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Miranda and the Media: Tracing the Cultural Evolution of a Constitutional Revolution

*Russell Dean Covey**

INTRODUCTION

Law's interplay with popular culture is fascinatingly multifaceted, and nowhere has the complexity of the relationship played out more fully than with the media's treatment of *Miranda v. Arizona*.[1] Not only did television make the *Miranda* warnings famous,[2] its adoption of *Miranda* as an icon of criminal procedure may be the main reason *Miranda* is good law today. At least, one can extract that claim from the Court's decision in *Dickerson v. United States*.[3]

The *Dickerson* Court declined the opportunity to overrule *Miranda* and return interrogation law to its pre-*Miranda* status, it said, largely because "*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture."[4] Pop culture thus saved *Miranda*. But why? What, if any, link is there between the procedures that constitute "routine police practice" and the fact that *Miranda* has become a part of the national culture?

To the extent that there is a link at all, I suspect it is quite attenuated. Delivery of *Miranda* warnings to a suspect prior to custodial interrogation is only one of many routine police practices, most of which—say, the search-incident-to-arrest

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1 384 U.S. 436 (1966).

2 *See, e.g.*, Paul Finkelman, *Civil Rights In Historical Context: In Defense Of Brown*, 118 HARV. L. REV. 973, 998 (2005) (reviewing MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004)) (noting that most Americans "can recite the *Miranda* warning from memory because they have heard it so often on television").

3 Dickerson v. United States, 530 U.S. 428, 444 (2000). The issue presented to the Court in *Dickerson* was the constitutionality of 18 U.S.C. § 3501, a provision of the 1968 Omnibus Crime Control Act which purported to replace *Miranda* with an approach to assessing the admissibility of statements obtained in custodial interrogation that directed courts to consider several factors, viewed in the "totality of the circumstances," in assessing whether a statement was "voluntary" and thus admissible under the Fifth and Fourteenth Amendments. *Id.* at 431–32.

4 *Id.* at 443.

rules—never became national icons. And what does embeddedness in pop culture have to do with the constitutionality of a warning requirement? On the surface at least, not much. In my view, the *Dickerson* Court's claim is best read as stating not one but two distinct justifications for upholding *Miranda*. One claim is that *Miranda* should be preserved because the *Miranda* warnings have become a *useful* part of routine police practice.[5] A second is that the *Miranda* warnings should not be dispensed with because of the collateral damage that would result from uprooting such an embedded cultural icon.

This article comments on the second of those two claims. It explores the depiction of interrogation in film and television from the 1940s to the present, and contrasts that imagery with the Supreme Court's interrogation jurisprudence over the same time frame.[6] Although my treatment of the subject is necessarily only fragmentary (a comprehensive review of either topic would fill many volumes), this article hazards a few tentative hypotheses.

First, a review of the treatment of interrogation in both domains during this period strongly suggests that law and popular culture are not autonomous regions of thought or distinct and isolated disciplines,[7] but rather that law and culture are in deep dialogue. On the one hand, as Professors Sarat and Kearns have noted, law is "constitutive of culture" in the sense that its "concepts and commands" have a way of penetrating the cultural

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5 That the *Miranda* warnings have been widely accepted as useful to prosecutors and the police is indicated by the fact that the United States in *Dickerson* agreed with the defendant that the *Miranda* warnings should not be overturned. The opposing position was argued by an amicus appointed by the Court. *See* Timothy P. O'Neill, *Why* Miranda *Does Not Prevent Confessions: Some Lessons from Albert Camus, Arthur Miller and Oprah Winfrey*, 51 SYRACUSE L. REV. 863, 865 (2001) (noting that "the federal government in *Dickerson* was happy to accept *Miranda*. Prosecutors have grown to like the fact that following *Miranda*'s formalistic rules almost invariably leads to admission of the confession. Moreover, the vast majority of suspects do not choose to invoke *Miranda*'s protections anyway").

6 As discussed below, part of the story concerns the triangular relationship <suspect—detective—law> whereby at different times the three have different relationships. At the risk of gross overgeneralization, in the noir period, suspect and detective were relatively equally matched, and the law was primarily depicted as a brooding omnipresence. During the *Miranda* era, the (good) law was infused with a more activist role as a shield for the (good) suspect against the (bad) police detective. That picture was reversed in the post-*Miranda* period, paradigmatically illustrated in *Dirty Harry*, where the (good) police detective actively opposes the (bad) suspect and the (bad) law. More recently, in cop shows like *NYPD Blue* and *Homicide*, the cycle has come full circle with a return to the depiction of "good/bad" cops squaring off against "good/bad" criminals under a "good/bad" law.

7 *See* PETER BROOKS, TROUBLING CONFESSIONS: SPEAKING GUILT IN LAW & LITERATURE 4 (2000) (noting that "[j]udges, lawyers, and legal scholars . . . have tended to treat the procedures and the language of the law as if they were fully hermetic").

consciousness almost imperceptibly.[8] At the same time, "[l]egal meanings are not invented and communicated in a unidirectional process."[9] Law's "internal definitions of some of its terms of art" cannot be reliably understood without reference to popular meanings and ordinary language.[10] Both popular culture and law draw from, and add to, a common set of iconographic images that represent and describe the world, thereby creating something of a collage of interrogation imagery that might be studied through a "semiotics" of law and order—that is, an attempt to construct meaning by analyzing the contexts and mutual relationships in which the concepts of law and order are embedded.[11] Because of this dialogic relationship, not only can the history of law be illuminated by reference to pop culture (and vice versa), but the constraints and demands of form and convention that each genre imposes in its own respective sphere necessarily influence and transform its counterpart.

Second, the history of *Miranda*'s iconization, duly noted by the Court in *Dickerson*, aptly illustrates this semiotics. I thus attempt to show that the changing depiction of *Miranda* on film and television intersects revealingly with the successive Warren, Burger, and Rehnquist Courts' treatment of interrogation law generally, and *Miranda* law in particular.

The origins of the story, however, predate *Miranda*. The "interrogation moment" has always been a central component of the popular image of law and order, from the single-minded effort of Porfiry Petrovich to secure Raskolnikov's confession in Dostoevsky's *Crime and Punishment*,[12] to the weekly episodes of *NYPD Blue* in which Detectives Bobby Simone and Andy Sipowicz play good cop/bad cop, using a variety of lawful and unlawful tactics in the "interview room" to induce suspects to confess guilt.[13] *Miranda*'s story must be understood as a continuation of an older plotline concerning popular culture's use of confession as a narrative device and its exploitation of police

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8 *See* LAW IN THE DOMAINS OF CULTURE 7 (Austin Sarat & Thomas R. Kearns eds., 1998).

9 *Id.* at 8.

10 BROOKS, *supra* note 7, at 4. *See also* LAW IN THE DOMAINS OF CULTURE, *supra* note 8, at 4–5.

11 For one take on the meaning of the phrase "legal semiotics," see Jeremy Paul, *The Politics of Legal Semiotics*, 69 TEX. L. REV. 1779, 1787–88 (1991) (identifying a central tenet of semiology as providing that "signs [like words or legal arguments] take their meaning from their mutual relationships in a system of signification" (quoting J.M. Balkin, *The Hohfeldian Approach to Law and Semiotics*, 44 U. MIAMI L. REV. 1119, 1121 (1990))).

12 *See* William Burnham, *The Legal Context and Contributions of Dostoevsky's* Crime and Punishment, 100 MICH. L. REV. 1227, 1236 (2002).

13 Susan Bandes & Jack Beermann, *Lawyering Up*, 2 GREEN BAG 2d 5, at 7 (1998) (discussing interrogation tactics portrayed on *NYPD Blue*).

interrogation as the vehicle that brings about these confessions. Confession's narrative convenience collides awkwardly with *Miranda*'s function as a legal solution to a problem dogging the Court at least since *Brown v. Mississippi*[14]: how to sort out the respective roles of police, trial courts, and appellate courts in setting the parameters of interrogation, in a way that ensures that confessions satisfy whatever qualitative criteria are necessary—be it reliability, voluntariness, or absence of torture or overt coercion—without overstepping their competency and jurisdictional bounds and without undermining effective law enforcement. Both law and pop culture have struggled to reconcile these competing demands.

Pop culture's confessional needs are not dissimilar to law's, but neither are they identical. Like all effective dramatic narratives, crime dramas must tell their stories within the short time their formats permit. Parsimony therefore is extremely important. At the same time, effective dramatic narrative requires enough of a sense of verisimilitude to permit the viewer to suspend disbelief for the duration of the drama.[15] The device of the confession serves the needs of parsimony well; it is the primary vehicle for narrative closure. (As will be discussed later, it is with respect to verisimilitude that confession as a plot device creates problems.) Few and far between are the crime and cop shows that do not end with the criminal's confession. The indispensability of the confession is evidenced by the fact that even in a contemporary crime show like *CSI: Crime Scene Investigation*, which depicts the crime-solving activities of forensic crime investigators whose job is to analyze and piece together *physical* evidence left at crime scenes, virtually every episode concludes with an interrogation (a highly unrealistic bit of role confusion) and confession from the "real" criminal.[16]

The screenwriter's dramatic reliance on confessions, regardless of story structure, is intuitively understandable. Where the narrative is presented from the viewpoint of the investigating detective, police officer, or crusading citizen who must solve a crime, the criminal's confession provides the possibility of a definitive resolution of the mystery; it permits revelation of what "really happened." At the same time, where

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14 297 U.S. 278, 286–87 (1936).

15 *See* Norman Rosenberg, *Looking for Law in All the Old Traces: The Movies of Classical Hollywood, the Law, and the Case(s) of Film Noir*, 48 UCLA L. REV. 1443, 1448–50 (2001) (discussing the requirements of realism and effective storytelling, including the need to reach adequate resolution of narrative tensions necessary to construct the plot).

16 The absurdity of lab technicians conducting interrogations is fairly self-evident. *See* Joanne Kimberlin, *Forget What You See on 'CSI,'* THE VIRGINIAN-PILOT, Oct. 3, 2006, at A1.

the narrative is presented from the criminal's perspective, the confession permits the character development so essential to effective narrative; the criminal confesses to demonstrate his acknowledgement of transgression, to make vengeance for wrongdoing possible, to create the preconditions for remorse, or to lay the foundation for just retribution. Dramatic convention requires that a villain give some verbal or at least inferable acknowledgement of culpability before the hero is permitted to plug him with lead.[17] Avenging heroes do not kill transgressors unaware. Not only would an unwarned killing be unmanly, it would defeat the very idea of retribution for which the avenging hero stands, because retributive punishment loses its meaning unless its subject is aware of the reasons for his punishment.[18]

Confession is equally important where the suspect in a dramatic narrative is innocent. Indeed, confession is perhaps even more important in this context, because a suspected character's innocence cannot be dispositively confirmed absent an exonerating explanation. As Peter Brooks writes, "[E]xculpation depends on articulation."[19] Resolution cannot occur unless the protagonist confesses the truth or the guilty party confesses to absolve the innocent. Thus, regardless of whether the story's protagonist is criminal or cop, guilty or innocent, narrative rules require a response to accusation in order to confirm guilt or to deny it, to justify retribution or defeat it.

Pop culture could hardly live without confession. Nor, as it turns out, can law. Some of the most interesting contemporary jury research suggests that juries evaluate evidence through a narrative lens.[20] That is, in reaching verdicts, "jurors impose a narrative story organization on trial information."[21] As such, the cognitive strategies jurors rely upon in the courtroom are similar, if not identical, to those at work in the living room or theater. Confessions likely perform a narrative function in the courtroom similar to that in fiction—they parsimoniously and definitively resolve doubts regarding the veracity of the prosecutor's story. The legal system's overwhelming reliance on guilty pleas to resolve criminal charges, moreover, further elevates the

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17 PETER A. FRENCH, THE VIRTUES OF VENGEANCE 84 (2001) (explaining that retributive vengeance requires that before receiving his (or her) just deserts the wrongdoer "accept that what he (or she) did to someone else was wrong").

18 *See id.* The requirement that criminal defendants must be competent at the time they are executed has been held to be a fundamental attribute of due process. Ford v. Wainwright, 477 U.S. 399, 409–10 (1986).

19 BROOKS, *supra* note 7, at 114.

20 *See* Nancy Pennington and Reid Hastie, *The Story Model for Juror Decision Making*, *in* INSIDE THE JUROR: THE PSYCHOLOGY OF JUROR DECISION MAKING 192 (Reid Hastie ed., 1993).

21 *Id.* at 194 (emphasis omitted).

importance of confession, since confession serves as a substitute for objective evidence of guilt. Appellate courts have come to rely on confessions (in the form of guilty pleas) in order to minimize post-conviction process. From the point of view of the legal system, confession (in the interrogation room or the courtroom) provides the closure necessary to the system's function and legitimacy. It thus comes as no surprise that the Court has announced that law cannot do without confession, proclaiming that "[a]dmissions of guilt are more than merely 'desirable,' they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law."[22]

But that still leaves the problem of how, consistent with the demands of verisimilitude and constitutional law, the confession is to be induced. After all, few confessions in reality are freely offered.[23] Bound up with the drama of confession, then, is the distinctive role performed by the confessor's handmaiden: the interrogator, who in drama as in real life may wear many hats,[24] including psychoanalyst, priest, lover, or policeman, or who may not be a person at all, but rather a diary[25] or dictaphone.[26]

As we will see, *Miranda*'s story reflects an evolving understanding of the relationship between police interrogator and suspect told by successive generations of jurists. But the Supreme Court was far from the only arbiter of the interrogation room. Even as the Supreme Court in its role as constitutional overseer of police evidence-gathering methods focused on the delicate legal intracacies of interrogation—weighing and balancing the respective importance of such values as individual autonomy and the right to be free of coercion against the state's interest in solving crimes and securing convictions—purveyors of popular culture were busily instantiating and appropriating interrogation and confession for their own distinct purposes. Their product—the crime films and police shows that have served as a mainstay of pop culture since Hollywood's birth—simultaneously borrows from authoritative sources of law (such as Supreme Court opinions), mirrors popular assumptions about

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22 Moran v. Burbine, 475 U.S. 412, 426 (1986) (citation omitted).

23 If law demanded voluntary confessions in the purest sense of the term, the only confessions the police could accept would be those in which a person of his own volition "enters a police station and states that he wishes to confess to a crime"—as *Miranda* itself almost but not quite suggested—the screenwriter (and the typical beat-cop) would be in difficult straits. 384 U.S. 436, 478 (1966) (quoting People v. Dorado, 62 Cal. 2d 338, 354 (1965)).

24 See BROOKS, *supra* note 7, at 35–42.

25 Nikolai Gogol, *Diary of a Madman*, *in* THE DIMENSIONS OF THE SHORT STORY: A CRITICAL ANTHOLOGY 53 (James E. Miller, Jr. & Bernice Slote eds., 1964).

26 See BILLY WILDER, DOUBLE INDEMNITY 10 (2000). The movie *Double Indemnity* is discussed *infra*.

what law is, and shapes public attitudes toward what law should be. Pop culture's depiction of interrogation reflects and provides a record of evolving legal norms and changing public expectations not only about law and the legal process, but about the nature of the human condition. The next part of this article attempts to illustrate this dynamic by juxtaposing images of interrogation in film and in Supreme Court decisions during the era of film noir.[27]

I. INTERROGATION IN THE PRE-*MIRANDA* ERA

The contest between interrogator and suspect featured centrally in the film noir crime dramas of the 1940s and 1950s.[28] Indeed, many films noir used the interrogation/confession device as their basic narrative framework.[29] In this part, I consider two brief fragments from a pair of the classic films noir, both released in 1944. The first fragment is a bit of dialogue from *Double Indemnity*, a film which follows the ill-fated scheme of insurance salesman Walter Neff and housewife Phyllis Dietrichson to murder Dietrichson's husband, which is told in the form of Neff's dying confession. Shortly after Neff (Fred MacMurray) has commenced an affair with Dietrichson (Barbara Stanwyck), Dietrichson divulges thoughts of murdering her rich and inattentive husband. Neff, with a dawning realization that her interest in him is related to her desire to take out and collect on a secret insurance policy on her husband's life, warns that such a plot would be quickly detected by his company's claims investigator. Says Neff, "[A] set-up like that would be just like a slice of rare roast beef. In three minutes he'd know it wasn't an accident. In ten minutes you'd be sitting under the hot lights. In half an hour you'd be signing your name to a confession."[30]

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27 The tactic used here is to focus more on fragmentary imagery, and less on the overarching moral lessons intended by the creators of popular culture, even if such overarching lessons could be clearly identified. *See* Rosenberg, *supra* note 15, at 1449–53 (noting that film medium tends towards open-texturedness rather than closed, tight meanings in order to resonate with wider audiences, and thereby increase box-office appeal and profit).

28 Norman Rosenberg defines film noir as "a group of motion pictures released during the 1940s and 1950s that foreground images of 'things legal.'" See Rosenberg, *supra* note 15, at 1446.

29 Both *Mildred Pierce* (Warner Brothers 1945) and *Double Indemnity* (Paramount Pictures 1944) were told in the form of confessions given by their ill-fated protagonists. The Greatest Films, Mildred Pierce (1945), http://www.filmsite.org/mild.html; The Greatest Films, Double Indemnity (1944), http://www.filmsite.org/doub.html. In *Mildred Pierce*, Mildred's confession was made to the police in the course of police-station questioning. In *Double Indemnity*, Walter Neff narrates his confession to a Dictaphone in his insurance office while he sits bleeding from a gunshot wound.

30 See Billy Wilder & Raymond Chandler, *Double Indemnity* (screenplay), *available at* http://www.weeklyscript.com/Double%20Indemnity.txt (last visited Mar. 22, 2007). The full dialogue is as follows:

PHYLLIS: The other night we drove home from a party. He was drunk

The second fragment to consider is a climactic scene occurring near the end of another 1944 film, *Laura*.[31] Laura Hunt (Gene Tierney) has been arrested for the murder of Diane Redfern, and Detective Mark McPherson (Dana Andrews) has brought Laura to the police station for questioning. As soon as McPherson sits down, he flips on two bright interrogation lights directed in Laura's face:

McPherson

"All right, let's have it."

Laura

"What are you trying to do, force a confession out of me?"

McPherson

"You've been holding out and I want to know why. It'll be easier for you if you tell the truth."

Laura

"What difference does it make what I say. You've made up your mind, I'm guilty."

McPherson

"Are you?"

Laura

"Don't tell me you have any doubts, since you. [dropping her head and shielding her eyes] Oh, I can't, please, do I have to have those lights in my face?"

[McPherson turns off the lights.]

"Thanks. [pause] No, I didn't kill Diane Redfern . . ."[32]

What do these two filmic fragments tell us about the popular conception of interrogation? Most obviously, their adoption of the "hot lights" in the interrogation room as a metaphor for police questioning suggests a prevalent assumption that moderate pressure in the interrogation room was standard, the norm rather than the exception. In *Laura*, McPherson turns on the lights without hesitation or pause. In *Double Indemnity*, when

again. When we got into the garage he just sat there with his head on the steering wheel and the motor still running. And I thought what it would be like if I didn't switch it off, just closed the garage door and left him there.

NEFF: I'll tell you what it would be like, if you had that accident policy, and tried to pull a monoxide job. We have a guy in our office named Keyes. For him a set-up like that would be just like a slice of rare roast beef. In three minutes he'd know it wasn't an accident. In ten minutes you'd be sitting under the hot lights. In half an hour you'd be signing your name to a confession.

31 LAURA (Twentieth Century Fox 1944).

32 *Id.*

Neff wishes to dissuade Phyllis from killing, he invokes the lights as a metaphor for police questioning. The lights are synonymous with interrogation itself.

In addition to reflecting a basic popular comfort with police pressure tactics in the interrogation room, several additional messages can be gleaned from the interrogation imagery in these pre-*Miranda* films. First, Neff's warning to Phyllis suggests a popular presupposition that when criminal suspicions point to a particular suspect, the suspect will be called to answer questions. Second, both fragments underscore the belief, or at least the pretense, that police pressure will induce revelation of the truth. These messages are of course fully consistent with the "dogmatic"[33] moral lesson of the films of the period: crime (although titillating) doesn't pay. Criminality inevitably leads to confession, which in turn leads to retribution, either in the form of punishment or, more typically, death—the fate that befalls Dietrichson and Neff in *Double Indemnity*, and Waldo Lydecker, the real killer in *Laura*. (Death, for narrative effect, is much neater than legal process.)

If the "hot lights" metaphor demonstrates the popular expectation that suspects will be questioned and that police will apply pressure to get suspects to talk, the juxtaposition of strong pressure tactics and delicate (or apparently delicate) suspects such as Laura Hunt and Phyllis Dietrichson suggests a further expectation that police interrogational pressure will be moderated in proportion to the strength of the suspect's capacity to withstand it. After all, very little pressure is necessary to overcome Laura's capacity—when she shows weakness, McPherson turns off the lights, and Laura talks.[34]

As the words "film noir" suggest, the prevalence of darkness

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33 Dogmatic, in the sense of reflecting the ordained beliefs authorized and approved by authority. All films of this era were required to comply with the Production Code, which (among other things) dictated that "the sympathy of the audience should never be thrown to the side of crime, wrongdoing, evil or sin," and that "[l]aw, natural or human, shall not be ridiculed, nor shall sympathy be created for its violation." MOTION PICTURE PRODUCTION CODE, GENERAL PRINCIPLES 1, 3 (1930), *reprinted in* LEONARD J. LEFF & JEROLD L. SIMMONS, THE DAME IN THE KIMONO: HOLLYWOOD, CENSORSHIP, AND THE PRODUCTION CODE app., at 286–87 (2d ed. 2001).

34 Laura's encounter further illustrates an image of police interrogation at once familiar and jarring: familiar because audiences are accustomed to the idea that criminals will be subjected to pressure tactics; jarring because McPherson's treatment of the beautiful Laura as a typical criminal upsets our preconceived notions of who should be subjected to them. The jarring quality of Laura's interrogation does not represent a condemnation of police pressure tactics, however, nor is the propriety of interrogation room pressure diminished by the fact that Laura's is an exculpatory confession. The confession is essential to the dissipation of the cloud of suspicion surrounding Laura and allows McPherson to identify the real killer and save Laura's life.

to "convey a bleak or cynical mood"[35] is an essential feature of the genre, and the play of light and dark not only serves an important aesthetic function but also works as an important narrative device. In a literary sense, the "hot lights" symbolize the glare of inquisition, a glare that unearths the "subterranean life of guilty secrets."[36] Questioning under the hot lights represents the literal and figurative process by which guilty secrets and wicked motives are dredged from the recesses of the criminal mind and exposed to the light of moral judgment and, ultimately, legal retribution. The harsh glare of the interrogation lights starkly contrasts with the shadowy underworlds in which the characters live. An emerging fascination with Freud also was manifested in the interrogation moment, which did double duty as a metaphor for the struggle between the unconscious (which seeks to remain hidden) and the psychoanalytic impulse to expose it to light.[37]

If police interrogation was portrayed as a useful, and perhaps essential, instrumentality of truth, interrogation was a soldier in the larger mission to expose the flawed humanity of the interrogated. The classic film noir criminals—Walter Neff and Phyllis Dietrichson in *Double Indemnity*, or even Waldo Lydecker (Clifton Webb) in *Laura*—were not cardboard cutouts but complex, flawed human beings. Part of film noir's fascination stems from its willingness to trade in shades of gray, to explore the murky complexities of human motive that move men and women to do evil. Criminality in film noir was variously portrayed as a vice or a weakness, stemming in some cases from the all-too-human desire for love, money, or drink, and in others, to moral or mental sickness, but almost always as the product of some recognizable human frailty.[38] Film noir thus acknowledged the thin line separating ordinary men and women from criminals.

How does law's depiction of interrogation compare? Perhaps not surprisingly, the Supreme Court's narrative tactics in its pre-

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35 TIMOTHY O. LENZ, CHANGING IMAGES OF LAW IN FILM & TELEVISION CRIME STORIES 54 (2003).

36 BROOKS, *supra* note 7, at 116.

37 See LEFF & SIMMONS, *supra* note 33, at 131 (noting that many Hollywood scriptwriters, themselves undergoing psychoanalysis, increasingly incorporated Freudian themes into their film scripts in the 1940s). As Brooks notes, like the interrogation room, the "Church's carefully crafted confessional and the psychoanalyst's couch are both places designed for the telling of intimate, dark secrets." BROOKS, *supra* note 7, at 141.

38 As such, the viewer has a complex emotional relationship with the main characters—empathizing with them at the same time that it becomes plain that they cannot escape retribution and punishment for their bad acts. In this way, film noir constructs criminal justice as the unfolding of tragedy—the characters' fatal flaws inevitably and inexorably causing their downfall.

Miranda involuntary confessions cases bear a striking resemblance to the interrogation-room dynamic depicted in film noir. Walter Neff's description of interrogation in *Double Indemnity*,[39] for instance, echoes the interrogation of Major Raymond Lisenba described by the Court in *Lisenba v. California*,[40] a case involving a defendant who—in classic film noir fashion—murdered his wife in order to collect life insurance on a "double indemnity" clause of the policy. Rejecting Lisenba's claim that his confession was involuntary, the Court explained that although Lisenba was confined and questioned without break by relays of police officers over a period of thirty-six hours, slapped (or worse), and deprived of sleep and food, the interrogation did not violate due process because, like the protypical film noir villain, Lisenba allegedly remained calm and cool throughout. In the Court's words, Lisenba

> exhibited a self-possession, a coolness, and an acumen throughout his questioning, and at his trial, which negatives the view that he had so lost his freedom of action that the statements were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer.[41]

The Court made no mention of interrogation lights in its opinion, but it registered no qualms over the pressure tactics that were admittedly used to interrogate Lisenba. Like *Double Indemnity* and *Laura*, the Court implicitly assumed that some amount of police pressure was permitted and even expected.

The "hot lights" were discussed at some length in *Ashcraft v. Tennessee*, however, where the Court reversed a defendant's murder conviction based on a finding that the defendant's confession, elicited after thirty-eight hours of non-stop questioning, was involuntary.[42] The Court narrated the events leading up to Ashcraft's confession:

> [E]arly in the evening of Saturday, June 14, the officers came to Ashcraft's home and 'took him into custody.' In the words of the Tennessee Supreme Court, 'They took him to an office or room on the northwest corner of the fifth floor of the Shelby County jail. This office is equipped with all sorts of crime and detective devices such as a fingerprint outfit, cameras, high-powered lights, and such other devices as might be found in a homicide investigating office. . . *It*

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39 *Double Indemnity* was adapted from a novel by James M. Cain, which in turn was based on a real murder that made headlines in 1927. The constant recycling of material from one genre to the next underscores the fluidity and seamlessness of the legal and cultural worlds. *See* IMDb.com, *Double Indemnity* (1944), http://imdb.com/title/tt0036775/ (last visited Mar. 16, 2007).

40 314 U.S. 219, 223 (1941).

41 *Id.* at 241.

42 Ashcraft v. Tennessee, 322 U.S. 143 (1944).

> *appears that the officers placed Ashcraft at a table in this room on the fifth floor of the county jail with a light over his head and began to quiz him.* They questioned him in relays until the following Monday morning, June 16, 1941, around nine-thirty or ten o'clock. It appears that Ashcraft from Saturday evening at seven o'clock until Monday morning at approximately nine-thirty never left this homicide room on the fifth floor.[43]

Ashcraft's interrogation followed the standard noir script in every detail. The interrogation room, equipped with a variety of criminal detection devices and interrogation lights, could have been lifted directly from a Hollywood set. As in *Lisenba*, police officers defended the extended interrogation with the assertion that after thirty-eight hours of questioning, Ashcraft remained "'cool,' 'calm,' 'collected,' 'normal.'"[44] But here the Court diverged from the script. Ashcraft's confession was not deemed, as it so easily might have been, the inevitable triumph of truth over criminal cunning. Instead, the Court critically noted the documented evidence of systematic police misconduct in interrogation, including the use of the "hot lights" to induce confessions,[45] and threw out Ashcraft's conviction on grounds that the thirty-eight hour interrogation was "so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom [the state's] full coercive force is brought to bear."[46]

Ashcraft, decided in the same year that *Double Indemnity* and *Laura* were released, provided an alternative interrogation narrative, and one decidedly more liberal than pop culture's. Certainly, the Court's condemnation of high-pressure police questioning diverged from the hard-nosed assumptions about police questioning embedded in films like *Double Indemnity* and *Laura*.

This is not to say that the Court was unanimous in its condemnation of the popular conception of police interrogation. Justice Jackson cited *Lisenba* in cautioning that he, at least, was "not ready to say that the pressure to disclose crime, involved in decent detention and lengthy examination," even if "inherently coercive," need be "denied to a State by the Constitution, where

43 *Id.* at 149 (emphasis added).

44 *Id.* at 151.

45 The Wickersham Commission's report on police third-degree practices had found that "[p]owerful lights turned full on the prisoner's face, or switched on and off have been found effective" by police for inducing defendants to confess. *Id.* at 150 n.6 (quoting *Report of Committee on Lawless Enforcement of Law made to the Section of Criminal Law and Criminology of the American Bar Association*, 1 AM. J. POLICE SCI. 575, 579–80 (1930)).

46 *Ashcraft*, 322 U.S. at 154 (citing Bram v. United States, 168 U.S. 532, 556, 562–63 (1897)).

they are not proved to have passed the individual's ability to resist and to admit, deny, or refuse to answer."[47] Nonetheless, the Court's basic direction appears to have been set. Although, over the course of the following two decades, the Court grew increasingly skeptical of high-pressure police interrogation, the dominant paradigm continued to be that of the clash of wills between suspect and interrogator, where the question was whether the pressure exerted on the suspect was proportional to her mental, physical, and emotional resources.[48] The use of belts, whips, and extended relay questioning was clearly improper, but the exploitation of inadequately explained inconsistencies fell safely within fair territory. The suspect's implicit obligation to produce an adequate and consistent explanation thus remained a central fact of police interrogation.

Ultimately, consideration of interrogation imagery in film and law during this era gives rise to a complex picture. On one hand, interrogation in the movies and in Supreme Court opinions share basic preconceptions. Interrogation in both mediums represented a climactic moment in the battle between good and evil, truth and crime, and pressure tactics—moderated so that the will of the suspect was not overborne—were recognized as a valuable tool to uncover wrongdoing. Sometimes the police overreached, but sometimes substantial pressure was both necessary and appropriate to expose chinks in the "almost perfect" story. At the same time, where Hollywood sought to emphasize the drama of the contest of wills, the Court began the project of crafting rules to limit the degree of pressure that interrogators might bring to bear on suspects. The attack on the "hot lights" had begun. To the extent that they lagged in reconceptualizing the interrogation-room narrative, it appears that Hollywood writers were taking their cues from the material around them, and not the other way around.[49] Led by Justices

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47 *Id.* at 170 (Jackson, J., dissenting).

48 *See, e.g.*, Culombe v. Connecticut, 367 U.S. 568 (1961). Justice Frankfurter explained that

> a confession made by a person in custody is not always the result of an overborne will. The police may be midwife to a declaration naturally born of remorse, or relief, or desperation, or calculation. If that is so, if the 'suction process' has not been at the prisoner and drained his capacity for freedom of choice, does not the awful responsibility of the police for maintaining the peaceful order of society justify the means which they have employed?

Id. at 576.

49 At least during this period, however, Hollywood's picture of interrogation lagged behind the progressive efforts of the Court to bring due process principles to bear on confessions. The 1944 films *Laura* and *Double Indemnity* are more akin in their iconography with the 1941 *Lisenba* case than they were with the 1944 *Ashcraft* decision which was already tending in the direction of *Miranda*. *Id.* at 154 (Justice Black's opinion, for example, suggests that interrogation standards should be judged by

Black and Frankfurter, the Court's stepped-up assault on coercive interrogation tactics for the time being would put the Court further out in front of pop culture in the coming decades.

II. *PERRY MASON*, *MIRANDA*, AND INTERROGATION ON THE WITNESS STAND

With *Brown v. Board of Education*[50] on the horizon and an increasing interest in the expansion of civil rights, both law and culture were set for major changes at the mid-century. By the time *Miranda* was decided, the effects of the civil rights movement and the ferment of the 1960s had wrought deep changes in popular culture, including a deep erosion in trust and sympathy for the police.

This distrust was reflected in Hollywood's choice of pop heroes. Although popular in the 1950s, both the crime film and the cop show had almost disappeared in the early 1960s.[51] To the extent police were portrayed at all in the popular culture of the decade, they tended to be depicted not as crime-fighting heroes but rather as "corrupt or inept."[52] Law, however, did not lose its attraction as a subject of pop culture. Although the police drama may have lost its luster, the stock of lawyers rose to unprecedented heights. The decade preceding *Miranda* witnessed a brief and unparalleled reign of the lawyer drama.[53] Three of the most famous trial films ever made, *Anatomy of a Murder* (1959), *12 Angry Men* (1957), and *To Kill a Mockingbird* (1967)[54] debuted during this period, as did the most famous trial lawyer never to grace an actual courtroom: Perry Mason.[55]

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comparison to the standards of the open courtroom: "It is inconceivable that any court of justice in the land, conducted as our courts are, open to the public, would permit prosecutors serving in relays to keep a defendant witness under continuous cross-examination for thirty-six hours without rest or sleep in an effort to extract a 'voluntary' confession.").

50 347 U.S. 483 (1954).

51 *See* LENZ, *supra* note 35, at 54 (stating that "crime film noir lasted until around 1955 when the public lost some of its interest in crime stories" in lieu of newfound interest in civil rights and the Cold War).

52 Bandes & Beermann, *supra* note 13, at 6 (noting that there was "a brief period in the late 1960s and early 1970s in which police (along with other government officials) were often portrayed as corrupt or inept").

53 *See* LENZ, *supra* note 35, at 54.

54 *Id.* at 46 (noting that these films continue to be "used in classrooms to teach civics lessons about law and politics").

55 Mason made his television debut in 1957. *See* Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229, 249 (1987). One of the dominant themes of *Perry Mason*, and indeed many of the major television series of the 1960s, was the ineptness of the police who, week after week, managed to arrest the wrong suspect only so Mason could expose the mistake in court. Other shows similarly "mocked the wayward ways of the crime-fighting establishment and even the law itself." *Id.* at 250. At the same time, several shows in the

Just as the Supreme Court's confession cases of the 1940s conceptualized interrogation in a manner paralleling the pop culture imagery of the era—as a battle of wits and wills between police officers and criminal suspects—Chief Justice Warren's opinion in *Miranda*, like the Court's opinions in *Gideon v. Wainwright*,[56] *Massiah v. United States*,[57] *Escobedo v. Illinois*,[58] and *Duncan v. Louisiana*,[59] reflected an approach to constitutional criminal procedure that elevated the role of lawyers above that of the police.[60] It is not farfetched to say, as some indeed have said, that the Warren Court's major milestones were in some sense a product of *Perry Mason*, or at least a reflection of the assumptions about the roles of lawyers, law, courts, prosecutors, and police common to pop cultural depictions of the era.[61]

In the *Perry Mason* view of the world, the defense lawyer rather than the police detective plays the principal role of guardian of justice. Week after week on television, Perry Mason induced criminals to confess, not in the interrogation room under the hot lights, but instead in the open courtroom, in response to irrefutable evidence or withering cross-examination and with the whole community as witness.[62] In the era of the lawyer drama, the law was certainly not depicted as perfect, as illustrated by the repeated false accusations of Mason's clients or the unjust conviction of Tom Robinson in *To Kill a Mockingbird*. But the solution to an imperfect law offered in the *Perry Mason* era was not the abandonment of law, but more and better law.[63]

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wake of *Perry Mason*'s success featured prosecutors as outright villains and defense lawyers as heroes. *Id.* at 254 (discussing the television shows *The Defenders*, *Cain's Hundred*, and *Arrest and Trial*). Indeed, the period from 1960 to 1968 featured a remarkably small number of traditional crime and cops-and-robbers dramas.

56 372 U.S. 335, 342 (1963) (holding that the Sixth Amendment right to assistance of counsel is a fundamental right incorporated by the Fourteenth Amendment's due process clause).

57 377 U.S. 201 (1964).

58 378 U.S. 478 (1964).

59 391 U.S. 145, 149 (1968) (holding that the right to trial by jury is a fundamental right incorporated by the Fourteenth Amendment's due process clause).

60 *See, e.g., Prime Time Law: Fictional Television as Legal Narrative*, N.J. LAW., Oct. 1998, at 34 (reviewing PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE (Robert Jarvis & Paul Joseph eds., 1998) (noting that "Perry Mason's success was . . . a function of what the public wanted to believe about its lawyers in that time").

61 *See* Stark, *supra* note 55, at 230 (arguing that "it would be . . . foolish to pretend that [*Perry Mason*] played no role at all" in the Warren Court's criminal procedure decisions).

62 *See id.* at 249 (describing the "formulaic" structure of *Perry Mason*, in which every episode concluded with Mason putting on a string of witnesses that "forced the real culprit to confess in the courtroom").

63 *See* LENZ, *supra* note 35, at 70 (noting that the message of *To Kill a Mockingbird* is "that law needs to be strengthened as an instrument of justice," a message that is "consistent with the liberal model of justice").

The need for more and better law is precisely what *Miranda* sought to deliver. But if *Miranda*'s spin on interrogation was not truly original,[64] its true genius, and perhaps what made it so controversial, was its wholesale inversion of the semiotics of interrogation. Hollywood writers "worth their salt" have always known that credible drama demands congruence between plot and character, as have sophisticated judges and lawyers. In *Miranda*, Warren sought to bolster the credence of the Court's attempt to reshape interrogation law by presenting the story of interrogation from the perspective of the suspect rather than the police. In this respect, he followed the teaching of Peter Fonda's character in *12 Angry Men*, in which Fonda explains that he does not share his fellow jurors' initial inclination to convict the defendant because he "*chose* to see the case from the perspective of the defendant rather than the prosecution."[65] By narrating the process of interrogation by recounting the tricks described in police interrogation manuals, *Miranda* deftly inverted the traditional roles of criminal and cop. By emphasizing the ploys used by interrogators to induce suspects to confess, Warren cast the police as the bad guys and suspects not as "criminals" but rather isolated, fearful, and helpless victims.[66]

Not only did *Miranda* shift perspective on familiar character roles, it also inverted traditional metaphors of light and darkness in the criminal law iconography. If in film noir the hot lights were a metaphor for the act of probing the dark recesses of the criminal mind—inevitably exposing the criminal's secrets to view—in *Miranda*, interrogation itself became a kind of virtually "criminal" secret, and the interrogation room a place where "police violence and the 'third degree' flourished."[67] Occurring unrecorded, in private, and thus eluding our scope of

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64 *Miranda*, of course, was not the first Supreme Court case to castigate police interrogation or to contrast it unfavorably with public, open-court proceedings. Beginning with Justice Black's decision in *Ashcraft*, the Court grew increasingly critical of high-pressure police interrogation tactics that diverged from courtroom standards. Justice Frankfurter, for instance, wrote in *Watts v. Indiana* that "[t]o turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process." 338 U.S. 49, 54 (1949).

65 LENZ, *supra* note 35, at 64.

66 George C. Thomas III & Richard A. Leo, *The Effects of* Miranda v. Arizona: *"Embedded" In Our National Culture?*, *in* 29 CRIME & JUST. 203, 217 (Michael Tonry ed., 2002) ("Somehow, suspects gained a measure of the Court's sympathy between *Lisenba* and *Miranda*. Somehow, the police had become authoritarian rather than simply overzealous."); Gerald Caplan, *Questioning* Miranda, 38 VAND. L. REV. 1417, 1447, 1472 (1985) (noting that although previous Supreme Court cases viewed the arrestee "as a hardy suspect—unwilling to confess and able to resist police questioning for hours without having his will overborne," *Miranda* portrayed arrestees as easily manipulatable persons).

67 Miranda v. Arizona, 384 U.S. 436, 445 (1966).

understanding, the interrogation room became the procedural equivalent of the Freudian unconscious—calling forth for a different sort of confession.[68] *Miranda's* solution was to expose interrogation's own dark secrets to public scrutiny, and in so doing to "interrogate" interrogation itself.[69]

Ultimately, this narrative move may not have been possible without the cover provided by the pop culture tropes of the period. The interplay between the Supreme Court's interrogation jurisprudence and popular culture's changing depiction of the role of lawyers, police and suspects is hard to pin down. It may be, however, that just as the creators of *Perry Mason* needed Justices Black and Frankfurter to lay the groundwork that would make Mason a compelling character, Chief Justice Warren needed *Perry Mason* to establish the cultural preconditions necessary for the large-scale transformation of legal culture he so obviously envisioned.

In any event, Justice Harlan's dissenting opinion in *Miranda*, which offered as a rejoinder to Warren's narrative the assertion that "peaceful interrogation is not one of the dark moments of the law,"[70] suggests that Warren's semiotic inversion did not pass wholly unnoticed. As the dissenters pointed out, the majority opinion reflected not merely a concern with the circumstances in which some confessions are made, but rather "a deep-seated distrust of all confessions."[71] To those who accepted the film noir image of interrogation as a necessary process of subjecting the suspect to questioning under the "hot lights," as did Justice Harlan, *Miranda* was a wolf in sheep's clothing.[72] It threatened inevitably to "return a killer, a rapist or other criminal to the streets and to the environment which produced

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68 *Id.* at 445. Chief Justice Warren imagines what happens during interrogation by recounting the interrogation tactics detailed in training manuals.

69 At least in a literary sense, the *Miranda* warnings perform an illuminative function very different from the interrogation room lights in the classic films noir. Not only do they educate suspects about their rights, but they also highlight, emphasize, and focus suspects on those rights. Repetition of the warnings makes it plain to the suspect that the decision to speak or remain silent is a choice with serious consequences. *Miranda* further illuminated the interrogation room chamber by opening its door to defense counsel. Knowledge of rights and the presence of counsel, the majority clearly hoped, would allow a fearful defendant to confront his interrogators with the assistance of law and thereby "to tell his story without fear." *Id.* at 466. Either by teaching suspects their rights, by opening up the interrogation room to the watchful eye of counsel, or by shifting the locus of the defendant's questioning from the interrogation room to the courtroom, *Miranda* was intended to dissipate the darkness surrounding the interrogation process, permitting truth to prevail in the courtroom—not in the backroom.

70 *Id.* at 517 (Harlan, J., dissenting).

71 *Id.* at 537 (White, J., dissenting).

72 Like Justice Jackson before him, Justice Harlan accepted that some pressure in the police interrogation room was essential to the revelation of truth. *See id.* at 515 (Harlan, J., dissenting).

him, to repeat his crime whenever it pleases him."[73] It also posed a veiled threat to every Hollywood screenwriter who needed to find a realistic way to allow his or her characters to confess in accord with the rules of dramatic narrative.

III. *DRAGNET* AND *MIRANDA*'S POPULAR DISSEMINATION

It did not take long for *Miranda* to travel from slip opinion to television script. Less than a year after the decision was handed down, the *Miranda* warnings became a regular component of Sergeant Joe Friday's arrest spiel on the television cop show, *Dragnet*. *Dragnet*, the brainchild of its star and creator Jack Webb, dramatized the day-to-day police work of the Los Angeles Police Department ("LAPD"). The show, which first aired on radio and then ran on television from 1952–1957, and was revived in 1967 for a second run through 1970, purported to dramatize real cases drawn from the files of the LAPD. Because of Webb's insistence on realism—real LAPD detectives served as technical advisers to the show[74]—the new *Miranda* rules were duly incorporated into the stories.

Given *Dragnet*'s tremendous popularity, the *Miranda* warnings quickly entered the American consciousness, but to what end? Friday's matter-of-fact delivery of the *Miranda* warnings undoubtedly suggested that law enforcement officers were cognizant of their legal duties and scrupulously respectful of civil rights. Detached, taciturn, devoted to his job and little else, Friday presented a calm and reassuring portrait of American law enforcement—an image likely to be comforting to the public and to television sponsors hoping for an antidote to the sense of a growing crime threat and perceptions of increasing disorder on the streets in the late 1960s.[75] *Miranda*'s apparently easy incorporation into the arrest and police questioning rituals might also have given *Dragnet* viewers the impression that respecting civil rights in general, and *Miranda* in particular, was not a difficult ordeal for the police. In addition, and perhaps most importantly, *Dragnet*'s treatment of *Miranda* suggested that the new procedures were in any event largely symbolic. On any typical episode, the arrest proceeded as follows: First, Friday or his partner would recite the *Miranda* warnings. Second, as soon as the warnings were given, Friday or his partner would launch into questioning. Third, in response, suspects

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73 *Id.* at 542 (White, J., dissenting).

74 LENZ, *supra* note 35, at 86.

75 *See* Stark, *supra* note 55, at 246 ("In broadcasting, . . . there is a key intermediary, the sponsor, who controls all air time, either directly or indirectly. *Dragnet*'s portrayal of the police undoubtedly warmed the hearts of advertisers, who found a pro-establishment sentiment more in keeping with their conservative political views.").

volunteered (often incriminating) answers.[76] On *Dragnet*, recitation of the warnings did nothing to change the essential nature of the custodial encounter.

In retrospect, Hollywood's decision to cast *Miranda* in this symbolic and ineffectual manner is not surprising; the dramatic demand for confession was as great after *Miranda* as it had been before. An interesting question, however, is whether Joe Friday's taciturn treatment of *Miranda* had any effect in actual interrogation rooms. Given that *Miranda* itself has had little, if any, effect on the confession rate, perhaps Joe Friday did teach a lesson to police and their suspects.[77] Several studies of police interrogation after *Miranda* have documented that police typically deliver *Miranda* in essentially the same droning monotone as Joe Friday, a tactic calculated to minimize the perception that the stakes have increased. What happens in real life is thus essentially what happened on *Dragnet*: the warnings are read, and the suspect talks.[78]

Dragnet, of course, depicted the criminal justice system from the perspective of law enforcement officers. As such, it demanded that viewers empathize with cops, not criminals. Nonetheless, the relatively peaceful, matter-of-fact, just-the-facts-ma'am policing style shown on *Dragnet* drew from and suggested a system that was fundamentally at peace with the law. On *Dragnet*, the police were competent and disinterested, they caught the bad guys, and they played "by the book." Consistent with the values of Perry Mason and the lawyer dramas of the earlier part of the decade, *Dragnet* presented "a formal, idealistic, civics conception of the criminal justice system. The police and judges are still on the same side," and "law, order, and justice are still closely related."[79]

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76 See, for example, *Dragnet: The Kidnapping* (NBC television broadcast Jan. 26, 1967) (or virtually any episode, where suspects make incriminating statements immediately after receiving the warnings).

77 *See* Yale Kamisar, *On the Fortieth Anniversary of Miranda: Why We Needed It, How We Got It—And What Happened to It*, 5 OHIO ST. J. CRIM. L. (forthcoming 2007), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=944546#PaperDownload, at 23 (observing that "[w]ith one conspicuous exception, there is wide agreement that *Miranda* has had a negligible impact on the confession rate").

78 *See* Thomas & Leo, *supra* note 66, at 237 (noting that empirical studies indicate that "despite the fourfold warnings, suspects frequently waived their *Miranda* rights and chose to speak to their interrogators. Some researchers attributed this largely unexpected finding to the manner in which detectives delivered the *Miranda* warnings, while others attributed it to the failure of suspects to understand the meaning or significance of their *Miranda* rights").

79 LENZ, *supra* note 35, at 89.

IV. THE POST-*MIRANDA* ERA

Joe Friday's stoic acceptance of *Miranda*, however, hardly reflected the storm of controversy that surrounded *Miranda* in the "real world." In Congress and in police departments across the nation, *Miranda* was greeted with outrage and hostility.[80] Although that hostility was not reflected on *Dragnet*, during the 1970s, television crime fighters grew increasingly jaded and dismissive both of *Miranda* and of the need more generally to protect the civil rights of criminal suspects.[81] Indeed, Jack Webb's sequel to the *Dragnet* series—*Adam-12* (which ran from 1968–1975)—regularly featured uniformed LAPD officers complaining about the Warren Court's criminal procedure decisions.[82] By the time *Kojak* debuted in 1976, the dominant attitude of cops toward law had undergone a total transformation from the *Perry Mason/Dragnet* era.

Kojak, played by bald-is-beautiful Telly Savalas, was a hard-nosed, "blue-collar, ethnic cop" who "was tougher than his predecessors, as well as more violent, unyielding, and obsessed with the way criminals were 'getting off' because the police were not allowed to do their job properly."[83] In stark contrast to Detective Friday's stoic and dutiful delivery of the *Miranda* warnings to arrestees, Kojak glibly announced to his captives in a first-season episode: "You guys all know your rights, you don't have to say anything."[84] In another episode, a suspect interrupted his interrogation by asserting that he would like a lawyer, and Kojak retorted, "Doesn't everybody?" The interrogation continued without a lawyer.[85] As *Kojak* demonstrates, by 1976, television cop shows had taken a turn away from the bland, just-the-facts-ma'am style of *Dragnet* and

80 *See* Thomas & Leo, *supra* note 66, at 205 (noting that "[t]he political reaction was swift and clear," including passage of legislation in 1968 purporting to repeal the decision); *id.* at 214 ("The instrumental fear was that warning suspects of a 'right to remain silent' and then promising a free lawyer to stand between them and the police would cause the rate of successful interrogations to plummet and the crime rate to soar.").

81 Buoyed in part by the popular success of *Dragnet* and the networks' insatiable appetite for popular programming, the era of the television police drama dawned with a vengeance. During the next several years, the networks debuted a number of new police shows, including popular hits such as *The Mod Squad* (ABC television broadcast 1968–73), *Adam-12* (NBC television broadcast 1968–75), and *Hawaii-Five-0* (CBS television broadcast 1968–80), and countless more detective shows, from *Columbo* (NBC television broadcast 1968) to *Baretta* (ABC television broadcast 1975–78).

82 *See* LENZ, *supra* note 35, at 87.

83 Stark, *supra* note 55, at 262–63.

84 *Kojak: Knockover* (CBS television broadcast Nov. 14, 1973). Following this truncated *Miranda* warning, Kojak grabs two suspects for an arrest photo and asks them to "say cheese."

85 Stark, *supra* note 55, at 264.

stopped doing things "by the book."[86] Not only did Hollywood cool to *Dragnet*'s (and *Miranda*'s) sense of procedural regularity, Hollywood affirmatively embraced the perspective of the dissenters in *Miranda* who predicted not only that *Miranda* would return rapists and killers to the streets, but that it would harm "those who rely on the public authority for protection and who without it can only engage in violent self-help with guns, knives and the help of their neighbors similarly inclined."[87]

Dirty Harry was the first of several major Hollywood films to dramatize that prediction.[88] In *Dirty Harry*, Clint Eastwood starred as Detective Harry Callahan, a rogue cop with blatant disdain for the law but a "good heart." Merciless to the bad guys, Dirty Harry is precisely the kind of cop you want on your side when the going gets tough. Rich in a symbolism of political and cultural criticism, the set-up of the movie involves the San Francisco police department's failing efforts to catch a serial killer loose on the streets of San Francisco. The killer has kidnapped a young girl and has demanded ransom. The Mayor, somewhat like Neville Chamberlain in 1939, agrees to appease the killer and pay the ransom. Although Detective Callahan is scornful, he consents to deliver the ransom money (although obviously he has no intention of obeying orders). After a vicious battle that almost costs Callahan his life, Dirty Harry tracks down and corners the killer in an empty football stadium. Displaying no mercy, Callahan coldly shoots the fleeing killer in the leg, and in a haunting and violent scene, demands to know where the kidnapped girl is. When the killer fails to reply, Callahan grinds his heel into the killer's mangled limb, provoking a desperate cry: "I want a lawyer . . . I have a right to a lawyer . . . I have rights . . . ." The scene fades to black while the wounded killer howls like an animal in pain.

The film immediately cuts to Detective Callahan watching the girl's dead body being retrieved from a hole, confirming that his act of torture succeeded in inducing the killer to confess. Then, in the next scene, Callahan has been called into his boss's office and arrives expecting congratulations. Instead, he is berated for his use of unlawful methods, informed that his search violated the suspect's *Miranda* and Fourth Amendment rights,

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[86] *Id.* ("On television, the police of the 1970's [sic] grew increasingly more contemptuous of the Constitution.").

[87] Miranda v. Arizona, 384 U.S. 436, 542 (1966) (White, J., dissenting).

[88] DIRTY HARRY (Warner Bros. 1971). See also Charles Bronson in *Death Wish* (Paramount Pictures 1974), described as a "key film in the vigilante cycle," and a mutation of "cop movies like *Dirty Harry* into an uncomfortable lynch mob attitude." THE BFI COMPANION TO CRIME (Phil Hardy ed., 1997).

and told that the evidence is inadmissible in court and that the killer would go free.[89]

The interrogation scene in *Dirty Harry* contrasts vividly, to say the least, with those in *Laura* and *Dragnet*. Not only does the film openly accuse the law of coddling vicious criminals to the detriment of public safety, but it seems to challenge the very premise of police regulation of interrogation. *Dirty Harry*'s political message is hardly subtle: the law is the problem, not the solution, because it creates a wedge between the forces of justice that need information and the criminals who seeks to conceal it.[90] And what is the law? What are the rights that let serial killers get off the hook for their crimes? Largely, the film suggests, *Miranda*, and particularly its promised right to counsel. *Dirty Harry* makes *Miranda* an icon of all that is perverse and ineffective in the justice system. *Dirty Harry*'s torture of the suspect, though portrayed with brutality, is ultimately meant to seem justifiable as a matter of simple justice, even if not legal in the eyes of the lawyers. In this manner, *Dirty Harry* not only takes on *Miranda*, it harkens all the way back to *Brown v. Mississippi*.[91] If law undermines the ability of cops to get confessions from clearly guilty suspects, does it not also undermine the possibility of justice?

Like *Dragnet*, the cop shows of the 1970s told their stories from the point of view of the police. As the cop shows became more sophisticated, the characters of the police men and women they featured gradually grew increasingly textured. But the criminals of this era, unlike their film noir predecessors, remained simple caricatures: animals so lost in their lust to do evil that it rarely mattered what fate befell them—arrest, shooting, or death by car crash—as long as they were ultimately tamed and subdued.[92] In *Dirty Harry*'s climactic interrogation

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89 In the end, Callahan disobeys a direct order to stay away from the case, saves a busload of children abducted by the killer, and delivers proper retribution. *See* IMDb.com, Plot Summary for *Dirty Harry* (1971), http://imdb.com/title/tt0066999/plotsummary (last visited Feb. 27, 2007).

90 *See* William Ian Miller, *Clint Eastwood and Equity: Popular Culture's Theory of Revenge*, *in* LAW IN THE DOMAINS OF CULTURE, *supra* note 8, at 161, 174 (noting that films like *Dirty Harry* and *Death Wish* depict *Miranda* warnings and other legal rules as symbols of the state's failure to deliver real justice; that is, they depict the loss of faith in public institutions).

91 297 U.S. 278, 285–86 (1936) (holding that a confession procured through torture violates the Fifth Amendment privilege against self-incrimination, and further, that this applies to the states).

92 The villain in *Dirty Harry* was as extreme an example of this as possible, a "psycho hippie" who "rapes and buries alive a teenager, shoots innocent people at random, tries to blackmail the whole city and finally terrorises [sic] a busload of children." THE BFI COMPANION TO CRIME, *supra* note 88, at 108. This phenomenon might be explained in part by an increasing emphasis on the portrayal of cops in contrast to film noir's focus

scene, Detective Callahan does not question a person, he breaks an animal.

Released in 1971, *Dirty Harry* anticipated the Burger and Rehnquist Courts' campaign to scale back *Miranda*. Numerous factors undoubtedly contributed to the backlash against *Miranda*. Most obviously, conservative judicial appointments from the Nixon, Reagan, and Bush administrations replaced liberals who were sympathetic to the Warren Court's progressive goals. But it is likely that pop culture's attack on law's benign image, an attack that necessarily undermined the Court's own legitimacy, further encouraged the Court's retreat. After all, the Justices, lacking both purse and sword, "must rely on public support for the implementation of their policies."[93] Here, it is Hollywood that is clearing space for a post-Warren Court retrenchment by reshaping the iconography, not only of interrogation, but of law itself. In any event, with only a few exceptions,[94] what followed *Dirty Harry* was a barrage of decisions that whittled down the scope and effect of *Miranda* and, at the same time, the costs to police of using pressure tactics to induce confessions. The first, and perhaps the most important, of these decisions was handed down the same year *Dirty Harry* was released. In *Harris v. New York*, the Court held that statements obtained in violation of *Miranda* could be used for impeachment purposes.[95] *Harris* undercut the hope that *Miranda* would provide the foundation for an interrogation-room code of conduct, and gave police ample incentive to ignore *Miranda* when doing so proved convenient. It also set the tone for the decisions to follow. Three years later, *Michigan v. Tucker* introduced the theory of *Miranda* as a "prophylactic" rule.[96] In 1979, *North Carolina v. Butler* established the critical clarification (really, partial overruling) of *Miranda*'s waiver rules, relieving police of the supposed heavy burden of showing that a suspect expressly waived his *Miranda* rights, so long as the facts and circumstances show that an implicit waiver was

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on criminals. But even prominent films that did give villains a high profile, such as THE SILENCE OF THE LAMBS (Orion Pictures Corporation 1991), tended to depict the villains as grotesqueries, not as normal human beings gone astray. *See* IMDb.com, Plot Summary for *Silence of the Lambs* (1991), http://imdb.com/title/tt0102926/plotsummary (last visited Feb. 27, 2007).

93 VALERIE J. HOEKSTRA, PUBLIC REACTION TO SUPREME COURT DECISIONS 5 (2003).

94 See, for example, Brewer v. Williams, 430 U.S. 387 (1977), which illustrated almost precisely the specter that *Dirty Harry* dramatized.

95 401 U.S. 222, 225 (1971).

96 417 U.S. 433, 445–46 (1974) ("[T]he police conduct at issue here did not abridge respondent's constitutional privilege against compulsory self-incrimination, but departed only from the prophylactic standards later laid down by this Court in *Miranda* to safeguard that privilege.").

knowing and intelligent.[97] Numerous decisions in the 1980s and 1990s only further watered down *Miranda*'s substantive protections.[98]

By the time *Dickerson* came before the Court, *Miranda* had been broken—much like *Dirty Harry*'s serial killer. As the Court somewhat euphemistically stated, "[O]ur subsequent cases have reduced the impact of the *Miranda* rule on legitimate law enforcement while reaffirming the decision's core ruling . . . ."[99] The notion that *Miranda* would make obsolete the backroom interrogation, that confessions would be made in the courtroom, if at all, or for that matter, that suspects needed much legal protection from their interrogators was long gone.[100] *Miranda* as legal formalism, however, was more entrenched than ever both in popular culture and in legal practice. Police departments had grown accustomed to *Miranda*, and even began to see its charm.[101] While *Miranda*—especially in its watered down post-*Dirty Harry* incarnation—placed few real constraints on police interrogation, it shielded interrogation practices from substantive scrutiny.[102] As long as *Miranda*'s formal warnings and waiver requirements were met, any confession obtained thereafter was almost always been treated as voluntary.[103]

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97 441 U.S. 369, 373 (1979).

98 *See Oregon v. Hass*, 420 U.S. 714, 722–23 (1975) (expanding *Harris v. New York*'s exception to permit the use of statements obtained after police disregarded the defendant's request for counsel for impeachment purposes); *Jenkins v. Anderson*, 447 U.S. 231, 240–41 (1980) (permitting the use of pre-arrest silence for impeachment purposes); *Fletcher v. Weir*, 455 U.S. 603, 607 (1982) (permitting the use of post-arrest silence for impeachment purposes); *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984) (holding that *Miranda* warnings are not required prior to roadside questioning during a routine traffic stop); *New York v. Quarles*, 467 U.S. 649 (1984) (creating a "public-safety exception" to *Miranda*); *Oregon v. Elstad*, 470 U.S. 298 (1985) (holding that the fruit of the poisonous tree doctrine does not apply to *Miranda* violations), *Moran v. Burbine*, 475 U.S. 412 (1986) (holding that a suspect's waiver of *Miranda* rights was knowing and voluntary despite failure of the police to inform him that a lawyer was attempting to contact him during interrogation); *Colorado v. Spring*, 479 U.S. 564 (1987) (holding that the police are not obliged to inform suspect of specific crimes that are subject of interrogation); *Illinois v. Perkins*, 496 U.S. 292 (1990) (holding that an undercover police officer is not required to administer warnings to a suspect interrogated in a jail cell); and *Davis v. United States*, 512 U.S. 452 (1994) (holding that ambiguous invocations of *Miranda* rights may be ignored).

99 Dickerson v. United States, 530 U.S. 428, 443 (2000).

100 *See* Kamisar, *supra* note 77, at 25 ("[T]he *Miranda* that had survived the Burger Court-Rehnquist Court gauntlet . . . was a far cry from what might be called the 'original *Miranda*.'").

101 *See* Thomas & Leo, *supra* note 66, at 252–53 (noting that "for the most part law enforcement supports *Miranda*" and pointing out that "none of the major police lobbying groups . . joined in then[-]Attorney General Edwin Meese's call to overrule *Miranda*" in the mid-1980s).

102 Welsh S. White, Miranda's *Failure to Restrain Pernicious Interrogation Practices*, 99 MICH. L. REV. 1211, 1218 (2001).

103 *Id.*

Perhaps because the post-*Miranda* crime shows have focused so heavily on cops, the dramatic function of confession has assumed an ever more instrumental quality, at least on the cop shows. Confession undoubtedly did little for the killer's soul in *Dirty Harry*, but it did permit police to find the abducted victim. This instrumentalism might be seen as a reflection of deeper societal attitudes toward criminals over the course of a three-decade period that saw the incarceration rate quadruple since *Dirty Harry* was released.

By the 1990s, *Miranda*'s iconization was complete. The *Miranda* warnings indeed had become "embedded" in popular culture. Today, a whole complex of narrative events signifying a character's arrest can be concisely depicted by a writer merely with the image of a police officer taking physical custody of a suspect and intoning: "You have the right to remain silent . . . ." At the same time, a new brand of television cop shows such as *Homicide* and, in particular, *NYPD Blue*, have constructed their basic narrative formulas around the suspect's interrogation. As such, the suspect's decision to forgo his or her right to counsel and to talk to police has taken a central place in the storyline.[104] For better or worse, the reading of *Miranda* warnings is no longer the mere formalism it was on *Dragnet*. Indeed, because the narrative in these shows is driven by the unfolding interrogation, and the dramatic catharsis almost invariably arrives in the form of the suspect's confession, the *Miranda* rights serve, alongside the suspect's own mental and psychological prowess, as the foil that creates the story's dramatic tension.

Thus over the course of nearly 70 years, the imagery of interrogation seems to have traveled a circle in four curvilinear steps. In the pre-*Miranda* period of the 1930s and 1940s, police use of interrogation room pressure was normal and expected. The 1950s and 1960s witnessed an accelerating rejection of pressure tactics by the Supreme Court and an era of popular culture which increasingly, albeit briefly, held up lawyers as heroes and law as a force of both truth (*Perry Mason*) and order (*Dragnet*). These developments laid the foundation for the classic "*Miranda* era," which was characterized by a popular, albeit temporary, inversion of the traditional demonization of the criminal and glorification of the cop, a corresponding celebration of formal law and of criminal defense lawyers in particular, and which saw the mass public dissemination of the warnings on

104 *See* Bandes & Beermann, *supra* note 13, at 8 (1998) (noting that "[t]he unifying principle in [*NYPD Blue*] interrogations is the need to convince suspects not to consult a lawyer").

shows like *Dragnet* and *Adam-12*. Beginning with President Nixon's election in 1968, however, the *Miranda* era gave way to a post-*Miranda* period characterized by an increasing backlash against the Warren Court agenda. In the post-*Miranda* world, *Miranda* was targeted by critics and reactionaries and became an icon of the law's perceived tenderness toward criminals. And at the same time that *Miranda* became an object of derision in the crime dramas of the 1970s and 1980s, it was slowly but steadily gutted by the Supreme Court in a long series of decisions that sought to make compliance with the *Miranda* rules simple and to minimize the consequences of noncompliance.

By 1999, *Miranda* had been neutered as an instrument of progressive legal regulation even while it had become the symbol of constitutional rights in the popular imagination. Viewed from this vantage point, the Court's decision in *Dickerson* was a fait accompli. Having cut *Miranda* down to manageable size, a conservative Court had nothing left to gain by formally overruling *Miranda*. But it stood to lose an inestimable amount of popular esteem should it purport to withdraw from the citizenry the most familiar set of legal rights known to them. It perhaps even risked losing "the Nation's confidence in the judge as an impartial guardian of the rule of law."[105]

Meanwhile, contemporary cop shows have subtly altered *Miranda* by making it part and parcel of the drama of interrogation. If *Miranda* is no longer vilified as the enemy of the beat cop, neither is it his friend.[106] Still, it remains as ineffective a safeguard for preventing confessions as ever. In retrospect, this process, too, seems to have been inevitable. *Miranda*'s purpose—the regulation of custodial interrogation—strikes such a sensitive narrative nerve that its neutralization was a dramatic imperative. To comply with the demands of verisimilitude, screenwriters had no choice but to incorporate *Miranda* into the dramatic representation of the interrogation moment. At the same time, the overarching narrative demands of the format continued to require confessions. As a result, although *Miranda* has been widely publicized in pop culture, it has been portrayed in a manner that underscores its impotence; in popular culture, *Miranda* warnings or no, the suspect always confesses.

Finally, although *Miranda*'s post-*Dragnet* decline can be understood partly as the work of an increasingly conservative

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105 Bush v. Gore, 531 U.S. 98, 129 (2000) (Stevens, J., dissenting).

106 *See* Bandes & Beermann, *supra* note 13, at 7 (noting the willingness of *NYPD Blue* characters to ignore the Constitution when it is necessary to get the bad guys).

Court, a response to a continuing explosion in the crime rate, and a pervasive cultural cynicism fueled by Vietnam and Watergate, it also must be understood in part as an almost inevitable aesthetic development. After all, films and television shows are first and foremost entertainment vehicles; their function is to titillate and amuse, all with the intent of maximizing viewership from the right demographic and, a fortiori, network and studio revenue. Given the aesthetic demands of popular drama, *Dragnet*-style rectitude inevitably had to give way to something more interesting. As one writer in the 1970s complained, "Our whole show has to come to a dead stop every week while the cop politely reads the crook his rights."[107] And as another added, "This civil rights business may be all right in real life but it makes miserable drama."[108]

CONCLUSION

The *Dirty Harry*-style paranoia eventually faded, but it left in its wake a pop culture version of *Miranda* in which the warnings have become an icon representing the whole awkward apparatus of courts, law, and constitutional regulation of criminal justice. To many, these rights undoubtedly "stand for" the very idea of constitutional law.

Because the *Miranda* warnings—routine or reviled—have become synonymous with constitutional law—and thus with the Supreme Court itself—it is no surprise that the Court declined to eradicate them in *Dickerson*. Doing so would have amounted to eradication of law itself in the eyes of popular culture. The Court's institutional interest in preserving its own popular status, and in protecting a legal regime that, thanks to the media, looks like it bends over backward for defendants, while in reality (as a result of a sustained judicial attack on its fundamental functions) provides defendants very little legal protection, allows a conservative Court to have its cake and eat it, too.

In sum, just as the media necessarily creates and depends upon signs, symbols, and icons, and manipulates them to serve its basic purposes—to tell its stories effectively and efficiently, to keep viewers engaged, and to keep sponsors happy—in narrating and explicating legal decisions, courts do precisely the same

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107 Stark, *supra* note 55, at 261 (quoting Gunther, *TV Police Dramas are Teaching Civil Rights to a Generation of Viewers*, TV GUIDE, Dec. 18, 1971, at 9). Perhaps the underlying sentiment of *Dickerson* is just the opposite, that this civil rights business may make good drama, but it is pretty miserable in real life.

108 *Id.* (quoting Gunther, *TV Police Dramas are Teaching Civil Rights to a Generation of Viewers*, TV GUIDE, Dec. 18, 1971, at 9).

thing, with their own institutional interests dictating the manner in which those signs will be treated. Certainly, the semiotics of interrogation, followed over time, elucidates important changes in popular and legal assumptions about a variety of aspects of criminal justice, including the identity of criminals, the causes of criminality, the purposes of interrogation, and the proper role of interrogators. The fact that popular and legal iconography has moved along the same trajectory suggests not only that popular culture draws its source material from the courts, but also that the courts narrate, and perhaps resolve, legal problems based in no small part on iconographic assumptions drawn from popular culture and the media as well.