feelings are intensified by a basic distrust of courts and lawyers,[261] who just make more difficult an already thankless job. Since the detectives uniformly see the crime problem in New Haven as becoming progressively worse, and morality as declining, they cannot understand why the courts impede their protection of the public. After all, the police are the ones on the side of justice. Yet, the courts are aiding suspects they know are guilty. The only explanations imaginable to many detectives is that the members of the Court do not understand the problem of crime—"Let one of the judge's daughters get raped or mugged and see what they do"—or that the Justices are Communists.[262]

Many detectives also seem to find assurance that an arrest is correct when the suspect confesses. The confession assures them that they have the right man—most detectives claim an innocent man has never confessed in New Haven. Moreover, in confessing the suspect generally

260. *See* note 92 *supra*.

261. Skolnick has concluded that "[T]he natural enemies of the policeman are the defense attorney and his client." J. SKOLNICK, *supra* note 38, at 28. We do not believe the distrust is this great in New Haven.

262. Whether detectives really believe the Justices are Communists, or whether this is just a name-calling reaction to something they do not like, was not clear to us.

fills in all of the details of the crime. This is important to the detective since it clears up problems in his own mind about the crime—the parts of a puzzle are put together—and also gives him a storehouse of information about the crime or the suspect that he feels he can use again.

Another important consideration is the fact that many of the detectives enjoy interrogating—the battle of wits between them and the suspect is the most exciting and interesting part of their job. As one detective said, "I particularly like sparring with the suspects. It is a great challenge. Getting the suspect to talk gives one a feeling of real accomplishment."[263] Many respondents complained that the Supreme Court's decisions have destroyed much of the pleasure of interrogations. According to one, "Interrogating used to be fun, but now with all these court rules there's not much point in it any more. They are now *interviews,* not interrogations."

Moreover, for many detectives interrogating is the skill that distinguishes them from foot patrolmen. Without interrogations their job would merely be patrolling for possible trouble.[264] The challenge of solving a crime by making a suspect talk is probably heightened by the general lack of sophisticated investigatory techniques in the Department. Although the detectives would like to do far more scientific sleuthing, the lack of facilities leads them to interrogations for self-fulfillment.

Finally, the police see the decision as hurting the clearance rate. Since this "rate" is the figure by which they expect to be judged,[265] especially by the Chief and the members of other police departments, they feel *Miranda* threatens their professional standing. Such a feeling is encouraged—even inculcated—by their training program. Most of the instructors who teach the in-service courses take the approach, "This decision is terrible, it will hurt our activities, but it is the law and we must follow. Perhaps if we follow the letter of the law we will show them it is unworkable."[266] Almost no attempt is made to explain the rationale behind the decision, or to discuss the various value positions. Instead, the students are told that many crimes will go unsolved—with the point being emphasized by a recent case.

263. *Miranda,* of course, can be viewed as making interrogations even more sporting.

264. *Cf.* J. SKOLNICK, *supra* note 38, at 196. For similar claims about the decision in Mapp v. Ohio, 367 U.S. 643 (1961) *see* Note, *The Impact of Mapp v. Ohio on Fairfield County,* 40 CONN. B.J. 118, 123 (1966).

265. The detectives continually told us that the decision would hurt their clearance rate and they would therefore look inefficient. The feeling appears to be universal. *See* GRIFFIN, STATISTICS ESSENTIAL FOR POLICE EFFICIENCY 61 (1958).

266. As one officer indicated, such an approach may be the only way to get proper behavior from patrolmen.

It is probable that the police will learn to live with *Miranda*—maybe even accept it as beneficial, as some have already done. Or they may just ignore it when necessary and risk losing a conviction. Perhaps if the police themselves find that *Miranda* has not substantially affected law enforcement, they will be less unhappy with it.[267]

IX. Conclusion

Our data and our impressions in New Haven converge to a single conclusion: Not much has changed after *Miranda*. Despite the dark predictions by the critics of the decision, the impact on law enforcement has been small. This is true for two reasons. First, interrogations play but a secondary role in solving the crimes of this middle-sized city, both because serious offenses are relatively infrequent and because the police rarely arrest suspects without substantial evidence.

Some larger cities have more crimes of violence committed, and interrogations, while no more necessary in such cases—in terms of being the only means of solving the crime—may seem more essential because solution itself is more imperative when a serious offense has been committed. But the more important explanation for the low estate of interrogations in New Haven—the usual availability of other evidence when suspects are arrested—may well apply in cities small, medium and large alike. The reason is simple: unless the criminal is caught red-handed or unless witnesses are available, the police with their limited resources for scientific investigation cannot amass even enough evidence to arrest a suspect. And since such evidence when available is all but conclusive, by the time the police have a suspect the crime is solved, conviction is assured and interrogation is unnecessary.

The second reason for the almost nugatory impact of *Miranda* in New Haven should also apply as well to other cities: the *Miranda* rules, when followed, seem to affect interrogations but slightly. The police continue to question suspects, and succeed despite the new contstraints.

This is not surprising when the realities of the interrogation room are considered. Warnings are not useless, but neither can they eliminate whatever "inherently coercive atmosphere" the police station may have. The suspect arrested and brought downtown for questioning is in a crisis-laden situation. The stakes for him are high—often his freedom for a few or many years—and his prospects hinge on decisions that

267. Several detectives already think it a good decision because it gives them clear standards to guide their work.

must be quickly made: to cooperate and hope for leniency, to try and talk his way out, to stand adamantly on his rights. Unless he is a professional, the suspect is unlikely to know the movements of the law enforcement machinery. The likely consequences of the alternatives open to him are unclear—how much leniency cooperation may earn, how likely fast talk is to succeed, how much a steadfast refusal to talk may contribute to a decision by the police, prosecutor or judge to "throw the book" at him.

In such a thicket, the *Miranda* warnings are no substitute for the close knowledge of the institutions and personalities of the criminal process that the suspect will never have. Warnings help—or at least they might if the police did not geld them of meaning by their tone and manner. But in a system so laced with discretion—discretion for the police, for the prosecutor, for the judge—a knowledge of formal rights, even if fully comprehended, may not help the suspect too much. As long as the police question the suspect alone, he is no match for them. The suspect will not grasp firmly his rights. He will try to deal with his captors, to talk his way out, and he is enormously inadequate to that task.

And entirely aside from the ineffectiveness of warnings when given, our study suggests that detectives cannot be trusted to give warnings consistently and conscientiously. The frequency with which the New Haven detectives failed to warn suspects at all last summer may be partly attributable to the recentness of the *Miranda* decision. But even as the requirements become better known to the police, all of their training and values lead them away from giving the warnings—particularly in a difficult case.

Perhaps with time, tightened review by the courts and by officials within police departments may, with difficulty, persuade detectives to give at least some warnings. A much more difficult—and probably insolvable—problem is to insure that warnings will be full and fair. The tone of a detective's voice, a few words added or omitted, the context in which a warning is given—all are factors difficult to review, and hence to control, but each may profoundly affect the suspect's understanding of his rights.

The conclusion, inescapable, that mere warnings cannot provide concrete "assurance of real understanding and intelligent exercise of the privilege of silence" calls for fresh examination of the goals which prompted *Miranda*. The Supreme Court spoke in terms of placing the suspect on an equal footing with the police and of placing the inexperienced on a par with the experienced. If such is the goal, this

can be done only by providing each accused with counsel before the police begin questioning—someone who knows the system, the institutions, the personalities involved. The lone suspect cannot make a "free and informed" choice to speak or remain silent.

We believe that such an informed decision is the proper goal. And, therefore, we recommend that counsel should be assured to each suspect before the police interrogate. The accused cannot be expected to demand a lawyer after a wooden and grudging warning of his "right" to one—even after a warning of his "right" to appointed counsel. The suspect alone in the police station cannot make a "knowing and intelligent waiver" of his constitutional rights; to suggest that he can is to engage in fiction.

But the semi-fiction of "waiver" may cloak a purpose which the law feels must be served. It may be felt that the suspect should not be placed on an absolutely equal footing with the police, that at some stage the criminal process must, in the interest of law enforcement, be at least partially inquisitorial rather than purely adversarial. If in fact the goal of *Miranda* and earlier cases is merely to lessen the disadvantage of the suspect vis-à-vis the police, and not to eliminate it altogether, such decisions may succeed in that limited purpose—at least aside from the question of whether suspects are equally disadvantaged.

In the short run, the specific case, the warnings may have only a small effect. But that effect helps adjust the balance. More important, such decisions have a significant long run effect, in two ways. First, they contribute to a greater general awareness of rights on the part of suspects. Here we are talking of the knowledge and sophistication the accused brings to the police station, not that which may be given him after arrest. The cloudy results of our attempt to make a time-series analysis of interrogations in New Haven between 1960 and 1966 suggest that the general, on-the-street sophistication of suspects may have increased as the result of *Miranda* and its forerunners. Such a broad educative effect may be more important than specific warnings after arrest. If our impressions are correct—and our data tend to substantiate them—the suspect is in a poor position to assimilate and make effective use of new knowledge after arrest. His position is too parlous. Rather, the knowledge of his rights which he brings to the police station, vague though this knowledge inevitably is, may be critical.

Second, *Miranda* and its predecessors seem to have had an important effect on the police. They now know that their actions are subject to review, that they do not create the rules of interrogation. To the extent that their tactics are softened and controlled by this sense of review, the

relative disadvantage of the suspect is lessened—particularly if review is made more effective by such devices as tape recorders in the interrogation room. Against this result, of course, must be weighed our conclusion that the police have interpreted *Miranda* as an undeserved rebuke from a Court with little true knowledge of their problems.[268] Police morale is not an unimportant consideration; decisions perhaps might better be written from the premise not that the police have abused the system, but that the system itself—which the police in broad measure attempt to apply as they perceive it—is wrong.

Thus, *Miranda* may succeed in adjusting the relative advantage between state and accused without balancing it: warnings are only a palliative, but a worthwhile one, and the educative effect of such decisions on both police and suspects helps redress the balance. But the Court should not talk righteously of equalizing the balance while merely adjusting the degree of imbalance. Rather than relying on relatively ineffective "warnings" and on the semi-fiction of "waiver," the Court should consider forthrightly the exact balance which should be constitutionally struck. To speak of placing the suspect on an equal footing while leaving him disadvantaged is an unhappy way-station and decidedly inadequate as a journey's end.

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268. Although we accepted the hostility of the police to recent Supreme Court decisions at face value, a recent book by Arthur Niederhoffer, a sociologist with 20 years experience as a policeman in the New York department, attributes police cynicism and hostility to the *anomie* caused by the transformation of police departments from "bureaucratic" to "professional" organizations over the past thirty years; and to the disparity between the unrealistically high ideals of the police academy and the actual practice on the streets. *See* A. NIEDERHOFFER, BEHIND THE SHIELD: THE POLICE IN URBAN SOCIETY (1967). Though he clearly feels that such *anomie* has been a major problem since before the recent Supreme Court decisions, he also suggests that the most important effect of them is their "probable reinforcement of cynicism among policemen." *Id.*, at 164.

* Projects editor, Volume 76.
† Editors, Volume 76.

APPENDIX A

OBSERVER'S QUESTIONNAIRE

Observer
Date
Observ. Standpoint

1. Name and Age of Defendant
2. Charge
3. Arrest — Yes / No
4. Race — N / W / O
5. Time of Arrival at Detective Division
   Time Interrogation Began
   Time Interrogation Ended
   Time Defendant Taken from Detective Division
   Time of Interruptions and Breaks Totalled

The following questions are to be filled out if suspect is not interrogated immediately and is made to wait. However, if the entire interrogation takes place in the waiting room, either at the detective division or special services, skip questions 6-13.

6. Where was the suspect between arrival and interrogation:
   At desks
   Cage
   Other (specify)
7. During this time, by whom was the suspect questioned?
   a. No one
   b. Principal Interrogator
   c. Detectives
   d. Arresting Patrolmen
   e. Other (specify)
8. Describe the manner of questioning (cite derogatory phrases, embarrassments, topics of interest, frightening comments, questions and answers, informal chatter, forms filled out, etc., anything you recall which may be of interest).
9. What information was elicited at this time?
10. What other conversations (and/or incidents) took place?
11. Was the subject advised of right to silence at this time? Yes / No
12. Was the subject advised of the right to counsel at this time? Yes / No

13. Was the subject advised of right to appointed counsel? Yes
No

The following questions pertain to the interrogation in the inside room, *prior to taking of any statement.*

14. By whom was he questioned? (Initials)
    a. Principal Interrogator
    b. Detectives
    c. Arresting Patrolman
    d. Other (specify)

15. When was subject advised of right to silence?
    Not advised
    Before questioning
    During questioning

16. In what manner was this information given?
    a. Clearly and explicitly in a separate statement (in some way set off from the conversation)?
    b. Clearly and explicitly but not in a separate statement
    c. Run into the conversation so that it seemed likely to obscure the warning
    d. Given with an attempt to discourage (you can have a lawyer but . . . or we have everything already, why need a lawyer, etc.)

17. When was subject told that anything he said could be used against him?
    Not advised
    Before questioning
    During questioning

18. In what manner was this information given?
    a. Clearly and explicitly in a separate statement (in some way set off from the conversation)?
    b. Clearly and explicitly but not in a separate statement
    c. Run into the conversation so that it seemed likely to obscure the warning
    d. Given with an attempt to discourage (you can have a lawyer but . . . or we have everything already, why need a lawyer, etc.)

19. When was subject advised of right to counsel?
    Not advised
    Before questioning
    During questioning

20. In what manner was this information given?
    a. Clearly and explicitly in a separate statement (in some way set off from the conversation)?
    b. Clearly and explicitly but not in a separate statement
    c. Run into the conversation so that it seemed likely to obscure the warning

d. Given with an attempt to discourage (you can have a lawyer but . . . or we have everything already, why need a lawyer, etc.)

21. How did the subject respond to this warning?

a. No response
b. Said he didn't want a lawyer
c. Asked to contact lawyer
d. "don't know" any lawyer
e. "can't afford lawyer"
f. Seemed confused about the meaning of a right to counsel

22. If subject responded either by d, e, or f, how did the police react toward the subject response?

a. No response
b. Said "we can't help you"
c. Told of right to appointed counsel with no further explanation
d. Told of right to appointed counsel and helped to get one
e. Other

23. If subject was told of right to appointed counsel, in what manner was this information given?

a. Clearly and explicitly in a separate statement (in some way set off from the conversation)
b. Clearly and explicitly but not in a separate statement
c. Run into the conversation so that it seemed likely to obscure the warning
d. Given with an attempt to discourage

24. When did subject ask to see attorney without being told

Didn't ask
Before questioning
During questioning
After questionning
Before statement

25. Was request granted? Yes
No

Answer the following questions as they pertain to the interrogation *after the time the subject has been asked to make a statement.*

26. When was subject told of right to silence?

Not told
Before statement
During statement
After statement

27. In what manner was this information given?

a. Clearly and explicitly in a separate statement (in some way set off from the conversation)?

b. Clearly and explicitly but not in a separate statement
c. Run into the conversation so that it seemed likely to obscure the warning
d. Given with an attempt to discourage (you can have a lawyer but . . . or we have everything already, why need a lawyer, etc.)

28. When was subject told statement could by used against him?

Not advised
Before statement
During statement
After statement

29. In what manner was this information given?
a. Clearly and explicitly in a separate statement (in some way set off from the conversation)?
b. Clearly and explicitly but not in a separate statement
c. Run into the conversation so that it seemed likely to obscure the warning
d. Given with an attempt to discourage (you can have a lawyer but . . . or we have everything already, why need a lawyer, etc.)

30. When was subject told of right to counsel?

Not advised
Before statement
During statement
After statement

31. In what manner was this information given?
a. Clearly and explicitly in a separate statement (in some way set off from the conversation)?
b. Clearly and explicitly but not in a separate statement
c. Run into the conversation so that it seemed likely to obscure the warning
d. Given with an attempt to discourage (you can have a lawyer but . . . or we have everything already, why need a lawyer, etc.)

32. How did the subject respond to this warning?

a. No response
b. Said he didn't want a lawyer
c. Asked to contact lawyer
d. "don't know" any lawyer
e. "can't afford lawyer"
f. Seemed confused about the meaning of a right to counsel

33. If subject responded either by d, e, or f, how did the police react toward the subject response?

a. No response
b. Said "we can't help you"
c. Told of right to appointed counsel with no further explanation

d. Told of right to appointed counsel and helped to get one
e. Other

34. If subject was told of right to appointed counsel, in what manner was this information given?
    a. Clearly and explicitly in a separate statement (in some way set off from the conversation)
    b. Clearly and explicitly but not in a separate statement
    c. Run into the conversation so that it seemed likely to obscure the warning
    d. Given with an attempt to discourage

35. How did detective change facts from oral interrogation when taking written statement?

Didn't change
Added facts
Changed facts
Other

36. When was subject told he could contact friends, relatives, etc.?

Not told
Before questioning
During questioning
After questioning
After statement
Before statement

37. Did subject request to see anyone without being told he could? — Yes / No

38. Did subject call anyone besides lawyer? Who? — Yes / No

39. Did subject see anyone (include lawyer)? — Yes / No / Who

40. Was a limit placed on the number of calls the subject could make? (How many?) — Yes / No

41. When did subject see anyone?

Not see anyone
Before questioning
During questioning
After questioning
Before statement

42. Did subject protest innocence at beginning? — Yes / No

43. If yes, did subject continue to protest innocence? — Yes / No

44. Did subject claim lack of any knowledge at the beginning? Yes / No

45. If yes, did subject continue to maintain same? Yes / No

46. Did subject refuse to talk at beginning? Yes / No

47. If yes, did subject continue to refuse to talk? Yes / No

48. Was the subject confronted with any witnesses? Yes / No

49. How did the police touch the subject?
    - Didn't touch at all
    - In comforting manner arm around shoulder
    - In a threatening way
    - Other threatening gestures
    - Other (specify)

50. Was the subject searched? Yes / No

51. Was he asked to take any tests) (i.e., urine specimen?) Yes / No

52. Did the police use any of the following tactics? (Check all those applicable)
    a. Play off co-defendants. Yes / No
    b. Use threats Yes / No
        1. He would get in trouble by not telling Yes / No
        2. It would look bad for him, if he remained silent Yes / No
        3. Tell of trouble to family (mother, wife, etc.) Yes / No
        4. Other (specify)
    c. Use promises
        1. Lower bail Yes / No
        2. Aid at court (leniency by judge) Yes / No
        3. Lower charge (combination of charges) Yes / No
        4. Other (specify)

d. Accuse him of other crimes — Yes / No

e. Use a friendly guy–hostile guy routine — Yes / No

f. Mention contradictions in statement, attempt to confuse on story — Yes / No

g. Refer to physical symptoms or actions of guilt — Yes / No

h. Refer to physical evidence of guilt — Yes / No

i. Use Relays — Yes / No

j. Tell of possible exaggeration on part of accuser — Yes / No

k. Display of sympathy (just a little mistake, sorry for you, anyone could have done it, etc.) — Yes / No

Other significant methods (please specify)

53. Did any of the above tactics produce a marked effect in the defendant? Describe this.

54. Was subject offered food or drink? — Yes / No

55. Was subject offered opportunity to go to the bathroom? — Yes / No

56. Was subject offered a cigarette? — Yes / No

57. Were these offered for the observer's benefit? — Yes / Could not tell / No

58. If not offered, did subject ask for any of these amenities? — Yes / No

59. Was subject denied any of these after asking? — Yes / No

60. Was subject allowed to terminate interrogation at will? — Yes / Made no attempt / No

If "no" or "made no attempt," describe the circumstances.

61. What did the interrogator call the defendant?

a. Mister
b. Last Name
c. First Name
d. You
e. Other (specify)

62. Check *one* which best describes the conduct of the defendant?

a. Very nervous-twitch, sweat, etc.
b. Fairly nervous
c. Impassive
d. Nonchalant
e. Defiant
f. Composed
g. Other (specify)

63. Check as many as best characterize the behavior of the defendant?

a. Evasive
b. Hostile
c. Unresponsive
d. Cooperative
e. Businesslike
f. Responsive
g. Annoyed
h. Ashamed (embarrassed)
i. Anxious to confess

64. Describe how the conduct of the defendant shifts during the course of the interrogation?

65. Check as many as appropriate to describe the general interrogation process in terms of interrogator attitude, methods and style. Place initials of each interrogator in appropriate space.

a. Hostility
b. Exasperation
c. Courtesy
d. Constant air of anger
e. Friendliness
f. Occasional anger
g. Swearing
h. Annoyance
i. Tenseness
j. Bigotry
k. Frankness
l. Businesslike manner
m. Calmness
n. Abusiveness
o. Unrelenting
p. Disbelief
q. Aggravation
r. Stern
s. Confident

66. Check as many as are appropriate methods used in the interrogation.

a. Threatening
b. Promising

c. Pleading
d. Trickery
e. Other (specify)

67. Results of interrogation

a. Did subject sign a confession to crime picked up for? Yes No

b. Did he fully admit crime but refuse to sign statement? Yes No

c. Did he give incriminating information about crime picked up for? (include unintentional information) but refuse to sign statement Yes No

e. Did he implicate a co-defendant? Yes No

f. Did subject reveal information about other crimes he committed? Yes No

g. Did subject establish an alibi? Yes No

68. On completion of the interrogation was the subject (circle relevant letter)
a) Released on bond?
b) Taken to circuit court for arraignment?
c) Confined to cell block
d) Taken to state jail
e) Released
f) Other

69. Remarks (use back page if necessary) (please note anything unusual about the interrogation, general attitudes of participants, success of interrogation, etc.)

APPENDIX B

Police Interviews

1) Name of subject
2) Age
3) Charge
4) Prior record
5) Was there an arrest before arrival at station? Yes No
6) Was there any questioning in the car? Yes No

7) What information was obtained at that time?

8) Was the subject taken anywhere before coming to the detective division? Yes / No

9) If yes, where?

a) Scene of crime
b) To witnesses
c) Line-up
d) Other

10) What evidence did the detectives have at the time of the pick-up? (check if caught red-handed, witnesses, fingerprints, etc.)

11) How important do you believe is the information obtained during the questioning? (if subject answered questions)

12) *If the subject remained silent*—How are you going to proceed to get the evidence necessary to prosecute?

13) *If subject answered questions*—How might you have gotten information necessary for prosecution *if* the subject *had* remained silent?

14) If subject released, why?

15) At what stage is the case?

a) Investigatory
b) Arrest
c) After bind over
d) After preliminary hearing
e) After grand jury indictment

If c, d, or e, is subject

a) on bail
b) in jail

APPENDIX C

Police Interviews—Six Months

(1) Name

(2) Age

(3) How long on force?
How long a detective?

(4) Try to think back to when you first joined the force. Can you remember why you joined the force?

(5) What things about your job as a detective do you like the most or find most interesting?

(6) What changes have occurred in work conditions since you became a detective? (*e.g.*, rules, attitudes, atmosphere)

(7) What things about your job do you like least? What changes do you think could be made to improve conditions?

(8) Do you believe court decisions have affected your work? How? *If not covered above ask about specific effects of Miranda,* i.e.: In particular, in what ways has the *Miranda* decision affected your work?

(9) If you were entirely free of regulations, in what manner do you think the police should be able to handle an interrogation? For example, what roles would you like to see changed? Should there be different rules for some kinds of crimes than others?

(10) There are several kinds of warnings that the Court in *Miranda* now requires. We wonder if the giving of any one of these is likely to deter a suspect from giving a statement more than any others. Would you please rank the following warnings in the order you believe that giving it makes getting a statement more difficult. 1—most deterrent 4—least deterrrent:

a) You have a right to remain silent.
b) You have a right to counsel.
c) Anything you say may be used against you.
d) You have a right to appointed counsel.

(11) Could you please place the following crimes in four piles according to how serious you consider the crime to be—the four piles will be labelled

a) most serious
b) serious
c) fairly serious
d) not very serious

(12) Could you please do the same for these crimes in terms of the need for interrogation, *i.e.,* according to how important the information obtained from interrogations is likely to be.

a) interrogation always necessary
b) interrogation usually necessary
c) interrogation sometimes necessary
d) interrogation usually not necessary
e) interrogation never necessary

(13) In what ways besides getting evidence for trial is the information from interrogations used?

(14) What type investigation generally takes place in trying to solve a crime?

(15) Are there ways investigation could replace interrogation?

(16) Do you think the crime problem in New Haven is more or less serious than ten years ago (or when you joined the force, if less than ten)? What do you think accounts for this? (Ask this with either *yes* or *no.*)

(17) Have you noticed a change in suspects' attitudes or behavior since the *Miranda* decision?

(18) Since you joined the force has there been a change in public opinion towards the police? What kind? What do you think accounts for this?

APPENDIX D

QUESTIONNAIRE—FILES

1. Year	1) 1965 2) 1965
2. Type of Crime	0) robbery 1) breaking & entering 2) motor vehicle 3) possession of weapon 4) aggravated assault 5) white collar 6) theft from person 7) miscellaneous
3. Race of suspect	1) white 2) negro 3) other
4. Age of suspect	1) under 16 2) 16-21 3) 22-30 4) over 30
5. Was there questioning?	0) not ascertained 1) yes 2) no
6. How long?	1) under 30 min. 2) 30 min.-1 hr. 3) 1-2 hrs. 4) 2-4 hrs. 5) over 4 hrs.
7. a) Is there any indication suspect warned of any rights?	Yes No
b) Which ones?	1) remain silent 2) have counsel 3) both
8. Did suspect refuse to talk?	0) not ascertained 1) yes 2) no 3) not questioned

9. Did suspect request lawyer?	0) not ascertained 1) not applicable 2) yes 3) no
10. Did suspect confess?	0) not ascertained 1) not applicable 2) yes 3) no
11. Did suspect give an admission?	0) not ascertained 1) not applicable 2) yes 3) no
12. Did he give incriminating evidence in statement?	0) not ascertained 1) not applicable 2) yes 3) no
13. Did he give incriminating evidence but no statement?	0) not ascertained 1) not applicable 2) yes 3) no
14. Did he implicate co-defendant?	0) not ascertained 1) not applicable [if obviously no col. 8] 2) yes 3) no
15. Did he confess to other crimes?	0) not ascertained 1) not applicable (if not which) 2) yes 3) no
16. Did he establish alibi?	0) not ascertained 1) not applicable 2) yes 3) no
17. How much evidence was available to police at time suspect was picked up?	0) not ascertained 1) nothing 2) very little—not sufficient to indicate suspect committed crime 3) enough to tie suspect to crime but not to hold without further evidence 4) enough to go to trial with 5) enough to probably obtain conviction
18. Previous record	0) not ascertained 1) yes 2) no

APPENDIX E

Defense Attorney

1) Defendant's name— address—
2) Age
3) Race
4) Education level
5) Prior record
6) Original charge(s)
7) Final charge(s)
8) Plea
9) If not guilty, outcome of trial?
   If guilty, sentence?
10) At what stage of the proceedings did you enter the case?
    a) Arrest
    b) Arraignment
    c) Preliminary Hearing
    d) Trial
11) Did the defendant make a statement to the police before you entered the case?
    Yes
    No
12) What kind of statement?
    a) confession
    b) incriminating statement
    c) admission (unsigned confession)
    d) implicate co-defendant
13) What was the effect of the statement on the defendant's case, e.g., was reason for conviction, resulted in greater/lighter sentence?
14) Did the presence or absence of a statement affect your handling of the case, e.g., your decision to plead guilty or not guilty? How?
    Yes
    No
15) Was there plea bargaining?
16) Did presence of confession or statement affect your ability to bargain? How?
    Yes
    No
17) Was there enough evidence, exclusive from the confession or implications, sufficient to convict the defendant?
    a) for the same crime
    b) for a lesser crime
18) Do you know of any other evidence the police could have obtained but didn't, perhaps through use of scientific techniques?

19) Was the confession retracted? Yes / No

20) Did you advise retraction? Yes / No

21) Did defendant refuse to retract? Yes / No

22) Did having given a confession affect the defendant's willingness to fight?

23) How would you advise your client, if you were to see him at time of arrest?

24) How much time is there to confer at the station?

25) In general do such clients take your advice?
Do they listen
a) always
b) usually
c) sometimes
d) occasionally
e) infrequently
f) never

26) Are there any particular type cases in which cooperation with the police is more helpful?

27) How would you in general advise a client who has confessed before you enter the case?

28) Were they paid for this case? Yes / No

29) How many criminal cases did they handle in the past year?

APPENDIX F

Defendants

1. Age
2. Sex — M / F

   2a. Race — W / N / O
3. What crime were you originally charged with?
4. What crime were you finally tried for?
5. What is your occupation?
   (If unemployed—what kind of work done within past year?)

6. Were you questioned by the police with reference to this offense? Yes / No
7. When you were picked up by the police, what did you think the law required you to tell?
8. Were you told of your rights? Yes / No
9. Who told you of your rights?
10. When were you told?
    a. In squad car?
    b. In waiting room?
    c. In interrogation?
    d. Before statement?
11. What rights were you told you had?

Answer the following which haven't been covered by No. 11 above.

12. Were you told that any statements could be used against you?
13. When?
14. Were you advised of your right to silence? Yes / No
15. When?

15a. Were you advised of right to counsel? Appointed counsel? When?

16. Were you questioned in the squad car? Yes / No
17. What did you say at this time?

(If answered yes to question [6] ask following).

18. What did you tell the police when they questioned you at the police station?
19. Did you sign a written confession? Yes / No
20. Did you admit that you were guilty, but refuse to sign a confession? Yes / No
21. Did the police continue to interrogate you after you had made a statement or confession? Yes / No
22. Why did you, or did you not confess?
23. During the questioning, did you try to get in touch with a lawyer? Yes / No
24. Did the police ask you if you wanted to get a lawyer? Yes / No
25. Did you try to call a friend, or relative? Yes / No
26. Did the police ask you if you wanted to call someone? Yes / No

27. Did you try to get bail? Yes / No
28. Did the police ask you if you wanted to try to get bail? Yes / No
29. Were you denied permission to do any of these things? Yes / No
30. Did you ask to use the phone for other purposes? Yes / No
Specify
31. Did they offer you a cigarette? Yes / No
32. Did they offer you food or drink? Yes / No
33. If answer to question 31 is no, did you ask for cigarettes? Yes / No
34. If answer to No. 32 is No, did you ask for food or drink? Yes / No
35. Were you denied cigarettes? Yes / No
36. Were you denied food or drink? Yes / No
37. Were you denied permission to go to the bathroom? Yes / No
38. How many times were you questioned?
39. Do you know which precinct you were questioned at?
40. How long did they question you?
41. Can you describe the room in which you were questioned?
42. Did the police swear at you at any time? Yes / No
43. Did they get mad at you? Yes / No
44. Did the police ever touch you? Yes / No
45. (if yes) Describe how they touched you.
46. Were you searched? Yes / No
47. Did you undergo any tests? Yes / No
48. (if yes) Did the police tell you that you had to take that test? Yes / No
49. In general, how would you say you were treated by the police?

50. During the questioning at the police station, did the police mention any evidence against you? Yes
(if yes) What evidence? No
51. Did the police play down the seriousness of the crime? Yes / No
52. Did the police tell you that your accuser might be exaggerating? Yes / No
53. Did they say that if you didn't talk it would be worse for you? Yes / No
54. Did they use any threats? Yes / No
Promises? Yes / No
(general, religious, moral, lower bail, lighter sentence, lesser charge, bringing family into it, look bad to judge?)
55. Did the police accuse you of any other crimes? Yes / No
56. Was anyone else picked up at the same time? Yes / No
57. If yes, did you make any statements about him? Yes / No
58. If yes, did the police tell you he had said you were guilty? Yes / No
59. When did you get a lawyer?
60. Who advised you to get a lawyer?
61. Did you later retract your confession? Yes / No
62. Why/why not?
63. How did you feel after you had confessed?
64. If did not confess, but plead guilty—when did you decide to plead guilty?
65. Why?

APPENDIX G

CHART I

A COMPARISON OF NEW HAVEN WITH URBAN AREAS THE SAME SIZE[1]

	Population	% Non-White	% Foreign Born	% of Foreign or Mixed Parentage	Median School Years Completed For Males	% Who Completed 4 Yrs. of H.S. or More For Males	Persons 14-17, % In School	Median Income
U. S. Average		11.4	5.4	13.6	10.3	39.9	87.1	$5657
New Haven, Conn.	152,048	14.9	13.2	29.0	10.1	38.2	85.2	$5882
Bridgeport, Conn.	156,748	9.9	14.6	29.5	9.2	32.4	83.6	$5826
Hartford, Conn.	162,178	15.5	17.7	27.5	9.3	34.5	83.3	$6006
Savannah, Ga.	149,245	35.7	1.4	3.3	10.5	40.4	88.3	$5733
Fort Wayne, Indiana	161,776	8.0	2.7	7.9	11.6	47.4	89.5	$6755
Youngstown, Ohio	166,689	19.1	10.1	22.8	9.7	34.8	90.8	$5746
Tacoma, Wash.	147,979	5.0	8.2	19.4	10.8	44.0	91.3	$6594
Nashville, Tenn.	170,874	37.9	0.8	1.5	8.7	29.3	84.4	$4591
Corpus Christi, Tex.	167,670	5.6	4.1	13.3	10.7	43.0	83.3	$6135
Paterson, N.J.	143,663	14.9	16.3	27.1	8.7	24.0	80.1	$5745
Sacramento, Cal.	191,667	12.7	8.7	19.4	12.0	53.2	92.9	$7482
Fresno, Cal.	133,929	9.8	8.0	17.6	11.5	48.0	91.5	$6865

1. *U.S. Bureau of the Census, Census of Population: 1960, supra* notes 11-13.

CHART II[1]

	Index Total	Murder	Forcible Rape	Robbery	Aggravated Assault	Burglary Breaking & Entering	Larceny $50 & Over	Auto Theft
New Haven, Conn.	2735	2	17	19	141	1037	539	980
Bridgeport, Conn.	3327	8	5	78	74	1584	626	952
Hartford, Conn.	3942	10	10	145	257	1910	814	796
Savannah, Ga.	3185	17	29	155	506	1306	811	361
Fort Wayne, Ind.	2846	2	15	129	155	927	1184	434
Youngstown, Ohio	2354	9	7	98	260	921	399	660
Tacoma, Wash.	2313	4	15	62	117	1150	582	383
Nashville, Tenn.	8796	55	58	280	807	4020	1802	1774
Corpus Christi, Tex.	4750	11	18	121	509	1912	1702	477
Paterson, N.J.	2699	9	13	176	134	1200	284	883
Sacramento, Calif.	8848	23	76	434	221	3522	2716	1856
Fresno, Calif.	5848	10	5	189	122	2155	2102	1265

1. FBI, UNIFORM CRIME REPORTS FOR THE UNITED STATES—1965, 177 (1966).

APPENDIX H

METHODOLOGY

A. *Questionnaires for Observers*

Ideally any large study should be preceded by a substantial pretest in order to work out all problems in the research design. Unfortunately, we were unable to undertake long and elaborate pretesting since we had a very short time from the conception of the project until we entered the police station. We did, however, engage in six weeks of testing.

Since we were unable to observe any interrogations before the first drafting of a questionnaire, most of the background for the question schedules was obtained from manuals recommending procedures to the police. A preliminary design was drawn up and sent to a number of professors and participants in the process. The questionnaires were then revised in light of their comments.

The forms were then given to the observers. After they had worked with the questionnaires for a week, they were revised in light of the information obtained—both about the process itself and the weaknesses in the questionnaires. The revised forms were tested for another week. All of the observers then viewed a mock interrogation conducted by the project director, and filled out a questionnaire based on the interrogation. Comparison of the answers on each questionnaire allowed us to find both the weaknesses in the questionnaires and the discrepancies in the observations of the observer. Questions that seemed too subjective were discarded. We attempted to provide uniform standards for the observers to code all other questions. An additional week of testing was undertaken. During this week *Miranda* was announced and the questionnaires were revised to take account of the decision. (Fortunately, the ruling had been anticipated and relatively little change was required in any of the questionnaires.) Finally, at the end of the third week a few additional changes were made and the questionnaires took their final form.

The questions were chosen to measure specific aspects of the process. Each questionnaire contained several questions that attempted to measure the same phenomena at different levels. While most of the questions were specific and could be checked off by an observer or interviewer, many were open-ended and we encouraged the participants to be as complete as possible in their responses. In addition, the station-house observers wrote detailed reports about each case so that the specific questions could be evaluated in light of all the circumstances.

Most of the data we sought could be obtained through straightforward questions—for example, data about adherence to legal norms by the police, the events of the interrogations, the advice lawyers would give. Several indices were designed to obtain more subjective information such as the atmosphere of interrogations and the attitudes of participants. We selected adjectives that seemed to scale—from friendly to hostile, from nervous to composed. During our test period and mock

interrogations we found that many of our original indicators could not be given any consistent meaning and these were discarded. Uniform interpretations were attempted for the others, but we discovered that in many cases these did not scale. Therefore, we have reported only clear examples of attitudes and atmosphere and coded the remaining cases as ambiguous.

B. *Questionnaires for Interviewing Lawyers, Defendants, and Police*

Much the same process was followed in preparing these questionnaires. Questions were drafted and revised in light of comments by a number of people familiar with these parts of the process. A number of interviews were then conducted and the questionnaires again revised.

C. *Training of Observers and Interviewers*

The observers and interviewers were chosen from students at the law school. From professors who had done similar research, they received several lectures on observation and interviewing techniques and on relations with the police. Much of the success of our efforts can be attributed to the observers' apparent success in establishing good relations with the detectives.

As mentioned above, each observer participated in a mock interrogation after his first week of observations. The interviewers conducted mock interviews. The results of these tests were discussed with all the observers and interviewers as we attempted to create uniform standards for coding. After five weeks of observation a second test was run to measure the variation in reporting. The results of this test indicated very little variation among observers, and none on the objective questions.

After the summer each observer wrote a paper covering generally the points discussed in this study. We have relied heavily on these papers in most descriptive sections.

D. *Statistical Methods*

While this section will provide a more detailed discussion of our statistical methodology, it is suggested that the reader who wishes a full elaboration of the various limits to the use of statistical evidence consult a basic text such as H. BLALOCK, SOCIAL STATISTICS (1960).

Our questionnaires were designed to provide data to answer a number of relatively specific questions—for example, how does the interrogation process in New Haven compare with descriptions of other interrogation procedures. For every hypothesis we wished to explore —for example, that the behavior of the police during questioning would be related to the type of crime—we devised scales for the appropriate variables. These were all ordinal or nominal scales such as "good," "better," "best" since we could not measure in exact amounts the difference between, say, good and better. Type of crime, race, prior record, giving of warnings, amount of evidence available, and many other variables were then cross-tabulated with all the other recorded variables.

The test used for significance was Chi-square. While this is a common measure of significance, its limited utility must be recognized. Chi-square is a statistic indicating whether, in a contingency table correlating two variables, the number in each cell differs markedly from what would be expected if the cases were distributed randomly. If a significantly large difference is found, the researcher can feel confident that the apparent relationship in his data exists in the "universe" from which his sample is drawn. A difference may be statistically significant without being significant in any other sense. The strength of the relationship between the two variables cannot be learned from a Chi-square test nor can it be discovered whether changes in one cause changes in the other. In small samples such as ours, however, Chi-square is a valuable test. The smaller the sample, the less likely it is that a significant relationship will be found using a Chi-square test. Therefore, when significance is found in a small sample the researcher is justified in placing substantial weight on this finding.

Before accepting a finding of significance we tested to see if the relationship between the two variables could be explained by a third variable. For example, if we found that amenities were offered more frequently to people who committed assaults, this might be accounted for by the greater duration of questioning for assaults or by the fact that one particularly friendly detective might have handled all the assault cases. We "controlled" for every variable we thought might explain the original relationship.

One additional limitation on the validity of Chi-square as a measure must be noted. To use a Chi-square test one must have a random sample. Obviously our samples were not random but constituted an entire "universe" over a period of time. However, the proportion of each type crime in the summer sample was so close to the proportion of that type crime in the total arrests for the year that we felt, after consultation with statisticians, that Chi-square was an adequate test measure.

APPENDIX I

Previous Empirical Studies

Three major empirical projects have studied, in response to recent judicial decisions, the role of interrogations and confessions in the criminal process. Each study concluded that confessions were important in only a small minority of cases. While the importance of these contributions cannot be underrated, particularly because of their timeliness, their possible methodological shortcomings should be examined. We will discuss the most salient of these in this appendix, objectively we hope, but admittedly perhaps motivated by the desire to use these studies as foils for our own. We are aware that the authors realize the shortcomings and have themselves indicated their studies' limitations. However, since each of these studies has received widespread attention,

and has been the basis for many controversial claims, we believe it is necessary to discuss each one.

The first of these studies was a survey of 1,000 cases conducted in Kings County (Brooklyn), New York, by Judge Nathan Sobel of the state Supreme Court.[1] In 1965, the New York Court of Appeals established a rule requiring District Attorneys to serve a pre-trial "notice of intention" on defendants if they planned to use a confession in a criminal trial.[2] Judge Sobel's sample consisted of the first 1,000 indictments returned in Kings County following the inauguration of this rule. The survey disclosed that notices of intention were filed in only 86 of these cases. On the basis of this figure Judge Sobel considered it "safe to estimate that 'confessions' constitute part of the evidence in less than 10 percent of all indictments."[3]

In addition to his findings on the use of confessions Judge Sobel also evaluates the need for questioning, concluding that "in most cases interrogation is not essential." He argues:

> *In the great majority of cases, the case is cleared and guilt established without the police or prosecutor ever having questioned the defendant at all* (emphasis in original).
>
> The basic reason for this is that most serious crimes are cleared by the factor . . . that in nearly *all* assaults; in 35 per cent of robberies and in 45 per cent of forcible rapes, the protagonists—the victim and the perpetrator—were known to one another *prior* to the commission of the crime. Even where not known to one another, in a large percentage of these cases there is positive identification. Thus neither interrogation nor even investigation is essential.[4]

A second study of the importance of confessions was conducted by Detective Chief Vincent Piersante of the Detroit Police Department.[5] This study compared the importance of confessions in all felony prosecutions in Detroit in 1961 with those completed between January 20 and December 31, 1965. The statistics were based on the personal evaluation of the investigating officers of the Detroit Police Department.

1. Sobel, *The Exclusionary Rules in the Law of Confessions: A Legal Perspective—A Practical Perspective*, 154 N.Y.L.J. 1. col. 4, Nov. 22, 1965. [hereinafter cited as Sobel.] Judge Sobel has just published a book, THE NEW CONFESSION STANDARDS (1966). In this book he recognizes some of the problems in his earlier study which are mentioned herein. See the book at pp. 136-9. Our criticism of the earlier article should be read in conjunction with his later revisions. Still, his additional material does not provide data necessary to fill the gaps in the earlier study.

2. This rule was established in People v. Huntley, 15 N.Y.2d 72; 204 N.E.2d 179 (1965).

3. Sobel, *supra* note 1, at 4, cols. 6-7. In contrast, Frank Hogan, District Attorney in Manhattan, reportedly insisted that he planned to introduce confessions in 68% of the homicide cases pending in New York County. He claimed that indictments would not have been obtained without a confession in 27% of these cases. Kaufman, *The Confession Debate Continues*, N.Y. Times, Oct. 2, 1966, § 6 (Magazine), at 50.

4. *Sobel, supra* note 1, at 5, col. 1.

5. Piersante, Confessions in Felony Prosecutions for the Year of 1961 as Compared to January 20, 1965 through December 31, 1965; July 27, 1966 (unpublished report).

The study found that confessions were given in 64.7 per cent of the 2,620 completed prosecutions in 1961, and 65.6 per cent of the 2,234 prosecutions in 1965 completed at the time of the survey. The investigators considered the confessions "essential" in 23.6 per cent of the 1961 sample, and 18.8 per cent of the 1965 sample.[6]

The third study was by Evelle J. Younger, the district attorney for Los Angeles County, who conducted two surveys of felony cases in his jurisdiction to determine the effects on criminal prosecution of *Miranda* and *People v. Dorado*, 62 Cal. 2d 338 (1965), the California equivalent of *Escobedo*.[7] The Deputy District Attorneys in Los Angeles County completed questionnaires on all cases handled by them during the periods studied. The "Dorado Survey," conducted in the week of December 13, 1965, involved 1,297 cases;[8] the "Miranda Survey," conducted during the three weeks ending July 15, 1966, involved 2,780 cases.[9] Both surveys studied three stages of the criminal process concurrently—the complaint stage, involving requests for the issuance of felony complaints; the preliminary hearing stage; and the trial stage.

Overall, confessions or admissions were given in 47 per cent of the cases in the Miranda survey[10] and 43 per cent in the Dorado study.[11] The deputy district attorneys were asked to evaluate the importance of the confessions or admissions available at the trial stage. Confessions or admissions were deemed "necessary" in 67 of the 487 cases which reached the trial stage in the Miranda study. Such data were available at the trial stage for only 63 of the Dorado survey cases. Of these, interrogation was considered "essential" in only 6 cases, but was deemed to have "enhance[d]" prosecution in 48 more.[12]

These studies have all contributed substantially to an understanding of the role of interrogations and confessions in the criminal process; their shortcomings are perhaps chiefly a function of the data which were available to their authors. First, all three studies focus on "confessions" and "admissions" rather than interrogations. While a con-

6. *Id.*, at 2.

7. The results of these surveys are thoroughly presented in Younger, *Interrogation of Criminal Defendants—Some Views on Miranda v. Arizona*, 35 FORDHAM L. REV. 255 (1966) [hereinafter cited as Younger]. For the complete report see E. Younger, Results of Survey Conducted in the District Attorney's Office of Los Angeles County regarding the effects of the *Dorado* and *Miranda* Decisions upon the prosecution of felony cases, Aug. 4, 1966.

8. This figure was obtained by adding subtotals found in Tables I, II, and III, in Younger, *supra* note 7, at 256-8.

9. The figure was arrived at by adding subtotals found in Tables IV, V, and VI in Younger, *supra* note 7, at 259-61.

10. This percentage was obtained by dividing the total number of confessions and admissions by the total number of cases. See Younger, *supra* note 7, tables IV, V, and VI, for the total number of confessions or admissions and total number of cases.

11. The percentage was obtained by dividing the total number of confessions or admissions by the total number of cases. *See id.* tables I, II, and III, at 256-8.

12. These figures are from the unpublished part of the report given to the present writers by District Attorney Younger's office. At the complaint stage in the Dorado survey, the deputies also reported that there was insufficient evidence to sustain a conviction without using the confession or admission, when held admissible, in 53 of the 202 cases (26%) in which complaints were issued. These evaluations were not made in the Miranda study.

fession is the primary goal of most interrogations, an exclusive emphasis on the former ignores the other purposes and possible products of questioning. Incriminating evidence in less formal form than an admission may be obtained for use at trial through the testimony of the interrogating officers. Leads may be found to other evidence which can be used to convict the suspect. The suspect may be persuaded to identify or implicate accomplices. Interrogation may also serve to clear other crimes, or simply for preliminary investigation and screening of suspects.[13] Thus, these studies may underestimate the importance of interrogations.

At the same time, these studies have shortcomings which may overemphasize the importance of interrogations. Judge Sobel recognizes this weakness in his study: "[T]hese notices give no indication whether the 'confessions' were essential to prosecution or merely 'additional proof' to an otherwise prima facie case."[14] The findings do not disclose whether sufficient evidence for prosecution and conviction could have been obtained by available alternative methods of investigation without relying on the confessions and admissions. Moreover, since notices of intention relate only to the trial stage of the process, these results do not measure those instances in which a case had to be dropped before trial for insufficient evidence because interrogation was necessary but unsuccessful. Finally, Judge Sobel measured only the number of cases in which confessions or admissions were available. Thus his figures do not include cases in which convictions were not obtained because a confession or admission was necessary for a conviction but interrogation had not been successful.[15]

The Los Angeles and Detroit studies include statistics indicating when confessions were "essential" or "necessary" to successful prosecution, but do not indicate the criteria relied on in making this evaluation. One could reasonably conclude that the evaluations were based primarily on the sufficiency of the other evidence against the suspects actually available or used by the prosecution in these cases. If so, these statistics may fail to reflect a crucial factor: whether sufficient evidence

13. The statistics quoted above from Judge Sobel's study cover the clearance of other crimes. *See* p. 1640 *supra*. Sobel does cite statistics (noting the percentages of defendants discharged after preliminary examination or on the prosecutor's motion in murder, rape and robbery cases), but the reader is not informed of the source of these statistics. Clearly, however, they were not obtained by studying the incidence of notices of intention in Brooklyn. Sobel, *Supra* note 1 at 4, col. 8.

Sobel mentions that notices of intention were also filed when the prosecution planned to use an exculpatory statement given during interrogation, *id.* at 4, col. 7, and Younger's report speaks of "confessions, admission[s] or other statement[s]," *supra* note 6, at 260, but the articles imply that such "other statements" were quite rare.

14. *Sobel, supra* note 1, at 4, col. 7.

15. In spite of these limitations, Judge Sobel offered his opinion that interrogation is not necessary in most cases. Even assuming that these figures cited by Judge Sobel are accurate, they are far from conclusive. First, "nearly *all* assaults . . . 35% of robberies and . . . 45% of forcible rapes" do not constitute a substantial percentage of all crimes solved. Second, these statistics relate only to crimes which are cleared or solved; they do not indicate anything about the need for interrogation in those cases not cleared. And, unfortunately, only about one-fourth of all reported crimes are currently solved.

for conviction, absent reliance on the confessions and admissions already available, *could* have been obtained by available alternative methods of investigation. Even if this factor was considered, however, these findings are still inadequate. As is the case with Judge Sobel's studies, they relate only to cases in which the prosecution possessed confessions or admissions; they do not include cases in which prosecution was unsuccessful—where the defendant was acquitted or the case dismissed —because information obtainable only by interrogation was necessary but the interrogation was unsuccessful. Moreover, they fail to consider the need for interrogation in cases which had to be dropped, because of insufficient evidence, earlier than the stage of the process studied.[10]

APPENDIX J

Factors Relating to Success of Interrogations

Although the Detective Division questioned over 90 per cent of the suspects we observed this summer, they gained useful information from only about half of them. It was clear to our observers that the desire for information varied from case to case. Nor were the interrogating skills of the detectives at all uniform. But these behavior differences offer only a partial explanation of interrogation success or failure. This appendix discusses other factors which may help to explain why some interrogations succeeded while others failed.[1]

Using the same definitions of success and interrogation outcome as in the text of the study,[2] we cross-tabulated success against a number of variables that we thought might be related to success—the prior record, race, age of the suspect, the evidence available to the police when the suspect was arrested,[3] and the seriousness of the crime.[4] Because of the occasional ambiguity in unproductive questioning and oral incriminating evidence, we also cross-tabulated confessions and refusals to talk, the polar extremes of the range of interrogation outcomes,

16. The Los Angeles survey on *Dorado* and *Miranda* is no more adequate in this last respect than the Detroit study, for although that survey did study the complaint and preliminary stages of the process as well as the trial stage, it considered only those cases which reached these stages, and only those cases at these stages in which confessions or admissions were introduced. Further, it studied each stage in isolation. Thus, there is no indication of the number of cases in these samples which passed these stages but which failed to culminate in successful prosecution because interrogations were necessary but unsuccessful.

1. We also hoped this exercise would provide insight into the finding that warnings had little impact on suspects, and test various claims about what type suspects are most likely to confess.

2. *See* the discussion of the concept of success, p. 1562-63 *supra.*

3. For an explanation of the meaning and categorization of this variable see p. 1580, *supra.*

4. We adopted the detectives' view of seriousness. *See* note 83, *supra.*

against the same variables.[5] Whenever a statistically significant relationship was found we tested for third variables to determine if the relationships discovered were spurious.

Our data provide suggestive rather than conclusive evidence for a general theory of interrogation success. It is presented primarily as a possible guide for future research.

A. *Prior Record*

This variable was defined in terms of previous arrests. We simply categorized suspects "yes" or "no", although more subtle effects might have appeared if we had taken cognizance of the type or number of previous arrests.

On balance, one would expect a previous record to reduce success. The educative effect of a previous trip through the interrogation mill is likely to make suspects more aware of their rights and to bolster their self-confidence.[6]

But on the other hand, prior records also increase the likelihood of a severe sentence, unless the suspect cooperates.[7] If a suspect were aware of this, as he might be through past experience, he might therefore cooperate.

Table A reveals that a prior record tends to reduce the likelihood of

TABLE A

	Prior Record		
Outcome of Interrogation	Yes	No	Total
Unsuccessful	41	16	57
Successful	29	24	53
Total	70	40	110

Not ascertained—8
Not questioned—9
Chi-square significant at .05 level.

success. Moreover, 20 suspects with prior records refused to talk; only two confessed. Suspects without records only refused to talk twice; 14 confessed. Thus, prior record may be even more important at the extremes of the success range.

B. *Race*

Although we lacked socio-economic data on suspects, we felt it possible that the lower educational level of Negroes might cause a relationship between race and success.[8] On the other hand, Negro reaction

5. *See* p. 1563, *supra*, for a discussion of why the extremes might be more relevant.
6. A record also seems likely to reduce the likelihood of guilt or shame producing talking.
7. Where the suspect cooperates he may ask for special leniency. *See* p. 1600, *supra*.
8. Even among the criminal population, we found that Negroes tended to have less education than whites in the cases where we could ascertain educational background.

to discrimination or hostility for "Whitey's Law" might produce the opposite effect.[9]

Table B reveals a slight tendency toward greater success with Negroes.

TABLE B

	Race		
Outcome of Interrogation	White	Negro	Total
Unsuccessful	21	34	55
Successful	16	41	57
Total	37	75	112

Not ascertained—6
Not questioned—9
Chi-square not significant (.30 level).

Looking at the extremes, we found that whites did refuse to talk more frequently, but they also confessed more. Successes against Negroes tended to be in the oral incriminating evidence category. Further investigation revealed that a number of these were assault cases, or more accurately, fights among Negroes. The detectives did not need to question in these cases. They simply listened to each suspect's attempts at exculpation and accusations of the other combatants—efforts which were usually self-incriminating. We feel these facts, plus the statistical non-significance, indicate there was no general relationship between success and race.

C. *Age*

We classified suspects into four categories for purposes of analysis: (1) under 16, (2) 16-21, (3) 22-30, and (4) over 30. As only four suspects interrogated were under 16, we will disregard them in this discussion.

Some assume the young are more likely to be overborne in a police-dominated atmosphere.[10] If this assumption is based on the belief that the young are also inexperienced we should point out that in our sample the 16-21 age group more frequently had prior records, which would tend to cut against finding a relationship.

Table C shows no discernible relationship between age and interrogation success.

TABLE C

	Age of Suspect			
Outcome of Interrogation	16-21	22-30	Over 30	Total
Unsuccessful	25	14	9	48
Successful	29	15	11	55
Total	54	29	20	103

Not ascertained—15
Not questioned—9
Chi-square not significant (.99 level).

9. We found, during our months in the station, that the personal views of many detectives were shaped by racial prejudice. We felt, however, that they seldom let prejudice affect their work, so that added pressure against Negroes was not a reason for assuming race to be relevant.

10. *See, e.g.*, 384 U.S. at 516.

At the extremes, we found that the younger the suspect the more likely he is to refuse to talk and the less likely he is to confess, but holding for a prior record seemed to indicate this relationship was spurious. Thus there is no support in our sample for the view that the young will "talk" more often.

D. *Available Evidence*

We classified the evidence against a suspect at the time of interrogation into four categories: (1) nothing, (2) little, (3) enough for trial; *i.e.*, a high probability that the state could avoid a directed verdict for the defense, and (4) enough for probable conviction.

One would expect that the more evidence of guilt confronting a suspect, the more likely it would be that he would see cooperation as the rational strategy. On the other hand, since we had found that the detectives did not interrogate vigorously in some cases where they had abundant evidence, success should increase up to a point as evidence increases, and then decline. The data in Table D1 seemed to support this hypothesis in broad gauge.

TABLE D1

Outcome of Interrogation	*Evidence Available*				
	1	2	3	4	Total
Unsuccessful	7	14	12	23	56
Successful	2	6	21	29	58
Total	9	20	33	52	114

Not ascertained—4
Not questioned—9
Chi-square significant at .05 level.

Success increases from categories 1 through 3, then declines slightly in category 4. But when the extremes of confessions and refusals to talk were tested the hypothesis was not supported.

TABLE D2

Outcome of Interrogation	*Evidence Available*				
	1	2	3	4	Total
Confessed	2	0	4	15	21
Refused to Talk	0	6	6	9	21
Total	2	6	10	24	42

Not ascertained—2
Chi-square significant at .02 level.

If categories 1 and 2 in Table D2 are considered together (this seems justified by their small size), success increases throughout the whole range of increasing evidence. We would suggest as a reconciliation that the unsuccessful cases under category 4 in Table D1 are cases of unproductive questioning which were really desultory questioning. If

the detectives did not really need the information, success as measured by obtaining some information is largely irrelevant.

E. *Seriousness of Crime*

We also classified the crime of which the suspect was accused along a scale of seriousness from 1 (least serious) to 4 (most serious). Crimes were categorized on the basis of the police view of their seriousness, ascertained by interviews.

One might expect this variable to affect success in either direction. Suspects might be more reluctant to admit involvement in crimes carrying more severe punishments (however, this scale is not a perfect measure of the severity of punishments). On the other hand, the suspect may know that sentences are much shorter for guilty pleas, particularly if he has been cooperative.

However, the police would seem more likely to pursue an interrogation vigorously when a serious crime is involved.

Table E1 suggests that interrogation success increases as the crime becomes more serious.

TABLE E1

Outcome of Interrogation	*Seriousness of Crime* 1	2	3	4	Total
Unsuccessful	15	17	19	4	55
Successful	11	15	25	9	60
Total	26	32	44	13	115

Not ascertained—3
Not questioned—9
Chi-square not significant (.30 level).

Table E2 however, qualifies and perhaps illuminates that finding.

TABLE E2

Outcome of Interrogation	*Seriousness of Crime* 1	2	3	4	Total
Refused to Talk	1	8	13	0	22
Confessed	1	4	11	5	21
Total	2	12	24	5	43

Not ascertained—1
Chi-square significant at .05 level.

It can be seen that confessions increase with the seriousness of the crime. Refusals to talk, however, also increase and decline only for the most serious crimes. This probably indicates the variable is important to both police and suspect. Of course, when the variable results in desultory questioning it is likely to be wholly determinative of success.

We are rather confident that none of the relationships discovered above are spurious. Holding for third variables revealed that prior

record, seriousness of crime, and available evidence were genuinely and independently related to interrogation success.[11]

We attempted to study the effects of all three variables simultaneously.[12] The frequency distribution per cell was too small to warrant statistical analysis, but the results were interesting. It will be recalled that no prior record, more serious crime, and more evidence tend to increase success. We found that when all three factors are working in the same direction the probability of these factors determining the result is quite high. The results suggest that the factors reinforce each other, although the extent of reinforcement could not be ascertained because the categories were too small. Similarly, when two of the variables were working in one direction, success tended to follow them. But here we found an interesting pattern that suggested prior record was the key variable in that it determined which of the other two factors would be more important. In the cases where suspects had prior records, available evidence seemed to account for much more of the further variance than did the seriousness of the crime. However, when the suspect did not have a record, the seriousness of the crime was more important than available evidence.[13]

Psychologically, the analysis suggests that prior record is the most important factor in determining the dominant personality in the interaction of detective and suspect. With a record, a suspect is more likely to be in sufficient control to evaluate the evidence and decide whether cooperation is the rational course of action. Without a prior record, a suspect is more likely to be at a detective's mercy. Here, the seriousness of crime, determining how vigorously the detective will exploit his advantage, is a more significant factor.

This theory suggests that, in principle, warnings might provide the knowledge and psychological strength necessary to alter the existing balance of forces. Our finding that they had little impact must mean that the warnings are too abstract to be comprehensible, or that if comprehended they are easily rendered nugatory by the tone and manner of the interrogators.

11. Considerations of space have made it necessary for us to omit the rather substantial presentation of work product necessary to demonstrate our findings.

12. To make this exercise feasible it was necessary to combine available evidence categories 1 and 2, and seriousness of crime categories 1 and 2, 3 and 4.

13. Again, we must emphasize we were using very small numbers (and therefore have not reported them), and that these conclusions are highly speculative. They are presented mainly as a possible clue for future studies to explore.