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CUSTODIAL POLICE INTERROGATION IN OUR NATION'S CAPITAL: THE ATTEMPT TO IMPLEMENT MIRANDA†

Richard J. Medalie, Leonard Zeitz,*** and *Paul Alexander****

I. TESTING THE PREMISES OF MIRANDA

IN his attempt to define the meaning of democracy, Carl Becker, looking back to Plato's view of society, observed that "[a]ll human institutions, we are told, have their ideal forms laid away in heaven, and we do not need to be told that the actual institutions conform but indifferently to these ideal counterparts."[1] Becker's observation may well set the perspective from which to view what occurred when the attempt was made in the District of Columbia to implement the Supreme Court's decision in *Miranda v. Arizona*.[2]

A. *The Miranda Premises*

In *Miranda*, the Court's aim was to devise proper safeguards which would preclude custodial police interrogation practices designed to impair a defendant's capacity to remain silent.[3] Once a suspect in custody was to be questioned by police, he would have to be "adequately and effectively apprised of his rights" and assured of "a con-

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1. C. BECKER, MODERN DEMOCRACY 5 (1941).

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

3. *See* Pye, *Interrogation of Criminal Defendants—Some Views on Miranda v. Arizona*, 35 FORDHAM L. REV. 199, 200 (1966). Custodial interrogation was defined by the Court to mean "questioning intiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Miranda v. Arizona, 384 U.S. 436, 444 (1966). The Court avowed that in-custody interrogation contained "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak when he would not otherwise do so freely." 384 U.S. at 467. For convenience, the term "defendant" in this article is used interchangeably with the terms "suspect," "accused," and "offender."

tinuous opportunity to exercise them."[4] To this end, the police were to warn the suspect "in clear and unequivocal terms"

—that he had the right to remain silent;[5]

—that anything said "can and will" be used against the individual in court;[6]

—that he had not only the right to consult with counsel prior to questioning, but also the right to have counsel present at the interrogation;[7]

—that if he could not afford an attorney, one would be appointed for him prior to any questioning if the defendant so desired.[8]

At least three related premises seemed to underlie the Court's decision: (1) that the police will give adequate and effective warnings of legal rights and will honor the accused's exercise of those rights; (2) that the defendant will understand the meaning of the warnings and their significance in application to himself and that he will thereby have sufficient basis to decide in his own best interest whether or not to remain silent and whether or not to request counsel; and (3) that the presence of an attorney in the police station will protect the accused's fifth amendment privilege.

B. *The Nature of the Present Study*

In order to test these premises, the Institute of Criminal Law and Procedure of the Georgetown University Law Center[9] undertook an empirical study of the attempt to implement *Miranda* in the District of Columbia.[10] In contrast to other studies which have con-

4. 384 U.S. at 467.

5. 384 U.S. at 467-68.

6. 384 U.S. at 469.

7. 384 U.S. at 471.

8. 384 U.S. at 479. The Court acknowledged that "the defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him." 384 U.S. at 444-45. The Court concluded that "unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." 384 U.S. at 479.

9. The Institute of Criminal Law and Procedure was established in October 1965 under a grant from the Ford Foundation, at the Georgetown University Law Center. The staff of the Institute is composed of attorneys and research associates from other disciplines, including sociology, psychiatry, psychology, social work, forensic science, history, and political science. The primary aim of the Institute is to engage in systematic studies of the criminal law process from police investigation practices to appellate and post-conviction procedures.

10. *See* Dash, *Foreword*, in R. MEDALIE, FROM ESCOBEDO TO MIRANDA: THE ANATOMY OF A SUPREME COURT DECISION xix (1966).

For their excellent cooperation, we are grateful to Julian Dugas, then Director, and

centrated on the police and law enforcement,[11] the Institute concerned itself primarily with the effect of *Miranda* on the role played by defense counsel at the station house and on the defendant's perception of his legal rights. Moreover, unlike other studies which obtained data by stationing observers with the police,[12] the Institute

Lorenzo Jacobs, then Deputy Director, Neighborhood Legal Services Project; Joseph F. Hennessey and Lawrence J. Bernard, Jr., Junior Bar Section (now Young Lawyer's Section) of the Bar Association of the District of Columbia, who together with Messrs. Dugas and Jacobs were co-chairmen of the Precinct Representation Project; Kenneth L. Wood, Director, and Addison M. Bowman III, then Deputy Director, Legal Aid Agency of the District of Columbia; and Professor William W. Greenhalgh, Co-Director, Legal Intern (Prettyman Fellowship) Program, Georgetown University Law Center, as well as to the attorneys on their respective staffs who gave so fully of their valuable time, as did many other members of the District of Columbia Bar. Professor A. Kenneth Pye, Duke Law School, then Assistant Dean, Georgetown University Law Center, was helpful during the initial formulation of the project. Professors Arnold Enker, University of Minnesota Law School, and Yale Kamisar, University of Michigan Law School, Mrs. Patricia Wald, Member, President's Commission on Crime in the District of Columbia, and many others suggested useful revisions in the manuscript of this article. Dr. Leonard H. Goodman, Senior Research Associate, Bureau of Social Science Research, Inc., and Dr. John Vincent, Research Sociologist, Institute of Criminal Law and Procedure, offered helpful criticism of the research methodology employed.

In addition to the authors, who served as Director, Research Director, and Assistant Field Director of the research study, the following people—most of whom were law and graduate students at the various universities in the District of Columbia—worked long and hard to make this research study possible: Field Director—Brian Paddock; Assistant Field Director—John W. Hempelmann; Interviewers and Research Staff—Inez N. Atwell, Wilbur M. Atwell, Sheldon Berman, Bruce L. Bozeman, Vernida J. Davis, Andrew F. Dempsey, Paul E. Fitzhenry, Sherry E. Gendelman, Naomi F. Hartwick, Otto J. Koenig, Paula Manning, George J. Martin, John Mills, and John Nader; Research Assistant—Joel Blumenfield; Coding Supervisor—Rita Mattox; Computer Assistants—Lawrence Berman and Tom Hogan. Finally, our appreciation is due to our secretarial assistants—Sandra Calloway, Carol Ann Hayter, Jacqueline Holt, Janet Johnstone, Charlotte Sandy, and Virginia Sponsler.

11. These studies analyzed police interrogation procedures in the following cities: (1) Boston, Chicago, and Washington, D.C.: Reiss & Black, *Interrogation and the Criminal Process*, ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI., Nov. 1967, at 47; *see also* Black & Reiss, *Patterns of Behavior in Police and Citizen Transactions*, in 2 PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, FIELD SURVEY III—STUDIES IN CRIME AND LAW ENFORCEMENT IN MAJOR METROPOLITAN AREAS 1 (Reiss ed. 1967). (2) Detroit: V. Piersante, Confession in Felony Prosecutions for the Year of 1961 as Compared to Jan. 20, 1965, through Dec. 31, 1965 (unpublished manuscript, July 27, 1965); *see* N.Y. Times, Feb. 28, 1966, at 18, col. 1. (3) Los Angeles: E. Younger, Results of Survey Conducted in the District Attorney's Office of Los Angeles County Regarding the Effects of the *Dorado* and *Miranda* Decisions upon the Prosecution of Felony Cases, Aug. 4, 1966. *See also* Younger, *Interrogation of Criminal Defendants—Some Views on Miranda v. Arizona*, 35 FORDHAM L. REV. 255 (1966). (4) New Haven: *Interrogation in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519 (1967). *See also* Griffiths & Ayres, *A Postcript to the Miranda Project: Interrogation of Draft Protestors*, 77 YALE L.J. 300 (1967). (5) New York: Sobel, *The Exclusionary Rules in the Law of Confessions: A Legal Perspective—A Practical Perspective*, 154 N.Y.L.J. 1 (1965). *See also* N. SOBEL, THE NEW CONFESSION STANDARDS 136-39 (1966). (6) Pittsburgh: Seeburger & Wettick, *Miranda in Pittsburgh—A Statistical Study*, 29 U. PITT. L. REV. 1 (1967). For a critique of the Detroit, Los Angeles, and New York studies, *see Interrogation in New Haven*, *supra*, at 1639-43.

12. *See, e.g.*, Reiss & Black, *supra* note 11, at 51-52; *Interrogation in New Haven*, *supra* note 11, at 1527-28, 1637-38. Although we attempted to conduct a similar observa-

obtained its data primarily through questionnaires administered to attorneys who had volunteered their time to service defendants at the station house in a year-long "Precinct Representation Project," and through interviews with defendants in the Institute's Defendant Interview Study. To the extent permitted by the available data obtained from the attorneys and defendants, police warning and interrogation practices were also analyzed.

1. *The Precinct Representation Project*

As an interim effort to implement the Supreme Court's guidelines in *Miranda,* the Junior Bar Section of the Bar Association of the District of Columbia and the Neighborhood Legal Services Project (NLSP) of the United Planning Organization (the local antipoverty agency) conducted a Precinct Representation Project in the District from June 28, 1966, until June 27, 1967. The Project was unique in its efforts to provide volunteer attorneys around the clock to defendants at the police station. Other groups, including the D.C. Bar Association, the Washington Bar Association, and the Legal Intern Program of the Georgetown University Law Center,[13] also participated in the Project.[14] With the exception of the legal interns and certain individual practitioners, the volunteer attorneys were in full-time civil practice with little or no experience in criminal law other than that derived from the occasional criminal cases to which they had been appointed by the courts.

Whenever an accused at a precinct police station desired counsel but had no counsel of his own, the police were to place a call to a central switchboard manned by NLSP personnel twenty-four hours a day. The switchboard operator was then to notify the volunteer attorney on duty to go to the appropriate police precinct to represent the accused. Generally, defendants did not obtain counsel at the station house from any other source.

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tion study of the police in the District of Columbia, we were unable to work out satisfactory arrangements with the Metropolitan Police Department.

13. Begun in 1960, the Legal Internship Program provides a number of fellowships at the Georgetown University Graduate School of Law. In addition to following a graduate program of study and research, the Legal Interns represent indigent defendants in actual cases. *See* Pye, *Legal Internships: Georgetown's Experiment in Legal* Education, 49 A.B.A.J. 554 (1963).

14. "[O]n June 28, 1966, more than 40 members of the Junior Bar Section, together with approximately 35 attorneys from the Neighborhood Legal Services Project, approximately 20 attorneys from the Washington Bar Association, and six attorneys from the Legal Intern Program at Georgetown Law Center began participating in an interim program . . . ." J. Hennessey & L. Bernard, Memorandum to Attorneys Participating in the Miranda Project, July 13, 1966, at 1, in Junior Bar Section, *Miranda* Kit, July 18, 1966. (The *Miranda* Kit is available for inspection in *Michigan Law Review* files.)

NLSP attorneys and Georgetown legal interns provided counsel to the precincts between 8:00 a.m. and 6:00 p.m. on Monday through Friday, while volunteer attorneys from the various bar associations manned the stations between 6:00 p.m. and 8:00 a.m. and during the weekend daytime hours.[15] All told, approximately 180 volunteer attorneys participated in the Project.

In order to evaluate this attempt to implement *Miranda*, the Institute of Criminal Law and Procedure arranged with NLSP and the Junior Bar Section to obtain complete access to all the Project's records for the entire life of the Project.

2. *The Defendant Interview Study*

To assess the impact of *Miranda* on the defendant directly, the Institute devised its Defendant Interview Study. The Institute staff conducted interviews with 260 persons[16] who had been subjected to arrest procedures in the District of Columbia during 1965 and 1966.[17]

The interview schedule was designed to gather a wide variety of data concerning (1) the defendant's reaction to actual and hypothetical arrest situations; (2) his attitudes toward the adversary system, the assistance of counsel, and police investigative practices; (3) his perception of constitutional and other legal rights coincident to arrest and initial presentment; (4) his awareness of judicial decisions defining those rights; and (5) his knowledge and understanding of the criminal law process itself.[18]

C. *The Central Findings*

Two central findings stand out in our study. First, approximately 40 per cent of the defendants in our study who were arrested in

15. The description of the Precinct Representation Project is drawn from *Miranda* Kit 1-3. The Institute was given complete access to all Project records for its entire life.

16. Because of the difficulty in standardizing the circumstances of the interviews, we found it necessary to interview the 260 defendants at all stages of the legal process, from arrest through release or incarceration, and in places ranging from private homes to the various penal institutions in the Washington area.

17. The Defendant Interview Study was part of a larger study which included interviews with a sample of over 750 nonoffenders and former offenders representing one tenth of one per cent of the general population in the District of Columbia. The results of this separate study will be reported in subsequent articles.

18. The Defendant Interview Schedule was pretested in two District of Columbia census tracts—one of high socioeconomic status and one of low socioeconomic status—and at the D.C. jail. On the basis of the pretest, as with all such instruments, some questions were found to be useless, many required modification and revision, and many new questions were inserted. In its completed form, the interview schedule was an instrument that required an average of one hour to administer. While interviews were still in progress, staff members began coding the data. When coding was completed, the data were keypunched and transferred to IBM cards. The material, both in frequency distributions and in cross-tabulations, was thereafter computed at the Georgetown University Computer Center. A portion of the schedule is set out in Appendix C *infra*.

the post-*Miranda* period stated that they had given statements[19] to the police.[20] Second, an astonishingly small number of defendants—1,262—requested counsel from the Precinct Representation Project, even though volunteer attorneys were readily available around the clock, seven days a week.[21] This number represented only 7 per cent[22] of the 15,430 persons arrested for felonies and serious misdemeanors in the District of Columbia during fiscal 1967.[23]

These central findings bring into question the three basic premises of *Miranda*. To assess their significance, we shall first examine the defendants' perceptions of specific police practices under

19. As in *Miranda*, the term "statements" includes for purposes of the present study "statements which are direct confessions . . . statements which amount to 'admissions' of part or all of an offense . . . inculpatory statements and statements alleged to be merely 'exculpatory.'" Miranda v. Arizona, 384 U.S. 436, 476-77 (1966). In addition, for the sake of completeness, unrelated and uncharacterized statements are included in the definition and will be noted, where relevant.

20. A slightly higher percentage of defendants in our study who were arrested before *Miranda* also gave statements to the police. For the detailed findings *see* table E-1, Appendix E, *infra*. Of the 128 statements given by defendants who ultimately obtained counsel from the Precinct Representation Project, forty-three (34%) were inculpatory, fifty (39%) were exculpatory, and thirty-four (27%) were unrelated or uncharacterized. The remaining one could not be determined. The rate of statements given by this group of defendants varied with the crime charged, from a high of 80% for auto theft and 62% for larceny-theft to a low of 25% for weapons offenses. The rate of statements given for each class of crime category is set out in table E-2, Appendix E, *infra*. *See generally Interrogation in New Haven*, *supra* note 11, at 1552-53, 1566 n.123, 1567.

21. After the first month of operation of the Project, Julian Dugas, then head of the NLSP found it "incredible" that his attorneys had received so few calls. As he observed, "[S]ince the free legal service was organized . . . only 78 defendants have taken advantage of it. It seems extraordinary—in fact, it seems incredible—in light of the number of serious offenses committed each day in Washington." Washington Post, July 20, 1966, at C-1, col. 1.

22. It does not follow from this statistic that the remaining 93% of the defendants were deprived of their constitutional rights as defined by *Miranda*. Not all of those arrested were subjected to interrogation, much less custodial interrogation which is the focus of *Miranda*. In their study of field interrogation, Albert J. Reiss, Jr., and Donald J. Black pointed out that interrogation did not take place in 54% of the Part I and Part II bookings. Reiss & Black, *supra* note 11, at 54. Using that figure to cut the arrest base to obtain only arrests in which interrogation took place, we would still only have 13% of the defendants who should have requested counsel. But this adjustment is not really proper, because, as we shall see in part III.B.2. *infra*, only about half of those who obtained counsel were in fact interrogated. The police were therefore not constitutionally required to offer the remaining defendants the option of counsel. Consequently, a proper adjustment would require us to cut the base of defendants requesting counsel by half as well as cut the arrest base by 54%. By doing so, however, we end up with 9%—close to the 7% rate of lawyer requests we originally obtained.

23. If all 73,492 nontraffic offenses are considered, the rate of those requesting counsel is only 2%. As might have been expected, the rate of calls for lawyers from the Precinct Representation Project was higher for persons charged with more serious offenses; it was nevertheless extremely low considering the seriousness of the offense. For example, of the 185 persons arrested for homicide during the fiscal year studied, only thirty-one (17%) made a telephone request for counsel. Similarly, only 9% of the 189 arrested for robbery, and 16% of the eighty-nine arrested for violating the drug laws requested counsel. A breakdown of requests for counsel according to the crime charged is set forth in tables E-3(1) & (2), Appendix E, *infra*.

Miranda—the types of warnings given, the nature of interrogation of the defendants, and the types of statements elicited. We shall then explore the reaction of the defendants to the *Miranda* warnings—their understanding of the warnings, their attitudes toward the warnings, and their reasons for deciding whether or not to obtain counsel and whether or not to cooperate with the police. Finally, we shall evaluate the role of the attorneys at the station house—the nature and effect of the time delays before the attorneys saw the defendants at the station, the types of services the attorneys performed, and the significance of their presence at the police station.

Before getting to findings and conclusions, however, it seems appropriate to begin with a description and analysis of our research methodology in order that the validity of our data may be properly assessed.

II. Sources of Data and Research Methodology

A. *The Samples*

We obtained data for the present study from three sources: the Telephone Log Records[24] and Volunteer Attorney Reports[25] of the Precinct Representation Project and the Defendant Interview Schedules[26] of the Institute's Defendant Interview Study.

During the year-long post-*Miranda* period of the Precinct Repre-

24. A Telephone Log Record form is reprinted in Appendix A *infra*. The Telephone Log Records were coded and tabulated by IBM equipment for the following items: the date; day of week; time of call; precinct; nature of most serious crimes charged; identity of attorney; time lapse between receipt of request by NLSP and contact with the attorney; and the number of defendants involved in the case.

25. A Volunteer Attorney Report form is reprinted in Appendix B *infra*. The Volunteer Attorney Reports were coded and tabulated by IBM equipment for the following data: the date; day of week; time of arrest; time between arrest and arrival of attorney; whether the attorney spoke to the defendant by telephone before he arrived at the station; time interval between arrival at the station house and the beginning of the attorney-client interview; time spent in the attorney-client interview; precinct; whether police admitted questioning defendant; whether defendant claimed to have been warned or interrogated prior to the arrival of the attorney; whether the defendant made statements during questioning prior to the attorney's arrival; the nature of the interrogation that occurred in the attorney's presence; whether the defendant made statements after the attorney offered advice; the nature of the attorney's advice and assistance; police reaction to the attorney as perceived by the attorney; the number of telephone calls the attorney made; whether the attorney maintained an interest in the case after initial contact; and other incidental data.

26. The most comprehensive part of the Defendant Interview Schedule related to the arrest situation. As an indication of its specificity, the battery ran up to as many as eighty-eight questions, depending upon the unique circumstances in which the respondent found himself. Along with the precoded responses, verbatim statements were elicited and recorded. Included in the questions were specifics relating to arrest and interrogation, the police communication of legal rights, the defendants' responses and the role of defense counsel. This portion of the Defendant Interview Schedule is set out in Appendix C *infra*.

sentation Project, the NLSP switchboard received 1,157 telephone requests for attorneys for 1,262 defendants. The Telephone Log Records contain data on all these requests. For the sole purpose of identifying the defendants reported upon in these Records, we shall refer to them throughout this study as the "telephone log defendants."

The Project's Volunteer Attorney Reports, which were designed by the Institute, were to be filled out by the attorneys after each tour of duty and returned by mail to NLSP. Approximately 84 per cent of the 1,262 cases logged, or 1,060 cases in all, were able to be assigned definitely to attorneys by the NLSP switchboard. The attorneys returned Volunteer Attorney Reports in 326 (31 per cent) of these assigned cases. For the purpose of identification, we shall use the label "volunteer attorney defendants" to refer to the 326 defendants reported upon in these reports.

Of the 260 defendants interviewed in the Defendant Interview Study, 175 (67 per cent) had been arrested prior to the *Miranda* decision, and 85 (33 per cent) had been arrested after *Miranda*. These two groups of defendants shall be identified on the basis of their time of arrest as "pre-*Miranda* defendants" and "post-*Miranda* defendants," respectively.[27]

For the purpose of analysis, one further breakdown is made of the 85 "post-*Miranda* defendants." Of these, 29 (34 per cent) eventually obtained counsel at the station house through the Precinct Representation Project,[28] whereas 56 (66 per cent) had no lawyer at all at the police station.[29] For the purpose of identification only, the former group shall be designated as "post-*Miranda* defendants with counsel," and the latter group shall be designated as "post-*Miranda* defendants without counsel."

Our findings and conclusions, then, have been derived from an

27. It should be noted that the term "post-*Miranda* defendants" properly describes the "volunteer attorney defendants" as well since they were in fact arrested after the *Miranda* decision. For purposes of this study, however, the two groups will be distinguished and the terms "volunteer attorney defendants" and "post-*Miranda* defendants" used as identifying labels for the two separate samples.

28. None of the defendants interviewed obtained counsel from any other source but the Project. Indeed, as previously noted, few defendants arrested throughout the year obtained non-Project counsel.

29. It is obvious that a higher percentage of defendants who obtained counsel (34%) were interviewed in our sample than the percentage of all arrested defendants who obtained counsel (7%). *See* text accompanying note 22 *supra*. Unfortunately, we could not obtain a sample in the same proportion because of the extreme difficulty in obtaining access to defendants for interviewing. It was easier to locate defendants who obtained counsel than those who did not because of our relationship to the Precinct Representation Project; we nevertheless interviewed more defendants who did not have counsel because of their overwhelming number.

analysis of data on six groups of defendants obtained from three sources, as set out in table 1.[30]

TABLE 1

Defendant Groups and Data Sources

Defendant Group	Data Source	No. of Defendants
Precinct Representation Project		
Telephone Log Defendants	Telephone Log Records	1,262[a]
Volunteer Attorney Defendants	Volunteer Attorney Reports	326[b]
Defendant Interview Study	Defendant Interview Schedules	260
Pre-*Miranda* Defendants		175
Post-*Miranda* Defendants		
Total		85
Without Counsel		56
With Counsel		29

[a] 1,157 telephone requests for attorneys were made for these 1,262 defendants.
[b] Representing 31 per cent of the 1,060 cases for which volunteer attorneys were furnished.

B. *The Problem of Selection Bias*

1. *The Data Sources*

a. *Telephone Log Records.* For analytical purposes, the Telephone Log Records of the Precinct Representation Project cannot be faulted since every case of a defendant desiring counsel was recorded in the log by the NLSP switchboard operator who received the call. The log, therefore, is a complete record or "universe" of the telephone requests and gives us a picture of the Project's entire year of operation.

b. *Volunteer Attorney Reports.* In contrast to the "telephone log defendants," the defendants reported upon in the Volunteer Attorney Reports and in the Defendant Interview Schedules constituted samples, rather than complete universes. Unfortunately, there was no way of randomizing either sample. Thus, the sample of "volunteer attorney defendants" was selective in that some attorneys chose to fill out the report forms,[31] and others chose not to do so for

30. At times, the data from one sample will overlap with the data from another so that we may contrast and compare the two. At other times, the data from one sample will not be comparable to that from another. So that no confusion as to the nature of the data occurs, we shall indicate in the footnotes and tables, where necessary, the specific data source: Telephone Log Records, Volunteer Attorney Reports, or Defendant Interview Schedules. We use all three data sources in discussing police practices in Part III *infra*; only the Defendant Interview Schedules in discussing the defendant's reaction in Part IV *infra*; and only the Telephone Log Records and Volunteer Attorney Reports in discussing the attorney's role in Part V *infra*.

31. As would be expected because of the sponsorship of the Project, most of the attorneys who returned the Reports were from the Junior Bar Section and the NLSP. Few were received from the Legal Interns or the other bar associations.

a variety of reasons. Moreover, with respect to the number of cases any particular attorney carried, there was an unquantifiable selectivity factor whenever the attorney decided upon which cases to report and which cases not to report.

c. *Defendant Interview Schedules.* As for the Defendant Interview Schedules, we found it necessary to turn to private attorneys and to the various defender-type agencies to supply us with defendants for interviews.[32] By reason of our relationship to the Precinct Representation Project, we were able to arrange in advance with some of the volunteer attorneys to interview twenty-nine defendants serviced by the Project. Obtaining access to other defendants was far more difficult. Not all attorneys carrying criminal cases could be contacted by our staff;[33] not all attorneys who were contacted would cooperate with us;[34] not all attorneys who cooperated by offering us interviews with their clients made available all (an entire universe) of their clients for a given period or even a sample selected on a random basis;[35] and not all defendants made available for interviews could be contacted or would cooperate.[36] Under these circumstances, some attorney selection bias was bound to be operative. Fortunately, certain mitigating factors discussed below greatly softened the effect of this bias.

2. *The Defendant Interview Samples*

Since approximately half of our samples was supplied by defender-type agencies handling only indigent defendants, since many more of our defendants were in fact indigent, and since indigent defendants overwhelmingly predominate in the District of Columbia,[37]

32. We were fortunate in securing the cooperation of the Legal Aid Agency of the District of Columbia (Public Defender), the Georgetown University Law Center's Legal Intern Program, and the Precinct Representation Project. Approximately half of our defendants were drawn from these defender-type agencies, and the remainder from private attorneys whose aid was solicited. In all, the 260 defendants in our interview sample were represented by approximately sixty-five different attorneys.

33. Our staff contacted between 150 and 200 attorneys, of whom approximately 100 were handling criminal cases and were able to provide us with permission to interview more than 400 defendants.

34. Of the attorneys contacted who had criminal defendants as clients, only two refused outright to cooperate.

35. In other words, attorneys who cooperated with us might have had specific clients in mind whom they wished interviewed and others whom they felt might not be appropriate. Selection was therefore on a basis personal to the attorney.

36. Of the more than 400 defendants made available to us, 281 were interviewed. Of these, 21 were omitted from the sample by reason of incompleteness, incoherence, or an excessive time lag between arrest and interview.

37. In its profile of the adult felon in the District of Columbia, the D.C. Crime Commission found that 55% had no history of regular employment, 46% were unemployed at the time of their offense, 69% earned less than $3,000 annually, and 90% earned less than $5,000. PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA, REPORT 795 (1966) [hereinafter D.C. REPORT].

we hypothesized that our samples would reflect the type of defendant within the District.

The profile of the defendant that ultimately emerged from our interview samples confirmed our hypothesis. The typical defendant in our sample is a young, single, Negro, male recidivist of low socio-economic status characterized by low income, low educational attainment, high unemployment, poor job status, borderline overcrowded living accommodations, and a dearth of voluntary affiliations.[38] This profile is virtually congruent with the profile of the convicted adult felon set out in the *Report of the President's Commission on Crime in the District of Columbia.*[39] Thus, although our samples could not be selected scientifically on a random basis, they were in fact representative of the District defendant population in demographic characteristics.

3. *The Volunteer Attorney Defendant Sample.*

We have no reason to believe that the profile characteristics of the "volunteer attorney defendant" sample differ in any marked manner from the characteristics of our defendant interview profile or the profile developed in the District of Columbia Crime Commission report. For example, substantially all of the "volunteer attorney defendants" were Negro and indigent. At least, the profile of twenty-nine of the "volunteer attorney defendants" is comparable to the profile of the twenty-nine "post-*Miranda* defendants with counsel" since these defendants are one and the same.[40]

In order to determine whether and to what extent our sample of 326 "volunteer attorney defendants" was representative of the universe of 1,262 defendants reported upon in the Telephone Log Records, we devised two complementary tests: first, a comparison of the cases reported in the Telephone Log Records with those in the Volunteer Attorney Reports according to the crime charged; second, a comparison of the telephone log and volunteer attorney data according to the high-crime and low-crime police precincts

38. A complete profile, together with a table of the profile characteristics of our defendant interview samples, is set forth in Appendix D *infra.*

39. D.C. REPORT 117-20, 133-40. *See also id.* at 467, 795. The profile was developed for the Commission in a study by the Stanford Research Institute for the presentence reports of 932 felons convicted in 1964 and 1965 in the District. The report of the Stanford Research Institute is contained in the *Appendix* to the D.C. REPORT at 511-644. For a summary of the Crime Commission's Profile, *see* Medalie, *The Offender Rehabilitation Project: A New Role for Defense Counsel at Pretrial and Sentencing,* 56 GEO. L.J. 2 (1967).

40. With respect to the remainder, we could not justify to the Precinct Representation Project requiring the Volunteer Attorneys to gather complete demographic data.

from which the cases originated.[41] The results of the first comparison are set out in table 2.

TABLE 2

Crimes Charged for Cases Reported in the Telephone Log Records and Volunteer Attorney Reports

Crimes	Telephone Log		Attorney Reports	
	No.	%	No.	%
Crimes Against Persons	527	46	156	47
Homicide[a]	31	3	8	2
Robbery[b]	158	14	49	15
Sex Offenses[c]	51	4	11	3
Assaults[d]	287	25	88	27
Crimes Against Property	347	31	96	29
Larceny-Theft	137	12	44	13
Auto Theft	68	6	14	4
Housebreaking	123	11	35	11
White Collar[e]	19	2	3	1
Miscellaneous Crimes	261	22	61	19
Drug Offenses	59	5	15	5
Weapons[f]	83	7	11	3
All Others[g]	119	10	35	11
Undetermined	22	2	13	4
Total	1,157	101[h]	326	99[h]

[a] Includes murder, manslaughter, and negligent homicide.
[b] Includes robbery and attempted robbery.
[c] Includes rape, attempted rape, sodomy, and carnal knowledge.
[d] Includes aggravated and simple assault.
[e] Includes counterfeiting, embezzlement, forgery, and fraud.
[f] Includes carrying and possession.
[g] Includes all other crimes except common traffic offenses.
[h] In this and other tables the total percentages may not add up to 100 per cent because of rounding off.

With the exception of weapons offenses the Telephone Log and Attorney Reports are within one or at most two percentage points of each other for each of the offenses charged. We are, therefore, reasonably assured that, at least on the basis of crime charged, the defendants reported upon in the Volunteer Attorney Reports are representative of the universe of "telephone log defendants."

The results of the second test based on high and low crime police precincts from which the cases originated are reported in table 3. Again the results show reasonable consistency. For both categories of defendants, the totals are within one percentage point of each other for both the low- and high-crime districts. Moreover, in a majority of the high crime precincts the results either are completely congruent with or are within one or a few percentage points of each other. On the basis of these two tests, then, we felt that the problem of attorney selection bias had been minimized.

41. *Cf. Interrogation in New Haven, supra* note 11, at 1552-53, 1566 & nn.123, 1567.

TABLE 3

Telephone Log Records and Volunteer Attorney Reports by High Crime and Low Crime Precincts

Precinct	Telephone Log		Attorney Reports	
	No.	%	No.	%
High Crime Precincts	874	79	245	80
1	248	22	89	29
2	135	12	23	8
5	104	9	33	11
9	75	7	22	7
10	118	11	31	10
13	194	18	47	15
Low Crime Precincts[a]	234	21	61	20
Total	1,108[b]	100	306[c]	100

[a] All precincts with only 5 per cent or less of cases are grouped under this category.
[b] Omitted from this analysis are 17 cases from the Metropolitan Police Women's Bureau and the U.S. Park Police, as well as 32 other cases which were not identified by precinct.
[c] Omitted from this analysis are 20 cases which were not identified by precinct.

C. *The Problem of Respondent Bias*

Our data from the Defendant Interview Schedules and Volunteer Attorney Reports also raise certain problems as to respondent bias since the former relies upon the defendant as the source of information and the latter relies upon both the defendant and attorney as sources. Thus, for example, the defendants might have lied or, by virtue of faulty memory, might have distorted the facts pertaining to their arrests or interrogations.

Lying has always been a vexing problem in public opinion questionnaires,[42] and its resolution is never totally satisfactory. As to the twenty-nine defendants interviewed who were also serviced by the Precinct Representation Project, we were able to compare the defendants' answers with those of the attorneys and found highly consistent results. Moreover, the warning, interrogation, and confession rates obtained from the Volunteer Attorney Reports are virtually the same as the rates indicated by our post-*Miranda* data from the Defendant Interview Schedules.[43] To the extent that the comparable statistics have turned out to be reasonably similar, we believe the incidence of respondent lying was minimized.[44]

As for the faulty memory, public opinion experts have clearly

42. *See, e.g.*, A. KINSEY, W. POMEROY & C. MARTIN, SEXUAL BEHAVIOR IN THE HUMAN MALE 53-58 (1948); S. PAYNE, THE ART OF ASKING QUESTIONS 17-33 (1951).

43. *See* Part III *infra*. We also found that our findings on interrogation practices in the District of Columbia were similar to the findings in New Haven, Pittsburgh, and other cities. *See generally* studies discussed in note 11 *supra*.

44. Nothing in our data suggested that the attorneys filled out their report forms without a highly rigid and scrupulous regard for honesty and exactitude.

established that events occurring within the preceding twelve-month period are most reliably recalled.[45] None of our "post-*Miranda* defendants" and few of our "pre-*Miranda* defendants" were required to think back beyond a year to dredge up information on arrest and interrogation.[46] Problems of recall, therefore, occurred only for a handful of respondents.

An additional problem stems from the very nature of the sources of our data. The data do not necessarily represent the reality of what occurred so much as what the defendants and attorneys perceived to be the reality and what they thereafter reported. To the extent that we sought and elicited the defendants' attitudes, understanding, and perceptions, we are satisfied with the results. To the extent, however, that we sought information as to what actually occurred during the arrest and interrogation situation, we must recognize the possible distortions in the data gathered.

Although we believe that most of the distortion and bias in our data have been offset or mitigated, we nevertheless recognize that some degree of distortion or bias must still exist. For this reason, we offer the report of our investigations with this cautionary prologue.

III. The Defendant's Perception of Police Practices Under Miranda

A. *The Official Response of the District of Columbia Police Department to Miranda*

Approximately a month after *Miranda* was decided, the District of Columbia Police Department issued its General Order No. 9-C,[47] an elaborate five-page, single-spaced document explaining in detail the *Miranda* requirements and reasoning. In accordance with

45. *See, e.g.*, Robbins, *The Accuracy of Parental Recall of Aspects of Child Development and of Child Rearing Practices*, 66 J. Abstract & Social Psych. 261 (1963).

46. Those defendants with too great a time lag between arrest and interview were eliminated from the sample. *See* note 36 *supra*. While minimizing the effect of respondent lying and distortion, we nevertheless acknowledge that it is a problem. In the New Haven study, it was determined that "[a]lmost half of the interviewed suspects whom we had observed described their interrogations differently than our observer," and while some "reported the process more favorably . . . most respondents reported a more hostile interrogation than our observer recorded." *Interrogation in New Haven*, *supra* note 11, at 1530-31. At the same time, the authors also admitted that, even if they did not assume any exaggeration by the defendants not observed, their description of what occurred was "similar" to what had been observed. *Id.* at 1531. For purposes of our study, whatever distortion occurred in the recounting is not a crucial factor since our primary interest was in the defendants' perception of the process and of his legal rights.

47. D.C. Metropolitan Police Department, General Order No. 9-C, Series 1964, July 16, 1966 [hereinafter General Order No. 9-C].

Miranda, the order required warnings of rights to be given prior to any custodial interrogation.[48] Police officers were reminded "that the critical point is the time the arrest is made or the person's freedom of action is limited, for it is then that the person must be fully advised of his rights."[49]

The order went on to explain virtually in the language of *Miranda* how the police were to act following the administration of the warnings.[50] Among other requirements, the police were given the following advice:

> If the defendant indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning.
>
> If the defendant is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him.[51]

In accordance with *Miranda*,[52] the order observed that a defendant could waive his rights, but the waiver would have to be made "voluntarily, knowingly, and intelligently."[53] If there were such a waiver, however, the police would have to ensure that they had evidence that the defendant completely understood his rights and freely waived them. One method of proof to be used was a "Warning and Consent" form the accused was to sign after reading the warnings. Besides repeating the warnings,[54] the form contained a "Consent To Speak" section which read as follows: "I know what my rights are. I am willing to make a statement and answer the questions. I do not want a lawyer. I understand and know what I am doing. No promises or threats have been made to me or used against me."[55]

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48. The text of the police warnings are as follows:

> You are under arrest. Before we ask you any questions, you must understand what your rights are.
>
> You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.
>
> You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.
>
> If you cannot afford a lawyer and want one, a lawyer will be provided for you.
>
> If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

Id. at 2.

49. *Id.*

50. *See id.* at 2-3.

51. *Id.* at 3.

52. *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966).

53. General Order No. 9-C, at 3.

54. For the text of these warnings, *see* note 48 *supra*.

55. General Order No. 9-C, Attachment. Of the sixteen "post-*Miranda* defendants" who were shown rights warnings in writing by the police, seven were asked to sign the "Consent To Speak" form and only four actually signed it.

B. *The Actual Response of the District of Columbia Police Department to Miranda*

In order to determine the actual response of the police department, we shall first analyze the frequency with which defendants reported being warned of their rights and being interrogated by the police. We shall then analyze the relationship between interrogation and the giving of warnings by the police and the decision by defendants whether or not to give statements to the police. Thereafter, we shall analyze whether statements were given following police warnings. Finally, we shall determine the kinds of statements given by defendants at the different stages of the post-arrest process.

1. *Warnings of Rights*

Miranda and General Order No. 9-C apparently affected the rate at which at least one or more of the required warnings were given to those who were arrested.[56] According to our data from the defendants, the warning rate rose from slightly over 50 per cent before the *Miranda* decision[57] to 75 per cent after *Miranda*.[58] Of even more significance is the rate of specific warnings given to the defendants by the police, as set forth in table 4.[59]

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56. Unlike many of the suspects discussed in Reiss and Black's article on field interrogation (Reiss & Black, *supra* note 11), the defendants in our samples were all under arrest. We are thus not faced with the problem of deciding whether or not a street detention is equivalent to custody or a deprivation of the suspect's "freedom of action in any significant way." Miranda v. Arizona, 384 U.S. 436, 444 (1966).

57. The Police Department had been under a general order to give *Miranda*-type warnings even before the decision in *Miranda*, with, of course, the exception that, instead of advising a defendant that he had the right to the presence of counsel without charge at the station, the police advised that, if he wished counsel, one would be appointed in court. *See* D. C. Metropolitan Police Department, General Order No. 9-B, Series 1964, Aug. 11, 1965.

58. In the sample of "post-*Miranda* defendants," a sharp differentiation appeared: although fewer than two thirds of the "defendants without counsel" reported receiving any kind of warning, well over 90% of the "defendants with counsel" reported being warned of their rights. Similarly, over 90% of the "volunteer attorney defendants" also said they had been warned of their rights. An analysis of the warnings of rights given to the different defendant groups is set out in table E-4, Appendix E, *infra*. A comparable differentiation between the "post-*Miranda* defendants with counsel" and those "without counsel" may be seen in the number of times each defendant reported being given one or more of the *Miranda* warnings, as set out in table E-5, Appendix E, *infra*.

59. In order to elicit information whether specific warnings of silence or counsel had been given to the defendants, we asked each interviewed defendant such questions as whether he had been told he didn't have to say anything to the police at any time or to answer any questions, or whether he had been advised that he had a right to consult with counsel at the station house. To mitigate the effect of prompted answers, we first asked the defendant two general questions and took his verbatim response: "What did the policeman say to you when you were arrested?" and "When you got to the police station, what happened then?" Although we recognized the problem of recall

TABLE 4

Specific Warnings of Rights Given to Pre- and Post-Miranda Defendants[a]

Warnings of Rights[b]	Pre-*Miranda* Defendants[c]		Post-*Miranda* Defendants					
			Total[d]		Without Counsel[e]		With Counsel	
	No.	%	No.	%	No.	%	No.	%
1. Silence[f]	25	14	13	16	10	19	3	10
2. Silence & Non-Station-House Counsel[g]	12	7	4	5	4	8	—	—
3. Silence and Station-House Counsel[h]	8	5	24	30	9	17	15	52
4. Non-Station-House Counsel[g]	26	15	8	10	6	12	2	7
5. Station-House Counsel[h]	4	2	8	10	2	4	6	21
6. Phone and/or Bond	15	9	3	4	1	2	2	7
7. No Warnings	84	48	21	25	20	38	1	3
Total	174	100	81	100	52	100	29	100

[a] Data source: Defendant Interview Schedules.
[b] Each warning category is mutually exclusive of the others.
[c] Not ascertained: 1.
[d] Not ascertained: 4.
[e] Not ascertained: 4.
[f] Combines silence warning and warning that "anything you say may be used against you."
[g] Combines warnings of right to counsel in court and right to telephone own counsel.
[h] Combines warnings of right to presence of counsel at station house and right to appointed counsel.

This table shows that *Miranda* clearly affected the giving of specific warnings by the police. The police, however, fell far short of the standards set by the Court. For example, if we combine warnings 1, 2, and 3 relating to the right of silence, and warnings 2, 3, 4, and 5 relating to the right to some type of counsel, we see that almost double the percentage of "post-*Miranda* defendants" said they received these separate warnings as did the "pre-*Miranda* defendants." Even at that, however, only slightly more than half of the "post-*Miranda* defendants" reported receiving either the silence or counsel warning. Thus, as reported by the defendants, 51 per cent of the "post-*Miranda*" group received the silence warning, whereas only 26 per cent of the "pre-*Miranda*" group did; 55 per cent of the "post-*Miranda* defendants" received a counsel warning, whereas only 29 per cent of the "pre-*Miranda* defendants" did.

Even more significant, only 40 per cent of the "post-*Miranda* defendants" stated they had been given the specific station-house counsel warning,[60] and only 30 per cent said they had received all four *Miranda* warnings.[61]

From the foregoing data, it is evident that, during the year following the Court's decision in *Miranda*, the police in the District of Columbia were reported as not having given arrested persons anywhere near the complete battery of warnings required, not only by the *Miranda* decision itself, but also by the Police Department's own General Order. But whether proper warning was or was not given is not the end of the investigation. The *Miranda* warning requirements are operative only "if a person in custody is to be subjected to interrogation."[62] Those who are not interrogated need not be given rights warnings. In any assessment of police practices under *Miranda*, therefore, it is necessary to determine the rate of interrogation of those who were warned and the results of that interrogation.

2. *Interrogation and Warnings*[63]

According to the data derived from our defendant interviews, the interrogation rate dropped from 55 per cent before *Miranda* to

in these types of questions, we nevertheless believed that the results would give us at least an insight into the police warning practices.

In analyzing the results, we decided to combine the response to various warnings. Because of the small cell groups responding to the right to the presence of station-house counsel and the right to free or appointed counsel, we combined the responses to these two warnings. We also combined the silence warning with the response to the warning that anything one says can be used against him in court. Some defendants reported that they had received warnings not of the right to station-house counsel but of the right to counsel in court or only of the right to call a lawyer himself. These responses were also combined. At the same time, however, we believed it important to see the pattern of combined warnings, *e.g.*, silence and counsel. These considerations therefore served as the basis for table 4.

60. *See* table 4, warnings 3 and 5, *supra*. Interestingly, only 21% of the "post-*Miranda* defendants without counsel" reported being given the station-house counsel warning in contrast to 73% of the "defendants with counsel." Since the designation of "with counsel" is only for identification purposes, of course, there is no implication that these defendants were given the warnings because they had counsel. Rather the true relationship is the other way around, namely, the effect of the warnings on the decision to request counsel. This relationship, as well as the relationship between the silence warning and the decision to remain silent is discussed in part IV.B. *infra*.

61. *See* table 4, warning 3, *supra*. The table also shows that only 17% of the "post-*Miranda* defendants without counsel" said they had been given all four *Miranda* warnings in contrast to 52% of the "defendants with counsel."

62. Miranda v. Arizona, 384 U.S. 436, 467 (1966). *See* also note 22 *supra*.

63. For purpose of our study, we defined "interrogation" to mean any questioning initiated by police officers, beyond mere identification of the person, that related to any offense. This definition was somewhat broader than the one used by Reiss and Black in their study of field interrogation: "For purpose of the field study, an interrogation was defined operationally as any questioning of a probing nature that went beyond mere identification of the person and that led to defining the person as a sus-

48 per cent after *Miranda*.[64] At the same time, over half of the "post-*Miranda* defendants with counsel," as well as half of the "volunteer attorney defendants," maintained that they had been interrogated before the attorneys arrived at the police station. Indeed, even the police themselves admitted to the attorneys that they had interrogated close to one quarter of the "volunteer attorney defendants" before the attorneys arrived. Obviously, any upward distortions in the reporting of the interrogation rate by the defendants may be considered as being offset by downward distortions by the police. Even if we were to assume that the interrogation rate in fact had been somewhere in the middle (37 per cent), it would still be significant for purposes of our inquiry. The pattern of interrogation is set out in table 5.

TABLE 5

Interrogation[a] *of Different Defendant Groups*[b]

	Pre-*Miranda* Defendants		Post-*Miranda* Defendants						Volunteer-Attorney Defendants			
			Total		Without Counsel		With Counsel		Defendant Claims[c]		Police Admissions[d]	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Interrogation	97	55	41	48	26	46	15	52	148	50	68	24
No interrogation	78	45	44	52	30	54	14	48	146	50	214	76
Total	175	100	85	100	56	100	29	100	294	100	282	100

[a] Nine of the "pre-*Miranda* defendants" and 3 of the "post-*Miranda* defendants" stated that they had been "threatened" by the police, but gave no other indication that they had been interrogated. Out of caution, we decided to categorize these 12 defendants in the "No Interrogation" column.

[b] Data Sources: Defendant Interview Schedules and Volunteer Attorney Reports.

[c] Not ascertained: 32.

[d] Not ascertained: 44.

Of the forty-one "post-*Miranda* defendants" who were interrogated, twelve (29 per cent) claimed that they had not been given a

pect or offender." Reiss & Black, *Interrogation and the Criminal Process*, ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI., Nov. 1967, at 47, 50. Moreover, as we pointed out in note 56 *supra*, all interrogation for purposes of our study took place while the suspects were under arrest. Unfortunately, because of the limitations of our study, we were unable to ascertain the types of tactics used by the police during interrogation or the extent of the evidence the police had prior to conviction.

64. As might be expected, the interrogation rate varied considerably with the crime charged from a high of 75% for homicide to a low of 10% for sex offenses, and with rates higher than the 50% average for drug offenses, auto theft, assault, larceny-theft, and housebreaking. The pattern of interrogation by crime is set out in table E-6, Appendix E, *infra*. *See generally Interrogation in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519, 1552-53, 1566 & n.123, 1567 (1967).

single *Miranda* warning[65] and were therefore interrogated by the police in clear violation of *Miranda* and the Police Department's General Order. The remaining twenty-nine "post-*Miranda* defendants" who were interrogated, however, said they had received *Miranda* warnings of some type;[66] eighteen of them (62 per cent) reported that they had not been given all four *Miranda* warnings[67] and were therefore also interrogated in clear violation of *Miranda* and the General Order.[68]

3. *Police Practices Affecting the Admissibility of Statements Given*

In *Miranda,* the Court pointed out that not all statements given by a defendant were to be barred from evidence, even if no warnings had been given: "Volunteered statements of any kind are not barred by the Fifth Amendment."[69] The Court explained that "[t]here is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make."[70] Of the thirty-four "post-*Miranda* defendants" who reported giving statements to the police, thirteen (38 per cent) stated that they had volunteered the statements without being interrogated.[71] The remaining twenty-one "post-*Miranda* defendants" maintained that they had given statements as a result of interrogation, and, of these, six (29 per cent) were given no warnings.[72] Since the warnings are "prerequisites to the admissibility of any statement made by a defendant"[73] following interrogation, the statements by

65. *See* table E-7, Appendix E, *infra.* Of these twelve, eleven were "defendants without counsel" and one was a "defendant with counsel." Of 147 "volunteer attorney defendants" who were interrogated, fourteen (10%) also reported not being given any *Miranda* warning. *See id.*

66. *See id.* Of these twenty-nine, fifteen were "defendants without counsel" and fourteen were "defendants with counsel." The remaining 133 "volunteer attorney defendants" (90%) who were interrogated also claimed receiving *Miranda* warnings of some type. *See id.*

67. The remaining eleven received all four *Miranda* warnings.

68. Of the eighty-five "post-*Miranda* defendants," twenty-six (31%) informed the police at some point in the post-arrest process that they did not wish to talk or to continue to talk. The police were reported to have stopped interrogation in thirteen of these cases (50%), to have asked the defendant to reconsider in four cases (15%), ignored the defendant's wishes in six cases (23%), and threatened the defendant in two cases (8%). No information as to subsequent action of the police was available for the remaining defendant.

69. Miranda v. Arizona, 384 U.S. 436, 478 (1966).

70. 384 U.S. at 478.

71. *See* table E-8, Appendix E, *infra.* Of the 126 "volunteer attorney defendants" who said they had given statements, sixteen (13%) reported giving the statements voluntarily. *See id.*

72. *See* table E-9, Appendix E, *infra.* Of the 109 "volunteer attorney defendants" who reported giving such statements, twelve (11%) were given no warnings. *See id.*

73. 384 U.S. at 476.

these six would have had to be suppressed in any subsequent proceeding if the issue had been presented. As for the statements resulting from interrogation by the remaining fifteen (71 per cent) "post-*Miranda* defendants" who received one or more of the *Miranda* warnings, those which were not preceded by all four warnings would also have had to be declared inadmissible.[74]

But even if all defendants had been given complete and valid warnings, the police, by virtue of *Miranda* and the General Order, were required to obtain a voluntary, knowing, and intelligent waiver from all the defendants interrogated.[75] From what we were able to determine, however, only four "post-*Miranda* defendants" signed[76] the "Consent To Speak" form;[77] and, even this act of signing the waiver form was not really indicative of a knowing and intelligent waiver. As the Supreme Court said of Miranda's signed confession, "[t]he mere fact that he signed a statement which contained a typed-in clause stating that he had 'full knowledge' of his 'legal rights' does not approach the knowing and intelligent waiver required to relinquish constitutional rights."[78]

Finally, as we shall explore in detail in another part of this Article, a significant number of "post-*Miranda* defendants" did not understand the rights warnings.[79] Therefore, interrogation of any of these defendants, even with formal waiver, would have been invalid because the waiver would presumably have been adjudged as not knowing and intelligent. Without the proper waiver, of course, the statements obtained could not have been used against the defendants.[80]

4. *Incriminatory Statements Elicited at Arrest and at the Station House*

The warning and station-house counsel requirements prescribed in *Miranda* rested in part on the Court's view of the interrogation process. The process it described takes place "in privacy"[81]—"in a room . . . cut off from the outside world."[82] The "salient features"

74. *See* Table E-9, Appendix E, *infra*. So, too, would the statements by the ninety-seven of the 109 "volunteer attorney defendants" (89%) who claimed to have received one or more of the *Miranda* warnings. *See id.*

75. *See* Miranda v. Arizona, 384 U.S. 436, 445, 479 (1966); General Order No. 9-C, at 3.

76. *See* note 55 *supra*.

77. General Order No. 9-C, Attachment; *see* text accompanying note 55 *supra*.

78. 384 U.S. at 492.

79. See Part IV-C, *infra*.

80. 384 U.S. at 479.

81. 384 U.S. at 448.

82. 384 U.S. at 445.

of the process were set forth as being "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.[83]

The reality of the interrogation process in the District of Columbia turned out to be somewhat different from the Court's model. Of the 148 "volunteer attorney defendants" who claimed to have been interrogated by the police, slightly over one third (50) were interrogated not in a room cut off from the outside world but in a public place at the time and place of arrest; one third (49) were interrogated in various parts of the police station; and over one quarter (41) were interrogated in both places.[84]

The warning rate of the "volunteer attorney defendants" interrogated at the various stages of the post-arrest process remained fairly uniform. Of the fifty interrogated at arrest, forty-six (92 per cent) said they were warned of their rights; of the forty-nine interrogated at the station house, forty-three (88 per cent) were so warned; and of the forty-one interrogated in both places, thirty-eight (93 per cent) were warned. These high warning rates do not tell the full story, however, since apparently interrogation periodically took place either before the defendants were warned or at a place other than where the defendants were warned. This practice may explain why these findings on warnings contrast sharply with those of Reiss and Black in their study of field interrogation in Boston, Chicago, and the District of Columbia:

> During the observation period, the *Miranda* warning rarely was given to suspects in field settings. A citizen was apprised of at least one of the rights specified in the Miranda decision in 3 percent of the police encounters with suspects. In only three cases were all four rights warnings mentioned in *Miranda* used in the warning.[85]

Whether or not interrogation took place or warnings were given, the fact remains that many incriminatory statements were given at the time and place of arrest, as shown in tables 6 and 7.

83. 384 U.S. at 445. For a description of the interrogation process by the Court, *see* 384 U.S. at 445-58. A summary of this description may be found in *Interrogation in New Haven*, *supra* note 64, at 1533-36. Despite this emphasis, the Court made its requirements applicable not only to questioning initiated by law enforcement officers after a person has been taken into "custody," but also to questioning while a person is "deprived of his freedom of action in any significant way." 384 U.S. at 444. Presumably this had reference at least to on-the-street interrogation following arrest, if not to on-the-street interrogation following something less than arrest.

84. Data source: Volunteer Attorney Reports. The place of interrogation for the remaining eight defendants (5%) could not be ascertained.

85. Reiss & Black, *supra* note 63, at 55 n.6.

TABLE 6

Inculpatory and Exculpatory Statements Given by Volunteer Attorney Defendants Interrogated upon Arrest, at the Station House, and Both Places[a]

Place of Interrogation	Inculpatory Statements		Exculpatory Statements		Other Statements[b]		Total	
	No.	%	No.	%	No.	%	No.	%
Upon Arrest	19	51	11	28	6	21	36	34
At the Station House	7	19	17	41	12	41	36	34
Both Places	11	30	13	32	11	38	35	33
Total[c]	37	100	41	101	39	100	107	101

[a] Data Source: Volunteer Attorney Reports.
[b] Includes unrelated and uncharacterized statements.
[c] No statements: 18; statements not ascertained: 20; place of interrogation not ascertained: 3; not interrogated: 146; interrogation not ascertained: 32.

TABLE 7

"Incriminatory" Statements Given by Volunteer Attorney Defendants Interrogated upon Arrest and at the Station House

Place of Interrogation	Inculpatory Statements		Exculpatory Statements		"Incriminatory" Statements[a]		Other Statements[b]		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Upon Arrest[c]	30	81	24	59	54	69	17	59	71	66
At the Station House	7	19	17	41	24	31	12	41	36	34
Total	37	100	41	100	78	100	29	100	107	100

[a] Includes both inculpatory and exculpatory statements. *See* text following this table.
[b] Includes unrelated and uncharacterized statements.
[c] Includes statements upon arrest and at both places. *See* table 6, *supra*.

As shown by table 6, a majority of the thirty-seven inculpatory statements (51 per cent) was reported to have been elicited by the police at the time and place of arrest. If we combine the categories of interrogation at arrest and interrogation both at arrest and the station house (both places), as in table 7, we find that thirty out of thirty-seven "volunteer attorney defendants" (81 per cent) were said by their attorneys to have given inculpatory statements upon arrest.

But even this analysis is not complete. The Court in *Miranda* noted that "no distinction may be drawn between inculpatory statements and statements alleged to be merely 'exculpatory' " since

"these statements are incriminating in any meaningful sense of the word."[86] Thus, if we combine inculpatory and exculpatory statements, we find that fifty-four out of seventy-eight defendants (69 per cent) were said to have given "incriminatory" statements upon arrest.

* * *

This then is how the defendants perceived what occurred to them and how the police acted following arrest. The other side of the story, however, is how the defendants themselves reacted to their arrest and the police practices that followed. It is to this question that we now turn.

IV. The Defendant's Reaction to the Miranda Warnings

A. *The Court's Reasons for Requiring the Warnings*

James Mill in his *Essay on Government* propounded the view that a proper knowledge of one's self-interest would lead one to act in accordance with that interest.[87] According to Mill's son, John Stuart, so complete was his father's "reliance on the influence of reason over the minds of mankind . . . that he felt as if all would be gained if the whole population were taught to read."[88] James Mill's "fundamental doctrine," said his son, "was the . . . unlimited possibility of improving the moral and intellectual condition of mankind by education."[89]

The underlying philosophy of the Court's decision in *Miranda* is closely akin to Mill's eighteenth-century Utilitarian views. Implicit throughout the opinion is the assumption that once the defendant is properly warned of his legal rights he will be in a position to act in accordance with his interest in remaining silent and requesting a lawyer.

The Court's philosophical position may be most clearly seen in its characterization of the right-to-silence warning. The warning is needed, the Court avowed, in order to make the accused "aware" of the right.[90] In effect, the silence warning is "the threshhold requirement for an intelligent decision as to its exercise."[91] It "in-

86. 384 U.S. at 477.

87. "[I]f the parties who act contrary to their interest had a proper knowledge of that interest, they would act well. What is necessary, then, is knowledge." James Mill, *An Essay on Government*, in The English Philosophers From Bacon to Mill 885 (1939).

88. John Stuart Mill, Autobiography 89 (World Classics ed. 1931).

89. *Id.* at 91; *see also* J. Pennock, Liberal Democracy: Its Merits and Prospects 17 (1950).

90. 384 U.S. at 468.

91. 384 U.S. at 468.

sure[s] that the individual knows he is free to exercise the privilege at that point in time"[92] and shows the individual "that his interrogators are prepared to recognize his privilege should he choose to exercise it."[93] In like manner, the Court maintained, the warning that anything said can and will be used against the accused makes him aware "not only of the privilege but also of the consequences of foregoing it."[94] This awareness assures a "real understanding and intelligent exercise of the privilege" and serves to make the accused "more accurately aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest."[95]

Unfortunately, the Court's vision of how *Miranda* would operate has become somewhat blurred in practice, as our statistics of interrogation and confession demonstrate. We must therefore ask what did the *Miranda* warnings mean to the defendants and to what extent were they helped by the recital of warnings.[96]

B. *The Defendant's Behavior Following the Warnings*

A definite relationship existed between the giving of the warning of the right to station-house counsel[97] and the "post-*Miranda* defendants' " decision to obtain counsel: close to two thirds of these

92. 384 U.S. at 469.

93. 384 U.S. at 468.

94. 384 U.S. at 469.

95. 384 U.S. at 469. The court continued in this vein for the other warnings as well. Thus, concerning the right to the presence of an attorney, it said: "Only through such warning is there ascertainable assurance that the accused was aware of this right." 384 U.S. at 472. Concerning the right to an appointed counsel, the Court added:

> Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent—the person most often subjected to interrogation—the knowledge that he too has a right to have Counsel present. As with the warnings of the right to remain silent and the general right to counsel, only by effective and express explanation to the indigent of this right can there be assurance that he was truly in a position to exercise it.

384 U.S. at 473.

96. In light of the profile of the defendants in our interview samples, *see* text at notes 38-39 *supra* and Appendix D *infra*, perhaps we should also repeat the questions posed by Elsen and Rosett:

> [W]hat will the *Miranda* warnings tell the uneducated, deprived, and disadvantaged who are the grist of the criminal system's mill? How will the ignorant or subnormal defendant be significantly helped by the recital of some legal abstractions? As for those somewhat more aware of their rights, a general warning will probably be of little assistance, since their problem is to decide what to do about those rights.

Elsen & Rosett, *Protections for the Suspect Under Miranda v. Arizona*, 67 COLUM. L. REV. 645, 655-56 (1967).

97. Combines warnings of the right to the presence of counsel at the station house and the right to appointed counsel. *See* table 4 n.h *supra*.

defendants who reported receiving this warning did request counsel. Yet the fact remains that over one third of these defendants receiving the warning did not request counsel. Moreover, when no warnings were given or when warnings other than the right to station-house counsel were given, the overwhelming response of well over three quarters of the remaining "post-*Miranda* defendants" was not to request counsel. The results are set forth in table 8.

TABLE 8

Results of Specific Warnings of Post-Miranda Defendants[a] *by Whether Counsel Requested*[b]

	Counsel Requested		Counsel Not Requested	
Warnings of Rights[c]	No.	%	No.	%
Non-Station-House Counsel	2	17	10	83
Station-House Counsel	21	64	12	36
Silence Alone	3	23	10	77
Neither Counsel nor Silenced	3	12	21	88
Undetermined	—	—	3	*[e]
Total	29	34	56	66

[a] Only 2 of the 175 "pre-*Miranda* defendants" requested counsel.
[b] Data source: Defendant Interview Schedules.
[c] For definitions of the warnings, *see* table 4, nn. f, g & h *supra*.
[d] Includes warnings of phone and/or bond, as well as no warning.
[e] An asterisk in this and other tables means an irrelevant or insignificant percentage.

Similarly, a parallel relationship existed between the warning of the right to silence[98] and the "post-*Miranda* defendants' " refusal to give statements to the police:[99] 60 per cent of these defendants who said they were given the warning gave no statements; the other 40 per cent, however, did give statements despite the warning. At the same time, when no silence or other warnings were said to have been given, over half of the remaining "post-*Miranda* defendants" gave statements to the police. The results for all defendant groups are set out in table 9.

C. *The Defendant's Understanding of the Warnings*

In order to test their cognitive understanding, we gave full *Miranda*-type warnings one at a time to the defendants,[100] and, after

98. This warning combines the literal warning of the right to silence and the warning that "anything you say may be used against you." *See* table 4 n.f *supra*.

99. A similar but not so dramatic pattern was apparent with the "pre-*Miranda* defendants."

100. The warnings we used were as follows:

You have been placed under arrest. You are not required to say anything to us at

TABLE 9

Results of Specific Warnings of Pre- and Post-Miranda Defendants by Whether Statements Given[a]

	Pre-*Miranda* Defendants[b]				Post-*Miranda* Defendants											
					Total				Without Counsel				With Counsel			
	Statements		No Statements		Statements		No Statements		Statements		No Statements		Statements		No Statements	
Warnings of Rights	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Silence[c]	21	47	24	53	17	40	26	60	9	36	16	64	8	44	10	56
Counsel Alone[d]	15	50	15	50	6	46	7	54	3	43	4	57	3	50	3	50
Neither Silence Nor Counsel[e]	39	39	60	61	11	55	9	45	10	56	8	44	1	50	1	50
Undetermined	—	—	—	—	—	—	9	*	—	—	6	*	—	—	3	*
Total	75	43	99	57	34	40	51	60	22	39	34	61	12	41	17	59

[a] Data source: Defendant Interview Schedules.

[b] Not ascertained: 1.

[c] Includes silence alone and silence with other warnings. There was little difference in result between the effect of the silence warning alone and the effect of all *Miranda* warnings.

[d] Because the cell groups were so small, this category includes warnings of both station-house and non-station-house counsel. *See* table 4 nn. g & h *supra*.

[e] Includes warnings of phone and/or bond, as well as no warnings.

each, asked what the warning meant to them.[101] The defendants' answers were then rated as signifying either "understanding" or "misunderstanding."[102] The ratings indicated that 15 per cent of the eighty-five "post-*Miranda* defendants" failed to understand the right to silence warning, 18 per cent failed to understand the warning of the right to the presence of counsel, and 24 per cent failed to understand the warning of the right to appointed counsel.[103]

We were able to derive an added insight into the defendants' understanding of the warnings by obtaining their verbatim comments of what they felt about the way the police told them of their rights.[104] A number were cynical about the procedure, and believed the warnings to be "merely a formality" given to them only because the police "had to." Thus, one defendant complained that the police "didn't seem to care whether we understood or not," and another noted that the police officer giving the warnings "was as ignorant of my rights as I was myself. He was only reading a statement."[105]

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any time or to answer any questions. Anything you say may be used against you as evidence in Court.
Your lawyer may be present here during the police interrogation and you may consult with him.
If you cannot afford to retain a lawyer privately, you have the right to have a lawyer appointed to represent you free of charge at the police station.

101. Our interviewers gave these warnings to the defendants interviewed in as neutral a manner as possible. To be sure, this procedure could not duplicate the atmosphere at arrest or at the station house, where the possible anxiety of the defendant and the possible partisan manner of the police (*see Interrogation in New Haven, supra* note 64, at 1552) would probably lead to greater misunderstanding and confusion as to the meaning of the warnings than was registered by the defendants in our interviews. Consequently, if anything, our results understate the defendants' rate of misunderstanding of the warnings.

102. "Understanding" included both complete and partial understanding. Complete understanding was indicated either by an explanation which signified understanding or a definitional statement as to the specified right. A number of respondents answered by saying that the right "means just what it says." This response was considered to be a partial understanding. Our interviewers reported that the somewhat more educated or aggressive persons gave this response and resented any attempt at clarification. "Misunderstanding" included both complete and partial misunderstanding. Complete misunderstanding included the response, "I don't know." Partial misunderstanding included such responses as "That would mean I'm in trouble"; "That wouldn't mean anything to me since I'm innocent"; or "That would mean a lot to me."

103. The "pre-*Miranda* defendants" had a comparable rate of misunderstanding of the first two warnings (18 and 19% respectively), but went up to 36% misunderstanding for the right to appointed counsel. The results are set out in table E-10, Appendix E, *infra*.

104. The verbatim comments of the defendants, as well as the volunteer attorneys, are contained in the various Defendant Interview Schedules and Volunteer Attorney Reports, on file at the Institute of Criminal Law and Procedure. Each Schedule and Report has a code number. A master index of the quotations according to subject matter is also kept on file.

105. Other such statements included: "I don't think they really mean it"; the police were "unjust"; the police "didn't truly tell me of my rights—they held back"; "they thought I was guilty already."

On the other hand, several other defendants accepted the warnings from the police at their face value. As one remarked, "They were helpful. [The police] . . . explained . . . [the warnings] very clearly, which is more than they used to do." Others remarked that "[t]hey talked like they meant it"; "they made a big thing about it"; "they wanted it to be known they had about eight people watching as witnesses."

There were many misconceptions as to the meaning of the right to station-house counsel. The following were typical misinterpretations of the warning by the defendants:

—The police "had some lawyer of their own who was working with them."

—It means that "I would have to pay for a lawyer."

—They planned to "appoint someone at court."

—"I just have to write for one and wait for him to answer."

—"I don't know why one would need a lawyer in a station house; it's never done."

—The warning "means I would answer [questions by the police] if a lawyer is present."

Other defendants were not even able to get to the point of interpreting the warning. For example, one was shown the police card with the warnings on it, but failed to read it, and another was so wrought up that his "mind wasn't functioning." "I couldn't think," he reported.

Some defendants had comparable misconceptions about the right-to-silence warning. Several understood it to mean that they had the right to talk. Some had the opposite impression that the police either did not want them to talk or would not let them talk. Others perceived a garbled version. As one said, it means that "I should have the right to say something so they can use it in evidence in court," and another added that it meant that "[i]f I . . . like try to bribe them, they would use it against me in court." Still others propounded more involved interpretations. "If I'm innocent," said one, "I should tell the truth." Another recognized the dilemma presented: the warning means "that if I said anything false it would go hard on me; if I tell the truth, then trouble."

1. *The Relationship of the Defendant's Understanding to His Behavior*

More significant than the defendant's understanding of the warnings is the relationship of this understanding (or misunderstanding) to the decisions each defendant made concerning the right to counsel and the right to silence.

As may be seen in tables 10 and 11, 66 per cent of those who understood the station-house counsel warning given by the police-requested counsel,[106] and approximately 60 per cent of those who understood the silence warning did not give statements.[107]

2. *The Inverse Relationship of the Defendant's Understanding to His Behavior*

A further question raised by tables 10 and 11 is why the 34 per cent of the "post-*Miranda* defendants" who understood the counsel warnings did not request counsel and why the 41 per cent who understood the silence warning did not remain silent.

Several commentators have attempted explanation. Elsen and Rosett have observed:

> To predict how a suspect's insistence on his rights will affect his chances of avoiding prosecution requires an intimate knowledge of the system which cannot be conveyed by a warning, however improved. . . . The suspect . . . does not know if his request for counsel will annoy the police, the prosecutor or a jury. The fact that he has been warned as required by *Miranda* may have little bearing on his decision whether counsel should be waived . . . . A suspect may well choose not to be a "wise guy" who will land in jail as a reward for his insistence on his rights.[108]

And the editors of the *Yale Law Journal* have noted:

> The suspect arrested and brought downtown for questioning is in a crisis-laden situation. The stakes for him are high—often his freedom for a few or many years—and his prospects hinge on decisions that must be quickly made: To cooperate and hope for leniency, to try and talk his way out, to stand adamantly on his rights . . . . The likely consequences of the alternatives open to him are unclear—how much leniency cooperation may earn, how likely fast talk is to succeed, how much a steadfast refusal to talk may contribute to a decision by the police, prosecutor or judge to "throw the book" at him.[109]

Thus, while these defendants may have had a cognitive understanding of their rights, they had no appreciation of them and lacked the ability to apply them to their "crisis-laden" situations. This is borne out by many of the statements of the defendants we obtained in our interviews. Although these statements could not be quantitatively

106. The cell size for those who did not understand the counsel warning is too small for analysis.

107. Again, the cell size for the "misunderstanding" response to the silence warning is too small for analysis.

108. Elsen & Rosett, *supra* note 96, at 658.

109. *Interrogation in New Haven, supra* note 64, at 1613-14.

TABLE 10

Results of Understanding of Station-House Counsel Warning by Whether Counsel Requested[a]

	Understanding		Misunderstanding	
	No.	%	No.	%
Counsel Requested	19	66	2	50
Counsel Not Requested	10	34	2	50
Total	29	100	4	100

[a] Data source: Defendant Interview Schedules.

TABLE 11

Results of Understanding of Silence Warning by Pre- and Post-Miranda Defendants by Whether Statements Given[a]

	Pre-*Miranda* Defendants[b]				Post-*Miranda* Defendants											
					Total				Without Counsel				With Counsel			
	Under.		Misunder.		Under.		Misunder.		Under.		Misunder.		Under.		Misunder.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Statements	15	42	3	30	15	41	2	33	9	39	—		6	43	2	50
No Statements	17	58	7	70	22	59	4	67	14	61	2	100	8	57	2	50
Total	32	100	10	100	37	100	6	100	23	100	2	100	14	100	4	100

[a] Data source: Defendant Interview Schedules.
[b] Not ascertained: 3.

analyzed, they did afford us an opportunity to gain an insight into the reasons for rejection of counsel and for talking to the police.

Concerning the right to station-house counsel, one defendant did not believe he could really obtain a lawyer at the station. Another did not trust a lawyer furnished by the police. "I don't dig those jailhouse deals," he said. "The police have their own lawyer. I wouldn't be interested." And another added, "I only wanted to talk to people I could trust who would let me know what I was up against." Other defendants were too preoccupied with other concerns to recognize the value of a lawyer. Thus, one noted, "I wasn't thinking about anything but calling my mother and wife," and another's "main concern was bond." Still others believed that they themselves knew the system too well to risk having a lawyer. As one "sophisticated" defendant observed, "I wouldn't want one. That's the *worst* place to have a lawyer because the police play it straight then. I wanted them to make a mistake."

As for the right to silence, some feared being hit or beaten up by the police. Several maintained they had been threatened by the police or tricked.[110] Another answered questions only because they did not relate to the charge against him. Still others wanted to convince police of their innocence. In this regard, a general response was that "I saw no harm in it," or that "I had nothing to hide," or that "I thought I was not at fault so I talked." One defendant insisted that there is always a tendency for a person to want to cooperate. And others explained that they would get lenient treatment if they cooperated. As a defendant said, "I figured I could straighten out the whole thing right there." Finally, there were those who just felt compelled to talk. As one explained, "I did it. I knew why the police wanted me, and they had me cold."[111]

* * *

110. One defendant talked because he thought the policeman had been kidding.

111. In addition to studying the relationship of the defendant's cognitive understanding or misunderstanding of the warnings of his legal rights to his response to the warnings, we also attempted in our Defendant Interview Study to measure the other dimensions of understanding by distinguishing between defendants with "anomie" and those without "anomie" and differentiating those two defendant groups' societal attitudes and their sense of power or "powerlessness" within the community.

"Anomie" is a term coined by the French sociologist, Emile Durkheim, in his work *Suicide* (Spaulding & Simpson transl. 1951). The term may be defined as the inability or refusal of an individual to accept the premises and values of his society, and may be characterized as an aimless, normless, or ambivalent way of life which often leads to various social pathologies. Our study was based on the Nahemow and Bennett modification of Srole's Anomia Scale devised in the middle fifties. *See* L. Nahemow & R. Bennett, A New Scale for Anomie (1962) (mimeographed paper on file at the New York Psychiatric Institute); Srole, *Social Integration and Certain Corollaries: An Exploratory Study*, 21 AM. SOC. REV. 709 (1956). Srole contended that persons with "anomic" tenden-

In light of the foregoing data on police practices under *Miranda* and the defendants' response, even in an optimum system of precinct representation, with well-trained counsel available at the police station as soon as a defendant is brought in, the odds against even beginning to approach the model established by the Court in *Miranda* would have been exceedingly high. How the attorneys actually operated after the Junior Bar Section and NLSP established the Precinct Representation Project is the next chapter of our story.

V. The Attorney's Role Under Miranda

A. *The Court's View*

The basic aim of the Court in *Miranda* was to "assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process."[112] The warnings by themselves were considered not wholly sufficient in assuring this freedom of choice, however, because "the circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators."[113]

How then to protect the individual's right to choose between silence and speech from the coercive atmosphere of the interrogation process? The solution, which the Court believed to be "indispensable to the protection of the Fifth Amendment,"[114] was to require the presence of counsel during any questioning should the defendant so desire.[115] If the accused chose to remain silent, the presence of the attorney would "reduce the likelihood that the police will practice coercion,"[116] and, if the accused chose to talk, the attorney's pres-

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cies are more likely to have pessimistic and cynical views of the world around them than persons without "anomic" tendencies.

"Powerlessness" is a dimension which has also been studied by others. *See, e.g.*, Bullough, *Alienation in the Ghetto*, 72 Am. J. Soc. 469 (1967); Weinstein & Geisel, *Family Decision Making Over Desegregation*, 25 Sociometry 21 (1962). In our study, we developed two dimensions of powerlessness: (1) the sense of personal powerlessness —that one does not control one's own destiny, and (2) the inability to utilize or manipulate the already available, societally sanctioned means of obtaining aid.

We hypothesized that the distinction based on "anomie" and "powerlessness" would also characterize a difference in response by the two defendant groups to the warnings of rights given by the police. This study, Zeit, Medalie, & Alexander, *Anomie, Powerlessness, and Police Interrogation* (1968), will be published at a later date. It is currently on file with the Institute of Criminal Law and Procedure.

112. 384 U.S. at 469.

113. 384 U.S. at 469.

114. 384 U.S. at 469. Preliminary advice alone given to the accused by his own attorney was considered insufficient, as well, because, just as the warnings, it could "be swiftly over-come by the secret interrogation process." 384 U.S. at 470.

115. 384 U.S. at 469.

116. 384 U.S. at 470.

ence would enable the accused "to tell his story without fear, effectively, and in a way that eliminates the evils in the interrogation process."[117] The attorney would also be able to give the accused advice and counsel based on his assessment of the facts and on "the good professional judgment he has been taught."[118] Finally, the attorney would serve the subsidiary function of enhancing "the integrity of the fact-finding process in court,"[119] by mitigating the dangers of untrustworthiness, by offering himself as a witness who can testify in court about the coerciveness of the interrogation should that have been the case, by guaranteeing "that the accused gives a fully accurate statement to the police," and by assuring "that the statement is accurately reported by the prosecution at trial."[120]

B. *The Police Department's Official Response*

Following *Miranda,* the District of Columbia Police Department was faced with the problem of what to do if the accused responded to the warnings by stating that he wished counsel. In its General Order, the Department required that if the accused wished a lawyer present, the police were to give him the opportunity either to contact his own attorney or to make one availabe by placing a call to "one of the volunteer legal agencies" and notify the agency of the accused's name and request for counsel.[121] Should a requested lawyer come to the station house, the police were to afford the accused "every reasonable opportunity for confidential consultation."[122] After the consultation, if the police deemed interrogation advisable, the officer was to repeat the warnings to the accused in the presence of counsel and then "proceed with the interrogation unless or until terminated by the arrested person."[123]

C. *The Precinct Representation Project's Plan for Furnishing Volunteer Attorneys*

In response to the Court's call for counsel to protect the accused's rights under *Miranda,* the Junior Bar Section published an information and orientation "kit" and several supplementary memoranda for use by the attorneys who volunteered for station-house

117. 384 U.S. at 466.
118. 384 U.S. at 480.
119. 384 U.S. at 466.
120. 384 U.S. at 470.
121. General Order No. 9-C, at 4.
122. *Id.*
123. *Id.*

duty.[124] In the kit were several detailed suggestions as to what an attorney should do in the police station.

The initial advice related to the telephone request for counsel. If the accused was on the telephone, he was to be advised by the attorney "not to talk to the police at all" until the attorney arrived at the station; if a police officer placed the call, he was to be requested not to interrogate the accused until the attorney arrived and to allow the accused to speak on the telephone.[125] The volunteer attorney was further advised that, once he arrived at the police station, he could "usually talk to the arresting officer" and could even "occasionally see the police report which is often being prepared at the same time," because the officer was "usually easier to approach at this time" than he would be after discussion of the case with a prosecuting attorney.[126] In his interview with the police officer, the attorney was advised to ask whether the accused had been booked, the nature of the charge, whether he had been placed and identified in a lineup, and whether and when the police intended to take the accused before a committing magistrate.[127]

The attorney was also to ask the police for a place at the station in which he could consult privately with the accused. Upon seeing the accused, the attorney was to explain who he was, that he was there to provide preliminary legal assistance to the accused free of charge, that he was the accused's lawyer and "not provided by the police," and that whatever the accused told the attorney would be "held in absolute confidence."[128] The attorney was also admonished to make clear that he was there only "for the limited purpose" of helping the accused in the police station and that probably another lawyer would handle the case at subsequent stages.[129]

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124. J. Hennessey & L. Bernard, Memorandum to Attorneys Participating in the Miranda Project, July 13, 1966, in Junior Bar Section, *Miranda* Kit, July 18, 1966 [hereinafter Jr. Bar *Miranda* Kit]; J. Hennessey & L. Bernard, Suggestions for Volunteer Attorneys, Aug. 17, 1966, in Junior Bar Section, Supplement No. 1 to *Miranda* Kit, Aug. 18, 1966 [hereinafter Jr. Bar Supp. No. 1]; J. Hennessey & L. Bernard, Comments Addressed to Those Participating in the Miranda Project, in Junior Bar Section, Supplement No. 2 to *Miranda* Kit, Sept. 30, 1966 [hereinafter Jr. Bar Supp. No. 2].

125. Jr. Bar *Miranda* Kit 6.

126. Jr. Bar Supp. No. 2, at 3.

127. Jr. Bar *Miranda* Kit 6.

128. The Project memoranda pointed out that "[t]he lawyer's presence and questions have the effect of 'cementing' the factual situation before memories dim or stories change for other reasons." It was also suggested to the attorneys that "[t]he opportunity to observe the physical condition of the defendant may be very important in a later trial of the case. If the defendant was cut or bruised, drunk or on narcotics, had a mustache or beard, such information might be valuable later on. If the defendant is seriously injured, an attorney's urging might be necessary before the police will send him to the hospital." Jr. Bar Supp. No. 2, at 3.

129. Jr. Bar *Miranda* Kit. 6. If the attorney did not intend to continue representa-

The attorney's immediate responsibility, the Junior Bar Co-Directors suggested, was to aid "the accused in deciding how much to tell the police."[130] To facilitate this aid, the attorney was to ascertain from the accused what had happened up to then, what statements he had made, what questions the police had asked him, the circumstances leading to his requesting a lawyer, the circumstances of his arrest, whether he had an alibi, and whether there were witnesses on the scene whom the accused knew might exculpate him.

The attorney was told to advise the accused of his fifth amendment rights:[131]

> Explain to him that he may be able to tell the police of his defense and walk freely out of the station but that in explaining his story to the police he may become more deeply involved himself; that anything he says can be held against him in court . . . . If the accused wants to talk to the police, discuss carefully any defense he wants to offer.
>
> If the accused wants to tell his story in the hope that he will receive consideration or better treatment, explain to him that his decision does not have to be made immediately. He will have other opportunities later in the proceedings to cooperate with the authorities and receive whatever consideration might be given for such cooperation.
>
> If after the explanation of his rights the accused wants to offer an explanation of his conduct to the police so inform the police and state that you desire to be present during the interrogation.

It was further suggested to the volunteer attorney that he take careful notes of his conversation and of any interrogation in his presence since the notes might be necessary to refresh his recollection in the future should he be called as a witness.[132]

Finally, two additional immediate responsibilities were imposed on the volunteer attorney. The first was to bring whatever pressure he could "to get the accused before a magistrate as soon as possible and to make sure that when there he has a preliminary hearing and

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tion after the precinct stage, he was informed that he could be of assistance to the accused by making himself available to the attorney who thereafter represented the accused at subsequent stages. Jr. Bar Supp. No. 1, at 1.

130. Jr. Bar *Miranda* Kit 6.

131. *Id.* at 7. In this regard, it was pointed out that:

> Many arrested persons are totally ignorant of our legal procedure; *i.e.*, rights to bail, preliminary hearing, appointment of counsel, burden of proof, etc. This ignorance puts the arrested person at a great disadvantage, and, even in cases where interrogation is not planned, defendants have been known to try and "talk" their way out of a charge. The advice of an attorney can do much to overcome the problems inherent in this type of situation.

Jr. Bar Supp. No. 2, at 3.

132. Jr. Bar *Miranda* Kit 8.

is released from custody under reasonable conditions."[133] Second, the attorney was to arrange for bond to be set at the police station if no magistrate was available and to help the accused to obtain the bond once it was set.[134]

D. *The Actual Operation of the Precinct Representation Project*

1. *The Pattern of Defendant Requests and Attorney Responses*

We have already noted that, during its year of operation, the Precinct Representation Project had an extremely low number of requests for counsel, only 1,157 requests for 1,262 defendants. What is even more startling is that the number of requests drastically declined from the first to the second six-month period of operation: 804 requests for counsel (69 per cent) were made during the first six months, whereas only 351 (31 per cent) were made during the second six-month period.[135] The monthly pattern of counsel requests during the year, set forth in table 12, shows clearly the leveling off of the requests in December and January, the sudden break and decline in February, and the consistently low request rate for the rest of the period.

This pattern of requests for attorneys cannot be explained by the mere fact that the fall and winter months are usually low crime and arrest months.[136] One explanation may be that the police were simply reverting to their former practices after the "heat" of the first period of post-*Miranda* operation was off. But this explanation does not correlate with experience in other jurisdictions that, during the first months of operating under *Miranda,* police interrogation practices were rarely in compliance because they took considerable time to work out operational procedures, but that as time went on the police practices improved.[137]

Another explanation of the request pattern may be that the defendants arrested later in the year had learned through the "grapevine" that earlier defendants had questioned the value of the services provided by the volunteer attorneys.[138] They may also have been

133. *Id.* at 6-7.

134. *Id.* at 7.

135. Requests not designated by month or year: 2.

136. *See* D.C. REPORT 35-36 and table 12 (homicide); *id.* at 48 and table 25 (rape); *id* at 55, 58 table 37 (robbery); *id.* at 67-68, 69 table 49 (aggravated assault); *id.* at 83, 84 table 65 (housebreaking); *id.* at 92 & table 72, 93 table 73 (larceny).

137. *See, e.g., Interrogation in New Haven, supra* note 64, at 1550-51, & table 3. *See also* Reiss & Black, *supra* note 63, at 55 n.6. Because of the limitations of our study, we were unable to gauge the *changes* in specific police practices over time.

138. The limitations of our study made it difficult to measure the *changes,* if any, in defendants' attitudes toward attorneys.

TABLE 12
Telephone Requests for Volunteer Attorneys by Month and Year[a]

Month and Year	Telephone Requests	
	No.	%
June 1966[b]	8	1
July	155	13
August	185	16
September	133	11
October	103	9
November	124	11
December	96	8
Total 1966	804	69
January 1967	92	8
February	60	5
March	61	5
April	67	6
May	53	5
June[c]	18	2
Total 1967	351	31
Total 1966-1967[d]	1,155	100

[a] Data source: Telephone Log Records.
[b] The Project began operations on June 28, 1966.
[c] The Project ended operations on June 27, 1967.
[d] Requests not designated by month or year: 2.

aware that the attorneys themselves had become disillusioned, had questioned the value of their own services in relationship to the investment of time put in, and were therefore not participating to as great an extent as previously. Such a "feed-back" effect from defendants and attorneys may have produced an aura of low utility about the Precinct Representation Project among the District of Columbia defendant population.

There was clearly a change in the response of the attorneys to the defendants' requests for counsel during the second six-month period. During the first six months of operation, the NLSP switchboard was able to assign attorneys for at least 725 out of 804 calls (90 per cent), whereas during the second six-month period, the switchboard was able to assign attorneys for only 248 of the 351 calls (70 per cent).[139] Thus, the falling-off of defendant requests for

139. Requests not designated by month or year: 2. The difficulty in the Project's obtaining volunteer attorneys as time went on is also highlighted by the number of attorneys the switchboard had to contact during the first six months of operation in order to secure a volunteer for the station house compared with the number of attorneys the switchboard had to contact during the second six months of operation. This data is set out in table E-11, Appendix E, *infra*.

attorneys paralleled the falling-off of attorney response to the requests.[140]

2. *Operational Problems in Servicing the Defendant*

a. *Delay between arrest and the attorney's arrival at the station house.* There was considerable delay between the time a defendant was arrested and the time a volunteer attorney arrived at the police station. As set out in table 13, 60 per cent of the attorneys arrived after a delay of an hour or longer, and almost 9 per cent took four or more hours to arrive.[141]

TABLE 13

Time Intervals Between Arrest and the Arrival of the Volunteer Attorneys at the Police Station[a]

Time Interval from Arrest to Arrival	Attorney Arrivals		
	No.	%	Cummulative %
0-15 min.	11	4	4
15-30 min.	32	11	15
½- 1 hr.	73	25	40
1- 2 hrs.	87	29	69
2- 3 hrs.	53	18	87
3- 4 hrs.	13	4	91
4 + hrs.	27	9	100
Total[b]	296	100	

[a] Data source: Volunteer Attorney Reports.
[b] Not ascertained: 30.

The two major delay intervals were between the time of arrest and the time when the attorney received his assignment from the NLSP switchboard, and between the time of assignment and the time when the attorney arrived at the station. Although over one third of the assignments were made within the first half hour, and somewhat fewer than two thirds within the first hour, major problems of servicing the defendants arose with the 21 per cent of attorneys who received assignments during the second hour after arrest and the remaining 17 per cent who received assignments thereafter.[142] Thus, one attorney complained about the "long delay" between

140. *See* text at note 135 and table 11 *supra.*

141. When we speak of a two- or four-hour delay as being "considerable," we mean "considerable" in terms of the defendant's needs. Within a relatively short time following arrest or at least following arrival at the police station, the absence of a lawyer to protect the defendant's interest proved conducive to police interrogation.

142. The time delay between arrest and attorney assignment is set out in table E-12(1), Appendix E *infra.* Again, of course, the delay is not intrinsically long but long only in terms of the defendant's needs.

the time his defendant was arrested and the time he was called into the case; another lamented that it did not make sense to have been called to the station house two-and-one-half hours after the defendant had been arrested.[143]

Some of the delay between arrest and attorney assignment occurred between the time the NLSP switchboard received the telephone request from the police station and the time it contracted the attorneys. One attorney complained that he had not received his assignment until four hours after arrest even though the NLSP switchboard had been called almost immediately after arrest. And a second attorney highlighted the problem that occurred when only one attorney was on duty during a particular time period:

> After interview with client, I telephoned NLSP . . . to learn of any other assignments. I was the only attorney on call that night. I telephoned . . . several times, but no answer . . . . I later learned that [the operator] had gone out to "lunch" leaving the telephone unattended. Had [he] been in, I would have learned of my second call . . . . [I]nstead I drove home!

For the most part, however, the delay between telephone request and attorney assignment was minimal, with only 8 per cent of the assignments made one hour or more after the telephone request. Attorneys were usually assigned by the NLSP switchboard with efficiency and dispatch: 59 per cent of the assignments were made within the first five minutes after the switchboard was called; 77 per cent within the first fifteen minutes; 85 per cent within the first half hour; and 92 per cent within the first hour.[144] Most of the delay before assignment of the attorney, therefore, came between arrest and the placing by police of the telephone request to the NLSP switchboard for an attorney. As a result, the police must bear the major responsibility for this delay.[145]

b. *Delay at the station house.* Once the attorneys arrived at the police station, two additional sources of delay were present. First was the practice of transferring the defendant to Precinct No. 1 for booking and identification before the attorney arrived at the station.[146] For example, one attorney reported twice traveling all the

143. *See* note 104 *supra.*

144. The time delay between the telephone request for an attorney and the assignment of the attorney is set forth in table E-12(2), Appendix E, *infra.*

145. Unfortunately, few attorneys could or did obtain documentation of this type of delay. As one of the attorneys pointed out, "[N]o explanation was given why there was a substantial delay between arrest and [the] time [the] request for [a] lawyer was made."

146. Precinct No. 1 is the central cell-block for all those arrested in the District of Columbia. It is normal operational procedure for defendants to be transferred to No. 1, at least when no United States Commissioner or Committing Magistrate is available for presentment.

way across town only to find that "both times the accused had been moved from the precinct" before the attorney arrived. However, we found no evidence to sustain the conclusion that this was a purposeful device used by the police to hinder the attorney.

The second opportunity for delay at the station occurred between the arrival of the attorney and the time he obtained access to the defendant. Although 80 per cent of the attorneys saw their clients within five minutes, and an additional 6 per cent within fifteen minutes, 12 per cent of the attorneys were delayed between fifteen minutes and an hour before they could see their clients, and another 2 per cent were delayed for an hour or more.[147] Again, just as with the delay before the telephone request for an attorney, the police must bear the major responsibility for delay at the station house.

The delay we have documented constituted one of the "real" problems of the Precinct Representation Project, as one of the attorneys reported. By the time an attorney arrives at the station, he said, "the chances are that he [the defendant] has been talked to by the officers." This observation is borne out by a fact we have already noted: that over half of the defendants requesting counsel were interrogated by the police upon arrest and at the station house before the attorneys arrived at the station house.[148]

c. *Telephonic communication between attorney and defendant.* Perhaps the time delays could have been mitigated had there been direct telephonic communication between the defendant and attorney at an early stage. The General Order, however, directed that only the police themselves should call "one of the volunteer legal agencies" if the accused asked for an attorney.[149] As a result, once the NLSP switchboard was in operation, 888 out of 1,037 telephone requests (86 per cent) were placed by police officers, and only 135 (13 per cent) were placed by the defendants themselves.[150]

Even the defendants who called received little immediate satisfaction since no advice was or could be given by the switchboard operator. As with the calls from the police, the switchboard operator's only task was to contact the attorney on duty. The attorney in turn had been advised by the Project's supervisors to ask the

147. The time delay between the arrival of the attorney at the station house and the attorney's consultation with the defendant is set forth in Table E-12(3), Appendix E, *infra.*

148. *See* Part III.B.2. *supra.*

149. General Order No. 9-C, at 4. This directive was strongly criticized by Julian Dugas, head of NLSP. "We don't want the police calling us up. . . . We don't want defendants to get us identified as policemen's lawyers." Washington Post, July 20, 1966, at C-1, col. 2.

150. The remaining fourteen calls were placed by relatives, friends, and other members of the public. Data source: Telephone Log Records. Not ascertained: 120.

police by telephone not to interrogate the defendant, and to speak to the defendant himself in order to advise him not to talk to the police until the attorney arrived.[151] Had the attorneys followed this advice, they might have been able to mitigate the consequences of the delay in their seeing the defendants. Unfortunately, only twenty-two attorneys (7 per cent) had telephone conversations with their clients before they departed for the police station. The remaining 295 (93 per cent) had no conversations whatsoever.[152]

3. *The Services Performed by the Attorney at the Station House*

Once the attorneys arrived at the police station, only twenty-five (8 per cent) spent more than an hour with the accused, and six (2 per cent) more than two hours. On the other hand, a substantial number of attorneys—seventy-nine (27 per cent)—spent no more than fifteen minutes, and six (2 per cent) actually spent no more than five minutes, with the defendants. The findings on the time spent by the attorneys are set out in table 14.

TABLE 14
Time Spent by Attorneys with Defendants[a]

Time with Defendants	Attorneys	
	No.	%
0- 5 min.	6	2
5-15 min.	73	25
15-30 min.	84	29
½- 1 hour	104	36
1- 2 hours	19	6
2 + hours	6	2
Total[b]	292	100

[a] Data source: Volunteer Attorney Reports.
[b] Not ascertained: 34.

a. *Legal rights warnings and advice.* The limited time spent with defendants by over one quarter of the attorneys, while conceivably sufficient to fulfill the minimum constitutional requirements imposed by *Miranda,* did not seem sufficient for the attorneys to provide many of the other services suggested in the Junior Bar Section's own *Miranda* Kit.[153] Thus, one third of the seventy-nine attorneys who spent fifteen minutes or less at the police station reported confining their legal services solely to the giving of legal

151. Jr. Bar *Miranda* Kit 6; *see* text accompanying note 125 *supra.*
152. Data source: Volunteer Attorney Reports. Not ascertained: 9.
153. Jr. Bar *Miranda* Kit 6-7; *see* text accompanying notes 130-34 *supra.*

rights warnings, including at times advice to the defendant to remain silent. This limited service was also performed by another 117 out of the total of 311 volunteer attorneys reporting (38 per cent); an additional 172 attorneys (55 per cent) also reported giving legal rights warnings and advice along with other services.[154]

b. *Interrogation of the defendant in the attorney's presence and thereafter.* The limited time spent by the attorneys at the station and the restricted services provided were symptomatic of the attorneys' declining interest in the Precinct Representation Project as time went on. A number of attorneys felt that they were serving little purpose in going down to the station house: some believed that they could serve no useful function because their defendants had been "caught in the act," or because the cases were unimportant, or because the police had no intention of interrogating their defendants. As one attorney stated:

> I draw the line at getting out of bed at 2:00 a.m. on a bitterly cold, snowy night and driving 20 minutes to advise a man arrested for vagrancy . . . of his rights against self-incrimination when the police have no conceivable reason for or intention of interrogating him. Will these men ever be assigned counsel at their trial? I don't think the *Miranda* decision contemplated this situation, and I believe it an imposition to take my time to consult with persons arrested for petty misdemeanors.[155]

Another attorney reported:

> I found it a most frustrating experience. The accused was never questioned by police at any time. The accused asked for an attorney to be comforted more than anything else. I was happy to do this but I feel it is not the intent of *Miranda* for the Bar to undertake this function. The police could have advised him of the matters I discussed with the accused. His wife should have been there to comfort him.

This general feeling was articulated most succinctly by the Junior Bar Section's Project Co-Directors, who concluded after three months of experience with the Project "that very few interrogations

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154. Data source: Volunteer Attorney Reports. Not ascertained: 15.

155. Whether or not a particular offense was covered by the *Miranda* requirements depended upon whether or not a particular police officer thought it was, and, occasionally, as in this case, an officer would give the *Miranda* warnings even when vagrancy or some other petty misdemeanor was involved. As to the question of the types of offenses covered by the fifth amendment, *see* Y. Kamisar, *Commentary*, in A NEW LOOK AT CONFESSIONS: ESCOBEDO—THE SECOND ROUND 108-09 (B. George ed. 1967); Kamisar & Choper, *The Right to Counsel in Minnesota: Some Field Findings and Legal-Policy Observations*, 48 MINN. L. REV. 1, 68-73 (1963).

are taking place and that the number of confessions has been substantially reduced."[156] Specifically, they noted that:

> [I]n the vast majority (over 95%) of these cases, the police have not continued the interrogation of the accused after counsel has been contacted. This indicates that the problem of coerced confessions which prompted the Supreme Court to establish the procedural safeguards listed in *Miranda* may have been minimized in the District of Columbia.[157]

This assessment conflicted with what both the volunteer attorneys and the defendants had reported to our research staff. It may be that in "over 95%" of the cases, the police had "not continued" interrogation "after counsel had been contacted." Yet, as we noted in part III, prior to contacting the attorneys and clearly before the attorneys arrived, there was a substantial incidence of police interrogation and of statements given by defendants.

But this problem aside, failure of the police to continue interrogation led many volunteer attorneys to believe that *Miranda* did not require their token attendance at the station house. As stated by the Junior Bar Project Co-Directors:

> [S]ome volunteer attorneys . . . feel that if the police do not intend to interrogate, the attorney can serve no useful function by traveling many miles late at night to visit an accused at the precinct station. These volunteers have suggested that when a call is received, the attorney telephones the precinct, advises the accused of his rights and inquires of the officers whether they desire to conduct further interrogation. If the police do not wish to interrogate the accused, these attorneys feel that the obligation imposed by *Miranda* will have been fulfilled without the necessity for an across town journey and lengthy interview by an unpaid volunteer. . . .[158]

This same view was reported by the Chairman of the Junior Bar Section, in the course of announcing the termination of the Junior Bar's participation in the Precinct Representation Project, effective June 27, 1967:

> The Junior Bar Committee discovered that apparently in very few cases where counsel responded to calls from the precincts did the police actually intend to question the arrested person about the charge after the lawyer appeared. Consequently, so far as making counsel available in situations where the *Miranda* case had held that counsel was constitutionally required, the program's impact seemed to be quite limited.[159]

156. Jr. Bar Supp. No. 2, at 3.
157. *Id.* at 2.
158. *Id.* at 2.
159. Letter of S. White Rhyne, Jr., Chairman, Junior Bar Section, to Howard West-

One trouble with the Committee's discovery had previously been raised by the Junior Bar Project Co-Directors themselves who had emphasized that it was unknown "how many interrogations might have been continued had not lawyers actually shown up at the station house; or, if a telephone call rather than a personal appearance would have been as effective as the personal appearance."[160] Moreover, according to 311 of the attorneys' own Volunteer Reports, interrogation in their presence actually took place in 36 cases (12 per cent),[161] and, in 22 out of the 219 cases reported (10 per cent), the defendants gave statements to the police even after having been advised by their attorneys to remain silent.[162]

The dilemma raised by the juxtaposition of the realities of interrogation against the attorneys' assessment of their role is a very real one. Unless the lawyer is at the police station when an interrogation takes place, the defendant is very likely to waive his rights to silence and give incriminatory statements; yet since the police have need to interrogate only a limited number of suspects, providing a lawyer for each person arrested, or even for each person who requests counsel, makes the lawyer feel that he is wasting his time.

c. *Aid in pretrial release.* The Precinct Representation Project showed that the attorney at the station house could perform many valuable non-*Miranda* services. A major service reported by the volunteer attorneys was the giving of some aid or advice concerning

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wood, Chairman, NLSP Board of Directors, May 15, 1967, at 2, in J. F. Hennessey, Memorandum to All Volunteers Participating in the Miranda Project, May 15, 1967.

160. Jr. Bar Supp. No. 2, at 3.

161. In sixteen of these cases (44%), the interrogation was not related specifically to the arrest and offense charged, however. Not ascertained: 15.

162. Data source: Volunteer Attorney Reports. Not ascertained: 107. There may be serious underreporting on this point, since 215 out of 303 attorneys (71%) indicated that they had not "maintained an active interest in the case" and presumably were therefore in no position to learn of statements after they left the police station.

Of the twenty-two defendants who gave the statements, twenty-one (95%) reported having previously been given warnings by the police; fifteen (68%) reported having been previously interrogated by the police and eleven (50%) were reported by the police to have been previously interrogated; twelve (55%) said they had been previously interrogated in the attorney's presence; and thirteen (59%) stated that they had given previous statements, five of which (38%) had been inculpatory and six (46%), exculpatory. Data source: Volunteer Attorney Reports.

These facts concerning interrogation and confession should put into perspective the statement by Justice Harlan, dissenting in Miranda v. Arizona, 384 U.S. 436, 516 n.12 (1966):

> The Court's vision of a lawyer "mitigat[ing] the dangers of untrustworthiness" . . . by witnessing coercion and assisting accuracy in the confession is largely a fancy; for if counsel arrives, there is rarely going to be a police station confession. *Watts v. Indiana*, 338 U.S. 49, 59 (separate opinion of Jackson, J.): "[A]ny lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances." See Enker & Elsen, Counsel for the Suspect, 49 Minn. L. Rev. 47, 66-68 (1964).

bail, bond, or personal recognizance in 94 out of 311 cases (28 per cent).[163] If the defendant had his own financial resources or had friends or relatives with money, the attorney was often of help in having station-house bond set and in raising the premium for bail. When the accused was to be brought before a magistrate in the morning following a night-time arrest, however, bond for a few hours freedom proved to be a very expensive luxury for the indigent. The real injustice was to those indigents who would be released on their own recognizance once they were brought before a magistrate: because of the unavailability of committing magistrates, some indigent defendants had to remain in jail over night or even over the weekend, and the volunteer attorneys were powerless to do anything about it.

The potential value of assistance in pretrial release was recognized by the Committee of the Junior Bar Section responsible for the Project; unfortunately little could be done to realize the potential. As the Committee noted:

> [E]xperience gained under the program, particularly in the case of arrests early in the weekend (where the person would ordinarily be held in jail without presentment until Monday morning), showed that counsel could perform a valuable service in arranging for prompt release on bail or personal recognizance. This became particularly important after the effective date of the Bail Reform Act in September, 1966. It also became apparent that representation at this stage could provide an opportunity for an early factual inquiry which might be useful at later stages of the case. This emphasized the need for having a judicial officer, capable of fixing bail as well as assigning counsel and holding preliminary hearings, physically present at a readily-accessible location.[164]

d. *Other services.* Another major service reported by attorneys was contacting friends or relatives in 141 cases (45 per cent). Additional services reported included (1) offering to become permanent counsel, (2) helping defendants obtain medical assistance, (3) notifying the defendant's probation officer or commanding officer of his arrest, (4) advising the defendant to ask for permanent counsel at arraignment, and (5) obtaining exculpatory witnesses.[165]

4. *The Voluntary Nature of the Project*

The basic defect of the Precinct Representation Project was that it was a voluntary program. It was developed and conducted by a

163. Data source: Voluntary Attorney Reports. Not ascertained: 15.

164. Letter, *supra* note 159, at 2. The Bail Reform Act is found in 18 U.S.C. §§ 3041, 3141-43, 3146-52, 3568 (Supp. II, 1966). *See also* District of Columbia Bail Agency Act, D.C. CODE ANN. §§ 23-901 to 23-909 (1967).

165. Data source: Defendant Interview Schedules.

small group of attorneys, who had taken the initiative to establish an interim program, provide orientation materials, recruit attorneys, and keep the program going. Because of its limited budget, it could not orient and train the voluntary attorneys aside from providing the *Miranda* Kit and the two supplementary memoranda. Indeed, as time went on, there was little money left even for reproducing the Kit and mailing it out to new volunteers in the program. After the initial effort, coordination of the project became less effective and the voluntary effort by the lawyers began to slack off.

The voluntary nature of the program also created other problems. Because of other professional obligations, most of the volunteers were unable to represent the accused at subsequent hearings or trials. There was thus a lack of continuity in representation, which may have been detrimental when the attorney representing the accused at the police precinct had information which was not available to the counsel who represented the accused in subsequent stages of the proceedings. This information—details about arrest, police practices, witnesses, and evidence—was not systematically preserved by the Project for the latter attorneys. Indeed, one of the major complaints by the attorneys themselves was that "there should be some coordination between representation at the precinct and representation in court." As one attorney put it:

> Some arrangements should be made so that the stationhouse attorney can refer the client to an attorney for preliminary hearing, if he doesn't want to go to hearing himself. Otherwise, the accused feels that he is being dismissed back into the system he doesn't understand.

Furthermore, the Project was a severe strain on the full-time practicing attorneys who volunteered for service. On some Saturday nights, a single attorney would be called down to one or the other of the police stations ten or more times during his tour of duty.

Despite these problems and deficiencies in the Project, what is remarkable is that the Project was sustained over such a long time by so many attorneys who gave freely of their time and effort even though many of them were carrying on full-time law practices during the day-time hours. At the same time, however, such an interim program could not continue indefinitely. Some more permanent arrangement had to be made. This need was explained by S. While Rhyne, Jr., Chairman of the Junior Bar Section in his letter announcing the termination of the Junior Bar's participation in the Project:

> The precinct representation project program of the Junior Bar was conceived and carried out as an interim effort. It would be

> unwise, in our opinion, for any permanent system of providing prompt legal representation after arrest to depend on such a massive effort by private attorneys who have full court and office schedules during the day and nevertheless commit themselves to respond without compensation to calls in the middle of the night and on weekends.[166]

VI. Miranda in Perspective

A. *Summary of Findings*

That the response of the police, defendants, and attorneys to *Miranda* did not conform to the ideal envisioned by the Court should come as no surprise. "Life and history," said Carl Becker, "have an inveterate habit of betraying the ideal aspirations of men. . . . [M]en were sure to be neither so rational nor so well-intentioned as the ideology conceived them to be."[167]

1. *The Police*

In contrast to the first premise underlying the Court's decision in *Miranda* that the police would give adequate and effective warnings of legal rights and honor the accused's exercise of those rights, the police in fact were reported to have failed to observe the spirit and often the letter of *Miranda*. Half the defendants reported not being given the silence warning, somewhat fewer than two thirds reported not being given the station-house counsel warning, and over two thirds as not being given all four *Miranda* warnings. Half the defendants said they had been interrogated by the police and even half of those requesting counsel maintained they had been interrogated before the attorneys arrived. Much of this interrogation and the concomitant eliciting of incriminatory statements occurred at the time and place of arrest where no lawyer could be present. Few defendants who stated they had been interrogated and had given statements signed any formal waiver of their rights. And, formal waiver or not, a significant number of those who gave statements under interrogation could not have given any knowing and intelligent waiver because of their failure to understand the warnings.

2. *The Defendants*

In contrast to the second premise that the defendants would be able to have a sufficient basis from the warnings to decide in their

166. Letter, *supra* note 159, at 3.
167. C. Becker, Modern Democracy 33 (1941).

own best interest whether to remain silent and to choose counsel, the defendants were loathe to use attorneys and frequently gave statements to the police because of their inability to apply *Miranda* to their own circumstances. Over nine tenths of those arrested for felonies and serious misdemeanors did not request counsel; nor did well over three quarters of those who said they had not been given the station-house counsel warning, over one third of those who stated they had been given the warning, or over one third of those who reported having been given the warning and having understood it. Moreover, two fifths of the defendants interviewed said they had given statements to the police. The defendants who gave statements constituted over one half of those who stated they had not been given the silence warning, two fifths of those who reported having been given the warning, and over two fifths who said they had been given the warning and understood it.

3. *The Attorneys*

Finally, in contrast to the third premise that the presence of attorneys in the police station would protect defendants' fifth amendment rights, the attorneys found it difficult to define adequately their role at the station house. They were often unavailable at the critical point in time necessary to protect the defendants' rights because of the delays between the time of arrest and the time the attorney arrived at the station and because of the reported failure of the police to curb interrogation until the defendant could have access to an attorney. Moreover, because so few attorneys even thought of telephoning the defendant directly before setting out for the station house and because so many spent so short a time with the defendant once there, little headway was made in mitigating the consequences of the time delays and police practices.

B. *Conclusions*

1. *The Police*

No warnings of rights and no program of providing attorneys to defendants, regardless of how good, can be of much value if the police persist in interrogating suspects at the time and place of arrest where the right to an attorney cannot be realized. The least that should be expected is that the police be required to refrain from all attempts to conduct custodial interrogation until the defendants have the "continuous opportunity to exercise" their fifth

amendment rights.[168] As the Court in *Miranda* emphasized, "If authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may do so without violating the person's Fifth Amendment privilege so long as they do not question him during that time."[169]

Another minimum requirement should obviously be that the police give all—and not only some—of the *Miranda* warnings, clearly and in a neutral manner, to all defendants subjected to custodial interrogation before that interrogation begins. The Court believed that warnings given in this manner would afford a defendant the opportunity of making a meaningful decision whether or not to request counsel and to remain silent. Although our data have cast serious doubt on the validity of this premise in all cases, it is the law and retains sufficient rationality to make adherence mandatory.

2. *The Defendants*

In our study we found that, aside from the large number of defendants who understood the warnings and acted accordingly, a small group of defendants misunderstood the warnings and a significant percentage, who had a cognitive understanding of the warnings, nevertheless failed to appreciate their significance and lacked the ability of applying them in context.

Our findings are not unique. A recent study of noncustodial interrogation of draft protestors who were highly educated and intelligent middle-class college students and professors at Yale shows that the results of giving *Miranda* warnings and of subsequent interrogation were comparable to our own:

> Even though the suspects understood that they could refuse to answer whenever they chose, they had only the vaguest intuition about how to decide whether to answer a given question. Their decision whether to waive their right to remain silent was made on hunch alone, without any of the knowledge or understanding required to make it "knowing and intelligent." Their waiver of the right to a lawyer's advice was even less informed, since their ignorance of the significance of the right to silence was compounded by their ignorance of the functions a lawyer might have performed for them.[170]

168. Miranda v. Arizona, 384 U.S. 436, 467 (1966).

169. 384 U.S. at 474. This prohibition was not intended to affect "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process . . . ." 384 U.S. at 477.

170. Griffiths & Ayres, *A Postscript to the Miranda Project: Interrogation of Draft Protestors*, 77 YALE L.J. 300, 311 (1967). Griffiths and Ayres further pointed out that:

It is obvious that the problem of comprehension of the *Miranda* warnings posed at Yale could not have been cured regardless of how clear, concise, and neutral the warnings were. One reason suggested in the Yale study was that the law enforcement officers

> cannot be expected to give the warnings in a sympathetic way or to assure full comprehension and appreciation in the suspect. It is hardly realistic to expect an interrogator to have the solicitude for the interest of the suspect which is required if the suspect is to be able to appreciate the significance of his rights in the context of what is at stake in the interrogation. To ask a detective . . . to act both as interrogator and as counsel for the defense is to require a capacity for schizophrenia as a qualification for the job.[171]

What then may be done to help defendants develop not only a cognitive understanding of their rights during interrogation but also an appreciation of the significance of those rights? One method devised at Yale was to mount an intensive campaign which included newspaper and posted notices of legal rights as well as a mass meeting at which Yale law professors discussed in detail the legal rights of persons subjected to police interrogation. At the meeting, the professors

> explained some of the working of the criminal process, clarifying the possible uses to which information gathered by the FBI might be put. They discussed the possible objectives of the questioning, the functions a lawyer could perform for a person trying to decide whether and what to answer, and the necessity that a person decide what his goals are before seeking legal advice as to how to accomplish them. Those present were told that they could phone a designated extension to obtain the numbers of local ACLU lawyers who would be willing to represent them. Questions of strategy were then debated at some length, and the sense of the meeting became clear that talking to the FBI could serve no useful purpose and might conceivably be harmful.[172]

As a result of the meeting, "highly-educated suspects seem[ed] able—in a non-custodial interrogation conducted according to *Miranda* rules—to exercise their constitutional rights fairly effectively, and, when in the absence of a lawyer, to behave as most lawyers would

> One of the prime reasons why the suspects . . . answered the questions . . . was that they did not appreciate the reasons for remaining silent. Because . . . they lacked knowledge of the legal context of the decisions they faced, they could not make an informal choice whether to exercise their rights, even though they were more or less aware of the literal meaning of the statements on the waiver form.
>
> *Id.* at 313.

171. *Id.* at 309-10.
172. *Id.* at 303.

probably have counseled."[173] Indeed, so important did the Yale study show this preparatory education of rights to be that, without it, the *Miranda* warnings proved "wholly ineffective, and this was so even when the suspect was intelligent, and the interrogation was polite, non-custodial, and at the suspect's home."[174]

The Yale experience has shown that an intensive campaign in which people are oriented to their rights before they come into conflict with the law may prove effective in implementing the purposes of *Miranda*. Attorneys from the local bar association and the local neighborhood legal services project could serve a valuable function in this educational role. But would this type of educational program be sufficiently effective with the type of poorly educated, indigent defendant usually involved in street crimes as it had been with the highly educated and intelligent middle-class students and professors involved in the Yale study? Despite the extremely favorable situation at Yale, the study there ultimately concluded that, "for full achievement of *Miranda*'s values, a suspect needs even more than a sympathetic explanation before his interrogation—he needs a sympathetic advocate during the interrogation."[175] Obviously, no less should be required for poorly educated, indigent defendants.

3. *The Attorneys*

But what type of attorney and what kind of legal program would satisfy the requirements of *Miranda*? Clearly, as the Precinct Representation Project demonstrated, a program of volunteer attorneys is inadequate to meet the challenge on a permanent basis. As a result of that experience, the Junior Bar sponsors recommended "that the most efficient way of providing legal counsel upon arrest would be in connection with a prompt presentment before a committing magistrate, available at a downtown location on a 24-hour basis."[176] Counsel could then be quickly appointed by a judicial officer to represent the defendant. This proposal was ultimately embodied in a recommendation by many prominent agencies and groups in the District of Columbia to establish a night court.[177] An experimental night court in the District of Columbia Court of General Sessions was put into effect from October 2 to December 29, 1967. Unfortunately, whatever its other merits, the night court did not solve the

173. *Id.* at 312.
174. *Id.* at 318.
175. *Id.*
176. Letter, *supra* note 159, at 2.
177. *See id.*; D.C. REPORT 283, 364, 956 n.142.

basic problem of protecting the accused's fifth amendment rights immediately after arrest, during which, as we have seen, a large portion of police interrogation was said to have taken place.

Another, and perhaps more relevant, proposal made by the Junior Bar was that "a permanent system should provide counsel who are able to devote full time and attention to continuous representation as a part of their regular duties."[178] Obviously, this system of adequately compensated counsel at the station house, supported by public funds, would not have to depend on the devotion and willingness of only a few lawyers to help out but would make provision for counsel responsive to the needs of the defendants. The "permanent system" would still have the same problem of time delays as the Precinct Representation Project had, however, unless counsel was in fact present from the time the defendant arrived at the station.

How feasible is such a system of full-time counsel to fulfill the *Miranda* requirements? The National Crime Commission's Task Force on the Administration of Justice has noted that, "at a time when reform of the criminal process is essential and legal manpower needs are acute, there are not enough competent criminal lawyers available to serve even those defendants who can afford to retain counsel."[179] If this be true, where could one hope to develop a corps of full-time lawyers to handle *Miranda* problems in the manner required?

Without enough well-trained criminal attorneys to go around, perhaps the alternative is to look to the law schools which represent a substantial, almost untapped source of legal manpower. In a legal program operating out of a legal aid or public defender agency under supervision of faculty and agency lawyers, law students could assume the role of legal counsel at the police station.[180] Such a program would provide "invaluable training under proper supervision,"[181] improve legal representation, and help to relieve the legal manpower shortage.[182] By utilizing the judgment of several well-

178. Letter, *supra* note 159, at 3.

179. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 57 (1967); *see* Silverstein, *Manpower Requirements in the Administration of Criminal Justice*, in *id.* at 152-61 (Appendix D).

180. No serious legal problem should arise in qualifying the students to play the role of counsel. According to the National Crime Commission Report, "[i]n at least nine [now thirteen] States, third-year law students are permitted by law to represent indigent defendants charged with misdemeanors at trial." PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, REPORT: THE CHALLENGE OF CRIME IN A FREE SOCIETY 152 (1967).

181. *Id.*

182. *See id.*

chosen attorneys and faculty members experienced in criminal law who would serve as supervisors, the law student program could avoid the disabilities of a program composed entirely of full-time attorneys who are not in sufficient supply to fulfill the need. By harnessing the enthusiasm and vitality of law students to whom the station house could serve as a challenge rather than a menial task, the program could avoid the disabilities of a volunteer program of private attorneys who have full court and office schedules with insufficient time to devote nights and weekends to servicing defendants under *Miranda.*

* * *

None of these recommendations for improving the implementation of *Miranda* is a panacea, of course. Just as with the original attempt to implement *Miranda,* a subsequent attempt along the lines suggested will hardly be the ultimate solution. One can hope, however, that a curbing of the more egregious police practices, an educational campaign by the bar to help sensitize the citizenry to their legal rights, and the use of the law students in the station house to help the legal manpower problem may help alleviate some of the difficulties in implementing *Miranda.*

APPENDIX A

Telephone Log Record

PRECINCT REPRESENTATION PROJECT
Contact Report

Date _____

Case No. _____

INITIAL CONTACT

1. Time _____
2. Contact's name _____ Phone _____
3. Arrestee's name _____
4. Held at _____
5. Charges _____
6. Summary of conversation _____

_____

ATTORNEY FOLLOW-UP

7. Telephoned _____ Time _____

   Results _____

8. Telephoned _____ Time _____

   Results _____

9. Telephoned _____ Time _____

   Results _____

10. Remarks _____

_____

_____
Operator

APPENDIX B

Volunteer Attorney Report

PRECINCT REPRESENTATION PROJECT
VOLUNTEER ATTORNEY REPORT

DATE

FOR OFFICE USE ONLY
ATTORNEY I.D. NO. | ACCUSED I.D. NO.

NAME OF ATTORNEY

AFFILIATION (CIRCLE ONE OR MORE): NLS, D.C. BAR, JR. BAR, FED. BAR, WASH. BAR, WOMEN'S BAR, INTERN, OTHERS.

NAME OF ACCUSED

CHARGES

DATE OF ARREST | TIME | DATE ASSIGNMENT RECEIVED | TIME

DID YOU SPEAK WITH THE ACCUSED BY TELEPHONE BEFORE YOU LEFT FOR THE PRECINCT STATION? ☐ YES ☐ NO IF NO, PLEASE EXPLAIN.
IF YES, PLEASE DESCRIBE THE NATURE OF YOUR CONVERSATION:

TO WHICH PRECINCT DID YOU GO?

TIME OF ARRIVAL AT STATION:

HOW FAR THROUGH THE ROUTINE POLICE PROCEDURE WAS THE ACCUSED AT THE TIME OF YOUR ARRIVAL? ☐ NONE ☐ BOOKING ☐ I.D. SECTION
☐ OTHER (SPECIFY)

TIME PRISONER MADE AVAILABLE FOR INTERVIEW WITH ATTORNEY:

PLEASE EXPLAIN ANY LENGTHY DELAY BETWEEN THE TIME OF YOUR ARRIVAL AT THE STATION AND YOUR MEETING WITH THE ACCUSED.

DID YOU DISCUSS THE CASE WITH THE ARRESTING OFFICER? ☐ YES ☐ NO

DID THE POLICE ADMIT INTERROGATING THE ACCUSED? ☐ YES ☐ NO

WERE YOU ABLE TO SECURE PRIVACY WITH THE ACCUSED? ☐ YES ☐ NO

THROUGH DISCUSSION WITH THE ACCUSED PLEASE DETERMINE:
WAS THE ACCUSED WARNED OF HIS LEGAL RIGHTS PRIOR TO YOUR ARRIVAL? ☐ YES ☐ NO ☐ PARTIALLY (EXPLAIN)

HAD THE POLICE INTERROGATED THE ACCUSED IN ANY MANNER PRIOR TO YOUR ARRIVAL? ☐ NO ☐ YES IF YES, WHERE AND WHEN HAD THE PRISONER BEEN QUESTIONED? ☐ AT ARREST ☐ IN SQUAD CAR ☐ AT PRECINCT STATION ☐ AT I.D. SECTION ☐ OTHER (SPECIFY)
HAD THE ACCUSED UTTERED ANY STATEMENTS DURING INTERROGATION? ☐ NO ☐ YES ☐ EXCULPATORY ☐ INCULPATORY ☐ NEUTRAL

DID ADDITIONAL INTERROGATION TAKE PLACE IN YOUR PRESENCE? ☐ NO ☐ YES (PLEASE DETAIL)

TIME INTERVIEW CONCLUDED:

WHAT WAS THE NATURE OF YOUR ADVICE AND ASSISTANCE? ☐ WARNINGS
☐ ASSISTANCE IN OBTAINING BOND ☐ CONTACT FRIENDS OR RELATIVES ☐ OTHER (PLEASE DETAIL)

DID THE ACCUSED MAKE ANY STATEMENTS AFTER YOU ADVISED HIM TO REMAIN SILENT? ☐ YES ☐ NO

WHAT WAS THE POLICE REACTION TO YOUR PRESENCE? ☐ FAVORABLE ☐ NEUTRAL ☐ UNFAVORABLE

WERE OTHER PRISONERS PRESENTED TO YOU FOR ADVICE AND CONSULTATION DURING YOUR STAY AT THE STATIONHOUSE? ☐ NO ☐ YES NUMBER:
(IF SO, PLEASE FILL OUT ADDITIONAL FORMS FOR EACH ONE.)

MODE OF TRANSPORTATION USED ON VISIT. ☐ PRIVATE AUTOMOBILE

MILEAGE: ☐ BUS ☐ TAXI FARE:

HAVE YOU MAINTAINED AN ACTIVE INTEREST IN THIS CASE? ☐ YES ☐ NO

NUMBER OF PHONE CALLS MADE IN THE COURSE OF YOUR VISIT:

NATURE OF OTHER EXPENSES:

TOTAL EXPENSES:

DID YOU MAKE ANY DETERMINATION OF INDIGENCY? ☐ NO ☐ YES, INFORMAL ☐ YES, FORMAL

COMMENTS ON OPERATION OF VOLUNTEER ATTORNEY PROGRAM, RECOMMENDATIONS, AND OTHER OBSERVATIONS.

APPENDIX C

*Defendant Interview Schedule**

PART IV

Col. 12	What date were you arrested?
Col. 13	What time of day were you arrested?
Col. 14	Where were you arrested?
Col. 15	Did you know why you were being arrested?
Col. 16	Did the police tell you the reason you were being arrested?
Col. 17	Did they have a warrant for your arrest?
Col. 18	What did the policeman say to you when you were arrested?
Col. 19	How many policemen arrested you?
Col. 20	Was anybody else arrested with you?
Cols. 21-22	Did you talk with the arresting policeman (men) at all?
	INTERVIEWER: ASK THE FOLLOWING QUESTION OF ALL DEFENDANTS. TAKE STATEMENT VERBATIM AND CODE ANSWER LATER IN COLUMNS 23 THROUGH 33.
	When you got to the police station, what happened then?
Cols. 23-40	Coding for verbatim statements.
Col. 23	Were you told of your legal rights?
Col. 24	*When* were you first told?
Col. 25	Where? (were you told)
Col. 26	Who told you?
Col. 27	How many times were you told?
Col. 28	Did anyone say that you didn't have to say anything to the police at any time?
Col. 29	Did anyone say that you didn't have to answer police questions?
Col. 30	Did anyone tell you that if you couldn't afford a lawyer, one could be appointed when you went to Court?
Col. 31	Did anyone tell you that you had the right to have a lawyer appointed at the police station?
Col. 32	Did anyone tell you that if you could not afford a lawyer, you would be given the phone number of a free one?
Col. 33	Were you told that your lawyer could be with you at the police station and that he could consult with you?
Col. 34	Did anyone tell you about any other legal rights?
Col. 35	Were you given the name of a lawyer? (Specify)
Col. 36	Were you given a lawyer's phone number?
Col. 37	Were you told about other legal services? Which ones?
Col. 38	Did they put these rights down in writing?
Col. 39	Were you asked to sign the paper on which your rights were set down?
Col. 40	Did you sign it?
Col. 41	Did you read it before you signed it?
	INTERVIEWER: ASK THE FOLLOWING TWO QUESTIONS *ONLY* OF RESPONDENTS WHO SAY THAT THE POLICE *DID NOT* INFORM THEM OF ANY RIGHT.
Col. 44	You have said that the police did not inform you that you had legal rights under the circumstances. Did *you* think that you had any rights?
	IF THE ANSWER TO THE PREVIOUS QUESTION IS "YES," THEN ASK. . .
Cols. 45-46	What did you think your rights were under the circumstances?
Col. 73	IF THE RESPONDENT INDICATED KNOWLEDGE OF THE RIGHT TO SILENCE, OR WAS INFORMED OF HIS RIGHT TO REMAIN SILENT, AND ALSO INDICATED THAT HE HAD TALKED WITH THE ARRESTING OFFICER, THEN ASK. . .

* Columns are not in order due to the unpredictable development of the schedule as the researchers' experience grew.

Why, if you knew you had the right to remain silent, would you talk with the arresting officers?

IF THE RESPONDENT WAS TOLD THAT HE HAD RIGHTS, THEN ASK WHAT HE THOUGHT THE POLICE MEANT WHEN THEY SAID. . . . [Probe first those rights mentioned to the respondent.]
THEN, FOR RESPONDENTS NOT INFORMED OF RIGHTS, OR THOSE PARTIALLY INFORMED, ASK: WHAT DO YOU THINK THE POLICE WOULD HAVE MEANT IF THEY SAID. . . . [*Note* whether respondent was actually told or is hypothesizing.]

Col. 47 "You have been placed under arrest. You are not required to say anything to us at any time, or to answer any questions. Anything you say may be used against you as evidence in Court."

Col. 48 "You may call a lawyer, or a relative, or a friend."

Col. 49 "Your lawyer may be present here while we question you, and you may talk (consult) with him."

ONLY ONE OF NEXT THREE QUESTIONS ARE [sic] TO BE ASKED. SELECT THE APPROPRIATE WARNING (DEPENDING ON WHICH ONE WAS GIVEN) FROM THE NEXT THREE COLUMNS: ASK ONLY THAT ONE. [If respondent was not told any of the three, ask Col. 52 hypothetically.]

Col. 50 "If you cannot obtain a lawyer, one may be appointed for you, when you first go to Court." (Before Dec. 1965)

Col. 51 "If you cannot afford to retain a lawyer privately, here is a telephone number by which you may call a volunteer attorney to represent you here at the police station." (From Dec. 1965 to July 1966)

Col. 52 "If you cannot afford a lawyer privately, you have the right to have a lawyer appointed free of charge to represent you here at the police station." [Note if question is asked hypothetically] (From July 1 to present)

ASK ONLY THOSE WARNED BY THE POLICE AND PROBE ATTITUDE IN RELATION TO EACH RIGHT.

Col. 53 What did you feel about the way the police told you of your rights?

Col. 55 How had you learned about these rights?

Cols. 56-57 Were there any other rights that you thought that you deserved but which the police did not mention?

Col. 58 What did you do when (or would you do if) the police said you didn't have to talk with them, or answer their questions?

Col. 59 Did you ever say that you did not want to talk?

Col. 60 What did the police do when you said you did not want to talk?

Col. 61 What did you do when (or would you do if) they said you could call a lawyer, friend, or relative?

Col. 62 How many calls were you allowed to make?

Col. 63 Why did you (or would you) call that person?

Col. 64 Tell me about what you and that person you called (or would call) talked (or would talk) about on the telephone.

IF THE RESPONDENT INDICATES THAT HE CALLED SOMEONE, ASK. . . .

Col. 65 Did (the person called) come down to the police station?

IF THE ANSWER TO THE PREVIOUS QUESTION IS "YES," THEN ASK. . . .

Col. 66 What happened after he got there? (Interviewer: Probe to determine specifics of action, *i.e.*, did police allow you to see him during question, *etc.*)

Col. 67 If you were (or had been) told you had a right to a lawyer, what did you do (or would you have done)?

Col. 68 If you said (or would have said) you wanted a lawyer, what did (or would) the police do?

IF THE PERSON THE DEFENDANT CALLED DID NOT COME DOWN TO THE STATION HOUSE, ASK:

Col. 69	Why didn't ———— come?
	IF THE RESPONDENT INDICATED (Col. 61) THAT HE DID NOT CALL A LAWYER, THEN ASK:
Col. 70	Would you have liked to talk to a lawyer?
	IF THE RESPONSE TO THE PREVIOUS QUESTION IS "YES," THEN ASK:
Col. 71	What do you think he could have done?
	IF THE DEFENDANT DID NOT WANT TO TALK TO A LAWYER, ASK. . . . .
Col. 72	Why not?
	INTERVIEWER: CODE YOURSELF, LATER
Col. 74	How many different lawyers did the defendant have?
	* *STATION HOUSE CALLS ONLY* *
Col. 75	How soon after you were arrested did your appointed attorney visit you (at the police station)?
Cols. 76-77	What did this lawyer tell you to do (advice)?
Col. 78	Did you follow his advice?
Cols. 79-80	What services, if any, did the attorney render? (Write down all services)
Col. 42	How much time did the lawyer spend with you?
Col. 43	Do you think that this attorney was helpful to you? If no, why?

APPENDIX D

The Profile of the Defendants in the Interview Sample

The overwhelming majority of the 260 defendants in our interview sample are male Negroes: 93 per cent are males, 90 per cent are Negroes, 88 per cent are male Negroes. The group is generally young: approximately three quarters fall between the ages of 19 and 34, the modal range being 20-24.

The defendants also tend to be poor: approximately 45 per cent have annual incomes of $4,000 or less, and 16 per cent have annual incomes of under $2,000.[a] Their occupational levels, as well as their occupational skills, are low: 17 per cent are unemployed; 51 per cent are either laborers, operatives, or in service jobs; 42 per cent have had no vocational training whatsoever.

The defendants' educational status is also relatively low: 76 per cent did not complete high school, and 22 per cent received eight years or less of schooling.

Despite the fact that 72 per cent of the sample is listed as presently unmarried, family size is large, averaging 4.1 persons per household. Housing conditions are generally poor with the average number of persons per room as .997, which is just slightly below the United States Census figure of 1.01 persons per room as signifying overcrowding.[b]

Because of the large number of Negroes in the sample, it was anticipated that the group would primarily be of the Baptist religion, and while indeed Baptists occur with the greatest frequency (34 per cent), there is a surprising number of Catholics (27 per cent). Another 10 per cent of the sample were Black Muslims, and 14 per cent reported no religious affiliations. Approximately 67 per cent reported themselves to be either "very" or "fairly" religious, 13 per cent said that they were "a little" religious, 9 per

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[a] This income level is comparable to the general income of Negroes in the District of Columbia in 1960: 43 per cent of the Negro households had annual incomes of $4,000 or less then. U.S. BUREAU OF CENSUS, CENSUS OF POPULATION AND HOUSING FOR VIRGINIA AND MARYLAND TRACTS, table P4, at 137 (1960). There is indication that the percentage of defendants with incomes of $4,000 or less in our sample may well have been higher if the 17 per cent who had refused to answer this question or who had incomes so marginal and fragmented as to make construction of their annual incomes impossible had in fact responded to the question.

[b] *Id.*, table H1, at 149.

cent reported no religious feelings, and 7 per cent felt that they were not religious enough.

As has been noted by other observers,[c] one of the more accurate criteria for determining class membership is the number of voluntary affiliations, with the middle class tending toward many and diverse organizational affiliations and the lower class tending toward few and more restricted affiliations. The evidence of the interview data corroborates the general lower socioeconomic status of the sample: only 3 per cent belong to political parties; 3 per cent are Parent-Teacher Association members; 2 per cent belong to civil rights organizations; 2 per cent belong to professional groups; 2 per cent belong to fraternal organizations; and the largest number, 7 per cent, belong to informal clubs.[d]

Over half of the sample (57 per cent) are residents of the District of Columbia, while close to a third come from the South. In addition, the defendants have had a reasonably low degree of geographic mobility: 56 per cent have always lived in the District; 15 per cent have lived here nine years or less; only 6 per cent have lived here two years or less.[e]

Finally, most of the crimes committed by defendant sample are serious: 56 per cent are violent felonies; 39 per cent, nonviolent felonies; and only 5 per cent, misdemeanors. That the sample represents a serious criminal population is further evidenced by the fact that 24 per cent had been arrested nine or more times, with the median lying between seven and eight arrests. Moreover, 72 per cent of the defendants had friends who at one time or another had been arrested.

The following table is a comparative tabulation of the frequency distribution of demographic characteristics of all defendants, pre-*Miranda* defendants, and post-*Miranda* defendants, and post-*Miranda* defendants with and without counsel.

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[c] *See, e.g.*, Reisman, *Class, Leisure, and Social Participation*, 19 AM. SOC. REV. 76 (1956); Wright & Hyman, *Voluntary Association Memberships of American Adults: Evidence from National Sample Surveys*, 23 AM. SOC. REV. 284 (1958).

[d] As defined here, informal clubs refers to such loosely structured organizations as a once-weekly card-playing group or a few men who bowl together regularly.

[e] This fact tends to argue against any theory of relationship between criminality and broad geographic mobility. In the present study, however, we did not have an opportunity to explore the relationship of criminality to local or neighborhood mobility. For a discussion of this relationship, *see* Robins & O'Neal, *Mortality, Mobility and Crime: Problem Children Thirty Years Later*, 23 AM. SOC. REV. 162 (1958).

TABLE D-1

Frequency Distribution of Demographic Characteristics of Various Defendant Samples (in percentages)

Characteristic	Total Defendants (N = 260)	Pre-*Miranda* Defendants (N = 175)	Post-*Miranda* Defendants (N = 85)	Post-*Miranda* Defendants Without Counsel (N = 56)	Post-*Miranda* Defendants With Counsel (N = 29)
Sex					
Male	93	93	93	91	97
Female	7	7	7	9	3
Race					
White	10	9	13	18	3
Negro	90	91	87	82	97
Age					
15-19	13	11	16	13	24
20-24	33	34	33	25	48
25-29	19	20	18	20	14
30-34	15	15	14	20	3
35-39	7	6	9	9	10
40-49	11	12	8	12	0
50 and over	2	2	1	2	0
Birthplace					
D.C.	57	62	48	45	55
Va.	5	6	4	5	0
Md.	3	3	1	2	0
Other South	24	20	31	32	28
Other & Foreign	11	9	16	16	17
Years in D.C.					
Life	56	61	45	41	52
30 yrs. or more	3	4	1	2	0
20-29 yrs.	12	10	16	25	0

TABLE D-1 (*continued*)

Characteristic	Total Defendants (N = 260)	Pre-*Miranda* Defendants (N = 175)	Post-*Miranda* Defendants (N = 85)	Post-*Miranda* Defendants Without Counsel (N = 56)	Post-*Miranda* Defendants With Counsel (N = 29)
Years in D.C., (cont.)					
10-19 yrs.	14	10	21	16	31
5- 9 yrs.	5	5	5	0	14
3- 4 yrs.	4	3	5	5	3
1- 2 yrs.	2	2	2	4	0
1 yr. & under	4	4	5	7	0
Education					
0- 8 yrs.	22	22	20	21	17
Some H.S.	56	55	56	48	72
Grad. H.S.	17	16	19	25	7
Some college or better	6	6	5	5	3
Occupation					
Prof./Mgr.	5	5	5	5	3
Clerical/sales	5	5	6	5	7
Craft/Op.	25	25	24	24	24
Service	17	18	17	16	17
Military	1	2	0	0	0
Student	1	1	2	4	0
Retired	1	1	0	0	0
Household	2	1	4	4	3
Laborer	22	25	17	18	14
Unemployed	17	14	23	20	28
Other	2	2	2	2	3
Marital Status					
Married	28	30	24	27	17
Single	49	48	49	38	69
Widowed	3	3	5	7	0

TABLE D-1 (*continued*)

Characteristic	Total Defendants (N = 260)	Pre-*Miranda* Defendants (N = 175)	Post-*Miranda* Defendants (N = 85)	Post-*Miranda* Defendants Without Counsel (N = 56)	Post-*Miranda* Defendants With Counsel (N = 29)
Marital Status (cont.)					
Divorced	4	4	5	5	3
Separated	16	15	18	22	10
Household Composition					
Lives alone	1	1	0	0	0
With 1 other	12	13	12	10	17
With 2 others	15	14	19	18	21
With 3 others	15	13	18	16	21
With 4 others	15	16	13	16	21
With 5 others	13	13	13	13	7
With 6 others	9	10	7	7	0
With 7 others	5	5	4	5	0
With 8 others	6	6	5	4	7
With 9 others	5	7	2	2	3
With 10 or more	4	2	7	9	3
Annual Income					
Under $1,000	9	8	12	9	17
$ 1,000-$ 1,999	7	6	7	5	10
$ 2,000-$ 3,999	29	30	28	27	31
$ 4,000-$ 5,999	23	24	21	20	24
$ 6,000-$ 7,999	8	8	8	9	7
$ 8,000-$ 9,999	2	2	2	4	0
$10,000-$14,999	3	4	1	2	0
$15,000 or more	1	1	1	2	0
No response	17	16	19	23	10

TABLE D-1 (*continued*)

Characteristic	Total Defendants (N = 260)	Pre-*Miranda* Defendants (N = 175)	Post-*Miranda* Defendants (N = 85)	Post-*Miranda* Defendants Without Counsel (N = 56)	Post-*Miranda* Defendants With Counsel (N = 29)
Housing by Auspices					
Private	90	91	89	91	86
Public	10	9	11	9	14
Number of Rooms					
1	15	13	19	14	28
2	14	13	14	11	21
3	14	13	15	14	17
4	17	19	12	11	14
5	10	9	13	18	3
6	13	13	12	14	7
7	7	8	4	5	0
8-12	9	9	9	11	7
13 or more	2	2	2	2	3
Rent Per Month					
Free	5	6	5	7	0
Under $40	1	1	2	2	3
$ 40-$ 79	33	32	35	36	34
$ 80-$ 99	20	21	20	20	21
$100-$129	15	16	13	13	14
$130-$159	5	5	4	4	3
$160-$199	1	1	0	0	0
$200-$299	1	1	1	2	0
$300- and over	1	1	0	0	0
No response	18	18	20	18	24
Religion					
Baptist	34	33	36	35	39

TABLE D-1 (*continued*)

Characteristic	Total Defendants (N = 260)	Pre-*Miranda* Defendants (N = 175)	Post-*Miranda* Defendants (N = 85)	Post-*Miranda* Defendants Without Counsel (N = 56)	Post-*Miranda* Defendants With Counsel (N = 29)
Religion (cont.)					
Roman Catholic	27	28	26	20	35
Methodist	5	6	2	2	3
Presbyterian	1	2	0	0	0
Episcopalian	2	1	2	2	3
Lutheran	1	0	2	4	0
Seventh Day Adv.	1	1	0	0	0
Jewish	1	1	2	4	0
Jehovah's Witnes.	1	0	2	4	0
"Storefront"	1	1	2	4	0
Black Muslim	10	12	7	9	3
Unitarian	0	0	0	0	0
Holiness	1	1	2	4	0
None	14	14	13	14	13
Church Attendance					
Weekly	21	24	15	18	10
Twice monthly	14	13	16	14	21
Once monthly	8	9	7	4	14
5, 6 times yearly	8	8	8	7	10
Holidays only	4	3	6	5	7
Rarely, never	40	38	44	46	38
No response	5	5	4	6	0
Religious Feelings					
Very	20	18	25	32	10
Fair	47	46	47	39	62
A little	13	13	13	11	17
Not enough	7	9	5	5	3

TABLE D-1 (*continued*)

Characteristic	Total Defendants (N = 260)	Pre-*Miranda* Defendants (N = 175)	Post-*Miranda* Defendants (N = 85)	Post-*Miranda* Defendants Without Counsel (N = 56)	Post-*Miranda* Defendants With Counsel (N = 29)
Religious Feelings (cont.)					
Not religious	9	10	8	11	3
No response	3	3	2	2	3
Membership in Voluntary Organizations					
Church Clubs	6	5	7	7	7
Church Office holders	5	4	6	7	3
Labor Union	9	10	7	7	7
Political Party	3	4	2	4	0
Civil Rights Groups	2	3	0	0	0
Fraternal Organizations	2	3	0	0	0
Informal clubs	7	7	7	5	10
PTA	3	4	2	4	0
Professional Organizations	2	1	2	4	0
Previous Arrests					
0	0	0	0	0	0
1	10	10	11	13	7
2	18	14	26	30	17
3	16	16	18	18	17
4	10	11	8	2	21
5	10	11	9	4	21
6	6	6	6	5	7
7	2	2	2	2	0
8	3	4	1	0	3
9 & over	24	27	20	27	7
Friends Arrested					
One or more	72	73	69	68	72
None	28	27	31	32	28

APPENDIX E

Supplementary Tabular Data

Since our audience is primarily lawyers, we have deliberately avoided using statistical tests for the significance of our data. Probaby the most common test and one most understandable, is the "chi-square test."[a] In many of our tables, because of the frequency of large numbers of categories in which we present our data (cells) and because of the frequency in which small numbers appear in many of those categories (small cell size), our data do not lend themselves to meaningful chi-square analysis. On the other hand, had we selected the less complicated tables for chi-square analysis, we would have run the risk of suggesting distortion of the statistical significance by such selective usage even though chi-square would have been easily applicable in those instances.

We also rejected other tests of significance, such as the "T-test"[b] or the "Fischer exact probability test,"[c] because we believed the description and definition of these tests and their applicability would have made our presentation too complicated. In view of our audience, the marginal value of these tests would not have offset the concomitant confusion engendered.

At the same time, we must stress that, although statistical tests of significance are avoided, there nevertheless is a consistency of direction to our data which supports our inferences. The following tables supplement and support the textual tables.

[a] *See Interrogations in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519, 1532, 1550-51 n.82, 1639 (1967).
[b] *See* UNDERWOOD, DUNCAN, TAYLOR, & COTTON, ELEMENTARY STATISTICS 127 (1954).
[c] *See* SIEGEL, NONPARAMETRIC STATISTICS 96-104 (1956).

TABLE E-1
Statements Given by the Different Defendant Groups[a]

	Pre-*Miranda* Defendants[b]		Post-*Miranda* Defendants						Volunteer Attorney Defendants[c]	
			Total		Without Counsel		With Counsel			
	No.	%	No.	%	No.	%	No.	%	No.	%
Statements	75	43	34	40	22	39	12	41	128	49
No Statements	99	57	51	60	34	61	17	59	133	51
Total	174	100	85	100	56	100	29	100	261	100

[a] Data Sources: Defendant Interview Schedules and Volunteer Attorney Reports.
[b] Not ascertained: 1.
[c] Not ascertained: 65.

TABLE E-2
Class of Crime by Statements Given by Volunteer Attorney Defendants[a]

Crimes[b]	Statements		No Statements[c]	
	No.	%	No.	%
Homicide[d]	4	57	3	43
Robbery[e]	16	35	30	65
Sex Offenses[f]	3	33	6	67
Assaults[g]	40	57	30	43
Larceny-Theft	21	62	13	38
Auto Theft	8	80	2	20
Housebreaking	15	58	11	42
White Collar[h]	—	—	2	100
Drug Offenses	7	50	7	50
Weapons[i]	2	25	6	75
All Others[j]	6	25	18	75
Undetermined	6	55	5	45
Total	128	49	133	51

[a] Data Source: Volunteer Attorney Defendants.
[b] For the total number of defendants in each crime category, *see* table 1 *supra*.
[c] Not ascertained: 65.
[d] Includes murder, manslaughter, and negligent homicide.
[e] Includes robbery and attempted robbery.
[f] Includes rape, attempted rape, sodomy, and carnal knowledge.
[g] Includes aggravated and simple assault.
[h] Includes counterfeiting, embezzlement, forgery, and fraud.
[i] Includes carrying and possession.
[j] Includes all other crimes except common traffic offenses.

TABLE E-3 (1)
Frequency Distribution of Crimes Charged to Defendants Listed in Telephone Log Records[a]

Crimes[b]	Defendant Requests	
	No.	%
Homicide	31	2
Robbery	189	15
Sex Offenses	55	4
Assaults	293	23
Larceny-Theft	139	11
Auto Theft	75	6
Housebreaking	134	11
White Collar	21	2
Drug Offenses	89	7
Weapons	84	7
Sub Total	1,110	88
All Others	130	10
Undetermined	22	2
Total	1,262	100

[a] Data source: Telephone Log Records.
[b] Definitions of crimes are contained in table E-2 *supra*.

TABLE E-3 (2)
Crimes Charged to Defendants Listed in Telephone Log Records as Related to Total Arrests in D.C. in Fiscal 1967

Crimes[a]	No. of Defendant Requests[b]	No. of Total Arrests[c]	Defendant Requests as % of Total Arrests
Homicide	31	185	17
Robbery	189	2,005	9
Sex Offenses	55	494	11
Assaults	293	3,805	8
Larceny-Theft	139	3,418	4
Auto Theft	75	1,183	6
Housebreaking	134	2,065	6
White Collar	21	592	4
Drug Offenses	89	553	16
Weapons	84	1,130	7
Subtotal	1,110	15,430	7
All Others	130	58,062	*[d]
Undetermined	22	—	—
Total	1,262	73,492	2

[a] Definitions of Crimes are contained in Table E-2, *supra*.
[b] Data source: Telephone Log Records.
[c] Data source: D.C. Metropolitan Police Department, Official Arrest Statistics for fiscal year 1967, on file at the Institute of Criminal Law and Procedure.
[d] Percentage is too insignificant for computation.

TABLE E-4
Warnings of Rights Given to Different Defendant Groups[a]

	Pre-*Miranda* Defendants[b]		Post-*Miranda* Defendants						Volunteer Attorney Defendants[c]	
			Total		Without Counsel		With Counsel			
	No.	%	No.	%	No.	%	No.	%	No.	%
Warnings[d]	90	52	64	75	36	64	28	97	282	92
No Warnings[e]	84	48	21	25	20	36	1	3	26	8
Total	174	100	85	100	56	100	29	100	308	100

[a] Data Sources: Defendant Interview Schedules and Volunteer Attorney Reports.
[b] Not ascertained: 1.
[c] Not ascertained: 18.
[d] Includes complete and partial warnings.
[e] Includes those who were so intoxicated or in narcotic withdrawal as not to remember receiving the warnings, as well as those who received no warnings.

TABLE E-5
Number of Times Post-Miranda Defendants Given Warnings[a]

	Post-*Miranda* Defendants					
	Total		Without Counsel		With Counsel	
	No.	%	No.	%	No.	%
0	21	25	20	36	1	3
1	43	51	25	44	18	62
2	14	16	8	14	6	21
3+	7	8	3	6	4	14
Total	85	100	56	100	29	100

[a]Data source: Volunteer Attorney Reports.

TABLE E-6

Comparison of Defendant Claims and Police Admissions of Interrogation of Volunteer Attorney Defendants by Crime Charged[a]

	Defendant Claims[c]				Police Admissions[d]			
	Interrogation		No Interrogation		Interrogation		No Interrogation	
Crimes[b]	No.	%	No.	%	No.	%	No.	%
Homicide	6	75	2	25	3	43	4	57
Robbery	14	30	32	70	5	11	39	89
Sex Offenses	1	10	9	90	—	—	8	100
Assaults	44	58	32	42	19	25	56	75
Larceny-Theft	25	58	18	42	9	33	31	67
Auto Theft	9	64	5	36	5	38	8	72
Housebreaking	17	52	16	48	5	16	26	84
White Collar	—	—	2	100	1	33	2	67
Drug Offenses	8	67	4	33	9	24	3	76
Weapons	3	33	6	67	2	22	7	78
All Others	12	41	17	59	4	13	26	87
Undetermined	9	75	3	25	7	64	4	36
Total	148	50	146	50	69	75	214	25

[a] Data source: Volunteer Attorney Reports.
[b] Definition of crimes are contained in Table E-2, *supra*.
[c] Not ascertained: 32.
[d] Not ascertained: 43.

TABLE E-7

Rights Warnings Given to Interrogated and Noninterrogated Defendants[a]

	Pre-*Miranda* Defendants[b]				Post-*Miranda Defendants*								Volunteer Attorney Defendants[c]			
					Total				Without Counsel				With Counsel			
	Interro.		No Interro.		Interro.		No Interro.		Interro.		No Interro.		Interro.		No Interro.		Interro.		No Interro.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Warnings	44	45	46	60	29	71	35	79	15	58	21	70	14	93	14	100	133	90	136	93
No Warnings	53	55	31	40	12	29	9	21	11	42	9	30	1	7	—	—	14	10	10	7
Total	97	100	77	100	41	100	44	100	26	100	30	100	15	100	14	100	147[d]	100	146	100

[a] Data sources: Defendant Interview Schedules and Volunteer Attorney Reports.
[b] Not ascertained: 1.
[c] Not ascertained: 32.
[d] Not ascertained: 1.

TABLE E-8
Interrogation of Different Defendant Groups by Whether Statements Given[a]

	Pre-*Miranda* Defendants[b]				Post-*Miranda* Defendants										Volunteer Attorney Defendants[c]			
					Total				Without Counsel				With Counsel					
	Stat.		No Stat.		Stat.		No Stat.		Stat.		No Stat.		Stat.		No Stat.		Stat.		No Stat.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Interrogation	68	91	29	29	21	62	20	39	13	59	13	38	8	67	7	41	110	87	28	40
No Interrogation	7	9	70	71	13	38	31	61	9	41	21	62	4	33	10	59	16	13	42	60
Total	75	100	99	100	34	100	51	100	22	100	34	100	12	100	17	100	126[d]	100	70[e]	100

[a] Data sources: Defendant Interview Schedules and Volunteer Attorney Reports.
[b] Not ascertained: 1.
[c] Not ascertained: 65.
[d] Not ascertained: 2.
[e] Not ascertained: 63.

TABLE E-9
Results of Interrogation by Whether Defendants Warned[a]

	Pre-*Miranda* Defendants[b]				Post-*Miranda* Defendants												Volunteer Attorney Defendants[f]			
					Total[c]				Without Counsel[d]				With Counsel[e]							
	Statement		No Statement		Statement		No Statement		Statement		No Statement		Statement		No Statement		Statement		No Statement	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Warnings	24	35	20	69	15	71	14	70	7	54	8	62	8	100	6	86	97	89	25	93
No Warnings	44	65	9	31	6	29	6	30	6	46	5	38	—	—	1	14	12	11	2	7
Total	68	100	29	100	21	100	20	100	13	100	13	100	8	100	7	100	109	100	27	100

[a] Data sources: Defendant Interview Schedules and Volunteer Attorney Reports.
[b] Not interrogated: 78.
[c] Not interrogated: 44.
[d] Not interrogated: 30.
[e] Not interrogated: 14.
[f] Not interrogated: 146.

TABLE E-10
Understanding of Different Rights by Pre- and Post-Miranda Defendants[a]

	Pre-*Miranda* Defendants				Post-*Miranda Defendants*											
					Total				Without Counsel				With Counsel			
	Under.		Misunder.		Under.		Misunder.		Under.		Misunder.		Under.		Misunder.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Silence	144	82	31	18	72	85	13	15	48	86	8	14	24	83	5	17
Presence of Counsel	142	81	33	19	70	82	15	18	45	80	11	20	25	86	4	14
Appointed Counsel	112	64	63	36	67	76	18	24	43	77	13	23	24	83	5	17

[a] Data source: Defendant Interview Schedules.

TABLE E-11
Number of Attorneys Contacted for Each Telephone Request To Obtain Volunteer Attorneys in Six-Month Intervals[a]

Attorneys Contacted	1st Six Months		2nd Six Months	
	No.	%	No.	%
1	672	91	259	83
2	45	6	33	11
3	16	2	6	2
4+	4	1	12	4
Total[b]	737	100	310	100

[a] Data source: Telephone Log Records.
[b] Not ascertained for 1st six months: 67; not ascertained for 2nd six months: 41; not designated by month or year: 2.

TABLE E-12
Time-Intervals for Attorney Involvement, Between Arrest, Assignment, and Client Consultation

Time Interval	(1) Between Arrest and Attorney Assignment[a]			(2) Between Telephone Request for Attorney and Assignment of an Attorney[b]			(3) Between Arrival of Attorneys at Station House and Consultation with Clients[a]		
	No.	%	Cumulative %	No.	%	Cumulative %	No.	%	Cumulative %
0- 5 min.	14	5	5	550	59	59	248	80	80
5-15 min.	27	9	14	170	18	77	20	6	86
15-30 min.	58	20	34	75	8	85	15	5	91
½- 1 hour	79	28	62	66	7	92	21	7	98
1- 2 hours	60	21	83	36	4	96	4	1	99
2+ hours	50	17	100	40	4	100	2	1	100
Total	288[c]	100		937[d]	100		310[e]	100	

[a] Data source: Volunteer Attorney Reports.
[b] Data source: Telephone Log Records.
[c] Not ascertained: 38.
[d] Attorney not assigned or assignment not ascertained: 184; time interval not ascertained: 36.
[e] Not ascertained: 16.