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## New York v. Quarles: The Dissolution of Miranda

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## Notes

### NEW YORK v. QUARLES: THE DISSOLUTION OF MIRANDA

In recent years, the Burger Court has shown dissatisfaction with the constitutional protections and underlying spirit of *Miranda v. Arizona*.<sup>1</sup> *Miranda* was the culmination of a century-long inquiry into the admissibility of statements made by a suspect during custodial police interrogation. The decision set down a per se rule of exclusion, grounded in the fifth amendment's privilege against self-incrimination.<sup>2</sup> Because the *Miranda* Court found custodial interrogation inherently coercive, the Court ruled that all statements made by a suspect during custodial interrogation were inadmissible as evidence at trial, unless the suspect was informed of his constitutional rights prior to questioning.<sup>3</sup> Until recently, this "bright line" rule of confession admissibility was considered "settled law."<sup>4</sup> In *New York v. Quarles*,<sup>5</sup> however, the Supreme Court carved out a gaping exception to *Miranda*.<sup>6</sup> In so doing, the Court destroyed eighteen years of relative tranquility in American confession law, and condemned the police and the judiciary to unpredictable case-by-case determinations of admissibility.

Before *Miranda*, courts in this country focused on the "voluntariness" of confessions in determining the admissibility of such statements as evidence at trial.<sup>7</sup> The "traditional involuntary rule"<sup>8</sup> ostensibly pro-

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1. 384 U.S. 436 (1966). For a full discussion of *Miranda*, see *infra* notes 33-49 and accompanying text.

2. See 384 U.S. at 476.

3. *Id.*

4. See *New York v. Quarles*, 104 S. Ct. 2626, 2635-36 (1984) (O'Connor, J., concurring in part in the judgment and dissenting in part).

5. 104 S. Ct. 2626. For a full discussion of *Quarles*, see *infra* notes 98-165 and accompanying text.

6. For a discussion of the "public safety" exception as set down in *Quarles*, see *infra* notes 120-25 & 136-65 and accompanying text.

7. For examples of Supreme Court decisions focusing on the "voluntariness" of confessions, see *Lyons v. Oklahoma*, 322 U.S. 596 (1944) (voluntary or involuntary character of confession determined by the suspect's "mental freedom" while confessing or denying participation in a crime); *Ward v. Texas*, 316 U.S. 547 (1942) (use of confession obtained after suspect was whipped and burned is a denial of due process); *Chambers v. Florida*, 309 U.S. 227 (1940) (confession obtained after continued confinement, threats and physical mistreatment was involuntary and inadmissible under fourteenth amendment due process standards). The Court in these cases found that the interrogation procedure was part of the conviction process of criminal defendants, and therefore was subject to fourteenth amendment due process requirements. See N. SOBEL, *THE NEW CONFESSION STANDARD* 6-30 (1966).

8. See N. SOBEL, *supra* note 7, at 8. This rule derived from early English practice in which confessions made under "threats and promises" were deemed

hibited prosecutorial use of confessions which were elicited under coercive circumstances.<sup>9</sup> Historically, exclusion was justified on the premise that coerced statements were potentially unreliable,<sup>10</sup> although a few early decisions did reflect concern over the moral implications of deceptive or oppressive police conduct.<sup>11</sup>

involuntary, and were inadmissible at trial. Dix, *Mistake, Ignorance, Expectation of Benefit, and the Modern law of Confessions*, 1975 WASH. U.L.Q., 275, 279-80. For examples of the "threats and promises" rule, see *The King v. Rudd*, 168 Eng. Rep. 160, 161 (K.B. 1775) ("the prisoner ha[d] been drawn in by promises and assurances to answer . . . which she would not have done, but from a confidence that those promises and assurances would have been kept and performed"); *Regina v. Rose*, 18 Cox Crim. Cas. 717 (Cr. Cas. Res. 1898) (confession of larcenous acts inadmissible because statements were induced by the prosecuting counsel's advice to speak).

The rationale underlying the exclusion of such statements was their perceived unreliability. See Dix, *supra*, at 280. Even when the statements were likely to be reliable, however, most courts would still exclude them if they were made pursuant to an inducement. *Id.* at 284-85. Thus, English courts applied the "threats and promises" rule broadly, with few exceptions. *Id.* at 280-82.

United States courts adopted the English rule, but applied it with considerably less enthusiasm. *Id.* at 283. American courts focused almost exclusively on the reliability, or "trustworthiness" of the statements. *Id.* at 285. Thus, a statement was "voluntary" and admissible if it was free from influence which made it untrustworthy or "probably untrue." See C. McCORMICK, EVIDENCE 313-16 (2d ed. 1972); J. WIGMORE, EVIDENCE § 822 (3d ed. 1940).

9. See generally 3 J. WIGMORE, *supra* note 8, § 822. See also Kamisar, *What Is an "Involuntary" Confession? Some Comments on Inbau and Reid's Criminal Interrogation and Confession*, 17 RUTGERS L. REV. 728, 742 (1963). Precise definitions of the terms "voluntary" and "coerced" have been elusive in confession law. The actual test for voluntariness was usually subjective. N. SOBEL, *supra* note 7, at 8. For a discussion of the ambiguity of the term "voluntariness" and the voluntariness test itself, see *infra* notes 21-31 and accompanying text.

10. For a discussion of this rationale for exclusion, see *supra* note 8. Concern with the risk of unreliability was especially evident in early voluntariness cases. See *Lyons v. Oklahoma*, 322 U.S. 596 (1944) (courts cannot "infer guilt" upon declarations procured by torture); *Ward v. Texas*, 316 U.S. 547 (1942) (after suspect was moved to strange towns, whipped, burned, and questioned continuously, he was willing to make any statement). See also *Brown v. Mississippi*, 297 U.S. 278 (1936) (conviction based solely on confessions procured through extreme brutality reversed for insufficient evidence). The Court's focus on the trustworthiness of a confession in these early decisions caused the true dimensions of the voluntariness standard to remain obscure. See *infra* notes 21-31 and accompanying text. Thus, many state courts concluded that "unfairness in violation of due process exists when a confession is obtained by means of pressure exerted upon the accused under such circumstances that it affects the testimonial trustworthiness of the confession." *State v. Schabert*, 218 Minn. 1, 6, 15 N.W.2d 585, 587 (1944).

11. See Dix, *supra* note 8, at 285. Recognition by the courts that coercive police conduct was in itself grounds for a confession's exclusion came in the 1940's. In the companion cases of *Watts v. Indiana*, *Harris v. South Carolina*, and *Turner v. Pennsylvania*, the Court reversed three convictions which rested on coerced confessions without disputing the fact that "checked with external evidence [the confessions were] inherently believable and were not shaken as to truth by anything that occurred at the trial." See *Watts*, 338 U.S. at 58 (Jackson, J., concurring); *Turner*, 338 U.S. 62 (1949); *Harris*, 338 U.S. 68 (1949).

In 1936, the Supreme Court decided the first due process confession case, *Brown v. Mississippi*.<sup>12</sup> In *Brown*, the Court held that physically coerced confessions were "revolting to the sense of justice," and therefore were inadmissible under the due process clause of the fourteenth amendment.<sup>13</sup> However, the confessions in *Brown* were clearly unreliable,<sup>14</sup> and the case could have been interpreted as announcing a due

12. 297 U.S. 278 (1936).

13. See *id.* at 286. The fourteenth amendment provides in pertinent part: [N]o state shall deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of laws.

U.S. CONST. amend. XIV, § 1. The *Brown* Court noted that interrogation was part of the process by which a state procures a conviction, and was thus subject to the requirements of the fourteenth amendment due process clause. See *Brown*, 297 U.S. at 286. For a discussion of the fourteenth amendment's requirements of due process in the law of confessions, see Paulsen, *The Fourteenth Amendment and the Third Degree*, 6 STAN. L. REV. 411 (1954).

Although *Brown* was the first fourteenth amendment due process case, it was not the first case to rely on constitutional principles for the exclusion of involuntary statements. See, e.g., *Bram v. United States*, 168 U.S. 532 (1897). In *Bram*, the Supreme Court spoke broadly of the application of the fifth amendment to involuntary statements. *Id.* at 542. The Court explained that "[i]n criminal trials . . . wherever a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment . . . commanding that no person 'shall be compelled in any criminal case to be a witness against himself.'" *Id.* (quoting U.S. CONST. amend. V).

*Bram* appeared to adopt, as a matter of constitutional law, the view that an incriminating statement was involuntary if coerced by someone in authority, and that its admission violated the fifth amendment's prohibition against self-incrimination. Dix, *supra* note 8, at 289. However, the constitutional significance of *Bram* is uncertain. *Id.* In subsequent cases involving the admissibility of "involuntary" confessions, the Supreme Court ignored the constitutional underpinning of *Bram* and relied instead on the existing federal evidentiary requirement of voluntariness. *Id.* See, e.g., *Ziang Sung Wan v. United States*, 266 U.S. 1, 14-17 (1924) (defendant's admissions made on seventh day of interrogation were "presumed" involuntary); *Perovich v. United States*, 205 U.S. 86, 91 (1907) (conversations between defendant and United States Marshal admissible so long as there was no additional evidence of coercion). Subsequently, the Supreme Court stated that the *Bram* decision represented an exercise of the Court's supervisory power only and was "not a rock upon which to build constitutional doctrine." *Stein v. New York*, 346 U.S. 156, 190-91 n.35 (1953). See also Stone, *The Miranda Doctrine in the Burger Court*, 1977 SUP. CT. REV. 104 (*Bram* decision "had been vigorously criticized as founded upon a confusion between the constitutional privilege and the common law rule governing coerced confessions"). The question of whether a fifth amendment *Bram* analysis would have been appropriate in the *Brown* decision was moot because the fifth amendment was not applicable to the states until 1964. See *Malloy v. Hogan*, 378 U.S. 1, 17-18 (1964) (Harlan, J., dissenting).

The *Bram* decision was vigorously upheld, however, in *Miranda*. 384 U.S. at 461-62. In *Miranda*, Chief Justice Warren stated that *Bram* "set down the Fifth Amendment standard for compulsion which we implement today." *Id.* at 461. For a discussion of the constitutional significance of *Bram*, see Kamisar, *Equal Justice in the Gatehouses and Mansions of American Criminal Procedure*, in CRIMINAL JUSTICE IN OUR TIME 47 (Howard ed. 1965).

14. 297 U.S. at 280. Undisputed testimony showed that the prisoners had

process test which excluded only physically coerced confessions which were also untrustworthy.<sup>15</sup> Thus the actual dimensions of the constitutional protections set forth in *Brown* were unclear.

During the thirty years following *Brown*, the voluntariness doctrine matured.<sup>16</sup> Although *Brown* defined compulsion in terms of physical brutality, subsequent courts recognized that statements elicited through psychological coercion were also "involuntary" for purposes of fourteenth amendment due process.<sup>17</sup> Concurrent with this expansion in the scope of the voluntariness doctrine was the expansion of the Court's underlying rationale for exclusion. Coerced confessions were no longer inadmissible simply because of their potential unreliability.<sup>18</sup> Courts began to consider the fairness of the police methods,<sup>19</sup> recognizing that

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been whipped with a metal-buckled strap until they confessed to murder. *Id.* at 281-83.

15. See *Lyons v. Oklahoma*, 322 U.S. 596 (1944) (court cannot infer guilt from declarations procured by torture); *Ward v. Texas*, 316 U.S. 547 (1942) (continuous moving, threatening and beating of suspect resulted in untrustworthy confession); *Lisenba v. California*, 314 U.S. 219 (1941) (confessions elicited through physical torture deemed both unreliable and fundamentally unfair); *Chambers v. Florida*, 309 U.S. 227 (1940) (confessions made after defendants were continually threatened and mistreated, and while they were "in fear or their lives," did not support murder convictions).

16. See *Stone*, *supra* note 13, at 102. The Court decided thirty-five state confession cases from 1936 through 1965. Kamisar, *A Dissent from the Miranda Dissents: Some Comments on the "New" Fifth Amendment and The Old "Voluntariness" Test*, 65 MICH. L. REV. 59, 102 n.184 (1966).

17. See, e.g., *Leyra v. Denno*, 347 U.S. 556 (1954) (a confession elicited by a police psychiatrist masquerading as a physician brought to relieve the defendant's painful sinus condition inadmissible); *Watts v. Indiana*, 338 U.S. 49 (1949) (a confession obtained after six days of incommunicado confinement and interrogation inadmissible).

The Court specifically condemned the psychologically coercive practice of prolonged incommunicado detention and interrogation. See *Ashcraft v. Tennessee*, 322 U.S. 143 (1944). See also N. SOBEL, *supra* note 7, at 8. In *Ashcraft*, a confession was obtained after 36 hours of continuous police interrogation. 322 U.S. at 148-53. The Supreme Court held that the extended questioning raised a presumption of coercion. *Id.* at 154.

For a review of the use of both physical and psychological coercion during police interrogation, see F. INBAU & J. REID, *CRIMINAL INTERROGATION AND CONFESSIONS* (1967). See also *Miranda v. Arizona*, 384 U.S. 436, 448-58 (1966).

18. For a discussion of the "trustworthiness" rationale for excluding confessions, see *supra* note 10 and accompanying text. See also Paulsen, *supra* note 13, at 419.

Eventually, the court completely abandoned "trustworthiness" as an indicator of admissibility. See, e.g., *Davis v. North Carolina*, 384 U.S. 901 (1966). See also N. SOBEL, *supra* note 7, at 21 ("The *due process* [voluntariness] test [was] concerned with fundamental fairness in *methods* used to obtain confessions.") (emphasis in original). That the confession was "true" had no significance in determining voluntariness or admissibility. *Id.*

19. See, e.g., *Rochin v. California*, 342 U.S. 165 (1952). *Rochin* involved the admissibility of statements and physical evidence procured after the defendant was forced to have his stomach pumped, and incriminating narcotics were found. *Id.* at 166. The Supreme Court explained that the "[u]se of involuntary

subjective attributes of the suspect, such as age or mental capacity, were relevant to the issue of actual police coercion.<sup>20</sup> Thus the voluntariness of a confession was determined on a "totality of the circumstances" basis.<sup>21</sup> As courts confronted the more subtle "circumstances" of modern interrogation procedures, however, a gradual dissatisfaction and frustration with the voluntariness doctrine developed.<sup>22</sup>

The Supreme Court found the concept of voluntariness to be an inadequate test for the admissibility of confessions for several reasons.<sup>23</sup> First, the Court could never articulate a precise definition of "voluntariness."<sup>24</sup> The concept was "elusive" and "measureless," and generated "intolerable" uncertainty in the law of confessions.<sup>25</sup> Further, the "totality of the circumstances" test required case-by-case review.<sup>26</sup> Each case involved a delicate balancing of a number of variables, including

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verbal confessions in State criminal trials [was] constitutionally obnoxious not only because of their unreliability." *Id.* at 173. Although the statements may have been independently established as true, "[c]oerced confessions offend[ed] the community's sense of fair play and decency." *Id.*

20. See N. SOBEL, *supra* note 7, at 9-18.

21. *Id.* at 9-20. As the Court noted in *Schneckloth v. Bustamonte*, "[t]he significant fact about all [fourteenth amendment confession] decisions is that none of them turned on the presence or absence of a single controlling criterion; each reflected a careful scrutiny of all the surrounding circumstances." 412 U.S. 218, 226 (1973). Some of the "circumstances" examined by the Court included age of the accused, intelligence of the accused, delay in arraignment, unlawful arrest, protracted interrogation, and police deception and trickery. See *Culombe v. Connecticut*, 367 U.S. 568 (1961) (unlawful arrest); *Spano v. New York*, 360 U.S. 315 (1959) (protracted interrogation); *Payne v. Arkansas*, 356 U.S. 560 (1958) (suspect's intelligence); *Leyra v. Denno*, 347 U.S. 556 (1954) (police deception); *Gallegos v. Nebraska*, 342 U.S. 55 (1951) (delay in arraignment); *Haley v. Ohio*, 332 U.S. 596 (1948) (suspect's age). See N. SOBEL, *supra* note 7, at 9-18.

22. See *Miranda*, 384 U.S. at 448-58 (traditional methods of dealing with coerced confessions were deemed unsatisfactory, especially when police used subtle psychological coercion).

23. See generally Kamisar, *supra* note 16, at 94-104.

24. *Id.* at 96 ("[T]he Court 'never pinned [the voluntariness rubric . . . down to a single meaning, but on the contrary infused it with a number of different values.'" (quoting *Miranda*, 384 U.S. at 507 (Harlan, J., dissenting)). See also Grano, *Voluntariness, Free Will, and the Law of Confessions*, 65 VA. L. REV. 859 (1979). This commentator cited the Court's lack of specificity as the cause of much confusion: "The Court's general unwillingness to articulate the policies underlying volitional terminology explains the ambiguity of [the] voluntariness doctrine even within particular legal contexts . . . . [T]he Court's failure in this regard accounts for the intolerable uncertainty that characterized the thirty year reign of the due process voluntariness doctrine." *Id.* at 863.

25. Grano, *supra* note 24, at 863. See also *Reck v. Pate*, 367 U.S. 433, 355 (1961) (Clark, J., dissenting) (the voluntariness doctrine sets up ambiguous standards upon which reasonable minds can differ); Stone, *supra* note 13, at 102.

26. See Sonenshein, *Miranda and the Burger Court: Trends and Countertrends*, 13 LOY. U. CHI. L.J. 405, 413 (1982) (voluntariness necessitates an examination of all the facts).

the behavior of the police and the subjective attributes of the suspect.<sup>27</sup> As a result, the voluntariness test was an ambiguous standard which afforded little predictability in the courtroom.<sup>28</sup> Moreover, this standard provided no specific legal rules for police interrogators to follow.<sup>29</sup> At least one commentator believed that lower courts were able to utilize these inherent ambiguities to validate confessions of doubtful constitutionality.<sup>30</sup> Another writer opined that appellate courts were virtually unable to control such findings.<sup>31</sup> In answer to the patent inadequacy of the voluntariness test, the Supreme Court sought "some automatic device by which the potential evils of incommunicado interrogation [could] be controlled."<sup>32</sup>

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27. Stone, *supra* note 13, at 102. For a list of the "variables" considered by the Court, see *supra* note 21.

28. Sonenshein, *supra* note 26, at 413-14.

29. See *id.* at 414.

30. See Stone, *supra* note 13, at 102.

31. Sonenshein, *supra* note 26, at 413-14. Appellate courts were "hamstrung" because the question of coercion often resulted in a "swearing contest" between police officers and suspects. *Id.* at 414. The contest was one of credibility—and that determination was within the province of trial courts. *Id.*

32. W. SCHAEFER, *THE SUSPECT AND SOCIETY* 10 (1967). The Court had established such a device to some extent in federal prosecution through exercise of its supervisory powers. See *McNabb v. United States*, 318 U.S. 332 (1943). In *McNabb*, the Court held that a confession obtained by federal officers and offered in a federal prosecution could be excluded on the ground that it was elicited during a period of unnecessary delay in arraignment. *McNabb*, 318 U.S. at 341-42. *McNabb* was emphatically reaffirmed in *Mallory v. United States*, 354 U.S. 449 (1957). For a discussion of the *McNabb-Mallory* rule, see Hogan & Snee, *The McNabb-Mallory Rule: Its Rise, Rationale and Rescue*, 47 GEO. L.J. 1 (1958). See also N. SOBEL, *supra* note 7, at 13-15.

The Court next relied on the sixth amendment right to counsel as its "automatic device" for the exclusion of confessions in criminal cases. Stone, *supra* note 13, at 103. The sixth amendment provides in pertinent part that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." U.S. CONST. amend. VI.

In *Massiah v. United States*, the Court held that incriminating statements elicited after indictment and in the absence of counsel were inadmissible under the sixth amendment. 377 U.S. 201, 206 (1964). The *Massiah* Court reasoned that postindictment interrogation was a critical stage of the prosecution to which the right to counsel attached. *Id.* at 205-06. The Court automatically excluded any incriminating statements made by a suspect after indictment in the absence of counsel. *Id.* at 206. Because the holding in *Massiah* was limited to postindictment confessions obtained without counsel, however, it did not affect the majority of police interrogations, and thus failed to impact police coercion or deception. See N. SOBEL, *supra* note 7, at 38-39. See also Stone, *supra* note 13, at 103.

In *Escobedo v. Illinois*, the Court attempted to extend the *Massiah* holding to include pre-indictment confessions. 378 U.S. 478, 490-94 (1964). The *Escobedo* Court held that "when the process shifts from investigatory to accusatory—when its focus is on the accused and its purpose is to elicit a confession—our adversary system begins to operate, and . . . the accused must be permitted to consult with his lawyer." *Id.* at 492. The *Escobedo* opinion, however, combined sweeping language and a narrow holding, thereby generating more confusion than clarity in the courts. See Stone, *supra* note 13, at 103. For a discussion of

The Court provided such an automatic device in *Miranda v. Arizona*.<sup>33</sup> The *Miranda* Court set forth a "bright line" test of admissibility which focused on the application of the fifth amendment privilege against self-incrimination to in-custody interrogation:<sup>34</sup> "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."<sup>35</sup>

The Court directed the police to provide "procedural safeguards" when the suspect was "in custody,"<sup>36</sup> and "prior to interrogation."<sup>37</sup> The procedures required that "[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."<sup>38</sup>

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the confusion caused by the *Escobedo* opinion, see Enker & Elsen, *Counsel for the Suspect: Massiah v. United States and Escobedo v. Illinois*, 49 MINN. L. REV. 47 (1964); Kamisar, *supra* note 13, at 50-95.

33. 384 U.S. 436 (1966). Four separate confession cases were decided in the *Miranda* opinion. See *id.* at 491-99. In each case, the defendant had been arrested, taken to police headquarters, and interrogated. *Id.* at 445. In each case the police secured a confession that was used at trial to obtain a conviction. *Id.* The four cases decided in *Miranda* shared several salient features: they involved "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights." *Id.*

34. *Id.* at 441. The Court in *Miranda* thus shifted its emphasis from the sixth amendment right to counsel (invoked in *Massiah* and *Escobedo*) to the fifth amendment privilege against self-incrimination. See N. SOBEL, *supra* note 7, at 50-51. Although the dissenting justices in *Miranda* argued against the application of the fifth amendment privilege to the custodial interrogation setting, the Court's application of the privilege to this setting was to some degree foreseeable in view of the Court's earlier decision in *Bram v. United States*. See *Bram*, 168 U.S. 532 (1897). For a discussion of *Bram*, see *supra* note 13. See also *Miranda*, 384 U.S. at 460-65.

35. 384 U.S. at 444.

36. *Id.* The Court defined "custodial interrogation" to mean "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* See also Kamisar, "Custodial Interrogation" Within the Meaning of *Miranda*, CRIMINAL LAW AND THE CONSTITUTION 335, 337-51 (1968).

Subsequent Supreme Court pronouncements further clarified the term "custody." See *California v. Beheler*, 103 S. Ct. 3517 (1983) ("the ultimate inquiry [was] simply whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest") (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)).

37. "Interrogation" for *Miranda* purposes "refer[red] not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).

38. 384 U.S. at 444. The Court further stated that "[t]he defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, and intelligently." *Id.* A "heavy burden" rested on the government to



The *Miranda* Court determined that in-custody interrogation contained "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely."<sup>39</sup> Therefore, the Court found that a confession obtained during custodial interrogation and in the absence of the *Miranda* warnings conclusively would be presumed the result of police coercion.<sup>40</sup> Because such statements were presumed involuntary, they were inadmissible.<sup>41</sup>

In its attempt to provide "concrete constitutional guidelines for law enforcement agencies and courts to follow,"<sup>42</sup> the *Miranda* Court abandoned virtually all aspects of the voluntariness doctrine.<sup>43</sup> Because the Court grounded its decision in the privilege against self-incrimination, the issue of whether particular confessions were "trustworthy" or "reliable" was deemed irrelevant.<sup>44</sup> The case-by-case examination of police interrogation methods of physical or psychological coercion<sup>45</sup> was replaced by a concise requirement that the prescribed warnings be given.<sup>46</sup> Other inquiries central to the voluntariness test were similarly dismissed. As the *Miranda* Court stated, "[a]ssessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clearcut fact."<sup>47</sup>

The Court thus established an objective standard for the admissibility of confessions. Further, the *Miranda* Court found that the requirement of warnings was "fundamental with respect to the Fifth Amendment privilege."<sup>48</sup> Elaborating on this principle, the Court stated: "[T]he Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness

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establish such a waiver. *Id.* at 475. The Court emphasized that a valid waiver would not be presumed either from the silence of the accused after warnings were given, or from the fact that a confession was eventually obtained. *Id.*

39. *Id.* at 467.

40. *Id.* at 467, 471-72.

41. *Id.*

42. *Id.* at 442.

43. The Court recognized that the very confessions excluded in the *Miranda* decision may not have been "involuntary in traditional terms." *Id.* at 457.

44. The Court briefly addressed the issue of "trustworthiness" in its discussion of a suspect's right to the presence of counsel during interrogation: "If the accused decides to talk to his interrogators, the assistance of counsel can mitigate the dangers of untrustworthiness." *Id.* at 470. It is clear under *Miranda*, however, that an otherwise "reliable" statement would be excluded if the prescribed warnings were not given. *See id.* at 471.

45. For a discussion of the police methods considered under the voluntariness doctrine, see *supra* note 17 and accompanying text.

46. 384 U.S. at 478-79.

47. *Id.* at 468-69 (footnote omitted).

48. *Id.* at 476.

against himself. That right cannot be abridged."<sup>49</sup>

In the years following *Miranda*, the Warren Court upheld these precepts.<sup>50</sup> By 1971, however, the composition of the Supreme Court had changed, and there was no longer a majority of Court members sympathetic to the *Miranda* doctrine.<sup>51</sup>

The first Burger Court decision to consider the admissibility of statements obtained in violation of *Miranda* was *Harris v. New York*.<sup>52</sup> In *Harris*, the defendant was charged with selling heroin to an undercover police officer.<sup>53</sup> After his arrest, the defendant made incriminating statements to the police without the benefit of full *Miranda* warnings.<sup>54</sup> The issue before the *Harris* Court was whether the prosecution could use the defendant's incriminating statements to impeach the credibility of his testimony at trial.<sup>55</sup> The Court held that evidence obtained in violation of *Miranda* was admissible at trial for the limited purpose of impeachment.<sup>56</sup> In reaching its conclusion, the *Harris* Court reasoned that a primary purpose of the *Miranda* exclusionary doctrine was to deter improper police conduct.<sup>57</sup> Because the Court found that excluding the statements from the prosecution's case in chief was a "sufficient deterrent," it permitted the prosecution to use the statements to impeach the defendant on cross-examination.<sup>58</sup>

In holding that evidence obtained in violation of *Miranda* was admissible to impeach the defendant in *Harris*, the Court emphasized that the statements in question were neither "coerced" nor "involuntary."<sup>59</sup>

49. *Id.* at 479.

50. *See, e.g.,* *Orozco v. Texas*, 394 U.S. 324 (1969) (*Miranda* warnings required when suspect interrogated in his own bedroom, as he was deprived of his "freedom of action"); *Mathis v. United States*, 391 U.S. 1 (1968) (*Miranda* applied to interrogation of a suspect about an offense unrelated to the offense for which he was detained).

51. *See* Sonenshein, *supra* note 26, at 416-17. President Nixon appointed Chief Justice Burger to the Supreme Court in 1969, and Justice Blackmun in 1970. Burger and Blackmun replaced Chief Justice Warren and Justice Fortas, both members of the *Miranda* majority. The Burger Court was "profoundly unsympathetic" to the Warren Court's criminal procedure jurisprudence. *Id.*

52. 401 U.S. 222 (1971).

53. *Id.* at 222-23.

54. *Id.* *Harris* was not warned of his right to appointed counsel. *Id.* at 224.

55. *Id.*

56. *Id.* at 226. The Court conceded that use of the incriminating evidence by the prosecution in its case in chief was barred by *Miranda*. *Id.*

57. *Id.* at 225. *But see id.* at 231 (Brennan, J., dissenting). Justice Brennan saw a broader purpose behind the exclusionary rule: "The objective of deterring improper police conduct is only part of the larger objective of safeguarding the integrity of our adversary system. The 'essential mainstay' of that system . . . is the privilege against self-incrimination . . ." *Id.* (quoting *Miranda*, 384 U.S. at 460).

58. *Id.* at 225. The Court noted that the "shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense." *Id.* at 226.

59. *Id.* at 224.

This language represented a distinct departure from the *Miranda* tenet that all statements procured in violation of *Miranda* were “presumed” coerced or involuntary.<sup>60</sup> Further, the *Harris* opinion examined the “trustworthiness” of the defendant’s testimony.<sup>61</sup> The issue of reliability had been effectively abandoned in *Miranda* when the Court’s focus shifted from traditional notions of voluntariness to the individual’s privilege against self-incrimination.<sup>62</sup>

Thus, the *Harris* decision evidenced a distinct departure from the language and rationale of *Miranda*.<sup>63</sup> Moreover, the opinion appeared to suggest a return to a “totality of the circumstances” standard, as it focused on such voluntariness issues as actual coercion and the reliability of the statements.<sup>64</sup> In *Michigan v. Tucker*,<sup>65</sup> the Court again examined these “voluntariness” issues. In *Tucker*, the police interrogated the defendant without warning him of his right to appointed counsel.<sup>66</sup> During the interrogation, the defendant mentioned the name of a friend, Henderson.<sup>67</sup> When Henderson was later questioned, he discredited the defendant’s alibi, and revealed that the defendant had made

60. Under a pure *Miranda* analysis, the policeman’s failure to administer full *Miranda* warnings necessarily would have led to the exclusion of the defendant’s statements for all purposes. See *Miranda*, 384 U.S. at 467, 471-72. The *Miranda* Court found that statements elicited without full *Miranda* warnings were presumed involuntary, and were therefore inadmissible. *Id.* For a discussion of the “presumed involuntariness” of statements obtained in violation of *Miranda*, see *supra* notes 39-41 and accompanying text.

61. 401 U.S. at 224-26. The Court found that in *Harris*’ case, “the trustworthiness of the evidence satisfie[d] legal standards.” *Id.* at 224.

62. See *supra* note 44 and accompanying text.

63. The *Miranda* Court had addressed the issue of whether statements elicited without proper warnings could be used for impeachment purposes:

Statements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial or to demonstrate untruths in the statement given under interrogation and thus to prove guilt by implication. These statements are incriminating in any meaningful sense of the word and may not be used without the full warnings and effective waiver required for any other statement.

384 U.S. at 477. The *Harris* Court appeared to ignore this language. See *Harris*, 401 U.S. at 222-26.

64. *Harris*, 401 U.S. at 223-25. For a discussion of the voluntariness standard, see *supra* notes 7-32 and accompanying text.

65. 417 U.S. 433 (1974).

66. *Id.* at 436. The interrogation in *Tucker* occurred before *Miranda* was decided. *Id.* at 437. Still, the police appeared solicitous of Tucker’s fifth amendment rights. Prior to interrogation, Tucker was advised that he had a right to remain silent, that any evidence taken could be used against him, and that he had a right to counsel. *Id.* at 436. Tucker’s trial, however, took place after the *Miranda* decision was handed down. *Id.* at 437. Under *Johnson v. New Jersey*, *Miranda* was applicable to *Tucker*. 417 U.S. at 435. See *Johnson v. New Jersey*, 384 U.S. 719, 732-33 (1966) (although *Miranda* not given retroactive effect, it did govern cases commenced after the decision was rendered).

67. 417 U.S. at 436-37.

several statements to him that implicated the defendant in the crime.<sup>68</sup> The issue before the Court was whether Henderson's testimony was admissible against the defendant, since Henderson's identity had been learned only through questioning the defendant in the absence of full Miranda warnings.<sup>69</sup> That is, were the "fruits" of the defendant's statements, which were obtained in violation of *Miranda*, admissible against him in court?<sup>70</sup>

Justice Rehnquist, writing for the *Tucker* majority, set forth a two-step analysis addressing the question of the admissibility of this evidence.<sup>71</sup> First, the Court considered whether the police conduct violated the defendant's fifth amendment right against compulsory self-incrimination, "or whether it instead violated only the prophylactic rules developed to protect that right."<sup>72</sup> The *Tucker* Court thus refuted the *Miranda* principles that the warnings were "fundamental" with regard to the fifth amendment,<sup>73</sup> and that a violation of *Miranda* was evidence of a constitutional violation.<sup>74</sup> The *Tucker* Court preferred to "hark back to the historical origins of the privilege" to determine whether the defendant's statements were actually compelled or involuntary.<sup>75</sup> After reviewing the circumstances of the defendant's interrogation, the Court found that the statements "could hardly be termed involuntary as that term has

68. *Id.* The defendant was charged with rape and assault. *Id.*

69. *Id.* at 437. Tucker's own statements were concededly inadmissible under *Miranda*. *Id.*

70. Thus, *Tucker* considered whether Henderson's testimony was inadmissible as a "fruit of the poisonous tree." The "fruit of the poisonous tree" doctrine precludes the use of evidence which derives from evidence that was itself illegally obtained by police. See *Wong Sun v. United States*, 371 U.S. 471 (1963) (excluding statements learned during course of an illegal arrest). For a discussion of the doctrine, see Pitler, "The Fruit of the Poisonous Tree" Revisited and *Shepardized*, 45 CALIF. L. REV. 579 (1968).

71. See *Tucker*, 417 U.S. at 439.

72. *Id.*

73. See *Miranda*, 384 U.S. at 476. For a discussion of the fifth amendment foundation of the *Miranda* warnings, see *supra* notes 34-35 & 48-49 and accompanying text.

74. See *Tucker*, 417 U.S. at 462-63 (Douglas, J., dissenting) (the *Miranda* rules are directly tied to the Constitution). See also *United States v. Russell*, 411 U.S. 423, 430 (1973) (a violation of *Miranda* involves a violation of a constitutional right); *Orozco v. Texas*, 394 U.S. 324, 326 (1969) ("use of . . . admissions obtained in the absence of the required warnings was a flat violation of the Self-Incrimination Clause of the Fifth Amendment"). The *Tucker* Court supported its rejection of *Miranda*'s constitutional basis reiterating the *Miranda* Court's statement that the Constitution does not necessarily require "adherence to any particular solution" to the problem of custodial interrogation. *Id.* at 444 (citing *Miranda*, 384 U.S. at 467). The *Tucker* Court did not mention, however, the *Miranda* Court's demand for alternate procedures "which are at least as effective in apprising accused persons of their right[s]. . . ." *Miranda*, 384 U.S. at 467.

75. *Id.* at 439-40. The Court compared "the facts of this case with the historical circumstances underlying the privilege against compulsory self-incrimination." *Id.* at 444.

been defined."<sup>76</sup> Therefore, the Court concluded, the police conduct did not violate the defendant's right against self-incrimination.<sup>77</sup>

Having determined that the police merely disregarded the "procedural rules" embodied in *Miranda*, the Court turned to the second step of its analysis, and considered what sanctions, if any, to impose for this disregard.<sup>78</sup> Because the Court found that the police did not abridge the defendant's constitutional rights,<sup>79</sup> exclusion under the "fruit of the poisonous tree" doctrine was not warranted.<sup>80</sup> According to the Court, the question of the admissibility of Henderson's statements ultimately had to be determined by weighing the governmental costs of exclusion against the benefit to society under the exclusion rationale.<sup>81</sup>

The Court identified two possible justifications for the exclusion of evidence in such cases.<sup>82</sup> First, the exclusion of evidence obtained in violation of *Miranda* might deter improper police conduct in the future.<sup>83</sup> The Court stated, however, that "[t]he deterrent purpose of the exclusionary rule [presumes] . . . willful, or at the very least negligent, [police] conduct which has deprived the defendant of some right."<sup>84</sup> Because the Court found that the police conduct in *Tucker* was neither willful nor negligent,<sup>85</sup> and the defendant's constitutional rights were not violated,<sup>86</sup> the deterrence rationale for exclusion did not apply.<sup>87</sup> The second justification for the exclusionary rule under *Tucker* arose

76. *Id.* at 445.

77. *Id.* at 445-46.

78. *Id.* at 446. The Court noted that the *Miranda* bar against using the statements in "the prosecution's case at trial" was "fully complied with." *Id.* at 445. The defendant's "statements claiming that he was with Henderson and then asleep during the time period of the crime were not admitted against him at trial." *Id.*

79. See *supra* notes 72-77 and accompanying text.

80. *Tucker*, 417 U.S. at 445-46.

81. See *id.* at 450.

82. *Id.* at 446-48.

83. *Id.* at 446 (citing *United States v. Calandra*, 414 U.S. 338, 347 (1974)). The Court recognized that the deterrence rationale is applicable in both fourth and fifth amendment contexts. *Id.* at 446-47. Deterrence of unlawful police behavior was of great importance to the *Miranda* Court. See *Miranda*, 384 U.S. at 465-66.

84. *Tucker*, 417 U.S. at 447. The *Tucker* Court explained: "By refusing to admit evidence gained as a result of [willful, unlawful police] conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused." *Id.*

85. *Id.* The Court found it important that "the officers' failure to advise [the defendant] of his right to appointed counsel occurred prior to the decision in *Miranda*." *Id.* Thus, the police could not have willfully intended to violate the *Miranda* strictures.

86. See *id.* at 445-46.

87. *Id.* at 447-48. The Court stated: "Whatever deterrent effect on future police conduct the exclusion of [the defendant's] statements may have had, we do not believe it would be significantly augmented by excluding the testimony of the witness Henderson as well." *Id.* at 448. The Court thus distinguished be-

when "involuntary statements" were involved.<sup>88</sup> This second justification concerned the "protection of the court from reliance on untrustworthy evidence."<sup>89</sup> The *Tucker* Court noted that in Henderson's case, the statements were neither involuntary nor untrustworthy.<sup>90</sup> Thus, the balance tipped in favor of the government interests,<sup>91</sup> and Henderson's statements were held admissible.<sup>92</sup>

The Court in *Tucker* employed an analysis distinctly reminiscent of the voluntariness approach. First, the *Tucker* Court's balancing of governmental and individual interests called for an examination of the "totality of the circumstances," a case-by-case inquiry.<sup>93</sup> Further, voluntariness issues such as "actual compulsion" and the reliability of the evidence were determinative considerations to the *Tucker* Court.<sup>94</sup>

*Michigan v. Tucker* thus left the basis and strength of *Miranda* in a precarious position. The *Tucker* Court both denied the constitutional foundation of *Miranda*<sup>95</sup> and blurred the "bright line" test of admissibility.<sup>96</sup> One commentator believed that the Supreme Court was dismantling *Miranda* "piecemeal."<sup>97</sup> The latest *Miranda* decision, *New York v.*

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tween the deterrent effects of excluding the actual statements taken in violation of *Miranda*, and excluding the "fruits" of those statements. *See id.* at 447-48.

88. *Id.* at 448.

89. *Id.* For a discussion of the Court's previous concern with unreliability, see *supra* notes 10 & 14-15 and accompanying text.

90. *See Tucker*, 417 U.S. at 448-50.

91. *Id.* at 450. The Court identified the government's interests as follows: [W]hen balancing the interests involved, we must weigh the strong interest under any system of justice of making available to the trier of fact all concededly relevant and trustworthy evidence which either party seeks to adduce. In this particular case we also must consider society's interest in the effective prosecution of criminals in light of the protection our pre-*Miranda* standards afford criminal defendants.

*Id.* (quoting *Jenkins v. Delaware*, 395 U.S. 213, 221 (1969)).

92. 417 U.S. at 450.

93. For a discussion of the totality of the circumstances test, see *supra* note 21 and accompanying text.

94. The *Tucker* Court implied that the presence of actual compulsion in the eliciting of the statements would have necessitated the exclusion of the evidence. *See Tucker*, 417 U.S. at 439-52.

95. *Id.* at 439.

96. *Tucker's* actual impact on *Miranda* was tangential, as the Court steadfastly refused to admit at trial the defendant's own statements taken in violation of *Miranda*. *See id.* at 445.

97. *See Stone, supra* note 13, at 169. Other legal scholars agreed with Professor Stone that the future of *Miranda* was indeed ominous. *See Sonenshein, supra* note 26, at 425-26, 461. The cases following *Tucker* generally supported this prophecy. *See North Carolina v. Butler*, 441 U.S. 369 (1979) (holding an express waiver was not required under *Miranda*); *Michigan v. Mosley*, 423 U.S. 96 (1975) (holding that the police had "scrupulously honored" the defendant's rights when they recommenced questioning after the defendant had invoked the right to remain silent). *But see Estelle v. Smith*, 451 U.S. 454 (1981) (fifth amendment barred the government from offering psychiatric testimony where the defendant was not given *Miranda* warnings prior to a pretrial psychiatric ex-

*Quarles*,<sup>98</sup> does not dispel that impression.

In *Quarles*, a woman approached two police officers at 12:30 a.m. and told them that she had just been raped.<sup>99</sup> She described her assailant, and told the police that he had just entered a nearby supermarket and was carrying a gun.<sup>100</sup> One of the policemen, Officer Kraft, entered the store in pursuit of the alleged assailant.<sup>101</sup> He spotted Quarles, who matched the description given by the woman,<sup>102</sup> and ordered Quarles to stop and put his hands over his head.<sup>103</sup> Upon frisking Quarles, Officer Kraft discovered that Quarles was wearing an empty shoulder holster.<sup>104</sup> Officer Kraft then asked him, "Where is the gun?"<sup>105</sup> Indicating some nearby empty cartons, Quarles answered, "The gun is over there."<sup>106</sup> Officer Kraft retrieved the gun, and formally arrested Quarles.<sup>107</sup> Quarles was then read his *Miranda* rights.<sup>108</sup> Quarles indicated that he would answer questions without an attorney being present.<sup>109</sup> He admitted that he owned the gun, and stated that he had purchased it in Florida.<sup>110</sup>

The trial court excluded the defendant's initial statement and the gun, because the defendant had not been given his *Miranda* warnings before the police questioned him.<sup>111</sup> The court also excluded the defendant's subsequent statements regarding his ownership of the gun as

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amination from which the expert testimony was derived); *Edwards v. Arizona*, 451 U.S. 477 (1981) (upholding fifth amendment right to counsel under *Miranda*; once suspect requests counsel, he is not to be subject to further interrogation, in the absence of counsel, unless he initiates the communication); *Rhode Island v. Innis*, 446 U.S. 291 (1980) (defining boundaries of "interrogation" consistently with the "spirit" of *Miranda*).

98. 104 S. Ct. 2626 (1984).

99. *Id.* at 2629. The state of New York did not pursue the rape charge. See *id.* at 2630 n.2.

100. *Id.* at 2629.

101. *Id.* The other officer radioed for assistance. *Id.*

102. *Id.* Quarles then ran toward the rear of the store, and Officer Kraft lost sight of him for a few seconds.

103. *Id.* at 2630.

104. *Id.* By this time, Quarles was surrounded by four armed police officers. *Id.* at 2630, 2642 (Marshall, J., dissenting). The Court conceded that Quarles was "in custody" for purposes of *Miranda*. *Id.* at 2631. For a discussion of the meaning of "custody" under *Miranda*, see *supra* note 36.

105. 104 S. Ct. at 2630.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* Quarles was charged in New York state court with criminal possession of a weapon. *Id.* Under New York law, any person who possesses a loaded weapon outside of his home or place of business is guilty of criminal possession of a weapon in the third degree. See N.Y. PENAL LAW § 265.02(4) (McKinney 1980).

111. *Quarles*, 104 S. Ct. at 2630.

evidence tainted by the *Miranda* violation.<sup>112</sup> The Appellate Division of the Supreme Court of New York<sup>113</sup> and the New York Court of Appeals affirmed.<sup>114</sup> The United States Supreme Court reversed.<sup>115</sup>

Justice Rehnquist, writing for the majority, began his analysis in *Quarles* by reiterating the *Tucker* statement that the *Miranda* warnings were "not themselves rights protected by the Constitution but [were] instead measures to insure that the right against compulsory self-incrimination [is] protected."<sup>116</sup> The *Quarles* Court then noted that the fifth amendment right against compulsory self-incrimination was not abridged in this case, as the defendant made "no claim that [his] statements were actually compelled by police conduct which overcame his will to resist."<sup>117</sup> Therefore, according to the Court, the only issue was "whether Officer Kraft was justified in failing to make available to [the defendant] the procedural safeguards associated with the privilege against compulsory self-incrimination since *Miranda*."<sup>118</sup>

The Court decided that under the circumstances presented in *Quarles*, Officer Kraft was justified in not informing the defendant of his rights.<sup>119</sup> According to the *Quarles* Court, the police were not required to give *Miranda* warnings to suspects in situations where officers ask questions "reasonably prompted by a concern for public safety."<sup>120</sup> The Court observed that Officer Kraft was confronted with the immediate necessity of ascertaining the whereabouts of a gun.<sup>121</sup> "So long as the gun was concealed somewhere in the supermarket," the Court stated, "it obviously posed more than one danger to the public safety: an accomplice might make use of it, a customer or employee might later come upon it."<sup>122</sup> The *Quarles* Court thus created a public safety exception to the *Miranda* requirement that "warnings be given before a sus-

112. *Id.*

113. *See* New York v. Quarles, 85 A.D.2d 936, 447 N.Y.S.2d 84 (1981).

114. *See* New York v. Quarles, 58 N.Y.2d 664, 458 N.Y.S.2d 520, 444 N.E.2d 984 (1982).

115. *See* New York v. Quarles, 104 S. Ct. 2626 (1984).

116. *Id.* at 2631 (quoting Michigan v. Tucker, 417 U.S. 433, 444 (1974)). For a discussion of the *Tucker* rejection of the constitutional basis for the *Miranda* warnings, *see supra* notes 73-75 and accompanying text.

117. *Quarles*, 104 S. Ct. at 2631. The Court specifically rejected the notion "that the statement must be presumed compelled because of Officer Kraft's failure to read [the defendant] his *Miranda* warnings. *Id.* at n.5 (emphasis omitted).

118. *Id.* at 2631. Before the Court's decision in *Quarles*, the issue would have been whether the statements and the evidence derived from these statements should be excluded under *Miranda*. In apparent contemplation of the *Quarles* exception, however, Justice Rehnquist inquired into Officer Kraft's "justification" for not informing Quarles of his rights. *See id.* at 2631.

119. *Id.* at 2632.

120. *Id.* The Court noted that Officer Kraft asked only the question necessary to find the missing gun before advising Quarles of his rights. *Id.*

121. *Id.*

122. *Id.*



pect's answers may be admitted into evidence."<sup>123</sup> The Court further held that the availability of the public safety exception depended upon the court's assessment of the situation, and not "upon the motivation of the officers involved."<sup>124</sup>

In defining the applicability of the public safety exception, the *Quarles* Court set down a balancing analysis whereby the governmental need for answers in a particular situation would be weighed against the individual's need for a "prophylactic rule protecting the Fifth Amendment privilege against self-incrimination."<sup>125</sup> Thus, in *Quarles*, the governmental interest in the immediate discovery of the gun "outweighed" the defendant's "right" to know he had a right to remain silent.

Justice O'Connor, dissenting in part, stated that the majority had not offered sufficient justification for disregarding the teachings of *Miranda*.<sup>126</sup> In Justice O'Connor's view, the public safety exception undermined the strength of *Miranda*—the existence of a precise prophylactic rule.<sup>127</sup> Furthermore, Justice O'Connor explained, "*Miranda* has never been read to prohibit the police from asking questions [of a suspect] to secure the public safety."<sup>128</sup> Rather, it merely prevented the answer from being used against the defendant at trial.<sup>129</sup>

Justice Marshall, in his dissent,<sup>130</sup> accused the majority of misread-

123. *Id.*

124. *Id.* The Court reasoned as follows:

In a kaleidoscopic situation such as the one confronting these officers, where spontaneity rather than adherence to a police manual is necessarily the order of the day, the application of the exception which we recognize today should not be made to depend on post hoc findings at a suppression hearing concerning the subjective motivation of the arresting officer.

*Id.*

125. *Id.* at 2633.

126. *Id.* at 2634 (O'Connor, J., concurring in part and dissenting in part). Justice O'Connor conceded that "[w]ere the Court writing from a clean slate," she might have agreed with the majority. *Id.* She pointed out, however, that *Miranda* was "the law," and the *Miranda* Court had expressly rejected the notion that the need to interrogate could supercede the suspect's fifth amendment privilege. *Id.* at 2635 (O'Connor, J., dissenting) (citing *Miranda*, 384 U.S. at 479).

127. *Id.* at 2636 (O'Connor, J., concurring in part in the judgment and dissenting in part). According to Justice O'Connor, the public safety exception "unnecessarily blurs the edges of the clear line heretofore established and makes *Miranda*'s requirements more difficult to understand." *Id.* The public safety exception demands a factual inquiry into the exigencies of the situation of the particular case. *Id.* Justice O'Connor opined that "[t]he end result will be a finespun new doctrine on public safety exigencies incident to custodial interrogation, complete with the hair-splitting distinctions that currently plague our Fourth Amendment jurisprudence." *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 2641 (Marshall, J., dissenting). Justices Brennan and Stevens joined Justice Marshall's dissent.

ing *Miranda*.<sup>131</sup> According to Justice Marshall, *Miranda* did not permit courts to weigh the costs and benefits of giving warnings.<sup>132</sup> On the contrary, *Miranda* specifically mandated that the warnings be given.<sup>133</sup> Indeed, any statement elicited in the absence of the warnings were presumed coerced, and thus obtained in violation of the suspect's right against self-incrimination.<sup>134</sup> Furthermore, Justice Marshall warned, the abandonment of *Miranda*'s clear-cut rules for the incorporation of a public safety exception "condemns the American judiciary to a new era of *post hoc* inquiry into the propriety of custodial interrogations."<sup>135</sup>

It is submitted that the public safety exception to *Miranda*, as set down in *New York v. Quarles*, destroys *Miranda*'s basic strengths, and sentences both the police and the judiciary to the tribulations of the pre-*Miranda* voluntariness approach. Further, the *Quarles* Court has left the parameters of the exception singularly undefined. The decision offers no standard or guidelines for the identification of public safety situations. As a result, the scope of the exception is dangerously broad.

The basic strengths of the *Miranda* doctrine lay in the constitutional foundation of the warnings and the clarity of the per se rule of admissibility. As previously discussed, *Miranda*'s constitutional basis was effectively rejected in *Michigan v. Tucker*.<sup>136</sup> In *Tucker*, the warnings were severed from the fifth amendment privilege against self-incrimination, and were classified as mere procedural safeguards to that privilege.<sup>137</sup> The *Tucker* Court further asserted that a constitutional violation of the privilege against self-incrimination existed only if the confession was actually compelled under traditional voluntariness standards.<sup>138</sup> *Tucker*'s practical impact on the *Miranda* rule was limited, however, as the *Tucker* Court admitted into evidence only the "fruits" of the statements ob-

131. *Id.* at 2645 (Marshall, J., dissenting).

132. *Id.* Justice Marshall noted that the *Miranda* Court "refused to allow such concerns to weaken the protections of the Constitution." *Id.* The *Miranda* Court stated:

A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. *That right cannot be abridged.*

384 U.S. at 479 (citation omitted) (emphasis added).

133. See *Miranda*, 384 U.S. at 467-73.

134. For a discussion of the *Miranda* tenet of "presumed coercion," see *supra* notes 39-41 and accompanying text.

135. *Quarles*, 104 S. Ct. at 2641-42 (Marshall, J., dissenting).

136. For a discussion of *Michigan v. Tucker*, see *supra* notes 65-94 and accompanying text.

137. See *Tucker*, 417 U.S. at 445-46. For a discussion of *Tucker*'s rejection of the *Miranda* warnings as a constitutional prerequisite, see *supra* notes 72-75 and accompanying text.

138. See *Tucker*, 417 U.S. at 444-46.

tained in violation of *Miranda*. The defendant's own incriminating statements were excluded under *Miranda*.<sup>139</sup> In conceding that the defendant's own statements were inadmissible, the *Tucker* Court effectively upheld *Miranda*'s "clear stricture" that a statement elicited in the absence of warnings was not admissible at trial.

Thus, until *Quarles*, no Supreme Court decision had directly defied *Miranda*'s per se rule of admissibility.<sup>140</sup> Until *Quarles*, no court had admitted into the prosecution's case in chief statements which were blatantly procured in violation of *Miranda*.<sup>141</sup> As Justice O'Connor noted in her opinion: "Wherever an accused has been taken into 'custody' and subjected to 'interrogation' without warnings, the Court [has] consistently prohibited the use of his responses for prosecutorial purposes at trial."<sup>142</sup> This lauded era of "consistency" in the courts ended with *Quarles*.<sup>143</sup> Through the creation of an undefined, and in this case, thoroughly unnecessary exception for "public safety," the *Quarles* Court has struck a fatal blow to the most important strength of *Miranda*—the clarity of its bright line. The potential ramifications on American courts and law enforcement agencies are alarming.

The *Quarles* Court found that the availability of the public safety exception did not depend upon the subjective motivation of the individual officers involved.<sup>144</sup> Thus, the determination of whether a public safety exigency existed was a question for the court, and not the arresting officer. However, *Quarles* gave no standards or guidelines for a court to identify such a situation. The opinion did not define a "public safety" exigency. Presumably, a court would conduct a post hoc inquiry into all

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139. See *supra* note 78. The *Tucker* Court stressed this distinction: "This Court said in *Miranda* that statements taken in violation of the *Miranda* principles must not be used to prove the prosecution's case at trial. That requirement was fully complied with . . ." 417 U.S. at 445.

140. See *Quarles*, 104 S. Ct. at 2635 (O'Connor, J., concurring in part and dissenting in part) ("Since the time *Miranda* was decided, the Court has repeatedly refused to bend the literal terms of that decision.").

141. Justice O'Connor noted, however, that the Burger Court had also "refused to extend the [*Miranda*] decision or to increase its strictures in almost any way." *Id.* See, e.g., *California v. Beheler*, 103 S. Ct. 3517 (1983) (*Miranda* warnings not required where suspect voluntarily came to police station and was free to leave); *Oregon v. Mathiason*, 429 U.S. 492 (1977) (respondent not in custody and therefore not entitled to *Miranda* warnings when he voluntarily came to police and confessed); *Beckwith v. United States*, 425 U.S. 341 (1976) (*Miranda* warnings not required prior to noncustodial interview in criminal tax investigation). See also *Harris v. New York*, 401 U.S. 222 (1971) (statements admitted for limited purpose of impeachment, but not for prosecutorial purposes under *Miranda*).

142. *Quarles*, 104 S. Ct. at 2635-36 (O'Connor, J., concurring in part and dissenting in part) (emphasis added).

143. As Justice Marshall stated in his dissent, "In a chimerical quest for public safety, the majority has abandoned the rule that brought eighteen years of doctrinal tranquility to the field of custodial interrogations." *Id.* at 2644 (Marshall, J., dissenting).

144. *Id.* at 2632.

the surrounding circumstances.<sup>145</sup> As made manifest by the pre-*Miranda* voluntariness cases, such inquiries lead to unpredictability and possible arbitrariness in the courtroom.<sup>146</sup>

Similarly, the exception creates confusion from the policeman's point of view. With virtually no judicial standards to guide them, police officers must now decide whether the situation at hand "justifies an unconsented custodial interrogation."<sup>147</sup> "Few, if any, police officers are competent to make [that] kind of evaluation . . ."<sup>148</sup> In some cases, as Justice O'Connor recognized, police will benefit "because a reviewing court will find that an exigency excused their failure to administer the required warnings."<sup>149</sup> In other cases, however, "police will suffer because, though they thought an exigency excused their noncompliance, a reviewing court will view the 'objective' circumstances differently and require exclusion of admissions thereby obtained."<sup>150</sup>

The case itself illustrates the chaos that the public safety exception could unleash on courts and law enforcement agencies.<sup>151</sup> Upon an examination of the facts of *Quarles*, the New York Court of Appeals found "no exigent circumstances posing a threat to public safety."<sup>152</sup> The circumstances of Quarles' arrest appear to support this conclusion. The arrest took place after midnight in a deserted supermarket.<sup>153</sup> Before his interrogation, Quarles was "reduced to a condition of physical powerlessness."<sup>154</sup> He was handcuffed and surrounded by four armed policemen.<sup>155</sup> As the New York Court of Appeals noted, no evidence suggested that the officers were concerned for either their own or for the public's safety.<sup>156</sup> On the same facts, however, the United States

145. Such an inquiry was conducted by the *Quarles* Court. See *id.* at 2632-34. See also *id.* at 2642 (Marshall, J., dissenting) (the majority's analysis of the facts of *Quarles* conflicted with the New York courts' interpretation).

146. For a discussion of the shortcomings of the voluntariness test, see *supra* notes 23-32 and accompanying text.

147. *Quarles*, 104 S. Ct. at 2644 (Marshall, J., dissenting).

148. *Id.* (quoting *Rhode Island v. Innis*, 446 U.S. at 304 (Warren, C.J., concurring in the judgment)).

149. *Id.* at 2636 (O'Connor, J., concurring in part in the judgment and dissenting in part).

150. *Id.*

151. See *id.* at 2644 (Marshall, J., dissenting).

152. See *New York v. Quarles*, 58 N.Y.2d at 666, 458 N.Y.S.2d at 521, 444 N.E.2d at 985.

153. *Quarles*, 104 S. Ct. at 2641-42 (Marshall, J., dissenting).

154. *New York v. Quarles*, 58 N.Y.2d at 667, 458 N.Y.S.2d at 522, 444 N.E.2d at 986.

155. *Quarles*, 104 S. Ct. at 2631.

156. See *New York v. Quarles*, 58 N.Y.2d at 666, 458 N.Y.S.2d at 521-22, 444 N.E.2d at 985. Contrary to the Supreme Court's suggestion, Quarles was not believed to have, nor did he have, an accomplice. *Quarles*, 104 S. Ct. at 2642 (Marshall, J., dissenting). Moreover, there was little risk of a child coming across the weapon, as the Court suggested, as the arrest took place late at night. As the State acknowledged before the New York Court of Appeals:

Supreme Court came to precisely the opposite conclusion. The Court found that the missing gun "obviously posed more than one danger to the public safety."<sup>157</sup> As the dissent pointed out: "If after plenary review two appellate courts so fundamentally differ over the threat to public safety presented by the simple and uncontested facts of this case, one must seriously question how law enforcement officers will respond [to the public safety exception] in the confusion and haste of the real world."<sup>158</sup>

Thus, with the new exception for public safety, the law of confessions is in an unsettled, even precarious state. The decision demands a preliminary voluntariness inquiry into "actual" compulsion to determine whether a fifth amendment or a mere *Miranda* violation has occurred.<sup>159</sup> The question remains as to exactly what constitutes "actual compulsion."<sup>160</sup> Justice Rehnquist suggested that compulsion for fifth amendment purposes is demonstrated by police conduct which overcomes a suspect's will to resist.<sup>161</sup> Does "compulsion" for fifth amendment purposes also include psychological coercion?<sup>162</sup> Does the trustworthiness of the evidence have a bearing on its admissibility?<sup>163</sup>

*Quarles* also raises the issue of whether the public safety exception applies when the suspect's statements are both "actually compelled" and self-incriminating. In other words, may courts admit involuntary, coerced statements if the police obtained them during a "public safety" exigency? Finally, is it not true that most law enforcement confrontations involve some threat to the public safety?

The *Quarles* decision has overturned "eighteen years of doctrinal tranquility."<sup>164</sup> Unfortunately, due to the inherent ambiguities of the public safety exception, courts must now "dedicate themselves to spin-

After Officer Kraft had handcuffed and frisked the defendant in the supermarket, he knew with a high degree of certainty that the defendant's gun was within the immediate vicinity of the encounter. He undoubtedly would have searched for it in the carton a few feet away without the defendant having looked in that direction and saying that it was there.

Brief for Appellant at 11, *New York v. Quarles*, 58 N.Y.2d 664, 458 N.Y.S.2d 520, 444 N.E.2d 984 (1982), cited in *Quarles*, 104 S. Ct. at 2643 (Marshall, J., dissenting) (emphasis added).

157. See *Quarles*, 104 S. Ct. at 2632.

158. *Id.* at 2644 (Marshall, J., dissenting).

159. *Id.* at 2630-31. For a discussion of this distinction, see *supra* notes 116-19 and accompanying text.

160. For a discussion of various concepts and definitions of "compulsion," see *supra* notes 7-32 and accompanying text.

161. 104 S. Ct. at 2631.

162. See *Miranda*, 384 U.S. at 448-58. In *Quarles*, the defendant was surrounded by four armed, uniformed policemen. *Quarles*, 104 S. Ct. at 2642 (Marshall, J., dissenting). Surely such circumstances were "psychologically coercive."

163. For a discussion of the "trustworthiness" inquiry under the voluntariness standard, see *supra* note 10 and accompanying text.

164. *Quarles*, 104 S. Ct. at 2644 (Marshall, J., dissenting).

ning [a] new web of doctrines," and America's law enforcement agencies must suffer through another period of constitutional uncertainty.<sup>165</sup>

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165. *Id.* at 2645 (Marshall, J., dissenting).

