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New York v. Quarles:The "Public Safety" Exception to Miranda

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NEW YORK v. QUARLES: THE "PUBLIC SAFETY" EXCEPTION TO *MIRANDA*

I. INTRODUCTION

In *New York v. Quarles*,[1] the Supreme Court attempted to limit the exclusionary sanction provided under *Miranda v. Arizona*.[2] *Quarles* is a significant decision in the criminal procedure area not only because of the exception which it establishes, but because it represents "a legitimate effort by the Burger Court to reconcile the realities of effective law enforcement with the often hypertechnical rules of criminal justice."[3] Many observers have interpreted the *Quarles* decision as the long-awaited fruition of the conservatism now presiding over the Burger Court.[4] However, the setting for *Quarles* can be traced back to the *Miranda* decision itself.

A. Miranda v. Arizona: *The Precedent*

1. Requisite Procedural Safeguards Announced

In *Miranda v. Arizona*, the Supreme Court held that in the context of a "custodial interrogation,"[5] certain procedural safeguards[6] are necessary to protect the criminal suspect's fifth amendment privilege against compelled self-incrimination.[7] More specifically, the Court held that "the

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1. 104 S. Ct. 2626 (1984) (5-1-3 decision).

2. 384 U.S. 436 (1966).

3. Rogers, *Criminal Law Decisions of the 1983-84 Term: The Court Reaches Out to Adopt a "Common Sense" Approach*, 14 SUP. CT. RESEARCHER 115, 122 (1984); *see, e.g.*, United States v. Leon, 104 S. Ct. 3405 (1984) (adopting a "good faith" exception to the fourth amendment's exclusionary rule).

4. Rogers, *supra* note 3, at 125 (A coalition formed by Chief Justice Burger, and Justices O'Connor, Powell, Rehnquist, and White have prevailed in most of the decisions in the 1984 Term which appears to have split the Court along ideological lines).

5. The *Miranda* Court defined "custodial interrogation" as "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." 384 U.S. at 444. Though *Miranda* on its facts applied to station house questioning, it has not been so limited in subsequent decisions. *See, e.g.*, Rhode Island v. Innis, 446 U.S. 291 (1980) (police car); Orozco v. Texas, 394 U.S. 324 (1969) (suspect's bedroom); Mathis v. United States, 391 U.S. 1 (1968) (suspect's prison cell).

6. The *Miranda* Court suggested that the suspect, prior to questioning, be warned "that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." 384 U.S. at 479.

7. The fifth amendment provides: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." U.S. CONST. amend. V. *See also* Malloy v. Hogan, 378 U.S. 1 (1964) (declaring the fifth amendment applicable to the states under the fourteenth

prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant *unless* it demonstrates the use of procedural safeguards."[8]

The *Miranda* Court was seeking both to deter police misconduct and to protect the constitutional rights of an accused.[9] The Court believed that the subtle use of psychological coercion in custodial interrogations could only be effectively eradicated through designated limitations on the interrogation process itself.[10] However, the Court noted that the sanctions chosen should not unnecessarily burden the traditional functions of effective law enforcement.[11] Presumably, the Warren Court believed that the limitations it suggested properly addressed these corresponding concerns.

2. The Reception of *Miranda* by the Burger Court

Miranda was perhaps the most controversial of the criminal procedure decisions rendered by the Warren Court.[12] While a detailed analysis of its ramifications is beyond the scope of this comment, the *Miranda* doctrine has generally fallen into disfavor with the conservative majority now presiding over the Burger Court.[13] This development is reflected both in the Court's substantive decisions[14] and in the manner in which it has exercised its power of review.[15] The Burger Court has consistently refused the

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amendment due process clause).

8. *Miranda*, 384 U.S. at 444 (emphasis added).

9. *Id.* at 450-53; *see also* Kamisar, Brewer v. Williams, Massiah, *and* Miranda: *What is "Interrogation"? When Does It Matter?*, 67 GEO. L.J. 1, 16-18 (1978); Comment, Rhode Island v. Innis: *A Workable Definition of "Interrogation"?*, 15 U. RICH. L. REV. 385, 386 (1981).

10. *Miranda*, 384 U.S. at 460-64.

11. *Id.* at 450-53. The *Miranda* Court noted that "the traditional function of police officers to investigate crimes . . . [and to conduct] [g]eneral on-the-scene questioning as to facts surrounding a crime" would still be permitted prior to the administering of the suggested warnings. *Id.* at 477. Preserving life has also been characterized as a "common law function" of the police. United States v. Barone, 330 F.2d 543 (2d Cir.) (recognizing the emergency exception to the fourth amendment), *cert. denied*, 377 U.S. 1004 (1964); *see also* Bacigal, *The Emergency Exception to the Fourth Amendment*, 9 U. RICH. L. REV. 249, 250 (1975).

12. Stone, *The Miranda Doctrine in the Burger Court*, 1977 SUP. CT. REV. 99, 106.

13. *Id.* at 100.

14. *See, e.g.*, Michigan v. Tucker, 417 U.S. 433 (1974) (holding that evidence derived from statements elicited in violation of *Miranda* is admissible if the statements themselves have not been used to prove the prosecution's case at trial); Harris v. New York, 401 U.S. 222 (1971) (declaring that evidence obtained without compliance with *Miranda* safeguards is admissible in criminal prosecutions for impeachment purposes).

15. Stone, *supra* note 12, at 100-01. Professor Stone notes that:

> [During the 1973-1976 Terms,] the Court has granted certiorari in only one of the thirty-five cases on its appellate docket in which a defendant sought review of a lower court decision holding evidence admissible over a claimed violation of *Miranda*. During the same period, the Court has granted certiorari in thirteen of the twenty-five

opportunity to raise *Miranda's* strictures to the status of constitutionally mandated provisions.[16] Moreover, the propriety of balancing the government's interest in using the evidence against the competing interests served by its exclusion had already received limited recognition in the decisions immediately preceding *Quarles*.[17] In retrospect, the stage was clearly set for a *Quarles*-type opinion.

B. *The Case of* New York v. Quarles

1. The Facts

On September 11, 1980, shortly after midnight, a woman approached two police officers who were on patrol and told them that she had just been raped.[18] She gave a detailed description of her assailant and told them the man had just entered a nearby supermarket, and further, that he was carrying a gun.

While one of the officers radioed for assistance, the other (Officer Kraft) entered the store and spotted the respondent, who matched the description given by the woman. The respondent then ran toward the rear of the store, and Officer Kraft pursued him with his gun drawn. Officer Kraft lost sight of the respondent for several seconds, but upon regaining sight of him, ordered him to stop and put his hands over his head.[19]

Officer Kraft frisked the respondent and discovered that he was wearing a shoulder holster which was then empty. After handcuffing the respondent, Officer Kraft asked him where the gun was. The respondent nodded toward some empty cartons and responded, "the gun is over there." Officer Kraft then retrieved the gun from one of the cartons, formally arrested the respondent, and only then read him his *Miranda*

> cases in which the government sought review of a lower court decision excluding evidence on the authority of *Miranda* . . . . In ten of these cases, the Court interpreted *Miranda* so as not to exclude the challenged evidence. In the remaining cases, the Court avoided a direct ruling on the *Miranda* issue, holding the evidence inadmissible on other grounds. In effect, then, the Court has not held a single item of evidence inadmissible on the authority of *Miranda*.

Id.

16. *See* Michigan v. Tucker, 417 U.S. 433, 444 (1974) (declaring *Miranda's* procedural safeguards are "not themselves rights protected by the Constitution.").

17. *Id.* at 450 (weighing the judiciary's interest in obtaining relevant and trustworthy evidence against society's interest in the effective prosecution of criminals); *see also* Brewer v. Williams, 430 U.S. 387, 424 (1977) (Burger, C. J., dissenting) (calling for a balancing test in determining whether evidence should be excluded because of violations of *Miranda's* safeguards).

18. New York v. Quarles, 104 S. Ct. 2626, 2629-30 (1984).

19. Three other officers had arrived on the scene by the time the respondent had stopped at Officer Kraft's demand. *Id.* at 2630.

rights.[20] The respondent was charged in a New York state court with the criminal possession of a weapon.[21]

2. The Lower Court Decisions

At trial, the judge excluded the statement, "the gun is over there," and the gun itself,[22] because the officer had not given the respondent the warnings required by *Miranda* before asking him where the gun was located. This decision was subsequently affirmed without opinion by the Appellate Division of the Supreme Court of New York.[23]

The New York Court of Appeals also affirmed the lower court rulings.[24] The court rejected the state's argument that the exigencies of the situation justified Officer Kraft's failure to read the respondent his *Miranda* rights until after he had located the gun.[25] The court found it unnecessary to address the plausibility of an emergency exception to the usual requirements of *Miranda*, because it found no factual indication in the record supporting the proposition that Officer Kraft's inquiry was motivated by a subjective concern to secure either his own safety or the safety of the public.[26]

3. The Supreme Court Decision

The Supreme Court granted certiorari and reversed the decision of the New York Court of Appeals to suppress the respondent's statement and the gun.[27] Justice Rehnquist, speaking for the majority, concurred in the

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20. After administering the *Miranda* warnings, Officer Kraft then asked the respondent if he owned the gun and where he had purchased it. The respondent answered that he did own it and that he had purchased it in Miami, Florida. *Id.*

21. N.Y. PENAL LAW § 265.02(4) (McKinney 1980). The state originally charged the respondent with rape, but the count was dropped at the trial level.

22. The gun and statements about the respondent's ownership and place of purchase were excluded as the "tainted fruit" of the improper custodial interrogation. *Quarles*, 104 S. Ct. at 2630. *See* Wong Sun v. United States, 371 U.S. 471 (1963); Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

23. 85 A.D.2d 936, 447 N.Y.S.2d 84 (1981).

24. 58 N.Y.2d 664, 444 N.E.2d 984, 458 N.Y.S.2d 520 (1982) (4-3 decision).

25. 58 N.Y.2d 664, 666-67, 444 N.E.2d 984, 985-86, 458 N.Y.S.2d 520, 521-22 (1982).

26. *Id.* (concluding "there is no evidence in the record before us that there were exigent circumstances posing a risk to the public safety.").

27. Once the Court concluded that Officer Kraft's question concerning the whereabouts of the gun was legally permissible, the gun and the statements about the respondent's ownership and place of purchase were no longer subject to a tainted evidence characterization. Accordingly, they were also deemed admissible. New York v. Quarles, 104 S. Ct. 2626, 2634 (1984).

Justice O'Connor, concurring in part and dissenting in part, asserted that the gun was admissible as nontestimonial evidence which is not proscribed by the *Miranda* decision or the fifth amendment. *Id.* at 2636-41. *See* Schmerber v. California, 384 U.S. 757 (1966) (blood tests held admissible because they were neither testimonial nor communicative in

lower courts' belief that the applicable limitations of *Miranda* had not been followed.[28] Nevertheless, the Court upheld the admissibility of the evidence through the introduction of a new "public safety" exception to the exclusionary sanction inherent in *Miranda*.[29]

The Court acknowledged the fact that Officer Kraft needed an answer to his inquiry not only to make his case against the respondent, but also to insure that further danger to the public did not result from concealment of the gun in a public area.[30] The Court cautioned that if the recital of *Miranda* warnings was required before such an inquiry, suspects in the respondent's position might well be deterred from responding.[31] In light of the potential cost to society imposed by this dilemma,[32] the Court concluded "that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the [f]ifth [a]mendment's privilege against self-incrimination" provided under *Miranda*.[33]

The *Quarles* Court recognized that in resolving the aforementioned dilemma, it lessened the desirable clarity of *Miranda's* strictures.[34] The significance, justification, and applicability of the *Quarles* decision will now be reviewed to evaluate the validity of such candor.

II. The Analysis of *New York v. Quarles*

A. *Significance of the Use of an "Exception"*

The *Quarles* Court noted, with apparent ease, that the facts before it came "within the ambit of the *Miranda* decision."[35] Accordingly, it concluded that the only way to admit the evidence that was elicited in violation of *Miranda* was to fashion an exception.[36] The "public safety" exception or its functional equivalent had been a topic of judicial debate long before the *Quarles* decision was rendered. A brief review of the analytical

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nature). In developing the "public safety" exception, Justice Rehnquist found no occasion to address the argument that the gun was admissible either because it is nontestimonial or because the police would inevitably have discovered it absent their questioning. *Quarles*, 104 S. Ct. at 2634 n.9. Justice Marshall, in his dissenting opinion, had serious doubts regarding Justice O'Connor's proposal for admissibility, but refused to discuss them because the "novel" theory was not raised in the New York courts. *Id.* at 2649 n.11.

28. *Quarles*, 104 S. Ct. at 2631 (holding that the lower courts were "undoubtedly correct in deciding that the facts of this case [came] within the ambit of the *Miranda* decision.").

29. *Id.* at 2632.

30. *Id.* at 2632-33 (noting the possible existence of an accomplice or the danger to a customer or employee who might happen upon the gun).

31. *Id.* at 2632.

32. *See infra* text accompanying notes 78-80.

33. *Quarles*, 104 S. Ct. at 2633.

34. *Id.* at 2631.

35. New York v. Quarles, 104 S. Ct. 2626, 2631 (1984).

36. *Id.* at 2632.

struggle experienced in such precedent insures that proper significance will be accorded to *Quarles'* analytical conclusions.

Before the *Quarles* decision, courts confronted with similar factual scenarios used two distinctive analytical approaches to sustain the admissibility of the evidence in question. Under the first approach a number of courts concluded that the facts before them came within the ambit of the *Miranda* decision, and requisite exceptions were then developed.[37] However, an equal number of courts concluded that the facts before them did not come within the ambit of the *Miranda* decision, reasoning that the questions of the police did not constitute "interrogation" under *Miranda*.[38] These courts emphasized that it is simply not custody plus

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37. *See, e.g.*, United States v. Mesa, 487 F. Supp. 562 (D.N.J.) (pre-*Miranda* inquiries concerning weapons illegal under *Miranda*), *rev'd*, 638 F.2d 582 (3d Cir. 1980); Cronk v. State, ___ Ind. App. ___, 443 N.E.2d 882 (1983) (pre-*Miranda* inquiries concerning location and method of detonation of a bomb condoned under an "emergency exception" to *Miranda*); People v. Toler, 45 Mich. App. 156, 206 N.W.2d 253 (1973) (pre-*Miranda* inquiries concerning location of suspect's gun condoned under a "limited exception" to *Miranda*); People v. Ramos, 17 Mich. App. 515, 170 N.W.2d 189 (1969) (pre-*Miranda* inquiries concerning location of suspect's gun condoned as a necessary protective procedure); State v. Lackey, 3 Ohio App. 3d 239, 444 N.E.2d 1047 (1981) (pre-*Miranda* inquiries concerning location of suspect's gun condoned under an "exception" to *Miranda*); State v. Markovich, 17 Wash. App. 809, 565 P.2d 440 (1977) (pre-*Miranda* inquiries concerning whether suspect had a gun condoned under an "exception" to *Miranda*). The California courts had developed a similar exception known as the "rescue doctrine" applicable in kidnapping interrogations. *See, e.g.*, People v. Modesto, 66 Cal. 2d 695, 427 P.2d 788, 59 Cal. Rptr. 124 (pre-*Miranda* decision), *cert. denied sub nom.* Modesto v. Nelson, 389 U.S. 1009 (1967); People v. Riddle, 83 Cal. App. 3d 563, 148 Cal. Rptr. 170 (1978), *cert. denied sub nom.* Riddle v. California, 440 U.S. 937 (1979); People v. Dean, 39 Cal. App. 3d 875, 114 Cal. Rptr. 555 (1974); Annot., 9 A.L.R.4th 595 (1981).

38. *See, e.g.*, United States v. Harris, 611 F.2d 170 (6th Cir. 1979) (inquiries concerning whether suspect had a gun do not constitute "interrogation" proscribed by *Miranda*); United States v. Castellana, 500 F.2d 325 (5th Cir. 1974) (inquiries concerning whether suspect had any weapons within reach do not constitute "interrogation" proscribed by *Miranda*); Davis v. State, 389 So. 2d 950 (Ala. App.) (inquiries concerning whether suspect had a gun did not constitute interrogation proscribed by *Miranda*), *rev'd sub nom. Ex parte* Davis, 389 So. 2d 952 (Ala. 1980); Pope v. State, 478 P.2d 801 (Alaska 1970) (inquiries concerning whether suspect had a gun do not constitute "interrogation" proscribed by *Miranda*); State v. Hein, 138 Ariz. 360, 674 P.2d 1358 (1983) (inquiries concerning location of suspect's gun may not constitute "interrogation" proscribed by *Miranda*); State v. Heath, 122 Ariz. 36, 592 P.2d 1302 (1979) (inquiries concerning what had happened and location of suspect's gun do not constitute "interrogation" proscribed by *Miranda*); People v. West, 107 Cal. App. 3d 987, 165 Cal. Rptr. 24 (1980) (inquiries concerning whether suspect had any accomplices do not constitute "interrogation" proscribed by *Miranda*); People v. Mullins, 188 Colo. 23, 532 P.2d 733 (1975) (inquiries concerning location of suspect's gun do not constitute "interrogation" proscribed by *Miranda*); Aldridge v. State, 247 Ga. 142, 274 S.E.2d 525 (1981) (inquiry concerning what had happened was attempt to ascertain the nature of the immediate situation and therefore did not constitute questioning proscribed by *Miranda*); People v. Brown, 131 Ill. App. 2d 244, 266 N.E.2d 131 (1970) (inquiries concerning location of suspect's gun do not violate the fifth amendment); Hunt v. State, 2 Md. App. 443, 234 A.2d 785 (1967) (noting inquiries by prison officials relating to the maintenance of

"questioning," as such, which calls for *Miranda* safeguards, but rather, custody plus police conduct calculated to elicit incriminating evidence. The courts reasoned that where the primary motive prompting the officer's questioning was not to elicit incriminating evidence, but to secure public safety, no "interrogation" under *Miranda* had occurred.[39] Therefore, the exclusionary sanction inherent in *Miranda* was not applicable, and the evidence in question was admissible.

In *Quarles*, the Court implicitly rejected this second approach. While holding that Officer Kraft's question regarding the whereabouts of the gun was prompted by a concern for public safety,[40] the Court nevertheless believed that the strictures of *Miranda* were applicable and had not been followed.[41] Thus, by recognizing the applicability of *Miranda*, the Court was required to fashion an exception in order to admit the evidence against the defendant.

B. *The Role of the Balancing Test in Fifth Amendment Analysis*

The "public safety" exception was derived from a tacit balancing of interests initiated by the Supreme Court.[42] In *Quarles*, the Court concluded that the securing of public safety is paramount to the strictures of *Miranda*.[43] However, the mere use of a balancing process within a fifth amendment analysis was strongly questioned by the dissent.[44]

The majority found ample justification for its use of a balancing test. First, the Court noted that the prophylactic *Miranda* warnings provide only "practical reinforcement" for the fifth amendment.[45] They are "not themselves rights protected by the Constitution."[46] Second, the propriety

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internal security and discipline do not fall within the ambit of *Miranda*); Commonwealth v. Hankins, 293 Pa. Super. 341, 439 A.2d 142 (1981) (inquiries concerning location of suspect's accomplices do not constitute "questioning" proscribed by *Miranda*); State v. Lane, 77 Wash. 2d 860, 467 P.2d 304 (1970) (inquiries concerning whether suspect had a gun do not constitute "interrogation" proscribed by *Miranda*); State v. LaRue, 19 Wash. App. 841, 578 P.2d 66 (1978) (inquiries concerning location of prisoner's knife do not constitute "interrogation" proscribed under *Miranda*).

39. *Castellana*, 500 F.2d at 326; *West*, 107 Cal. App. 3d at ___, 165 Cal. Rptr. at 28; *Aldridge*, 274 Ga. at ___, 274 S.E.2d at 529-30; *Hankins*, 293 Pa. Super. at ___, 439 A.2d at 144.

40. *Quarles*, 104 S. Ct. at 2632.

41. *Id.* at 2631.

42. *See supra* notes 30-33 and accompanying text. Many observers noted that in the current use of a cost-benefit analysis, the Burger Court has pronounced that the "ends sometimes do justify the means." Rogers, *supra* note 3, at 122.

43. New York v. Quarles, 104 S. Ct. 2626, 2633 (1984).

44. *Id.* at 2641 (Marshall, J., dissenting).

45. Michigan v. Tucker, 417 U.S. 433, 444 (1974) ("The suggested safeguards were not intended to create a constitutional straitjacket.") (quoting Miranda v. Arizona, 384 U.S. 436, 457 (1966)).

46. *Quarles*, 104 S. Ct. at 2633.

of the balancing process had already been recognized in the fashioning of exceptions to the fourth amendment.[47] Third, a balancing test had already been implicitly used in other *Miranda*-type cases.[48] Finally, the *Quarles* majority recognized a judicial balancing process implicit in *Miranda* itself, weighing the benefits of "enlarged protection for the [f]ifth [a]mendment" against "the cost to society in terms of fewer convictions of guilty suspects."[49] Consequently, the majority found no problem with adding the concern for public safety to this "pre-existing" scale.

Justice Marshall, in his dissenting opinion, asserted that the mere use of a balancing test exemplifies a misreading of *Miranda* and the fifth amendment.[50] He stated that the fifth amendment is absolute in its guaranty that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."[51] Justice Marshall noted further that the *Miranda* Court itself considered social arguments akin to those raised before the *Quarles* Court.[52] Nevertheless, to the *Miranda* Court, the privilege against self-incrimination was a right that "[could not] be abridged."[53] Accordingly, Justice Marshall concluded that such an absolute right is not susceptible to the tacit balancing engaged in by the majority and from which the "public safety" exception was derived.[54]

Arguably, it is Justice Marshall who has misread the focus and scope of the majority's opinion in the *Quarles* decision. The balancing process engaged in by the majority is directed to the applicability of the limitations

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47. The need to protect the physical safety of the police officer was weighed against the government's interest in investigating a crime in *Terry v. Ohio*, 392 U.S. 1 (1968) (The *Terry* Court allowed the police to detain a suspect and make a limited protective search for weapons whenever the officer has a reasonable belief that the person is armed and presents a danger to the officer or others nearby). It has been stated that the "public safety" exception is a "bona fide and minimally offensive security measure in the line of *Terry v. Ohio*." United States v. Castellana, 500 F.2d 325, 326 (5th Cir. 1974).

48. *See supra* note 17 and accompanying text.

49. *Quarles*, 104 S. Ct. at 2632. In *Miranda*, the cost to society was apparently outweighed by the added protection the procedural safeguards would provide. *Id.*

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

51. U.S. CONST. amend. V.

52. *Quarles*, 104 S. Ct. at 2645. In *Miranda*, Justice White, in dissent, warned that the proposed rules would "operate indiscriminately in all criminal cases, regardless of the severity of the crime or the circumstances involved." *Miranda*, 384 U.S. at 544 (White, J., dissenting).

53. *Miranda*, 384 U.S. at 479. Specifically, the *Miranda* court noted that:

> 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.

Id. (citations omitted).

54. *Quarles*, 104 S. Ct. at 2647.

of *Miranda*, not the applicability of the fifth amendment.[55] *Miranda's* limitations serve only to reinforce the protections secured by the fifth amendment.[56] Since they are not part of the fifth amendment, how could they be subject to any precedent barring its abridgment? Arguably, the strictures of the fifth amendment are not directly affected by the *Quarles* analysis or its conclusions.

The existing applicability of the fifth amendment itself is demonstrated in the majority's concern that the respondent remain free on remand to argue that his statement was *actually* coerced or compelled under traditional due process standards.[57] The "public safety" exception seeks only to reject the argument that the respondent's statement must be *presumed* compelled because of Officer Kraft's failure to administer *Miranda* warnings.[58]

C. *The Applicability of the "Public Safety" Exception: Employing An Objective Standard*

The *Quarles* Court stated that the availability of the "public safety" exception should be based on an objective review of the circumstances surrounding the custodial interrogation.[59] The Court reasoned that:

> 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.[60]

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55. The *Quarles* Court prefaced its opinion by recognizing that the "only issue" before them was whether Officer Kraft was justified in failing to administer the *Miranda* warnings. *Id.* at 2631. *See also* Michigan v. Tucker, 417 U.S. 433, 445-46 (1974) (noting that although the police misconduct departed from the prophylactic standard set out in *Miranda*, it had not abridged the respondent's constitutional privilege against compulsory self-incrimination).

56. *See supra* notes 45-46 and accompanying text.

57. *Quarles*, 104 S. Ct. at 2631 n.5. Before *Miranda*, the principal issue was not whether a defendant had waived his privilege against compulsory self-incrimination, but simply whether his statement was voluntary. The Due Process Clause of the fourteenth amendment was applied. The circumstances surrounding the interrogation were examined to determine whether the processes were so unfair or unreasonable as to render a subsequent confession involuntary. *See, e.g.*, Haynes v. Washington, 373 U.S. 503 (1963); Payne v. Arkansas, 356 U.S. 560 (1958); White v. Texas, 310 U.S. 530 (1940); Brown v. Mississippi, 297 U.S. 278 (1936); *see also* Note, *Police Use of Trickery as an Interrogation Technique*, 32 VAND. L. REV. 1167, 1173-80 (1979) (examining pre-*Miranda* voluntariness standard).

58. *Quarles*, 104 S. Ct. at 2631 n.5; *see also* Mincey v. Arizona, 437 U.S. 385 (1978) (affirming the independent viability of the pre-*Miranda* due process voluntariness standard).

59. New York v. Quarles, 104 S. Ct. 2626, 2632 (1984) (holding that "the availability of that exception does not depend upon the motivation of the individual officers involved.").

60. *Id.* The Court noted that most officers when placed in Officer Kraft's position would act out of a host of largely unverifiable motives—their own safety, the public's safety, and a

Accordingly, questions "reasonably prompted by a concern for the public safety" need not be prefaced by a recital of *Miranda* warnings.[61] A subjective intent to elicit incriminating evidence from the suspect is not determinative of the exception's applicability.[62]

The breadth of the *Quarles* standard appears to be a likely area for considerable judicial debate. Frequently, the officer's inquiry can be construed as one prompted by *both* a concern for public safety and a desire to elicit incriminating evidence. *Quarles'* judicial predecessors had emphasized an additional prerequisite to the availability of their "public safety" exception. The requisite concern for public safety must also be the *primary* motive prompting the question.[63] The *Quarles* Court was silent regarding such a requirement.

The use of an objective standard in determining the applicability of a noted exception is far from an anomaly in the law.[64] Its current injection into fifth amendment analysis may represent a reaffirmation of *Miranda's* initial attempt to objectify the law of confessions through the abandon-

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desire to elicit incriminating evidence. *Id.*

61. *Id.* (holding the concealed gun in the supermarket "obviously" posed more than one danger to public safety—an accomplice might make use of it or a customer or employee might later come upon it).

Notwithstanding the propriety of the "public safety" exception, Justice Marshall questioned whether the objective facts before the court warranted its application. The respondent was surrounded by four police officers, frisked, and handcuffed immediately upon apprehension. *Id.* at 2630. The respondent did not have, nor was he believed to have any accomplices. *Id.* at 2642. Accordingly, Justice Marshall noted that when the interrogation began, the officers were "strictly confident of their own safety to put away their guns." *Id.* Additionally, the store was virtually deserted at the time of the respondent's arrest just after midnight. *Id.* at 2643. Justice Marshall noted there were no customers or employees wandering about the store in danger of coming across the discarded gun. *Id.* at 2642-43. Knowing that the respondent had discarded his weapon somewhere near the scene of the arrest, the police could have easily cordoned off the area to facilitate a proper search for the missing gun. *Id.* at 2643. Hence, Officer Kraft's question as to the whereabouts of the gun was *not* "reasonably prompted by a concern for the public safety."

62. *Id.* This is not to say that the intent of the police is irrelevant in determining the availability of the exception. The subjective intent will probably constitute an important factor in the objective analysis. *See* Rhode Island v. Innis, 446 U.S. 291, 308 n.7 (1980) (recognizing the relevancy of the subjective intent of the police in the objective determination of whether "interrogation" under *Miranda* had occurred).

63. *See, e.g.*, State v. Lackey, 3 Ohio App. 3d 239, 444 N.E.2d 104 (1981) (holding that although the officer's question also elicited that evidence which formed the core element of the crime charged, the primary concern for public safety justified the exception); *cf.* People v. O'Brien, 113 Mich. App. 183, 317 N.W.2d 570 (1982) (rejecting the availability of the "emergency exception" because it appeared the police questioning which preceded *Miranda* was prompted by a dual purpose).

64. The Court has utilized an objective standard in other contexts. *See, e.g.*, Rhode Island v. Innis, 446 U.S. 291 (1980) (whether "interrogation" under *Miranda* occurred); United States v. Mendenhall, 446 U.S. 544 (1980) (whether a "seizure" within the meaning of the fourth amendment occurred); United States v. Robinson, 414 U.S. 218 (1973) (whether "search incident to arrest" exception to the fourth amendment should be applied).

ment of the previous subjective voluntariness test.[65] However, as Justice Marshall noted, its injection also "condemns the American judiciary to a new era of post hoc inquiry into the propriety of custodial interrogations" not witnessed since *Miranda*.[66]

D. *Future Application by the Courts*

The *Quarles* Court acknowledged that to some degree the introduction of the "public safety" exception lessens the desirable clarity of *Miranda's* guidelines.[67] While the full extent of this diminution can only be determined by further judicial discussion, it is evident that the "doctrinal tranquility" provided under *Miranda* will be upset.

As Justice O'Connor noted, the "core virtue" of *Miranda* laid in its rigidity and preciseness.[68] It afforded the courts clear guidance on the manner in which custodial interrogations were to be conducted.[69] The penalty for variations was absolute exclusion.[70] Justice O'Connor predicted that the end result of the "public safety" exception will be "a finespun new doctrine of public safety exigencies incident to custodial interrogation, complete with the hair-splitting distinctions that currently plague our [f]ourth [a]mendment jurisprudence."[71]

Justice Marshall cited the present case as illustrative of the chaos the "public safety" exception will unleash into the judiciary system.[72] The circumstances surrounding the respondent's arrest were never in dispute.[73] On review, the New York Court of Appeals concluded that there was "no evidence in the record before us that there were exigent circumstances posing a risk to the public safety."[74] On review, the majority of the Supreme Court reached the opposite conclusion.[75] Consistent application of the exception is questionable "if after plenary review, two appellate courts so fundamentally differ over the threat to public safety presented."[76]

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65. *See supra* notes 57-58 and accompanying text.
66. *Quarles*, 104 S. Ct. at 2641-42 (Marshall, J., dissenting).
67. New York v. Quarles, 104 S. Ct. 2626, 2633 (1984).
68. *Id.* at 2636 (construing Fare v. Michael, 439 U.S. 1310, 1314 (1978)).
69. *Quarles*, 104 S. Ct. at 2636.
70. *See supra* note 8 and accompanying text.
71. *Quarles*, 104 S. Ct. at 2636.
72. *Id.* at 2644 (Marshall, J., dissenting).
73. *Id.*
74. *See supra* notes 26, 61 and accompanying text.
75. *See supra* notes 30, 60 and accompanying text.
76. *Quarles*, 104 S. Ct. at 2644. *See, e.g.*, State v. Hein, 138 Ariz. 360, ___, 674 P.2d 1358, 1363 (1983) (reversing a lower court decision since it believed that the officer's safety was not sufficiently in jeopardy to allow questioning before giving the *Miranda* warnings); People v. Toler, 45 Mich. App. 156, ___, 206 N.W.2d 253, 256 (1973) (noting the severity of the defendant's injury is determinative of whether the whereabouts of the gun posed a sufficient

While disagreements on the scope of the "public safety" exception and mistakes in its application appear inevitable, the real victim may be the law enforcement agencies who will have to suffer through yet another period of constitutional uncertainty.[77]

E. *Future Application by the Police*

The *Quarles* Court believed that the "public safety" exception would alleviate the dilemma which confronted each police officer.[78] The officer previously had been placed in the untenable position of having to decide: (1) whether to forego the *Miranda* warnings, ask the questions necessary to secure the public safety, and render whatever evidence he uncovered inadmissible; or (2) give the *Miranda* warnings to preserve the admissibility of whatever evidence was uncovered, but jeopardize his ability to elicit that information necessary to secure public safety.[79] By removing the applicability of *Miranda's* exclusionary sanction to responses elicited by questions reasonably prompted by a concern for public safety, the Court hoped to lessen the necessity of such on-the-scene balancing processes.[80]

The Court anticipated that the exception would not be difficult for police officers to apply because "police officers can and will distinguish almost instinctively between questions necessary to secure their own safety or the safety of the public and questions designed *solely* to elicit testimonial evidence from a suspect."[81] In substance, the *Quarles* majority implicitly emphasizes the "good faith" of the officer.[82] This emphasis may inject subjectivity into the already overburdened fact-finding process.[83]

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risk to public safety); State v. Vargus, 118 R.I. 113, ___, 373 A.2d 150, 154 (1977) (reversing a lower court decision since it believed the defendant was no longer a dangerous risk to public safety). The determination of what poses a threat to public safety in a particular setting is further complicated by factual precedent. *See* State v. Hayes, 73 Wash. 2d 568, ___, 439 P.2d 978, 979 (1968) (the record revealed that although the suspect's arms were cuffed behind his back and he was escorted by a police officer, he still managed to draw a gun from its place on his person, and point it at the officer).

77. *Quarles*, 104 S. Ct. at 2645.

78. New York v. Quarles, 104 S. Ct. 2626, 2633 (1984).

79. *Id.* Justice Marshall, asserted that no dilemma actually exists. The police have never been denied the right to ask questions prompted by a concern for public safety. All that is denied is the use of any statements elicited before the administering of *Miranda* warnings against the suspect at trial. *Id.* at 2636-41.

80. *Id.* The Burger Court has manifested its desire to lessen appellate second-guessing of police conduct and to effect a practical and workable approach to criminal procedure. Rogers, *supra* note 3, at 122.

81. *Quarles*, 104 S. Ct. at 2633.

82. The Court believed the exception "simply frees the police officer to follow his legitimate instincts when confronting situations presenting a danger to the public safety." *Id.*

83. Stone, *supra* note 12, at 124. The author warns that:

> Use of a good faith defense . . . places a premium on ignorance. Moreover, a good

The majority noted Officer Kraft's instinctive ability to make the distinction required under the "public safety" exception.[84] The officer only asked for information necessary to locate the gun before advising the respondent of his *Miranda* rights.[85] Justice Marshall, in his dissenting opinion, also cited the *Miranda* case, but for its exemplification of the extraordinary difficulty of drawing the requisite distinction.[86] Justice Marshall questioned the officer's ability to draw this distinction in the confusion and haste of the real world, if the reviewing judiciary cannot reach a consensus as to whether a threat to the public safety existed in the uncontested facts of *Quarles*.[87]

Justice O'Connor noted that in some cases, the police will benefit under the guise of the "public safety" exception, because a reviewing court may find that an exigency excused its failure to administer the *Miranda* warnings.[88] In other cases, the police will suffer, because though it thought an exigency excused their noncompliance with *Miranda's* limitations, a reviewing court may view the objective circumstances differently.[89] This is a legitimate concern because the majority opinion could be perceived as abstract and ambiguous in its guidelines. What necessarily poses a threat to public safety and whether the exception recognizes differing degrees in the threat to public safety are questions apparently left to the piecemeal development of the lower courts.[90]. Accordingly, the police will have to suffer uncertainty until a new web of clarifications is spun.[91]

> faith defense would add an additional, and exceptionally difficult, fact-finding operation to the already overburdened criminal process. Except in the most unusual circumstances, determination of whether a mistake of law was "reasonable" is hardly an easy task. The existence of such a defense could generate uncertainty and invite calculated risks on the part of the police, thereby defeating the primary goal of *Miranda*.

Id.

84. *Quarles*, 104 S. Ct. at 2633.

85. *Id.*

86. *Id.* at 2644 n.4 (Marshall, J., dissenting).

87. *Id.* at 2644.

88. *Id.* at 2636.

89. *Id.*

90. While questions clearly prompted by the whereabouts of the weapon, New York v. Quarles, 104 S. Ct. 2626 (1984), the whereabouts of a kidnapped victim, People v. Riddle, 83 Cal. App. 3d 563, 148 Cal. Rptr. 170 (1978), *cert. denied*, 440 U.S. 937 (1979), and the existence of an accomplice, People v. West, 107 Cal. App. 3d 987, 165 Cal. Rptr. 24 (1980), have now been judicially delineated as falling within the ambit of the new public safety exception, the possible existence of other exigent circumstances to which the exception will be available is left to future extrapolations by the lower courts. On a practical level, the government can always contend that the question was prompted by a concern for public safety. Could not a question concerning the whereabouts of illegal drugs arguably be prompted by an objective desire to keep them from falling into the hands of school children? *See* Bacigal, *supra* note 11, at 263.

91. *Quarles*, 104 S. Ct. at 2645 (Marshall, J., dissenting).

III. Conclusion

Before *Miranda*, the admissibility of confessions was subject to the subtleties and elusiveness of the "totality of the circumstances" test inherent in the due process voluntariness standard. The Supreme Court in seeking to rectify the misgivings of the voluntariness standard injected the strictures of *Miranda*. *Miranda* afforded the police and the courts clear and succinct guidance on the manner in which to conduct proper custodial interrogations. While the preciseness of its procedural aspects was praised, the rigidity of its sanctions was criticized. The burden it imposed on the realities of effective law enforcement was an administrative cost many were not willing to endure.

The *Quarles* decision represents an effort not only to cut back on the overbreadth of *Miranda*, but also to reconcile the realities of effective law enforcement with the technical rules of criminal procedure. The decision has reintroduced traditional due process review into cases where concern for public safety predominates. The extent to which the factual scenario found in *Quarles* is permitted to be extrapolated will determine whether it remains a narrow exception or becomes the rule.

The net effect of the *Quarles* decision is to place more faith in the discretion and instincts of the police officer on the street. The recognition of the "good faith" of the police in the criminal justice system appears to mark the emergence of the Burger Court's strong conservative direction. The extent to which this emergence will further serve to limit *Miranda* must await future judicial discussion. Meanwhile, the trial courts and the police will be left to fashion these ideals into workable and consistent procedures.

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