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The Rise and Fall of the Miranda Warnings in Popular Culture

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THE RISE AND FALL OF THE *MIRANDA* WARNINGS IN POPULAR CULTURE

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I. INTRODUCTION

The U.S. Supreme Court's June 2000 decision in *Dickerson v. United States*¹ was probably the first criminal procedure decision celebrated with an editorial in *Broadcasting & Cable* magazine.² The editorial observed that as a result of the Supreme Court's reaffirmation of the *Miranda* warnings, "[c]riminal suspects were not the only ones to benefit from the Supreme Court's decision . . . to uphold *Miranda*. It was a victory for cultural continuity, too."³ Noting that Chief Justice

* Director of Graduate Studies, Chapman University School of Law. Thanks to the Dean's Office at Chapman University School of Law for support for this research project, to my colleagues Katherine Darmer, Anthony Garcia, and the other participants in the Law School's Madison lecture and re-argument of the *Miranda* case, and to Mandana Changizi and Allison Lin for their input and research assistance. Thanks also to Mariam Shirvani for her invaluable help and support.

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¹ *Dickerson v. United States*, 530 U.S. 428 (2000).

² *Readim His Rights*, BROADCASTING & CABLE (July 2, 2000), http://www.broadcastingcable.com/article/138946-Readim_his_rights.php.

³ *Id.*

William Rehnquist “referred to the rights’ established place in the TV lexicon in delivering his opinion,” the editorial acknowledged that, “[n]ext to the pledge of allegiance, the *Miranda* rights may be the most familiar common litany of the baby-boomer generation, thanks to TV.”⁴

How many of us know about that right only from television? How many have been read those rights only by Joe Friday, Reed and Malloy, Steve McGarrett, Bobby Hill, Mick Belker and Lennie Briscoe? We’re not suggesting TV can claim cop shows fulfill their educational responsibility, but it does impress on us the important role the medium plays in cultural literacy.⁵

Professors Richard Leo and George Thomas have similarly observed that “suspects are likely to have heard *Miranda* so many times on television that the *Miranda* warnings may have a familiar, numbing ring,” and that “it is because of these shows and the mass media more generally—not the police, the legal system, or Supreme Court doctrine—that *Miranda* has become so much a part of our national culture.”⁶ Leo even goes on to conclude that, “in the last thirty years, the *Miranda* rights have been so entrenched in American popular folklore as to become an indelible part of our collective heritage and consciousness.”⁷ Research indicates that the public does indeed know about its *Miranda* rights.⁸

It is this very ubiquity of the *Miranda* warnings in popular culture that seems to have saved them from a potential elimination in *Dickerson v. United States*.⁹ “Pop culture impacts what people see and expect from the law,” writes Michael J. Hoskins on the growing fusion of legal and mediated realities.¹⁰ Paradigmatic of such cultural impact are popular television shows, which shape Americans’ perceptions of criminal procedure, law, and government. While certain benefits may arise from a culture exposed to legal information, when people rely on the information they receive from television shows to inform them about the law, it leads to dangerous misunderstandings: What is portrayed is often distorted for dramatic effect, and what does exist on television may not exist at all for the general public.

This raises an interesting question: What happens to a Supreme Court decision based on assumptions about public expectations and understandings when those

⁴ *Id.*

⁵ *Id.*

⁶ George C. Thomas III & Richard A. Leo, *The Effects of Miranda v. Arizona: “Embedded” in Our National Culture?*, 29 CRIME & JUST. 203, 246 (2002).

⁷ Richard A. Leo, *Criminal Law: The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 672 (1996).

⁸ According to a 1984 survey, 93% of the public knew that they had a right to an attorney, and another survey in 1991 indicated that 80% of those surveyed knew that they had a right to remain silent. *Id.* at 672, citing Jeffrey Toobin, *Viva Miranda*, NEW REPUBLIC, Feb. 1987, at 11-12, and SAMUEL WALKER, *TAMING THE SYSTEM: THE CONTROL OF DISCRETION IN CRIMINAL JUSTICE, 1950-1990*, at 51 (1993).

⁹ *Dickerson*, 530 U.S. at 437.

¹⁰ Michael W. Hoskins, *Pop Culture’s Place in Law: Attorneys, Judges Use Movies, Music to Supplement Legal Arguments*, IND. LAW., Feb. 21, 2007, at 1.

assumptions no longer seem valid? At one time, popular television shows could be credited with cementing the *Miranda* warnings into the minds of their viewers. However, a study conducted by the authors of this Article indicates that television today provides the public with much less exposure to the *Miranda* warnings. Indeed, since the *Miranda* warning's heyday on television in the late 1960s and 1970s, the prevalence of the warnings on police shows has steadily decreased over the years to now being almost obsolete. Can *Miranda* survive in law once its television role has been left on the cutting room floor?

II. THE IMPACT OF POP CULTURE ON *DICKERSON V. UNITED STATES*

Three decades after *Miranda* became the law of the land, *Dickerson* forced the Court to directly confront the confusion over whether *Miranda* represented a constitutional rule or merely a judicially created rule of evidence and procedure.¹¹ The Court had to admit that some of the confusion arose because of its own statements, such as the observation in *Michigan v. Tucker*,¹² that the *Miranda* warnings were merely “prophylactic,” “not themselves rights protected by the Constitution.”¹³ In *Dickerson*, the Court clarified that “*Miranda* announced a constitutional rule.”¹⁴ In the colorful language of United States District Court Judge George Z. Singal, while *Dickerson* has not “changed the landscape,” it had “lifted the dense fog that had settled into the landscape in the thirty years following the Supreme Court’s watershed decision in *Miranda*.”¹⁵

To some extent, *Dickerson* split the baby. The Court rejected the argument from the Fourth Circuit and Justice Scalia that *Miranda* lacks a constitutional foundation and could be superseded by statute.¹⁶ However, the Court also rejected the notion that *Miranda* violation necessarily implicates core Fifth Amendment principles and requires a complete bar for any evidence derived from a *Miranda* violation.¹⁷ That interpretation would have undermined a number of post-*Miranda* rulings accommodating constitutional rights and governmental interests, decisions that the Court found compatible with the moderate balance struck by *Miranda*.

Critical to the *Dickerson* Court’s reaffirmation of *Miranda* was its conclusion that *stare decisis* required respect for a precedent that many thought was ripe for reversal. And critical to *stare decisis* was the fact of the public’s overwhelming awareness of *Miranda* and what it meant. Indeed, Chief Justice Rehnquist observed:

Whether or not we would agree with *Miranda*’s reasoning and its resulting rule, were we addressing the issue in the first instance, the principles of *stare decisis* weigh heavily against overruling it now

¹¹ *Id.* at 437.

¹² *Michigan v. Tucker*, 417 U.S. 433 (1974).

¹³ *Dickerson*, 530 U.S. at 437-38.

¹⁴ *Id.* at 444.

¹⁵ *United States v. Faulkingham*, 156 F. Supp. 2d 60, 70 (D. Me. 2001), *rev’d*, 295 F.3d 85 (1st Cir. 2002). The circuit court’s reversal of Judge Singal’s ruling that a *Miranda* violation requires the suppression of derivative evidence suggests that the fog had not completely lifted.

¹⁶ *Dickerson*, 530 U.S. at 438-39, 447 (Scalia, J., dissenting).

¹⁷ *Id.* at 441.

Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture.¹⁸

Yale Law School Professor Akhil Amar predicted precisely the result and reasoning of the Court in *Dickerson*. In his essay written before the decision was handed down, he observed:

For better or worse, *Miranda* has been woven into the fabric of daily life: into the standard operating procedures of police departments around the country; into the expectations of most judges and prosecutors (to say nothing of defense lawyers); and, most important, into the cultural literacy and mind-set of virtually every American, rich or poor, black or white. Overruling *Miranda* cannot take us back to the world that preexisted *Miranda*, even if we wanted to go there. We have all been Mirandized too many times—if only on television.¹⁹

After the decision, Georgetown Law Professor Naomi Mezey similarly concluded:

[T]he Court found that the warnings were constitutionally required not because the Constitution demanded them but because they had been popularized to the point that they were culturally understood as being constitutionally required. In *Dickerson*, the synthesis of law and culture is complete: Law became so thoroughly embedded in culture that culture became the rationale for law.²⁰

Indeed, Professor Leo went so far as to argue that “it would be neither viable nor desirable to overrule *Miranda*,” even that such an overruling “would be largely symbolic,” because “*Miranda* has become an institution in American society, thoroughly established within our culture and our consciousness.”²¹ As discussed below, television gets the credit for imbedding *Miranda* into the American collective consciousness.

III. *MIRANDA* BECOMES A T.V. STAR: JACK WEBB MIRANDIZES THE PUBLIC

The influence of television on the American mind is no new discovery. For years, media critics have warned the academic community that constant viewing of television will have a significant impact on other facets of society. In *The New Media Monopoly*, Ben H. Bagdikian claims that “[m]odern mass media in the industrial nations have transformed social relations, politics, and economic and legal structures.”²² This transformation begins within the minds of the public, as “[t]wo thirds of Americans tell researchers they get ‘most of their information’ about the

¹⁸ *Id.* at 443.

¹⁹ Akhil Reed Amar, *OK, All Together Now: ‘You Have the Right to . . .’*, L.A. TIMES, Dec. 12, 1999, at M1, available at <http://articles.latimes.com/print/1999/dec/12/opinion/op-43041>.

²⁰ Naomi Mezey, *Approaches to the Cultural Study of Law: Law as Culture*, 13 YALE J.L. & HUMAN. 35, 57 (2001).

²¹ Leo, *supra* note 7, at 679-80.

²² BEN H. BAGDIKIAN, *THE NEW MEDIA MONOPOLY* xiii (2004).

world from television.”²³ However, mistaking television to be a valid and fruitful source of information can distort an understanding of a social institution, including the law, leading to a falsely constructed view of constitutional rights and their applications. As an earlier generation of cultural critics had worried, “technology can produce its own subordinated society,” where something that doesn’t appear on television doesn’t exist in the public mind.²⁴

Given how television shapes the public consciousness, it is easy to understand why the Court in *Dickerson* considered the *Miranda* warnings an unavoidable component of popular culture. Television shows immediately following the *Miranda* decision—shows that members of the Supreme Court would have seen in their youth—often integrated the warning not only as dialogue, but also as an important plot device. The *Miranda* warnings let us know when an arrest is being made, and served as a dramatic tool to mark the long-anticipated resolution in the plot.

Major responsibility for this cultural awareness goes to three men: Harold Berliner, Jack Webb, and Joe Friday. You are showing your age if you know the last two men are in fact the same person.

Harold Berliner was the District Attorney of Nevada County, California, in 1966 when he was asked by California Attorney General Thomas Lynch to distill from the majority opinion in *Miranda* what Berliner called “practical words to express the court’s notion, in language simple enough for an ordinary suspect to understand.”²⁵ In an odd accident of history, Berliner was also a small-time printer, and he saw a business opportunity in his new task.²⁶ According to journalist Blair Robinson, “his quick thinking may be the real reason there is no other *Miranda* version out there.”²⁷ Knowing that all jurisdictions would need a definitive statement of the new rule, Berliner printed up wallet-sized *Miranda* cards on thin plastic and sent samples and order forms to every law enforcement agency in the nation.²⁸ He ultimately sold hundreds of thousands of them.²⁹

²³ BILL MCKIBBEN, *THE AGE OF MISSING INFORMATION* 18 (1992).

²⁴ JERRY MANDER, *FOUR ARGUMENTS FOR THE ELIMINATION OF TELEVISION* 97 (1978).

²⁵ Blair Anthony Robertson, *No One Wants to Hear His Words: How Ex-DA Wrote Miranda Warning*, SACRAMENTO BEE, July 9, 2000, at A1. Despite suggestive language in the Court’s *Miranda* opinion, any supposed “rigidity” in that opinion never “extend[ed] to the precise formulation of the warnings given a criminal defendant.” *California v. Prysock*, 453 U.S. 355, 359 (1981). “Quite the contrary, *Miranda* itself indicated that no talismanic incantation was required to satisfy its strictures.” *Id.*; see also *Dickerson v. United States*, 530 U.S. 428, 441 n.6 (2000) (“[T]he Constitution does not require police to administer the particular *Miranda* warnings.”).

²⁶ Robertson, *supra* note 25.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* If he had it to do over, Berliner would make a change to his language: “Anything you say can and will be used against you in a court of law,” but “[w]hy can and will?” *Id.*

It is not an exact statement of the truth of the situation. I would take ‘and will’ out, [Berliner] said, shrugging. [He] conceded that not everything will be used in court. In fact, most of it won’t. But something about the rhythm of the sentence worked, and it has been repeated so often that it always seemed untouchable.

Jack Webb was the producer of the hit TV show *Dragnet*.³⁰ Beginning in the 1967 season, he incorporated the warnings crafted by Berliner into the script of his famed program.³¹ *Dragnet* was one of the most popular shows in its day: a day with only three national broadcast networks and far fewer options than the current media environment.³² Webb, in the famously deadpan and monotone delivery of Sergeant Joe Friday, drilled the *Miranda* warnings into the American psyche.³³

Webb's decision to include repeated recitations of the warnings was momentous; it made *Miranda* warnings part of popular culture, which seems to have saved them from a potential elimination in *Dickerson v. United States*.³⁴ Christopher Stone, formerly director of the Vera Institute of Justice and now a professor at Harvard's Kennedy School of Government, credits *Dragnet* with helping save the *Miranda* ruling, which was received with great hostility by many in law enforcement. It was Joe Friday who convinced viewers that reading suspects their rights did not impede a police officer's ability to conduct an effective interrogation.³⁵ Legal scholar Michael Mann similarly observed that "*Dragnet* provided a forum for the public to observe how the reading of *Miranda* rights to a defendant was far less of an obstruction for an officer to perform his or her duties than originally believed."³⁶

But why did Webb do it? Apparently, it was not out of any special affection for the warnings themselves. Instead, his decision reflected Webb's almost pathological obsession as a director and producer with always getting the details in his work right. For example, in his 1955 hit movie, *Pete Kelly's Blues*, Webb insisted on reproducing 1920s era labels for canned goods, photostatic copies of period newspapers, and even period-specific cigar bands.³⁷ For his 1957 film, *The D.I.*, he reproduced the Marine Corps training facility at Parris Island in precise detail. His set for a 1959 movie about the newspaper industry, *-30-*, copied the L.A. Examiner city room with such exacting precision that many of that paper's reporters were

Id. Interestingly, Professor Leo has noted that one detective he interviewed "crosses out the word 'and will' in the second *Miranda* warning, pointing out that what the suspect tells him may help him out and thus may or may not be used against him." Leo, *supra* note 7, at 662.

³⁰ DANIEL MOYER & EUGENE ALVAREZ, *JUST THE FACTS, MA'AM: THE AUTHORIZED BIOGRAPHY OF JACK WEBB* xi (2001).

³¹ *Id.* at 153.

³² *Id.* at 220.

³³ According to Leo:

[D]etectives in my sample delivered the *Miranda* warnings without any build-up and in a seemingly neutral tone, without any apparent strategy, as if they were indifferent to the suspect's response. One might associate this style with the television character Joe Friday in the popular 1960s television show *Dragnet*.

Leo, *supra* note 7, at 660.

³⁴ *Dickerson*, 530 U.S. at 437.

³⁵ Amy Lennard Goehner et al., *Where CSI Meets Real Law and Order*, TIME, Nov. 8, 2004, at 69.

³⁶ Michael Mann, *The "CSI Effect": Better Jurors Through Television and Science?*, 24 BUFF. PUB. INT. L.J. 211, 221-22 (2005).

³⁷ MOYER & ALVAREZ, *supra* note 30, at 113.

puzzled how the film could have been made at their location without them noticing it.³⁸

For *Dragnet*, Webb's signature verisimilitude resulted in sets that were a precise reproduction of the L.A. police headquarters.³⁹ Webb had his prop crew literally count the number of flecks in the speckled floor tile of the actual LAPD offices in order to get as close a match as possible.⁴⁰ The crime story was a staple of popular culture on the radio and in film and television, but *Dragnet* was a perennial hit in large part because Webb's penchant for accuracy produced a new kind of cop show. Though "the names were changed to protect the innocent," the stories in *Dragnet* were based on actual case files from the LAPD, and the police officers were not drawn from the standard stock characters of Hollywood.⁴¹ Webb explained that Joe Friday was intentionally "the steady, plodding kind of cop the public never really understood or appreciated," who did his job "without the help of beautiful, mysterious blondes, hefty swigs from an ever-present bottle, and handy automatics thrust into their belts or hidden in their socks."⁴²

Dispensing with the blondes, booze, and bullets also meant that, for a cop show, *Dragnet* was unusually popular with women, who wrote letters praising the "grown-up approach" of the show.⁴³ Grown-up as it was, the show still was popular with the young—eighteen percent of the fan mail came from children under sixteen.⁴⁴ *Dragnet* ranked twentieth in overall rankings, and was a top ten show for the twelve to seventeen age bracket in the 1967-68 season, which featured the television debut of the *Miranda* warnings.⁴⁵ When *Dragnet* ceased production in 1970, it immediately became a major staple in syndication, and was noted for attracting a young audience.⁴⁶ *Dragnet* was a cultural icon for those in the sweet spot of the boomer cohort that dominated the professoriate, the bench, and the bar by the time of the *Dickerson* decision.

IV. MIRANDA'S EVOLVING ONSCREEN ROLE

Webb served as the creator and producer of another hit, *Adam-12*, which was often a top ten program during much of its 1968 to 1975 run.⁴⁷ Webb again insisted on his trademark precision, and Officers Reed and Malloy further cemented the

³⁸ MICHAEL J. HAYDE, MY NAME'S FRIDAY: THE UNAUTHORIZED BUT TRUE STORY OF DRAGNET AND THE FILMS OF JACK WEBB 151 (2001); MOYER & ALVAREZ, *supra* note 30, at 122, 127.

³⁹ MOYER & ALVAREZ, *supra* note 30, at 83-84.

⁴⁰ HAYDE, *supra* note 38, at 172; MOYER & ALVAREZ, *supra* note 30, at 83-84, 99.

⁴¹ HAYDE, *supra* note 38, at 4, 41, 67-68; MOYER & ALVAREZ, *supra* note 30, at 56-57, 59, 99.

⁴² MOYER & ALVAREZ, *supra* note 30, at 62.

⁴³ *Id.* at 66.

⁴⁴ *Id.* at 103.

⁴⁵ *Id.* at 154.

⁴⁶ *Id.* at 227.

⁴⁷ HAYDE, *supra* note 38, at 227-28.

Miranda warnings into the American consciousness.⁴⁸ Other television shows and films followed Webb's lead, and recitation of the *Miranda* warnings became the accepted Hollywood short-hand for proper criminal procedure—and often a cue for a commercial break.⁴⁹ However, *Miranda*'s influence on television has evolved significantly during more than four decades that it has been onscreen.

The effect is most pronounced in the dramatic genre known as the “police procedural,” including notable programs such as *Hill Street Blues* and *Law & Order*. The police procedural, according to Larry Landrum, features an ensemble of professionals “in but not of a world characterized as rampant with crime.”⁵⁰ These ensembles become the “reality” for the viewing public:

[M]ost people do not have much direct experience with criminal trials, drug busts, or emergency surgery. Consequently, their perceptions of what the lawyer, police officer, or doctor does in the course of an average day is likely formed from media portrayals.⁵¹

Shrum has noted that a

content analysis of the most popular police dramas from 1982 to 1992 found that the programs consistently portrayed a spiteful and malicious world, and that the best response to such a world was to encourage unilateral action on the part of police officers that paid lip service to the legal rights of suspects and police codes of conduct.⁵²

Michael Mann agrees, noting that television programs featuring the police and the criminal justice system offer a vision of the system “which has, for better or worse, helped shape our understanding of the American criminal system.”⁵³

Through weekly television dramas discussing hyper-technical police procedures and legal proceedings, the criminal justice system has shifted into mainstream popular culture—a scary place since police and legal matters are presented to television viewers with no frame of reference. While certainly not all of the information the public learns by watching crime dramas should be discounted as immaterial, it has lead far too many viewers to think that when they tune in, they see an accurate portrayal of

⁴⁸ See MOYER & ALVAREZ, *supra* note 30, at 163-65.

⁴⁹ Todd S. Purdum, *The Nation: Miranda as a Pop Culture Icon*, N.Y. TIMES, July 2, 2000, at WK5.

⁵⁰ Larry Landrum, *Instrumental Texts and Stereotyping in Hill Street Blues: The Police Procedural on Television*, 11 MELUS 93, 96 (1984); see also Judith Grant, *Prime Time Crime: Television Portrayals of Law Enforcement*, 15 J. AM. CULTURE 57 (1992).

⁵¹ L. J. Shrum, *Effects of Television Portrayals of Crime and Violence on Viewers' Perceptions of Reality: A Psychological Process Perspective*, 22 LEGAL STUD. F. 257, 267 (1998).

⁵² *Id.* at 260.

⁵³ Mann, *supra* note 36, at 212.

the criminal justice system at work. In fact, to some viewers, these television shows are a lesson in law transmitted into their living rooms.⁵⁴

As might be expected, the *Miranda* warnings were spread far and wide by American popular culture. Indeed, people outside the United States who have seen many American television programs sometimes expect to hear the *Miranda* warning when they are arrested, although U.S. court rulings have no force outside the United States.

In an episode of a noted Russian TV police procedural, *Streets of Broken Streetlights*, detectives in St. Petersburg stage a fake arrest to convince the staff and patrons of a restaurant that they are by-the-book cops.⁵⁵ The irony is compounded by the fact that the detectives in the show are in the vein of the officers from *The Shield* or Andy Sipowicz of *NYPD Blue*: heart-of-gold tough guys more interested in results than the niceties of procedure. They arrange for one of their informants to pretend to hold-up the restaurant, and then nab the fake suspect and make a big show of giving him *Miranda* warnings (in Russian, of course).⁵⁶ A waitress is impressed with their professionalism, commenting that it was just like in the American movies, and rewards them with a meal on house—which was the plan all along.⁵⁷

In some cases, the failure to give *Miranda* warnings has been a plot device in police procedurals. A study of the 2000 season of *Law & Order* and *NYPD Blue* found twenty-four *Miranda* violations by Sipowicz and company, and fifteen by Briscoe and his colleagues, most of which were overt and used as complications in the story.⁵⁸ A similar study of *Law & Order: SVU* found “an average of 1.12 civil rights violations per episode, the most common violations being the use of excessive force and failure to read a suspect their *Miranda* warnings.”⁵⁹ Such violations were rarely if ever punished. Rather, they were “normalized” as “part of doing business with heinous criminals.”⁶⁰ Interestingly, some studies even suggest that such violations of *Miranda* and other procedural requirements, instead of undermining the image of police “serve to legitimate and normalize civil rights violations and increase viewers’ confidence in the police because they usually protect citizens by apprehending offenders efficiently.”⁶¹

⁵⁴ *Id.*; see Simon A. Cole & Rachel Dioso-Villa, *CSI and Its Effects: Media, Juries, and the Burden of Proof*, 41 NEW ENG. L. REV. 435 (2007).

⁵⁵ Jennifer Ryan Tishler, *Menty and the Petersburg Myth: TV Cops in Russia’s ‘Crime Capital,’* 10(2) J. CRIM. JUST. & POPULAR CULTURE 127, 138 (2003); see also *id.* at 127-41 (discussing how *Streets* is both popular and critically acclaimed, and represents to Russians a “thinking person’s police procedural”).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Sarah Eschholz, Matthew Mallard, & Stacey Flynn, *Images of Prime Time Justice: A Content Analysis of “NYPD Blue” and “Law & Order,”* 10(3) J. CRIM. JUST. & POPULAR CULTURE 161, 172 (2004).

⁵⁹ Sarah Britto, Tycy Hughes, Kurt Saltzman, & Colin Stroh, *Does Special Mean Young, White and Female? Deconstructing the Meaning of “Special” in “Law & Order: Special Victims Unit,”* 14(1) J. CRIM. JUST. & POPULAR CULTURE 39, 50 (2007).

⁶⁰ *Id.*

⁶¹ *Id.* at 41.

V. *MIRANDA* MOVES FROM FEATURED PLAYER TO BIT PART

Whether approving or skeptical of portrayals of *Miranda* and its embedding in popular culture and the public consciousness, most studies and commentaries presume that the consumers of serial police dramas on American television have had repeated exposure to the *Miranda* warnings. *Dickerson* was decided in part on the same premise. However, it may be that most people writing about the ubiquitous nature of *Miranda* in popular culture are describing a popular culture they remember, rather than popular culture as it now exists.

As mature adults, many law professors and scholars of law and society remember *Miranda* warnings used as prominent script elements in the television of their early days as a consumer of popular culture. Certainly, the generation that came of age in the era of *Dragnet* and *Adam-12* heard *Miranda* warnings more times than they could count. But, as *Broadcast & Cable* noted in its editorial that commented on the *Dickerson* decision and praised the impact of television on popular consciousness, “[w]e’ve not heard a TV *Miranda* read in a while.”⁶² While the editors at *Broadcast & Cable* did not think to follow up on that observation, it raises a profound point: the survival of *Miranda* in *Dickerson* was premised upon the idea that the public expects *Miranda* warnings because popular culture has inculcated a familiarity with the warnings through regular repetition. But what would happen to that rationale if there these repeated popular culture representations of *Miranda* warnings no longer existed?

A look at several iconic cop shows that aired after the *Miranda* decision was issued in 1966 puts that presumption to the test. The actual instances of *Miranda* warnings on broadcasted shows demonstrate that *Miranda*’s role in popular culture has diminished throughout the years.

The following shows were studied:

Dragnet (1967-1970)
Adam-12 (1968-1975)
Hill Street Blues (1981-1987)
Miami Vice (1984-1989)
NYPD Blue (1993-2005)
Law & Order (1990-2007+)
CSI (2000-2007+)

Episodes from the selected shows were viewed and studied for instances of arrests and coded for whether a *Miranda* warning, or a portion thereof, was portrayed. Coding was done as follows:

5-More than one full *Miranda* warning
 4-Full *Miranda* warning for at least one arrest
 3-Substantial *Miranda* warning for one or more arrests
 2-Partial/Fragmentary *Miranda* warning for one or more arrests
 1-No *Miranda* warning where there was at least one arrest
 0-No arrest

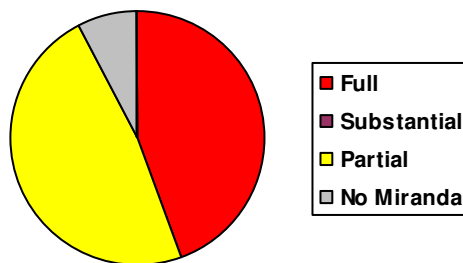
⁶² BROADCASTING & CABLE, *supra* note 2.

A. Miranda's Early Appearances in Television

Any study of *Miranda* warnings in television must begin with *Dragnet*, which originally aired from 1951 to 1959 and then again from 1967 to 1970. Webb, as producer, director, and star, brought to the show his quest and desire to portray the work of law enforcement officers as truthfully and realistically as possible. When the show returned to the air in 1967, *Miranda* was a fresh development, and in a sampling of that season, the use of the *Miranda* is impressive. With a total of twenty-three arrests and four interrogations, the entire *Miranda* warning was recited twelve times and partially recited or referenced thirteen times. (See Figure 1.) With regard to *Miranda*, *Dragnet* was indeed the show many remember it to be.

Figure 1

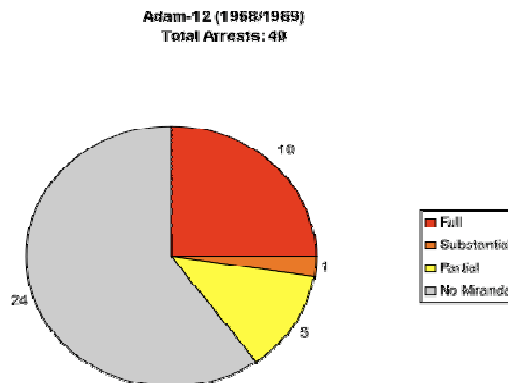
Dragnet (1967) Total Arrests/Interrogations: 27



Dragnet constantly reminded us of the *Miranda* warning, which was either read during an arrest or mentioned in an often repeated voice-over: "The suspect was informed of his constitutional rights." Hardly an episode went by without the warning being thrust into the ears and memory of the viewers. Indeed, only two episodes failed to address *Miranda* at all, despite having arrests in both.

Also created by Jack Webb was *Adam-12* (1968-1975), which focused on the patrolmen rather than the detectives. The 1968-1969 season of *Adam-12* contained ten full *Miranda* warnings, one substantial warning, and five that were partially recited or referenced. (See Figure 2.) While the number of *Miranda* warnings in *Adam-12* is close to that in *Dragnet*, it must be noted that the number of arrests in *Adam-12* is almost double, with forty in a single season. Eleven episodes did not reference *Miranda* when an arrest was made. The steadfast appreciation for realism in *Dragnet* is a difficult standard for popular television, and *Adam-12* was a bit less scrupulous about *Miranda*. Nonetheless, its record turns out to be far better than most cop dramas in subsequent years.

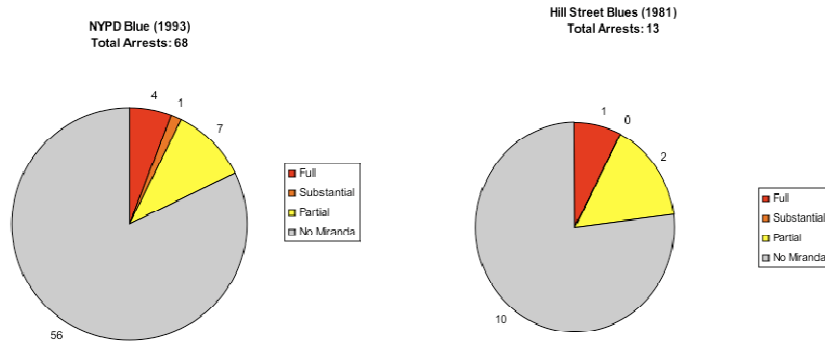
Figure 2



B. The Shift from the 1980s to Today

The transition between the cop shows of the 1960s and 1970s and of today can be illustrated by series such as *Hill Street Blues* (1981-1987) and *NYPD Blue* (1993-2005). Each show attempted to deconstruct the “good cop, good cop” dynamic of past TV dramas. They brought a gritty, urban feel to the image of law enforcement and complicated the characters of police officers and the dynamics of law enforcement institutions. *Hill Street Blues* has a surprisingly low arrest count in its premiere 1981 season, as the show tends to focus on the behind-the-scenes drama of Hill Street Station. Out of thirteen arrests, only one full and two partial *Miranda* warnings occurred. (See Figure 3.) The 1993 season of *NYPD Blue* contained a much larger number of arrests, totaling sixty-eight. With such a large amount of arrests, one might expect that the show’s *Miranda* count would be considerably higher than that of *Hill Street*. However, with only four full, one substantial, and seven partial warnings, the proportion of *Miranda* warnings to arrests in *NYPD Blue* is similar to that in *Hill Street Blues*. (See Figure 3.) Approximately eighty-two percent of arrests in *NYPD Blue* did not mention *Miranda*. This number compares to about seventy-seven percent of arrests in *Hill Street Blues*.

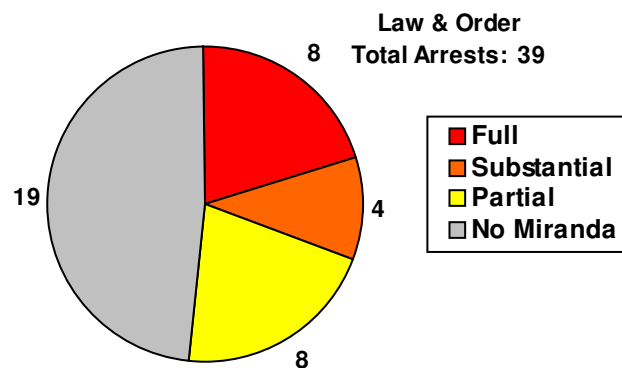
Figure 3



Emerging as a television powerhouse in the 1990s was the *Law and Order* franchise, which had several spin-offs. With an emphasis on procedure rather than dramatics, the show managed to capture some of what *Dragnet* and *Adam-12* had achieved decades earlier.

In its first season (1990-1991), *Law and Order* paralleled the occurrence of *Miranda* warnings in *Adam-12*, while still falling far behind *Dragnet*. Out of thirty-nine arrests, only eight full *Miranda* warnings were given, four substantial, and eight partial. (See Figure 4.) *Law and Order* stands as an exception to the downward trend of *Miranda* appearances on television. The rest of modern television displays an obvious gap between the arrest and the *Miranda* warning.

Figure 4



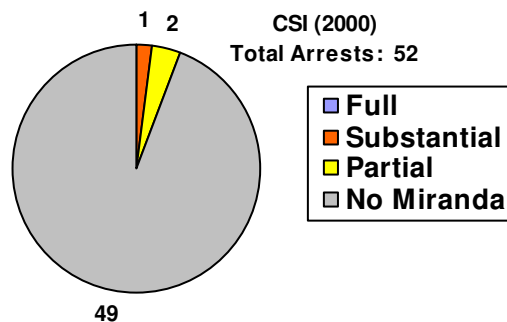
C. The Increasing Disappearance of *Miranda* from Television

In the decade since the *Dickerson* decision, *Miranda* warnings are not fairing well in popular culture. Interestingly, aside from the *Law & Order* flagship, television series hardly acknowledged the existence of *Miranda*. This is an

interesting development, and one very much at odds with the approach taken by Jack Webb. Of course, television is entertainment and its creators must be endowed with creative license for the sake of the audience. It is especially understandable that shows involving morally compromised and dirty cops would depict improper police procedure. Yet, shows such as *CSI* and *Bones* do not follow the genre in which cops and law enforcement operate in a gray area. These shows intend to portray the best and the brightest—upstanding officers who do things by-the-book. That book just happens to exclude one of the most basic elements of criminal procedure. For viewers of these shows, *Miranda* has been almost completely removed from the process of arrest and interrogation.

One of the highest rated post-*Dickerson* television police has been *CSI*, which premiered in October of 2000, just four months after the *Dickerson* decision. The show consistently placed in the top ten rated shows according to Nielsen Media Research.⁶³ Its two spin-offs, *CSI: New York* and *CSI: Miami*, usually placed in at least the top twenty.⁶⁴ Although the focus in *CSI* is primarily on the investigations at crime scenes and the science behind them, the police department always plays a crucial role. The first season of *CSI* was examined for this study. With twenty-three episodes and a total of fifty-two arrests, there were only three references to *Miranda*, with only one actual *Miranda* warning being delivered. (See Figure 5.) The season ranked the lowest of the modern police dramas in this section of the study at 1.19. In all, ninety-four percent of arrests on the show did not have any mention of *Miranda*. Interestingly, the most popular police drama in the time of the *Dickerson* decision almost completely disregarded the *Miranda* warning.

Figure 5

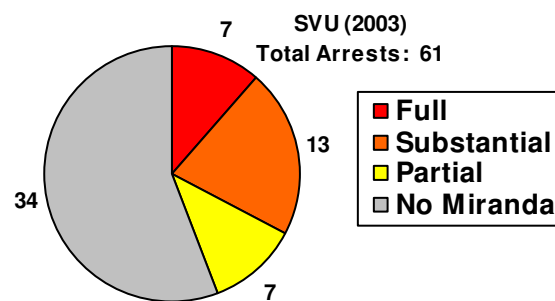


⁶³ See, e.g., *CSI Replaces ER as Season Champ*, THE INTERNET MOVIE DATABASE (May 20, 2002), <http://www.imdb.com/news/sb/2002-05-20#tv2>.

⁶⁴ See, e.g., *Season Rankings*, ABC.COM (Mar. 10, 2009), http://abcmedianet.com/web/dnr/dispDNR.aspx?id=031009_07.

The next highest rated current cop show is *Law and Order: SVU*, which is a spin-off of the original *Law and Order* series. This study looked at season five of *Law and Order: SVU*, which rated much higher than the other *Law and Order* series, with *Law and Order: Criminal Intent* quickly succumbing to cancellation.⁶⁵ Out of twenty-five episodes there were sixty-one arrests and twenty-seven references to *Miranda*. (See Figure 6.) *SVU* ranks highest in this study with a 2.71 average. However, fifty-eight percent of the arrests still did not mention *Miranda* rights. The *Miranda* warnings in the show were usually cut off or faded out at some portion to give way for a commercial break, but this at least counts as depicting the warnings being delivered.

Figure 6



There are a few key differences between the two shows. *CSI* focuses on the science of forensic investigation. The storylines within the show usually end at an arrest. Unlike *CSI*, *Miranda* plays an important role in *SVU*, where each episode, which involves police officers on the special victims unit, does not end once a suspect has been arrested. Usually the second portion of each episode takes place in the courtroom, where matters of criminal rights come to the forefront. It is for this reason that the *Miranda* warning becomes very crucial in a show like *SVU* and plays an important role in the plot.

While *CSI* and *SVU* remain high in the ratings, an important issue arises with regard to who is actually watching these shows. Shows that target a younger demographic would have a greater impact on the future generation's understanding of their rights and the *Miranda* warning. Unfortunately, Nielsen Media Research clusters younger audiences into a group ranging from eighteen to forty-nine years old.

However, Nielsen NetRatings has reported some research that provides a better idea of what young people are watching, by looking at shows that are viewed via iTunes.⁶⁶ The Apple program that helped make the iPod a household name offers

⁶⁵ Michael Schneider, 'Law & Order: CI' Moves to USA, VARIETY, May, 13 2007, available at <http://www.variety.com/article/VR1117964817.html?categoryid=14&cs=1>.

⁶⁶ Apple iTunes Users Growing Fast, BBC NEWS (Jan. 23, 2006), <http://news.bbc.co.uk/2/hi/technology/4639880.stm>.

music, movies, and television shows for download. Television shows can be downloaded commercial-free for \$1.99 to be viewed on an iPod, iPad, or iTV,⁶⁷ which is perfect for the younger, technologically driven generation. The study found that twelve- to seventeen-year-old teenagers make up the largest group of iTunes users, a demographic that certainly suits this study regarding *Miranda*. If the *Dickerson* rationale for retaining *Miranda* is to have ongoing validity, then the content of popular police procedurals for the next generation is of great interest.

Bones has been so successful with the tech-savvy audience that it became one of the featured shows in the transition from the TV screen to the personal screen. When television networks began making primetime programs in HD on the iTunes Store, Fox made *Bones* one of its first offerings. Interestingly, *Bones* joined a few other heavy-hitter cop shows on the list: CBS featured the *CSI* franchise, and NBC included *Law & Order: SVU*.⁶⁸

Bones has been renewed for multiple seasons thanks, in part, to its online success and decent ratings with 8.8 million viewers.⁶⁹ It became an iTunes powerhouse, but gained much of its original airdate success because it aired just before *American Idol* on Wednesday nights.⁷⁰ The show is much like *CSI* in that its emphasis is on the science of solving crimes. Typically the show begins with a body being found where all that is left is the bones of the victim. The case usually falls under federal jurisdiction and FBI Special Agent Seeley Booth is put on the case. Booth then goes to Dr. Temperance Brennan, a.k.a. Bones, a forensic anthropologist at the Smithsonian, for assistance in identifying the victim and solving the crime.⁷¹

Season one of *Bones* has thirty-two arrests and only three references to *Miranda*, with two actual readings of the *Miranda* warning, one only audible as muffled dialogue under a heavy musical score. Because the season has fewer arrests than a season of *CSI*, it barely ranks higher at a 1.24. In addition, ninety-one percent of

⁶⁷ Apple iTunes—What's On, APPLE.COM, <http://www.apple.com/itunes/whats-on/#tv> (last visited Apr. 21, 2011); TV Shows, ITV.COM, http://www.itv.com/TVShows/?intcmp=NAV_TVSHOWS (last visited Apr. 21, 2011).

⁶⁸ Filip Truta, ABC, CBS, FOX and NBC Bring More HD to iTunes, SOFTPEDIA.COM (Oct. 16, 2008), <http://news.softpedia.com/news/ABC-CBS-FOX-and-NBC-Bring-More-HD-to-iTunes-95843.shtml>. *Bones* further showed its tech-generation appeal by becoming the first program that FOX paired with its own official iPad application, allowing the show to become a “second screen” interactive program. Cory Bergman, Fox Debuts iPad App in Sync with TV Show “Bones,” LOSTREMOTE.COM (Feb. 11, 2011), <http://www.lostremote.com/2011/02/11/fox-debuts-ipad-app-that-syncs-with-tv-show-bones/>. The application itself is available at <http://itunes.apple.com/us/app/bones/id418050849?mt=8#>.

⁶⁹ Michael Schneider, Fox Renews ‘House,’ ‘Bones,’ VARIETY, Feb. 15, 2007, available at <http://www.variety.com/department/TV/> (type “Fox renews House” in the search bar, and then click on the link to the Article).

⁷⁰ Bill Carter, For Fox’s Rivals, ‘American Idol’ Remains a ‘Schoolyard Bully,’ N.Y. TIMES, Feb. 20, 2007, available at <http://www.nytimes.com/pages/arts/index.html> (type “American Idol Bully” in search bar, then click “All Results Since 1851,” then click on the link to the Article).

⁷¹ Unlike any of the other shows studied, *Bones* takes a look at federal cases. Ironically, *Dickerson* itself was a case in which FBI agents did not give a *Miranda* warning. *Dickerson*, 530 U.S. at 428.

arrests do not reference *Miranda* at all. Thus, *Bones* hardly contributes toward educating the younger public about their rights upon arrest.

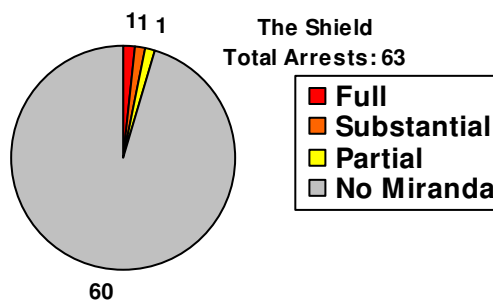
Another popular police drama on iTunes and elsewhere is *The Shield*, which purported to offer a gritty, realistic portrayal of an increasingly rogue gang unit in the LAPD. Season five of the show attracted 3.2 million viewers in 2006,⁷² which is strong for a cable show, though not as significant as bigger profile shows on broadcast television.

The Shield presents an ensemble of officers very different from those in *CSI*, *Law & Order*, and *Bones*, and about as far removed from the LAPD of Joe Friday as could be imagined. The show centers on a corrupt strike team headed by tough guy Vic Mackey. The unit's job is to monitor drug and gang activity, but their methods often involve tolerating, encouraging, and even engaging in illegal activity. Over the arc of the series, the actions of the strike team become increasingly illegal and out of control.

Notwithstanding their unconventional and often illegal methods, the majority of the police officers on *The Shield* are not corrupt and they make arrests in their own subplots. The show adopts its gritty realistic style from shows like *NYPD Blue* and *Hill Street Blues*. While *Hill Street Blues* did not have a strong *Miranda* presence, *NYPD Blue* received a relatively decent score of 2. Therefore, it was worth examining *The Shield* to see how this series ranks in comparison to past and recent police procedurals.

Season one of *The Shield* had sixty-three arrests in just thirteen episodes. However, there were only two episodes that involved *Miranda* warnings: in one the warnings were read in full from the card in Spanish (as well as a substantial portion of the warning in English); in the other a Captain stated, "Read him his rights, twice," which was coded as a partial warning. The show's score of 1.31 is much lower than that of *NYPD Blue* and ties *CSI* with ninety-four percent of arrests having no mention of *Miranda*. (See Figure 7.) The fact that the show deals more with corrupt cops than the good ones explains some of the pattern, but the lack of *Miranda* is still striking.

Figure 7



Finally, rather than just looking at dramas, it is also interesting to consider how *Miranda* warnings are fairing in television's version of the "real" world in the reality show *Cops*. Five episodes from the nineteenth season were viewed for this study,

⁷² Kate Aurthur, *Arts, Briefly*; 'Shield' Ratings Slip, N.Y. TIMES, Mar. 27, 2006, available at <http://www.nytimes.com/pages/arts/index.html> (type "Shield Rating Slip" in the search bar, then click "All Results Since 1851," then click on the link to the Article).

and, somewhat unexpectedly, the show consistently cut around *Miranda* warnings. Out of a total of seventeen arrests, there was only one point at which *Miranda* was even mentioned. That one reference was in a post-arrest interview with a police officer, who said that the suspect had been “Mirandized.” Such a statement would have been unclear to individuals who are unfamiliar with the *Miranda* warning to begin with.

IV. CONCLUSION

With this sample of data, one can conclude that the prevalence of *Miranda* in television is fading, with only one top police procedural consistently including *Miranda* warnings and emphasizing their importance. At this point in time, there is no reason to think that the majority of adults are unaware of *Miranda*. However, it does appear that *Miranda* is losing its prominence in popular culture, especially among shows directed at developing a younger audience whose understanding of police procedure, *qua Dickerson*, likely come from these television shows.

When the Court in *Dickerson* highlighted the importance of the *Miranda* warnings in popular culture, it undoubtedly had shows like *Dragnet* and *Law and Order* in mind. That vision of popular culture may no longer be valid, as the days of Sergeant Joe Friday are clearly over. *Law & Order*, the show that most often portrays *Miranda* warnings, is not particularly popular among younger viewers as compared to shows which do not feature *Miranda* as prominently.⁷³ While those who regularly watch *Law & Order* are likely to have viewed *Dragnet* as a child, the most impressionable age group has their eyes on shows like *CSI* and *Bones*, and may have never even heard of Joe Friday.

While *Dickerson*'s rationale is certainly correct in presuming that those over thirty have already learned about the *Miranda* warning from decades of television, younger generations only have today's *Miranda*-less programming on which to form their assumptions about law enforcement. *Miranda* can still be found on television, but its presence has severely diminished over the years. If this trend continues, how will America's current youth internalize the *Miranda* warning in the way older generations have? Near-universal awareness of *Miranda* is an artifact of a shared popular culture in which the repetition of the warnings was pervasive and inescapable. But how can that level of awareness not dissipate when the portrayal of *Miranda* in popular culture has become minimal, nearly obsolete? If *Miranda* continues disappearing from popular culture, how might a future Supreme Court reevaluate the importance of *Miranda* and the holding of *Dickerson*? In fifteen or twenty years, would the rationale of *Dickerson* still make any sense? The *Miranda* warning—once an integral part of American culture—may disappear as easily as television shows that are cancelled and quickly forgotten.

⁷³ “*Law & Order*” Franchise Under Review, UPI.COM (Mar. 14, 2007), http://www.upi.com/Entertainment_News/2007/03/14/Law-Order-franchise-under-review/UPI-5221113870388; Wayne Friedman, ‘*Friends*’ Faces Fewer Viewers in Key 18-49 Demo, ADVERTISING AGE (May 27, 2002), <http://adage.com/article/news/friends-faces-fewer-viewers-key-18-49-demo/52110/>.