Journal of Criminal Law and Criminology

Volume 86
Issue 2 *Winter*

Article 2

Winter 1996

Inside the Interrogation Room

Richard A. Leo

0091-4169/96/8602-0266
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY
Vol. 86, No. 2

Printed in U.S.A.

CRIMINAL LAW

INSIDE THE INTERROGATION ROOM*

RICHARD A. LEO**

I. INTRODUCTION

The "gap problem"—the gap between how law is written in the books and how it is actually practiced by legal actors in the social world—has been an ongoing concern to legal scholars at least since the advent of Legal Realism in the 1930s,[1] and has been the focus of countless empirical studies associated with the Law and Society Movement since the 1960s.[2] Nevertheless, the gap in our knowledge between legal ideals and empirical realities remains as wide as ever in the study of police interrogation. Recognizing the source of the gap problem in 1966, the *Miranda* Court wrote that "interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation room."[3] Linking the gap problem to the secrecy of interrogation, the *Miranda* Court emphasized the absence of first-hand knowledge of actual police interrogation practices, issuing a clarion call for empirical research in this area.[4] Regrettably, this call has gone almost entirely unheeded in the three decades following the influential *Miranda* opinion. Although law libraries are overflowing with doctrinal analy-

* I thank the following individuals for offering helpful comments, criticisms, and suggestions on earlier versions of this paper: Mark Cooney, David T. Johnson, Richard Lempert, Gary Marx, Fred Pampel, Tom Scanlon, Lindsey Simon, Jerome Skolnick, Tom Tyler, Eric Wunsch, and Frank Zimring.

** Assistant Professor of Sociology and Adjoint Professor of Law, University of Colorado, Boulder. B.A., University of California, Berkeley, 1985; M.A., University of Chicago, 1989; J.D., University of California, Berkeley, 1994; Ph.D., University of California, Berkeley, 1994.

1 AMERICAN LEGAL REALISM (William W. Fisher III et al. eds., 1993).

2 LAW AND SOCIETY: READINGS ON THE SOCIAL STUDY OF LAW (Stewart Macaulay et al. eds., 3d ed. 1995). This edited volume excerpts numerous studies that illustrate the gap between how law is portrayed on the books and how it actually works in practice.

3 Miranda v. Arizona, 384 U.S. 436, 448 (1966).

4 *Id.* at 448-58.

ses of appellate court cases, there exist no contemporary descriptive or analytical studies of routine police interrogation practices in America. If, as William Hart has written, "no law-enforcement function has been more visited by controversy, confusion and court decisions than that of the interrogation of criminal suspects,"[5] then it is not only surprising but also disturbing to note just how little we know about everyday police interrogation practices in America.

To be sure, since 1966 there have been a few experimental studies of the social psychology of confessions,[6] several early evaluative studies of the judicial impact of the controversial *Miranda* decision on confession and conviction rates,[7] and a few socio-linguistic or "conversational" analyses of individual police interrogation transcripts.[8] But unlike their English counterparts,[9] American scholars have almost altogether ignored or avoided the empirical study of police interrogation practices and criminal confessions. In legal scholarship, there have been no *empirical* studies of police interrogation practices since the late 1960s.[10] Instead, law professors, lawyers, and law students have created a formidable law review literature that focuses almost entirely on the doctrinal and ethical aspects of interrogation and confession case law, rather than on the routine activities of legal actors and institutions.[11] Since traditional legal scholarship is based on an analysis of leading cases—which are unrepresentative of the larger universe of court cases and thus may depict atypical police practices as the norm—this literature is by itself both narrow and misleading. In short, we know scant more about actual police interrogation practices today than we did in 1966 when Justice Earl Warren lamented the gap

---

5 William Hart, *The Subtle Art of Persuasion*, POLICE MAG., Mar. 1981, at 7.

6 *See* LAWRENCE WRIGHTSMAN & SAUL KASSIN, CONFESSIONS IN THE COURTROOM (1993).

7 *See* OTIS STEPHENS, THE SUPREME COURT AND CONFESSIONS OF GUILT 165-200 (1973) (reviewing this literature).

8 *See* William Sanders, *Pumps and Pauses: Strategic Use of Conversational Structure in Interrogations in*, THE SOCIOLOGIST AS DETECTIVE: AN INTRODUCTION TO RESEARCH METHODS (William Sanders ed., 1976); D.R. Watson, *Some Features of the Elicitation of Confessions in Murder Interrogations, in* INTERACTION COMPETENCE (George Psathas ed., 1990); Maria T. Wowk, *Blame Allocation, Sex and Gender in a Murder Interrogation, in* WOMEN'S STUDIES INTERNATIONAL FORUM (1984).

9 In the last decade in England, there have been numerous empirical studies of police interrogation practices. For a review of this literature, see GISLI GUDJONSSON, THE PSYCHOLOGY OF INTERROGATIONS, CONFESSIONS AND TESTIMONY (1992).

10 However, one law professor has recently gathered data on police interrogation practices in Salt Lake City. *See* Paul Cassell & Brett Hayman, *Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda*, 43 UCLA L. REV. (forthcoming 1996) (manuscript on file with author).

11 The leading two contemporary scholars on police interrogation practices and criminal confessions in the legal literature are Yale Kamisar and Joseph Grano. *See* YALE KAMISAR, POLICE INTERROGATION AND CONFESSIONS (1980); JOSEPH GRANO, CONFESSIONS, TRUTH, AND THE LAW (1993).

problem in *Miranda v. Arizona.*

This Article, which is the first in a two-part series, will attempt to fill in some of the gaps in our knowledge of routine American police interrogation practices by describing and analyzing the characteristics, context, and outcome of interrogation and confession in ordinary criminal cases that are not likely to make the published record on appeal. The second Article will analyze the impact of the Court's ruling in *Miranda v. Arizona* on the behavior, attitudes, and culture of American police interrogators in the last thirty years.[12] Both articles are based on nine months (more than 500 hours) of fieldwork inside the Criminal Investigation Division (CID) of a major, urban police department I shall identify by the pseudonym "Laconia,"[13] where I contemporaneously observed 122 interrogations involving forty-five different detectives. In addition, I viewed thirty videotaped custodial interrogations performed by a police department I shall identify by the pseudonym "Southville"[14] and another thirty video taped interrogations performed by a police department I shall identify by the pseudonym "Northville."[15] For each interrogation, I recorded my observations qualitatively in the form of fieldnotes and quantitatively with a forty-seven question coding sheet. Thus, my field research represents a more general, multi-faceted and methodologically diverse study of the history and sociology of police interrogation in America.[16]

This Article takes the reader inside the interrogation room to understand the characteristics, context, and outcome of contemporary police interrogation practices in America. It is the only study to do so in more than twenty-five years, and the first ever to do so in any sustained, explicit, or comprehensive manner.[17] I hope to reorient

---

12 Richard A. Leo, *The Impact of Miranda Revisited,* J. CRIM. L. & CRIMINOLOGY (forthcoming, Spring 1996).

13 In 1990 Laconia had a population of 372,242—approximately 43% black, 28% white, 15% Hispanic, and 14% Asian/Pacific Islander. In 1992 there were 58,668 Part I offenses in Laconia (10,140 violent crimes and 48,546 property crimes), an official crime rate of 123 per 1,000 members of the population. *See* Richard A. Leo, Police Interrogation in America: A Study of Violence, Civility and Social Change 456 (1994) (unpublished Ph.D. dissertation, University of California (Berkeley)).

14 In 1993 Southville had a population of 121,064. Fifty-one percent of Southville's residents were white, 24% Hispanic, 15% Asian, and 10% black. In 1993 there were 8,505 Part I offenses in Southville (1,298 violent crimes and 7,207 property crimes), and official crime rate of 70.3 per 1,000 members of the populaton. *See id.*

15 By the end of 1993 Northville had a population of 116,148. Forty-six percent of Northville's residents were white, 21% Asian, 20% black, and 11% Hispanic. In 1993 there were 9,360 Part I crimes in Northville (1,613 violent crimes and 7,747 property crimes), an official crime rate of 80.78 per 1,000 members of the population. *See id.*

16 *See id.*

17 With the exception of my own empirically-grounded research on the history and

much of the research and discourse on police interrogation practices in legal scholarship from its near exclusive doctrinal (or "law-on-the-books") focus to a more empirically-grounded (or "law-in-action") perspective, which I believe is necessary to inform the legal, ethical, policy, and theoretical debates in the study of criminal procedure.

In Part II of this Article I discuss the potential sources of bias in my data and how I attempted to overcome them. In Part III, I quantitatively describe and analyze the patterns in police techniques, suspect behavior, and interrogation outcomes in all of the 182 cases I observed.[18] In Part IV, I analyze the effects of police interrogation practices, *Miranda* warnings, and incriminating statements on the subsequent stages of the criminal process, such as the adjudication of guilt, case disposition, and sentencing. Finally, in Part V of this Article I offer some concluding thoughts on the findings of this study.

II. METHODOLOGICAL CAVEAT: OBSERVER EFFECTS AND THE PROBLEM OF BIAS[19]

Participant observation may be the ideal method to get as close as possible to the phenomena the researcher intends to analyze and understand. This has been one of the underlying methodological assumptions in my empirical study of American police interrogation practices.[20] However, the problem of studying naturally occurring data confronts the participant observer. Consequently, the participant observer cannot control the parameters of his research nor the effects of his behavior on the research subjects.

It is a methodological truism that the field researcher inevitably influences the environment in which he participates during the very process of observation.[21] These so-called "observer effects" may "con-

sociology of American interrogation practices, see Richard A. Leo, *From Coercion to Deception: The Changing Nature of Police Interrogation in America*, *in* CRIME, LAW AND SOCIAL CHANGE (1992) [hereinafter *From Coercion to Deception*]; Richard A. Leo *Police Interrogation and Social Control*, *in* SOCIAL & LEGAL STUDIES (1994) [hereinafter *Social Control*], only two observational studies of police interrogation exist in the American literature. *See* Michael L. Wald et al., *Interrogations in New Haven: The Impact of Miranda*, 76 YALE L. J. 1519 (1967); and NEIL A. MILNER, THE COURT AND LOCAL LAW ENFORCEMENT: THE IMPACT OF MIRANDA (1971). Both studies rely on data that was collected more than 25 years ago, and neither one is an analysis of a major, urban police department.

18 For a qualitative analysis of the patterns in police techniques, suspect behavior and interrogation outcomes I observed, see Leo, *supra* note 13, at 170-256; Leo, *Social Control*, *supra* note 17, at 99-113.

19 For a full account of the methodological strategies, challenges, and limitations of my participant observation fieldwork, see Leo, *supra* note 13, at 451-95. *See also* Richard A. Leo, *Trial and Tribulations: Courts, Ethnography, and the Need for an Academic Researcher's Privilege*, AM. SOCIOLOGIST, Spring 1995, at 113-34.

20 Leo, *supra* note 13.

21 Melvin Pollner & Robert Emerson, *The Dynamics of Inclusion and Distance in Fieldwork*

taminate" the data that the participant observer seeks to collect. In the context of my research, my presence may have altered the behavior of the detectives during the custodial interrogations I observed. Indeed, whether the participant observer alters the behavior of law enforcement officers by his mere presence is a classic methodological problem that has bedeviled sociologists of policing since Westley's groundbreaking field research more than forty years ago.[22] It stands to reason that the presence of a third party influences police behavior, yet the precise outcome of this effect is often difficult, if not impossible, to accurately assess since participant observers usually lack any independent or hidden controls.

I do not believe that my presence in the interrogation room significantly altered the behavior of the detectives I observed. Although I will never know the true effect of my presence, I offer the following observations. First, I sometimes put my ear to the door and listened to those interrogations from which I was purposely excluded, and each time the *Miranda* warnings were given properly. Nor did I overhear any threats or promises. Conversely, I occasionally observed behavior inside the interrogation room—such as yelling, table pounding, or highly aggressive questioning—that straddled the margins of legality. After one such interrogation, one of the two interrogating detectives informed me that he could be fired if I reported his behavior to the Captain. As we will see in Part III of this Article, I viewed a few interrogations that were clearly "coercive" by the standards of contemporary appellate courts. In one of these interrogations, the primary detective ignored the suspect's repeated invocations of his *Miranda* rights to silence and counsel, though ultimately the detective failed to convince the suspect to talk. After the interrogation session, the detective asked me what I thought he could have done differently to elicit admissions. When I responded that it did not matter since any subsequent confession would have been suppressed by the court, the detective casually replied that neither one of us would have remembered the *Miranda* violations in court. That one of the detectives could so naturally assume that I would perjure myself to advance the cause of crime control is, I think, good evidence that my presence, at least in some instances, had little effect on the interrogation practices I was observing.[23]

Relations, in CONTEMPORARY FIELD RESEARCH (Robert Emerson ed., 1983).

[22] William A. Westley, *Violence and the Police*, 59 AM. J. SOC. 34 (1953).

[23] Other police field researchers have reported similar feelings of invisibility. For example, Richard Uviller writes: "For the most part, my presence was simply ignored while police activities were in progress." RICHARD UVILLER, TEMPERED ZEAL: A COLUMBIA LAW PROFESSOR'S YEAR ON THE STREETS WITH THE NEW YORK CITY POLICE xiii (1988). And David

Second, the more time I spent inside the CID, the more the detectives became accustomed to my presence. As I became part of the "furniture" inside the Laconia Police Department (LPD), the detectives frequently treated me as one of their own. They would, for example, describe their cases to me by penal code sections or their actions by police codes or jargon, apparently forgetting that I did not know what they meant. In addition, many of the detectives shared with me explicitly confidential information about their co-workers or superiors, information whose exposure could have damaged their reputations, if not their careers, within CID. At the same time, detectives told me of their own indiscretions and sometimes questionable behaviors, for which they could have been administratively sanctioned, and in some instances held civilly liable, had I publicly revealed their confidences. In a sense, then, I became the archetypical Simmelian observer to whom social secrets were entrusted.[24] Strangely and unexpectedly, I realized midway through my research that the police code of silence (perhaps more accurately described as a code of solidarity) applied to me as well.

Third, I interviewed prosecutors and public defenders who were knowledgeable of LPD custodial interrogation practices. They agreed with my general descriptions of police interrogation practices at LPD, confirming that the methods and techniques I observed were representative of what they knew of interrogation methods at LPD from their daily cases as well. Significantly, the public defenders—the most strident ideological critics of police in an adversarial system of criminal justice—generally spoke respectfully of custodial interrogation practices at LPD, agreeing that detectives rarely engage in any illegalities during custodial questioning. Nevertheless, despite these comments, and although I established high levels of trust with the LPD detectives and sometimes even felt literally invisible during the interrogations, inevitably my presence must have exerted some effect on their behavior.

That I tended to be (but was not always) excluded from the more serious cases raises the general methodological issue of bias, and more specifically the problem of the representativeness of my data within LPD and the generalizability of my findings beyond LPD. In field studies, the researcher can overcome these problems only in degrees. I was unable to select randomly those cases whose interrogations I observed for three reasons. First, I had no control over those interroga-

Simon writes: "I became a piece of furniture in the unit, a benign part of the detectives' daily scenery." DAVID SIMON, HOMICIDE: A YEAR ON THE KILLING STREETS 596 (1991).

24 KURT WOLFF, THE SOCIOLOGY OF GEORG SIMMEL (1950).

tions from which some detectives chose to exclude me. Second, even in those cases in which I was allowed to attend the interrogation, the suspect had sometimes posted bail and left the jail prior to any custodial questioning. A class bias that is naturally present in the practice of interrogation at LPD was therefore inevitably present in my data. Third, occasionally circumstances conspired to provide me with a choice over which interrogations I would attend. Although sometimes hours would pass during which no interrogations would occur, at other times multiple interrogations would be occurring simultaneously. To correct for the inherent biases in my data, I always requested to sit in on the interrogation of the most serious cases available to me.[25] Nevertheless, the 122 interrogations I observed contemporaneously were still not entirely representative of the general category of interrogations occurring within LPD.

In addition, I attempted to correct for the bias against serious cases in the data I collected in my non-participant observations of sixty videotaped interrogations at the Southville and Northville Police Departments. I specifically requested videotapes of interrogations in the more serious felony crimes, especially homicide, rape, and assault, from these two departments. Observing the videotaped interrogations of two other police departments served as a check on any idiosyncratic interrogation practices at LPD.[26] Certainly the interrogation practices at LPD, which has been generally regarded as one of the most professional police departments in America during the last three decades, are not representative of the interrogation practices of all police departments in America. Nevertheless, observing the interrogation practices of two other police departments was one way I attempted to redress the intrinsic limitations of the case study method.

---

25 I considered the seriousness of cases in the following order: 1) homicide, 2) sexual assault, 3) felony assault; 4) robbery, 5) property crimes.

26 Although both the Southville and Northville Police Departments routinely videotape felony interrogations, neither department has a policy of storing their videotapes, and neither department permitted me to view videotaped interrogations in cases still pending. Therefore, neither department had many videotaped interrogations on hand from which I could choose to view cases. In Northville, I was provided with a master list of all the felony cases during the last several years in which interrogations had been videotaped. I was then permitted to meet with the evidence technician and retrieve as many tapes as we could locate. Unfortunately, most of the tapes had been destroyed once the case had been concluded. In Southville, the Captain of CID circulated a memo to the detectives, asking them to identify the homicide, sexual assault, and felony assault cases in which they had interrogated suspects. From this list, the Captain and I retrieved existing videotapes. While my fieldwork in Northville and Southville made up for some of the biases of my participant observations in Laconia, the method through which I obtained videotaped interrogations inevitably contained its own set of biases. Ultimately, I had little control over which videos both departments provided me.

III. The Context and Outcome of Police Interrogation: Exploring the Data

In all the interrogations I observed, both contemporaneously at LPD as well by videotape at the Southville and Northville Police Departments, I coded for a number of independent variables (e.g., class, race, gender, and social distance between the suspect and victim, strength of evidence against the suspect, and prior conviction record of the suspect) and a number of dependent variables (e.g., whether suspect waived/invoked *Miranda*, length of interrogation, outcome of interrogation, and ultimate case disposition). I now turn to a systematic analysis of these and other variables.

A brief statistical description of the demographic, legal, and case variables in my sample reveals the variation in my data and the typical characteristics of the suspect, victim, and interrogation procedures in the cases I observed. Slightly more than one-third (35%) of the interrogations were conducted in an interrogation room located inside the jail; the remaining (65%) were conducted in the interrogation rooms located inside the CID. In the large majority of interrogations (69%), one detective questioned the suspect; in the remaining interrogations (31%), two detectives conducted questioning. The primary detective was typically white (69%), though not infrequently African-American (19%) or Hispanic (12%); when present, the secondary detective was also white most of the time (65%) and African-American some of the time (19%). There was less variation in the gender of the detectives: virtually all (over 90% of the primary and 86% of the secondary detectives) were men. Most of the primary detectives had been police officers for between ten and twenty years (62%) and detectives for one to five years (61%); most secondary detectives had also been police officers for ten to twenty years (68%) but detectives for only zero to three years (54%).

The typical suspect in my sample was a young, lower or working class, African-American male. Although the age range spanned from the middle teens to the late sixties, approximately two-thirds (66%) of the suspects were less than thirty years old. More than 87% of the suspects were from the lower or working class; almost 12% were middle class; and only 1% were upper middle class.[27] Sixty-nine percent of the suspects were African-American, 14% were white, 13% were Hispanic, and the remaining 4% were either Asian or Native Ameri-

[27] I coded for the class status of the suspects in my sample by asking the primary detective to rate the suspect as either below middle class, middle class, or above middle class based on 1) the suspect's occupation and (2) the location of the victim's residence. The same procedure was followed to code for the class status of the victims in my sample.

can.[28] Thus, more than 85% of the suspects in my sample were minorities. As with the detectives who interrogated them, virtually all the suspects were male (more than 90%).

Unlike the suspects, the victims in my sample did not fit so clear a demographic profile, because many of the victims (more than 25%) were organizations. Excluding organizations, most of the victims came from the lower or working class (69%), a higher number of victims came from the middle class than did suspects (30%), but, as with suspects, only a negligible number were from the upper middle class (1%). Just as African-Americans comprised the largest racial group of suspects in my sample, so too were they more likely to be the victims of crime than any other racial group. Excluding organizations, a full 42% of the victims in my sample were African-American; 28% were white; 22% were Hispanic; and the remaining 8% were Asian. A far higher percentage of victims were likely to be female than were the suspects: excluding organizations, 39% of the victims were female while only 61% were male.

All the interrogations I observed were for felony offenses. A frequency distribution of these offenses, divided into five categories, is listed below in Table 1.[29]

Table 1
FREQUENCY DISTRIBUTION OF TYPE OF CRIME

Type of Crime	Freq.	Percent
Theft	9	4.95%
Burglary	21	11.54
Robbery	78	42.86
Assault	44	24.18
Homicide	22	12.09
Other	8	4.40
Total	182	100.00

[28] The non-minority (i.e., white) suspects in my sample were drawn disproportionately from the cases I observed at the Southville and Northville Police Departments. Although slightly more than two-thirds of the interrogations I observed occurred at the Laconia Police Department, only one-third (9/27) of the interrogations involving white suspects in my sample occurred at this department; 26% (7/27) occurred at the Southville Police Department; and 41% (11/27) occurred at the Northville Police Department.

[29] My division of criminal offenses into five primary categories parallels the categorization of offenses inside the Laconia CID Unit. The reader should note that allegations of rape or child molestation were classified as assaults. The few crimes in the "other" category were mostly drug offenses. Although these categories appear relatively straightforward, if multiple offenses were involved, the suspect was classified into the category representing the most serious offense. For example, if a suspect allegedly committed both a theft and a homicide, his crime was classified as a homicide.

While the type of crime I was likely to observe varied by department, 81% of the offenses were crimes against persons (e.g, robbery, assault, homicide), and the remaining 19% were crimes against property (e.g, burglary, theft).

Two potentially important case factors that may influence a suspect's treatment by legal authorities are the strength of the evidence and the suspect's prior criminal record. In 33% of the cases in my sample, the strength of the evidence against a suspect prior to an interrogation was weak (highly unlikely to lead to charging); in 32% of the cases the strength of the evidence was moderate (probably likely to lead to charging); and in 35% of the cases it was strong (highly likely to lead to charging). In 13% of the cases in my sample, the suspect did not have a prior criminal record; in 29% of the cases, the suspect had a misdemeanor record; and in 58% of the cases, the suspect had a felony record. Not surprisingly, almost 90% of the suspects interrogated were repeat players with prior criminal records. This variable distinguished the suspects from their victims. Almost 69% of the victims had no prior criminal record; approximately 15% had misdemeanor records; and approximately 16% had felony records.

The formal interrogation process must, of course, be preceded by the well-known *Miranda* warnings. Table 2 lists the frequency distribution for suspect's responses to *Miranda.*

Table 2

FREQUENCY DISTRIBUTION OF SUSPECT'S RESPONSE TO *MIRANDA* WARNINGS

Suspect's Response To *Miranda* Warnings	Freq.	Percent
Waived	136	74.73%
Changed to Waive	1	0.55
Invoked	36	19.78
Changed to Invoke	2	1.10
Not Applicable	7	3.85
Total	182	100.00

In seven (almost 4%) of the cases I observed, the detective did not provide any *Miranda* warnings because the suspect technically was not "in custody" for the purpose of questioning.[30] Therefore, in these seven cases the detectives were not legally required to issue *Miranda*

[30] In other words, the suspect was neither under arrest nor was his freedom restrained "in any significant way" (in each case, the detective(s) informed the suspect that he did not have to answer their questions and that he was free to leave at any time).

warnings.[31] With the exception of these cases, the detective(s) read each of the fourfold *Miranda* warnings verbatim from a standard form prior to virtually every interrogation I observed.[32] A suspect might respond in one of four ways: waiving his rights, invoking them, or changing his initial response either to a waiver or an invocation. As Table 3 below indicates, 78% of my sample ultimately waived their *Miranda* rights, while 22% invoked one or more of their *Miranda* rights, thus indicating their refusal to cooperate with police questioning.

Table 3
FREQUENCY DISTRIBUTION OF SUSPECT'S ULTIMATE RESPONSE TO *MIRANDA*

Whether Suspect Waived or Invoked	Freq.	Percent
Waived	137	78.29%
Invoked	38	21.71
Total	175	100.00

If a suspect chooses to waive his *Miranda* rights, the custodial interrogation formally begins. If a suspect chooses to invoke one or more of his *Miranda* rights, typically the detective terminates the interrogation and returns the suspect to jail (if he was under arrest). However, in seven (4%) of the cases I observed, the detectives questioned suspects even after receiving an invocation. In each of these cases, the detective(s) informed the suspect that any information the suspect provided to the detective could not and therefore would not be used against him in a court of law. The detective told the suspect that the sole purpose of questioning was to learn "what really happened." Of course, what the detectives knew and did not tell the suspect was that although the prosecution could not use such evidence as part of its case-in-chief, any information the suspect provided to the detective nevertheless could be used in a court of law to impeach the suspect's credibility, and indirectly incriminate the suspect if he chose to testify at trial.[33] In the remaining thirty-one cases in which the suspect invoked his *Miranda* rights at some point during questioning (82% of all

[31] *Miranda* warnings are legally required only "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).

[32] In two of the burglary interrogations I observed, one investigator recited the *Miranda* warnings verbatim from memory. One robbery interrogator had the habit of reading the *Miranda* warnings from a standard form but crossing out (and thus not reading) the words "and will" in the second of the four warnings. *See* Leo, *supra* note 13, at 174-81.

[33] Harris v. New York, 401 U.S. 222 (1971).

cases in which a suspect invoked a *Miranda* right), the detective(s) promptly terminated the interrogation.

In any session in which the detective questioned a suspect beyond the *Miranda* warnings (whether or not a suspect invoked), I coded for twenty-five potential interrogation techniques.[34] Table 4 lists the frequency distribution for the total number of tactics employed by detectives during each interrogation. The number of tactics a detective employed per interrogation ranged from zero (e.g., the suspect spontaneously confessed or the detective did not genuinely try to elicit a confession) to fifteen. The cumulative percentage figure represents the percentage of interrogations in which detectives used at least that many interrogation tactics.

Table 4
FREQUENCY DISTRIBUTION OF TACTICS EMPLOYED PER INTERROGATION

Number of Interrogation Tactics Used by Detectives per Interrogation	Freq.	Percent	Cumulative Percentage
0	2	1.31%	—
1	8	5.23	99%
2	19	12.42	93
3	17	11.11	81
4	16	10.46	70
5	16	10.46	59
6	16	10.46	49
7	19	12.42	39
8	10	6.54	26
9	11	7.19	20
10	9	5.88	12
11	5	3.27	7
12	3	1.96	3
15	2	1.31	
Total	153	100.00	

The detectives employed a median of 5 and a mean of 5.62 tactics per interrogation. Clearly, however, the detectives used some interrogation tactics more frequently than others. Table 5 below lists each of the twenty-five tactics, and the frequency of their use during the interrogations I observed.

[34] I derived this list from the tactics (1) advocated in contemporary police interrogation training manuals; (2) taught in police interrogation training courses; and (3) used by police detectives in popular culture.

Table 5
TYPES OF INTERROGATION TACTICS AND THEIR FREQUENCY

Type of Interrogation Tactic	No. of Cases In Which Tactic Used	% of Cases In Which Tactic Used
TACTICS USED MOST OFTEN		
Appeal to the suspect's self-interest	134	88%
Confront suspect with existing evidence of guilt	130	85
TACTICS USED OFTEN		
Undermine suspect's confidence in denial of guilt	66	43
Identify contradictions in suspect's story	65	42
Any Behavioral Analysis Interview questions	61	40
Appeal to the importance of cooperation	56	37
Offer moral justifications/psychological excuses	52	34
Confront suspect with false evidence of guilt	46	30
Use praise or flattery	46	30
Appeal to detective's expertise/authority	45	29
Appeal to the suspect's conscience	35	23
Minimize the moral seriousness of the offense	33	22
TACTICS USED LEAST OFTEN		
Touch suspect in a friendly manner	17	11
Invoke metaphors of guilt	15	10
Minimize the facts/nature of the offense	9	6
Refer to physical symptoms of guilt	7	5
Exaggerate the facts/nature of the offense	6	4
Yell at suspect	5	3
Exaggerate the nature/purpose of questioning	3	2
Exaggerate the moral seriousness of the offense	3	2
Accuse suspect of other crimes	2	1
Attempt to confuse the suspect	1	1
Minimize the nature/purpose of questioning	1	1
Good cop/Bad cop routine	1	1
Touch suspect in an unfriendly manner	0	0

As Table 5 indicates, there is great variation in the distribution of the interrogation tactics I observed. A couple of the tactics were used in virtually all of the cases, several others were used in approximately one-third to one-half of the cases, a couple were used in approximately one-fifth of the cases, a few others were used only sparingly, and others virtually not at all. If a portrait of the typical interrogation emerges from the data, it involves a two-prong approach: the use of

negative incentives (tactics that suggest the suspect should confess because of no other plausible course of action) and positive incentives (tactics that suggest the suspect will in some way feel better or benefit if he confesses). In my sample, detectives typically began the interrogation session by confronting the suspect with some form of evidence, whether true (85%) or false (30%), suggesting his guilt and then attempting to undermine the suspect's denial of involvement (43%), while identifying contradictions in the suspect's alibi or story (42%). But detectives relied on positive incentives as well, most often by appealing to the suspect's self-interest (88%), but also by frequently offering the suspect moral justifications or psychological excuses (34%), using praise or flattery (30%), minimizing the moral seriousness of the offense (22%), appealing to the importance of cooperation with legal authorities (37%) or appealing to the detective's expertise (29%), or appealing to the suspect's conscience (22%). In approximately 90% of the interrogations I observed, the detective confronted the suspect with evidence (whether true or false) of his guilt and then suggested that the suspect's self-interest would be advanced if he confessed.[35]

Of course, the interrogations in my sample also varied by length, ranging from literally seconds (when the suspect invoked before the detective even introduced himself) to four and one-half hours. Table 6 shows the frequency distribution of the length of the interrogations for those cases in which the detective chose to question a suspect (i.e., excluding the twenty-nine cases in my data in which the suspect invoked his *Miranda* rights, and the detective terminated all questioning). As Table 6 indicates, more than 70% of the interrogations in my sample lasted less than an hour, and only 8% lasted more than two hours.

Table 6

LENGTH OF INTERROGATION ONLY WHERE AN INTERROGATION OCCURRED

Length of Interrogation	Freq.	Percent	Cum.
Less Than 30 Minutes	53	34.64%	34.64%
31-60 Minutes	56	36.60	71.24
1-2 Hours	32	20.92	92.16
More Than 2 Hours	12	7.84	100.00
Total	153	100.00	

35 For a fuller description of contemporary American police interrogation techniques, see Leo, *Social Control*, *supra*, note 17, at 99-113.

The outcome of an interrogation is, of course, the most important aspect of questioning from the perspective of the police, and potentially the most important aspect of a case from the perspective of the suspect. In each interrogation, I coded for one of four possible outcomes: the suspect provided no information to the police that they considered incriminating (whether or not the suspect invoked); the suspect provided some information that police considered incriminating (whether or not intentionally) but did not directly admit to any of the elements of the crime;[36] the suspect admitted to some, but not all, of the elements of the crime; and the suspect provided a full confession to the detectives. Table 7 displays the frequency distribution for the outcome of the interrogations in my sample.

Table 7
OUTCOME OF INTERROGATIONS

Suspect's Response to Interrogation	Freq.	Percent
No Incriminating Statement	65	35.71%
Incriminating Statement	41	22.53
Partial Admission	32	17.58
Full Confession	44	24.18
Total	182	100.00

If an interrogation is successful when the suspect provides the detective(s) with at least some incriminating information, then almost two-thirds (64%) of the interrogations I observed produced a successful result. The rate of successful interrogations in this sample is notably higher than the success rate reported by Wald et al. (51%),[37] Younger (50%),[38] Neubauer (46%),[39] Seeburger and Wettick (38%)[40] or Leiken (32%),[41] but is slightly lower than the success rate reported by Witt[42] (67%).[43] If we exclude from my sample those cases in which

[36] Typically this consisted of implausible or contradictory denials that the detectives believed corroborated other evidence pointing to the suspect's guilt or that locked the suspect into a false alibi, and/or that could be used successfully to impeach a suspect's credibility, and thus incriminate him, in subsequent judicial proceedings.

[37] Wald et al., *supra* note 17, at 1566.

[38] Evelle Younger, *Results of a Survey Conducted in the District Attorney's Office of Los Angeles County Regarding the Effect of the Miranda Decision Upon the Prosecution of Felony Cases*, 5 AM. CRIM. L. Q. 32, 35 (1966).

[39] David W. Neubauer, *Confessions in Prairie City: Some Causes and Effects*, 65 J. CRIM. L. & CRIMINOLOGY 103, 104-06 (1974).

[40] Richard Seeburger & Stanton Wettick, *Miranda in Pittsburgh—A Statistical Study*, 29 U. PITT. L. REV. 1, 11 (1967).

[41] Lawrence S. Leiken, *Police Interrogation in Colorado: The Implementation of Miranda*, 47 DENV. L. J. 1, 13 (1970).

[42] James W. Witt, *Non-Coercive Interrogation and the Administration of Criminal Justice: The*

the police terminated questioning upon the invocation of a *Miranda* right (and thus the detective or detectives made no effort to incriminate the suspect), more than three-fourths (76%) of the interrogations I observed produced a successful result. To the extent that these studies are representative of general trends in American policing, detectives have become increasingly successful at eliciting incriminating information from criminal suspects.

Following a suspect's waiver of his *Miranda* rights, any information that he provides to a detective during custodial questioning—whether an incriminating denial, a partial admission, or a full confession—must be rendered "voluntarily" if it is to be used against that suspect in subsequent judicial proceedings.[44] In other words, the prosecutor will not be able to use any incriminating information police elicit from a custodial suspect if the interrogation methods they employed are deemed "coercive" by the courts. The issue of coercive questioning has been the fundamental concern of the appellate courts that have traditionally regulated police interrogation procedures in America.[45] Yet the meaning that courts have attributed to the concept of "coercion" has always been relative and historically contingent. How courts define the concept of "coercion" and where they draw the line between coercive and non-coercive interrogation tactics has varied dramatically in American history and continues to vary (from one jurisdiction to another as well as between courts within similar jurisdictions) in contemporary America.[46] For "coercion" in the context of interrogation is not an external thing one can indepen-

Impact of Miranda on Police Effectuality, 64 J. CRIM. L. & CRIMINOLOGY 320, 325 (1973).

[43] One must interpret these comparisons with some caution, for several of the researchers defined a successful interrogation differently or coded the outcomes of interrogations differently or relied on different methodologies when gathering their data. Witt uses a definition of success identical to my own (i.e., any interrogation yielding a confession, admission, or incriminating statement). *See* Witt, *supra* note 42, at 325. I computed the Wald et al. success rate by imposing on their data a definition of success identical to mine. *See* Wald et al., *supra* note 17, at 1566. Younger's definition of a successful interrogation—a confession, admission, or other (presumably incriminating) statement—appears similar to mine own. *See* Younger, *supra* note 38, at 35; *see also* Evelle J. Younger, *Interrogation of Criminal Defendants—Some Views on Miranda v. Arizona*, 35 FORDHAM L. REV. 255, 255-62 (1966). Neubauer's definition of a successful interrogation, which includes any confession, admission, or statement to police, appears more inclusive than mine because "statement to police" need not be incriminating. *See* Neubauer, *supra* note 39, at 104-106. By contrast, Seeburger & Wettick and Leiken employ a more exclusive definition of successful interrogations, which includes only confessions and admissions, not incriminating statements. *See* Seeburger & Wettick, *supra* note 40, at 10; Leiken, *supra* note 41, at 13. Despite the lack of identical definitions, however, these studies offer valuable data for rough comparisons of the efficacy of modern interrogation practices.

[44] Brown v. Mississippi, 297 U.S. 278 (1936).

[45] WAYNE LAFAVE & JEROLD ISRAEL, CRIMINAL PROCEDURE (2d ed. 1992).

[46] *See* Leo, *supra* note 13, at 12-66.

dently observe or something whose existence one can objectively verify, but rather a concept that courts attach to a variable and sometimes quite amorphous set of police behaviors.[47] In hard cases how courts draw the line between coercive and non-coercive interrogation methods depends on the judge's predisposition toward crime control or due process values and perhaps ultimately on the judge's philosophical conceptions of moral responsibility and the limits of human freedom.[48]

To operationalize the concept of "coercion," I attempted to capture those set of police behaviors and interrogation practices that contemporary appellate courts generally tend to label as "coercive." Thus, I coded any interrogation in my sample as "coercive" if at least one of the following ten conditions were present during the interrogation:

(1) The detective failed to read the *Miranda* warnings;
(2) The suspect was not permitted to invoke his *Miranda* rights;
(3) The detective touched the suspect in an unfriendly manner;
(4) The suspect was in obvious physical or psychological pain (whether or not related to the detective's actions);
(5) The detective threatened the suspect with physical or psychological harm;
(6) The detective promised the suspect leniency in exchange for an admission of guilt;
(7) The detective deprived the suspect of an essential necessity (such as water, food, or access to a bathroom);
(8) The detective's questioning manner was unrelenting, badgering or hostile;
(9) The interrogation lasted an unreasonable amount of time (more than six hours); or
(10) The suspect's will appeared to be overborne by some other factor or combination of factors.

Although some may disagree with where or how I chose to draw the line between coercive and non-coercive interrogations, I believe that I erred on the side of ruling as "coercive" questioning methods that many contemporary trial and appellate courts would otherwise deem to be non-coercive[49] and thus, my criteria for coercive tactics generally resolve any doubts in favor of the suspect, not the police. Nevertheless, in my sample of 182 custodial interrogations, police questioning methods in only four (or 2%) of the cases rose to the level of "coer-

---

47 *Id.*

48 *See* HERBERT PACKER, THE LIMITS OF THE CRIMINAL SANCTION (1968). To my knowledge, no one has empirically studied how judges reason, think about and distinguish "coercive" from "voluntary" confessions.

49 *See* YALE KAMISAR ET AL., MODERN CRIMINAL PROCEDURE: CASES, COMMENTS, QUESTIONS 452-61 (8th ed. 1994).

cion" according to these criteria.

Since four is too small a number to warrant any statistical analysis, I can only qualitatively describe the patterns, if any, I observed in these cases. All four cases involved the use of psychologically coercive methods; none involved the use of physically coercive methods. In one interrogation, detectives questioned a heroin addict who was quite obviously experiencing extremely painful withdrawal symptoms. While the detectives did nothing to contribute to the suspect's agony, they intentionally questioned him during the second day of his incarceration when they knew his withdrawal symptoms would be most acute. Although the police arrested the suspect on probable cause for felony gun possession, the detectives considered him a potential, not an actual, suspect in their robbery case. The detectives questioned him as if he were an informant, promising to release him just as soon as he provided them with information about a couple of robberies. Shortly thereafter, the police released the suspect from custody without charging him. In another case I coded as "coercive," two detectives employed the "good cop-bad cop" routine on a young gang member who witnessed a violent gang beating. As one detective kindly promised to release him from custody if he named the perpetrators of the assault, the other detective angrily threatened to provide the prosecutor with incriminating information that would send the suspect to prison. The suspect provided the detectives with the information they desired and was subsequently released without charge.

In another case, an alleged violent armed robbery by an individual with a long criminal record who had been recently released from prison, the detectives failed to acknowledge the suspect's repeated invocation of silence in response to the initial *Miranda* admonition. After repeatedly trying to talk the suspect out of waiving his *Miranda* rights, the detectives terminated their questioning after approximately five minutes. The suspect, against whom strong eyewitness evidence existed, was eventually charged by the prosecutor.[50] The last instance of a "coercive" interrogation in my sample involved a suspect who police arrested for selling drugs and offered an explicit promise of leniency if he became an informant and provided names of more highly placed drug dealers. The suspect refused to turn state's witness, and received a four year prison sentence instead.

Of course, four cases is too small a sample from which to draw any meaningful generalizations. If a common thread exists among these cases, however, it is that the detectives perceived that they had

[50] Due to a regretful error in note-taking, I was unable to track down the ultimate disposition of this case.

nothing to lose by exerting "coercive" means or intentionally eliciting an involuntary statement. For as all detectives know, witnesses do not enjoy the same constitutional protections as suspects, and the judicial suppression of a suspect's statement may not be very significant to the state's case when there exists other compelling physical evidence of a suspect's guilt. As in earlier studies,[51] the detectives did not, in this limited sample, appear to be any more likely to resort to coercive methods as a result of any personal or social characteristics of the suspect under questioning.

Police interrogation involves only one stage of the larger criminal process through which an individual may be convicted and ultimately incarcerated. The detective's primary goal during interrogation is to gather enough incriminating evidence to convince the prosecutor to file criminal charges against the suspect. Eventually, prosecutors charged 69% of the suspects in my sample and released the remaining 31%.[52] Of those individuals who were charged by prosecutors, 88.5% were convicted. Approximately 60% of the suspects in my entire sample were eventually convicted, though this figure includes only those cases whose dispositions were resolved (i.e., not pending trial or unknown) when I left the field altogether.[53] Eighty-five percent of those suspects received felonies while the remaining 15% received misdemeanors.

Whether or not a suspect was ultimately convicted of the offense for which he was under questioning, his case might be resolved by the criminal justice system in one of several ways: by dismissal; by a violation of parole or probation (in which the suspect is returned to prison for up to one year due to a prior conviction); by plea bargaining; or by trial. No charge or dismissal after charging occurred in approximately 38% of the cases in my sample; in approximately 10% of the cases the suspect violated his probation or parole from a prior conviction and was returned to prison; plea bargaining resolved approximately 43% of the cases; and in approximately 10% of the cases, the suspect's case was resolved by a trial.

---

51 *See* Wald et al., *supra* note 17.

52 I coded parole/probation violations as being charged, even though technically a suspect whose parole or probation is violated is not charged. Prosecutors may prefer to cite a parole/probation violation rather than charge a suspect for his current offense because the standard of proof for a violation is only "preponderance of evidence" (i.e., more likely than not) rather than "beyond a reasonable doubt," and thus violating a suspect's parole or probation typically results in the suspect's automatic re-incarceration for a previous conviction. Prosecutors "violated" the parole/probation of 18 (or approximately 10%) of the suspects in my sample.

53 Although I left the field in late September 1993 after nine months of fieldwork, I briefly returned to the Laconia, Southville, and Northville Police Departments in the spring of 1994 to collect information on outcomes for the outstanding cases in my sample.

The final stage of the criminal justice process for defendants is sentencing. In my sample, approximately 42% of the suspects were either not charged or not convicted and thus received no sentence. The other suspects in my sample received sentences ranging from probation to life imprisonment. Table 8 lists the length of sentence received by those suspects for whom dispositions were available at the time of this writing.[54] While there was considerable variation in the range of sentences in my sample, I have recoded them into four categories.

Table 8
LENGTH OF SENTENCE SUSPECT RECEIVED

Length of Suspect's Sentence	Freq.	Percent	Cum.
None	68	41.98%	41.98%
Low (Less Than One Year)	56	34.57	76.54
Medium (1-5 Years)	17	10.49	87.04
High (More than 5 Years)	21	12.96	100.00
Total	162	100.00	

IV. THE CONTEXT AND OUTCOME OF POLICE INTERROGATION: ANALYZING THE DATA

What explains how suspects respond to *Miranda* warnings? How do their responses vary by social, legal, and case factors? Are the differences statistically significant? How does a suspect's decision either to waive or invoke his *Miranda* rights affect the processing of his case, the likelihood of conviction, and the final case resolution? What explains how suspects respond to police questioning? Why do some suspects confess while others do not? Does the likelihood that a suspect will provide detectives with incriminating information vary by social, legal, and case factors? Are these differences statistically significant? Which interrogation tactics are likely to be most effective and ineffective in eliciting incriminating information from suspects? What explains the varying length of custodial interrogations and efforts detectives expend in trying to elicit incriminating information from criminal suspects? What effect does providing incriminating information to a detective have on the suspect's fate in the criminal justice system? These are among the questions that I will seek to answer in this section.

54 *See supra* note 53.

A. A SUSPECT'S RESPONSE TO *MIRANDA* AND ITS EFFECTS

Despite the passing of almost thirty years since their judicial creation, the *Miranda* warnings remain one of the most controversial issues in American criminal justice, even as *Miranda* has become settled doctrine in the appellate courts, standard policy in police departments, and a household word in American popular culture.[55] The conventional wisdom in legal and political scholarship is that virtually all suspects waive their rights prior to interrogation and speak to the police.[56] However, as we saw above, almost one-fourth of my sample (22%) exercised their right to terminate police questioning, while 78% of the suspects chose to waive their *Miranda* rights. Nevertheless, one might expect that certain individuals are more likely to waive their rights than others. Indeed, the Warren Court in *Miranda* speculated that underprivileged suspects were less likely to comprehend or exercise their constitutional rights to silence and counsel than their more advantaged counterparts.[57] Though I tested for twelve social, legal and case-specific variables, the only variable that exercised a statistically significant effect on the suspect's likelihood to waive or invoke his *Miranda* rights was whether a suspect had a prior criminal record ($p<.006$). As Table 9 below indicates, while 89% of the suspects with a misdemeanor record and 92% of the suspects without any record waived their *Miranda* rights, only 70% of the suspects with a felony record waived their *Miranda* rights. Put another way, a suspect with a felony record in my sample was almost four times as likely to invoke his *Miranda* rights as a suspect with no prior record and almost three times as likely to invoke as a suspect with a misdemeanor record. This result confirms the findings of earlier studies,[58] as well as the conventional wisdom among the detectives I studied, who complained that ex-felons frequently refuse to talk to them as a matter of course. The more experience a suspect has with the criminal justice system, the more likely he is to take advantage of his *Miranda* rights to terminate questioning and seek counsel.

---

55 *See* FRED P. GRAHAM, THE SELF-INFLICTED WOUND (1970); LIVA BAKER, MIRANDA: CRIME, LAW AND POLITICS (1983); Leo, *supra* note 12.

56 Leo, *supra* note 12.

57 Miranda v. Arizona, 384 U.S. 436, 471-73 (1966).

58 Wald et al., *supra* note 17, at 1562-77; Neubauer, *supra* note 39, at 106-07.

Table 9
SUSPECT'S RESPONSE TO *MIRANDA* BY PRIOR CRIMINAL RECORD

	Whether Suspect Waived or Invoked		
Suspect's Prior Record	Waived	Invoked	Total
None	22	2	24
	91.67%	8.33%	100.00%
Misdemeanor	42	5	47
	89.36%	10.64%	100.00%
Felony	72	31	103
	69.90%	30.10%	100.00%
Total	136	38	174
	78.16%	21.84%	100.00%

Pearson chi2(2) = 10.1340 Pr = 0.006

At least as important as a suspect's response to the *Miranda* warnings is the effect that either a waiver or an invocation will exert on the processing of his case, the likelihood of conviction, and the final case resolution. While the police may consider a suspect's interrogation less likely to be successful if a suspect invokes his *Miranda* rights, this is neither necessarily nor obviously true. In my sample, the detectives acquired incriminating information against a suspect in six (approximately 16%) of the thirty-eight interrogations in which the suspect at some point invoked his *Miranda* rights.[59] Despite its potential effect on the outcome of an interrogation, a suspect's case was 4% less likely to be charged if he waived his *Miranda* rights than if he invoked his *Miranda* rights prior to or during interrogation (approximately 73% vs. 69%). While counterintuitive, this difference, as Table 10 below indicates, is not statistically significant and thus not significantly related to the prosecutor's decision to charge the suspect with a criminal offense.

[59] In my sample, detectives questioned seven suspects after they had invoked their *Miranda* rights and two suspects who subsequently invoked their *Miranda* rights. Of these nine cases, six suspects provided incriminating information to detectives.

Table 10
EFFECT OF SUSPECT'S RESPONSE TO *MIRANDA* ON PROSECUTOR'S DECISION TO CHARGE CASE

Suspect's Response To *Miranda* Warnings	Whether Suspect was Charged by Prosecutor		
	Not charged	Charged	Total
Waived	42	95	137
	30.66%	69.34%	100.00%
Invoked	10	27	37
	27.03%	72.97%	100.00%
Total	52	122	174
	29.89%	70.11%	100.00%

Pearson chi2(1) = 0.1832 Pr = 0.669

While the suspects in my sample who waived their *Miranda* rights were only 4% less likely to be charged by the prosecution, they were approximately 10% more likely to be convicted of an offense than those who invoked their *Miranda* rights (63% vs 53%). This difference may seem large, but it is not statistically significant, as Table 11 below indicates.

Table 11
LIKELIHOOD OF CONVICTION BY RESPONSE TO *MIRANDA*

Suspect's Response To *Miranda* Warnings	Whether Suspect Was Convicted		
	Not Convicted	Convicted	Total
Waived	48	81	129
	37.21%	62.79%	100.00%
Invoked	15	17	32
	46.88%	53.13%	100.00%
Total	63	98	161
	39.13%	60.87%	100.00%

Pearson chi2(1) = 1.0057 Pr = 0.316

Although a suspect's response to *Miranda* is not significantly related to either the prosecutor's charging decision or the likelihood of conviction, it is significantly related to the process by which the suspect's case will be resolved ($p<.024$). As Table 12 below indicates, a suspect who waives *Miranda* is twice as likely to have his case resolved through plea bargaining, and this difference is highly significant ($p<.009$). And in my sample more than 98% of the plea bargains resulted in convictions. That a suspect's decision to waive his *Miranda* rights significantly increases the likelihood that his case will be re-

solved by plea bargaining confirms Neubauer's earlier finding,[60] and may be the most notable effect of a suspect's response to the pre-interrogation *Miranda* warnings. Presumably, the greater evidence accumulated against suspects who speak to their interrogators (and likely provide them with incriminating information) accounts for this statistically significant relationship. However, it is also possible that this relationship results from the selection bias created by *Miranda*; those suspects who waive their constitutional rights and allow police interrogation may be more cooperative individuals and thus more predisposed toward less adversarial means of case resolution such as plea bargaining, while those suspects who invoke their *Miranda* rights may be more inclined to press their claims aggressively through the court system.

Table 12

THE RELATIONSHIP BETWEEN *MIRANDA* AND PLEA BARGAINING

Suspect's Response To *Miranda* Warnings	Whether Suspect Case Was Resolved by Plea Bargaining		
	No	Yes	Total
Waived	69	65	134
	51.49%	48.51%	100.00%
Invoked	28	9	37
	75.68%	24.32%	100.00%
Total	97	74	171
	56.73%	43.27%	100.00%

Pearson chi2(1) = 6.9076 Pr = 0.009

The final stage of the criminal process in which a suspect's response to the *Miranda* waiver may exert an effect is sentencing. In particular, one might reasonably expect that suspects who waived their *Miranda* rights during interrogation would be likely to receive more severe sentences than those suspects who had invoked their rights. Although suspects who waive their *Miranda* warnings are more likely to receive punishment than their counterparts who invoke, the differences in the severity of punishment they receive are not statistically significant, as Table 13 indicates.

60 Neubauer, *supra* note 39, at 109-10.

Table 13
RELATIONSHIP BETWEEN *MIRANDA* AND SENTENCE SEVERITY

Suspect's Response To *Miranda* Warnings	Severity of Suspect's Sentence				
	None	Low	Medium	High	Total
Waived	48	46	15	15	124
	38.71%	37.10%	12.10%	12.10%	100.00%
Invoked	15	9	2	6	32
	46.88%	28.13%	6.25%	18.75%	100.00%
Total	63	55	17	21	156
	40.38%	35.26%	10.90%	13.46%	100.00%

Pearson chi2(3) = 2.6350 Pr = 0.451

Even if we control for conviction (i.e. exclude from our analysis those suspects who were not convicted), the relationship between a suspect's response to the *Miranda* warnings and the severity of his sentence remains statistically insignificant ($p<.349$).

B. THE SUCCESS OF INTERROGATIONS

Why do some suspects confess while others manage to resist police pressures to incriminate themselves? What social and legal circumstances make the probability of a successful interrogation more or less likely?

Several earlier studies have attempted to answer these questions. Leiken found that younger suspects were much more likely to confess than older ones, and that suspects without a prior criminal record were slightly more likely to confess than suspects with a prior record.[61] The differences captured in his data, however, were not statistically significant at the .05 level.[62] Leiken also found that socially disadvantaged suspects (as measured by years of education) were no more likely to confess than more socially privileged suspects.[63] Neubauer found that suspects without criminal records were substantially more likely to confess than suspects with criminal records, and that suspects accused of property crimes were more likely to confess than suspects accused of crimes against persons.[64] But younger suspects were no more likely to confess than older ones nor were suspects from disadvantaged social groups any more likely to confess than suspects from privileged social groups.[65] Neubauer theorized that what really ex-

61 Leiken, *supra* note 41, at 19-20.
62 *Id.* at 19-21.
63 *Id.* at 20.
64 Neubauer, *supra* note 39, at 104.
65 *Id.* at 105.

plained the differential confession rate in his data was the evidence against a suspect prior to interrogation, which, he posited, was typically much higher in property crime cases than crimes against persons.[66] Like Leiken, however, Neubauer failed to provide tests of significance to support his assertions, and thus we do not know whether the strength of the associations in his data were arbitrary.

Employing more sophisticated methods, Wald et al. found that suspects without a prior record were significantly more likely to provide incriminating information during interrogation than suspects with prior criminal records, and that suspects were significantly more likely to provide incriminating information during interrogation the stronger the evidence against them prior to custodial questioning.[67] Additionally, in the more serious offenses suspects were significantly more likely to provide incriminating information during interrogation.[68] However, Wald et al. found no statistically significant relationship between either the suspects' race or age and their likelihood to confess.[69]

Unlike Wald et al., Leiken, and Neubauer, I examined the effects of a wide range of sociological and legal variables on the likelihood of successful interrogation outcomes. None of the sociological variables—the class, race, or gender of the suspects, victims, or officers—were significantly related to the likelihood of obtaining incriminating information from the suspect.[70] Neither were many of the legal and case specific variables.[71] Although my data confirm Neubauer's (unsubstantiated) assertion that the strength of the evidence against a suspect prior to interrogation is significantly higher in property crimes

66 *Id.* at 106.

67 Wald et al., *supra* note 17, at 1643-48.

68 *Id.*

69 *Id.* at 1644-46.

70 Multivariate regression analyses confirmed the CHI2 finding that suspects' demographic data is not significantly related to successful interrogation outcomes.

71 It is possible that unsuccessful or successful interrogation outcomes were accounted for by the suspect's innocence or guilt rather than by the length of interrogation or the number of tactics. Since I could not tell whether a suspect was innocent or guilty prior to his interrogation, this possibility cannot be altogether falsified. However, it seems highly unlikely for at least two reasons. First, many unsuccessful interrogations were the result of a suspect invoking his *Miranda* rights, and, as we have seen, suspects with prior felony records were four times more likely to invoke their *Miranda* rights than suspects without any prior criminal record, a finding that is statistically significant. It stands to reason that suspects with prior felony records, who were more likely to be guilty than suspects without a prior criminal record, thus accounted for a disproportionate number of the unsuccessful interrogation outcomes. Second, the strength of the evidence prior to the interrogation was the best indicator of the suspect's innocence or guilt prior to interrogation, and it was not significantly related to successful interrogation outcomes. When controlling for the strength of the evidence prior to the interrogation, however, the length of interrogation and number of tactics remain statistically significant at the .01 level.

than in crimes against persons ($p<.028$), they do not support his argument that there is a significant relationship between the type of crime and the likelihood of confession. Nor do my data confirm Leiken's assertion that younger suspects are much more likely to provide incriminating information during interrogation than older suspects. Nor do my data corroborate Wald et al.'s findings that the absence of a prior record, the strength of the evidence prior to questioning, and the seriousness of the offense exert a statistically significant effect on the likelihood that the suspect will provide incriminating information during interrogation.

The only variables in my sample that were significantly related to the likelihood of a successful interrogation were the number of tactics employed by detectives ($p<.002$), and the length of the interrogation ($p<.000$). That the number of tactics employed by detectives and the length of interrogation are significantly related to the likelihood of confession suggests that the effort and energy expended by detectives is one of the most important factors in explaining successful interrogation outcomes. The more interrogation tactics detectives use, the more likely they are to find something that works. The longer detectives interrogate, the more likely they are to wear the suspect down and elicit incriminating statements.

C. THE EFFECT OF INTERROGATION TACTICS

Although the earlier empirical studies mentioned above all analyzed the effect(s) of selected sociological and legal variables on the likelihood of confession, no study has ever examined (either qualitatively or quantitatively) the effect of interrogation tactics on the likelihood that suspects will provide incriminating information to detectives during interrogation. Yet according to the rhetoric of police interrogation training manuals and courses, as well as the conventional wisdom in police culture, the interrogation tactics that a detective uses should be the decisive influence in a suspect's decision to provide police with incriminating information.[72] The *Miranda* Court echoed a similar sentiment when it excoriated police interrogation training texts for compelling confessions through psychologically subtle and sophisticated questioning methods.[73] My statistical analysis in the previous section revealed that the number of interrogation tactics detectives employ during custodial questioning is significantly related to the likelihood of obtaining incriminating information from suspects ($p<.002$). Are certain interrogation methods and strategies

[72] *See* Leo, *supra* note 13, at 67-127.

[73] Miranda v. Arizona, 384 U.S. 436, 448-55 (1966).

also significantly likely to be effective at eliciting incriminating admissions from custodial suspects? And is the use of these and other interrogation tactics by detectives socially and/or legally patterned? In other words, under what circumstances or conditions do some interrogation tactics yield a statistically significant likelihood of eliciting incriminating information from a suspect?

As Table 14 indicates, when detectives employed certain interrogation tactics they were significantly likely to elicit incriminating information from suspects.[74] In particular, the tactic of identifying contradictions in the suspect's denial of involvement was successful at eliciting incriminating information in 91% of the interrogations in which it was used ($p<.000$); the tactic of offering the suspect a moral justification or psychological excuse for his behavior was successful in 90% of the interrogations ($p<.004$); the tactic of using praise or flattery was successful in 91% of the interrogations ($p<.005$); and the tactic of appealing to the suspect's conscience was successful in 97% of the interrogations in which it was used ($p<.001$). Although these four tactics were the only ones that exercised a statistically significant effect on successful interrogation outcomes in general, the tactic of appealing to the importance of cooperating with legal authorities ($p<.098$) and using Behavioral Analysis Interview questions[75] ($p<.090$) were also highly likely to be effective.

---

74 Since 71 different detectives participated in the 182 interrogations in my sample, we can safely rule out the possibility that this table measures the techniques that only good interrogators use. Most of the interrogations in my sample did not involve the same officers. Moreover, as Table 5 indicates, several tactics were commonly used in a great many of the interrogations.

75 The Behavioral Analysis Interview consists of a structured set of non-investigative hypothetical questions that are thought to evoke particular behavioral responses from which interrogators are taught to ascertain the truthfulness of suspects' responses and infer deception prior to commencing formal interrogation. *See* FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 63-68 (3d ed. 1986). Inbau et al. recommend approximately 15 questions to pose to the suspect, ranging from general questions, such as why does the suspect think someone would have committed the crime, to specific ones, such as would the suspect be willing to take a polygraph. Inbau et al. argue that guilty suspects react defensively and with discomfort to these questions; they equivocate, stall, and provide evasive or noncommittal answers. By contrast, innocent suspects are thought to produce cooperative, direct, and spontaneous responses to these questions. In their introductory and advanced training seminars, the Chicago-based firm of Reid & Associates advise interrogators to treat as guilty any suspect whose answers to four or more of the fifteen questions appear deceptive to the interrogator.

Table 14
THE EFFECT OF INDIVIDUAL INTERROGATION TACTICS

Interrogation Tactic	Success[76] Rate	CHI2[77]
MOST SUCCESSFUL INTERROGATION TACTICS		
Appeal to the suspect's conscience	97%	.001*
Identify contradictions in suspect's story	91	.000*
Use praise or flattery	91	.005*
Offer moral justifications/psychological excuses	90	.004*
LEAST SUCCESSFUL INTERROGATION TACTICS		
Touch suspect in a friendly manner	88%	.225
Invoke metaphors of guilt	87	.327
Any Behavioral Analysis Interview (BAI) questions	84	.090
Appeal to the importance of cooperation	84	.098
Appeal to detective's expertise/authority	84	.133
Confront suspect with false evidence of guilt	83	.241
Minimize the moral seriousness of the offense	81	.414
Undermine suspect's confidence in denial of guilt	80	.182
Confront suspect with existing evidence of guilt	78	.168
Appeal to the suspect's self-interest	77	.760

*p<.01

The effectiveness of specific interrogation tactics also varies by the social characteristics of the suspects under questioning as well as the legal characteristics of their cases. Table 15 displays the relationships between the techniques that are significantly likely to yield incriminating information by the social and legal variables in my data for which the number of observations available was large enough to warrant statistical analysis. These findings tell us not merely which police techniques are most likely to be successful, but also the tactics to which different suspects are most likely to be vulnerable. For example, younger suspects seemed far more vulnerable to appeals of conscience and justification, perhaps because they are more naive, inexperienced, or idealistic than older suspects, who, by contrast, seemed far more vulnerable to pragmatic appeals based on self-interest and the strength of evidence suggesting their guilt.

[76] As we saw in Table 7, detectives were successful at eliciting incriminating information in 64% of the cases in my sample. This figures rises to 76% if we exclude the cases in which suspects invoked one or more of their *Miranda* rights and questioning subsequently ceased. This figure, then, is the base rate of success against which the percentages in Table 14 should be compared.

[77] I excluded from my analysis any interrogation tactic that was not used in at least 15 (or approximately 10%) of the interrogations because otherwise the number was too small to permit adequate statistical analysis.

Interestingly, some interrogation techniques that were not generally significant become significantly likely to yield incriminating information under certain conditions. For example, suspects who are below middle class and suspects with prior felony records were significantly likely to be vulnerable to physical evidence ploys. Due to the lack of variation in many of the independent variables in my data, however, explicit comparisons in the efficacy of techniques and the vulnerability of suspects could not always be made. For example, we can see the specific tactics to which men, minorities, and below middle class suspects in my sample were most vulnerable, but I can provide no such data for their female, white, or middle class counterparts because so few of my subjects fell into these categories. Moreover, as we will see below, detectives were significantly likely to use more interrogation tactics against certain types of suspects and in certain types of cases, thus increasing the possible number of efficacious tactics in those cases and against those suspects. For example, detectives were significantly likely to use more interrogation tactics the more serious the crime ($p<.042$) as well as in those cases in which the strength of the evidence prior to the interrogation was not already high ($p<.038$).

Table 15

EFFECTIVENESS OF INTERROGATION TACTICS BY SOCIAL AND LEGAL CHARACTERISTICS OF THE CASE

Variable/Successful Tactics	Success Rate	CHI2*
Younger Suspects (Less than 30 Years Old)		
Identify Contradictions	90%	.018
Use Praise or Flattery	93	.015
Offer Moral Rationalizations	97	.002
Appeal to Suspect's Conscience	100	.003
Older Suspects (Older than 30 years)		
BAI Questions	90	.024
Identify Contradictions	92	.004
Confronting Suspect with Existing Evidence	80	.004
Appeal to Suspect's Self-Interest	78	.048
Male Suspects		
Identify Contradictions	90	.001
Offer Suspect Moral Rationalizations	90	.008
Use Praise or Flattery	93	.004
Appeal to Suspect's Conscience	97	.001
Minority Suspects		
Identify Contradictions	93	.000
Offer Suspect Moral Rationalizations	93	.007
Use Praise or Flattery	91	.030
Appeal to Suspect's Conscience	100	.002
Appeal to Importance of Cooperation	88	.055

Suspects Below Middle Class		
Identify Contradictions	93%	.000
Confront Suspects with False Evidence	88	.050
Offer Suspect Moral Rationalizations	93	.001
Use Praise or Flattery	93	.004
Appeal to Suspect's Conscience	97	.002
Touch Suspect in a Friendly Manner	100	.028
Suspects With Prior Felony Records		
Use BAI Questions	94	.007
Identify Contradictions	95	.004
Confront Suspect with False Evidence	96	.027
Offer Suspect Moral Rationalizations	96	.013
Use Praise or Flattery	95	.033
Appeal to Suspect's Conscience	95	.030
Suspects Without Prior Felony Records		
Identify Contradictions	86	.031
Use Praise or Flattery	87	.044
Appeal to Suspect's Conscience	100	.009
Crimes Against Persons		
Identify Contradictions	90	.001
Offer Suspect Moral Rationalizations	90	.014
Use Praise or Flattery	91	.022
Appeal to Suspect's Conscience	97	.003
Appeal to Importance of Cooperation	86	.048
Crimes of Low or Medium Seriousness		
Identify Contradictions	97	.002
Offer Suspect Moral Rationalizations	93	.011
Appeal to Suspect's Conscience	100	.006
Crimes of High Seriousness		
Identify Contradictions	86	.054
Use Praise or Flattery	100	.016
Strength of Evidence is Low or Medium Prior to Interrogation		
Identify Contradictions	91	.001
Offer Suspect Moral Justifications	88	.036
Use Praise or Flattery	89	.031
Appeal to Suspect's Conscience	95	.013
Appeal to Importance of Cooperation	89	.008
Strength of Evidence is High Prior to Interrogation		
Offer Suspect Moral Rationalizations	95	.040
Appeal to Detective's Expertise	100	.042
Appeal to Suspect's Conscience	100	.033

*p<.05

D. THE LENGTH AND EFFORT OF CUSTODIAL INTERROGATIONS

What factors determine the amount of time detectives put into interrogating suspects and attempting to elicit incriminating information from them? When are detectives more likely to interrogate sus-

pects aggressively? How does the time and effort detectives expend during custodial questioning vary by the legal, case-specific, and sociological factors in my data? Which relationships are statistically significant?

My data revealed a statistically significant relationship between the amount of time detectives spend interrogating suspects and three other variables: the seriousness of the offense, the success of the interrogation, and the gender of the victim. The more serious the crime, the longer detectives spent attempting to elicit incriminating information from the suspect ($p<.002$). The high seriousness crimes were more than twice as likely to result in long interrogations (more than one hour) than low seriousness crimes (42% vs. 20%); conversely, a crime of low seriousness was approximately three times as likely to result in a short interrogation (less than thirty minutes) than a crime of high seriousness (53% vs. 18%). Not surprisingly, the length of the interrogation is also significantly related to its success ($p<.000$): successful interrogations were six times more likely to last more than one hour than unsuccessful ones (36% vs. 6%); conversely, unsuccessful interrogations were more than twice as likely to be under thirty minutes than successful ones (58% vs. 27%). Finally, the gender of the victim was also significantly related to the length of the interrogation in my sample ($p<.004$). If the gender of the victim was female, the interrogation was more than twice as likely to be long (46% vs. 21%). This finding is likely due to the interrogations of suspects accused of rape in my sample, interrogations which almost always lasted more than one hour and in which the victim was always female. However, this finding is difficult to assess because 89% of the suspects in my sample were men, thus rendering an extremely small comparison group.

Like the amount of time detectives spend interrogating suspects, the number of tactics detectives employ during custodial questioning was also significantly related to three independent variables: the seriousness of the offense, the race of the suspect, and the strength of evidence against a suspect. The more serious the offense, generally the more interrogation tactics detectives employ in their attempts to gather incriminating information from custodial suspects ($p<.042$). Interrogations for crimes of low seriousness were more than twice as likely to last under thirty minutes than either crimes of medium seriousness or high seriousness (53% vs. 26% vs. 23%). Not surprisingly, the number of interrogation tactics detectives employed during their interrogations of suspects accused of crimes against persons was significantly higher than for those accused of property crimes ($p<.008$). Detectives were also significantly likely to employ more tactics during

their interrogation of minority suspects (p<.005). However, the small number of non-minority suspects makes this finding difficult to assess because 85% of the suspects in my sample were nonwhite, once again rendering an extremely small comparison group. Finally, the strength of the evidence against a suspect prior to questioning is significantly related to the number of tactics detectives are likely to employ during interrogation (p<.038). Generally, detectives tend to use fewer tactics when the evidence against a suspect is already strong and there appears to be little need to obtain more incriminating evidence. Detectives in my sample were more than twice as likely to use a high number of interrogation tactics when the evidence against the suspect prior to questioning was either weak or intermediate than when it was strong (47% vs. 22%).

E. THE EFFECT OF CONFESSIONS ON CASE PROCESSING

What happens to suspects who incriminate themselves during interrogation? What effect does providing incriminating statements, admissions, and confessions in the interrogation room have on the likelihood that a suspect will subsequently be charged and convicted? The process through which a suspect's case is resolved? The severity of sentencing? Is it true, as critics have argued, that once a suspect confesses to police his case is largely over; in effect, the rest of the judicial process is mostly form rather than substance?[78]

This study suggests that confessions may well be the most damning and persuasive evidence of criminal guilt, a finding that confirms the beliefs of many detectives and prosecutors, as well as the outcome of mock jury experiments.[79] Incriminating statements provided to police during interrogation cast a long shadow over the defendant's fate within the criminal justice system. *Suspects who provide incriminating information to detectives are significantly more likely to be treated differently at every subsequent stage of the criminal process than those suspects who do not provide incriminating information during interrogation.* As Table 16 below indicates, suspects in my sample who incriminated themselves during interrogation were 20% more likely to be charged by prosecutors (p<.006);[80] 24% less likely to have their cases dismissed (p<.000); 25%

78 *See* Charles Ogletree, *Are Confessions Really Good for the Soul?: A Proposal to Mirandize Miranda*, 100 HARV. L. REV. 1826 (1987); Arthur Sutherland, *Crime and Confession*, 79 HARV. L. REV. 21 (1965).

79 *See* SIMON, *supra* note 23; Leo, *Social Control*, *supra* note 17, at 99; Gerald R. Miller & F. Joseph Boster, *Three Images of the Trial: Their Implications for Psychological Research*, *in* PSYCHOLOGY IN THE LEGAL PROCESS 19 (Bruce Dennis Sales ed., 1977).

80 The statistically significant differences at this stage of the criminal process remained even when I recoded parole or probation violations as a decision by the prosecutor not to charge the suspect. Still, a suspect who provided police with incriminating information

Table 16

THE EFFECT OF PROVIDING INCRIMINATING STATEMENTS ON CASE PROCESSING

Stage of Criminal Process	Percentages	CHI2
Whether Suspect Charged		.006*
Successful Interrogation	76%	
Unsuccessful Interrogation	56	
Whether Suspect's Case Was Dismissed		.001*
Successful Interrogation	29	
Unsuccessful Interrogation	53	
Whether Suspect's Case Resolved By Plea Bargaining		.001*
Successful Interrogation	52	
Unsuccessful Interrogation	27	
Whether Suspect Was Convicted		.001*
Successful Interrogation	69	
Unsuccessful Interrogation	43	
Severity of Sentence Received		.012*
NONE		
Successful Interrogation	33	
Unsuccessful Interrogation	57	
LOW SENTENCE (Less than One Year)		
Successful Interrogation	43	
Unsuccessful Interrogation	21	
MEDIUM SENTENCE (One to Five Years)		
Successful Interrogation	19	
Unsuccessful Interrogation	18	
LONG SENTENCE (More than Five Years)		
Successful Interrogation	13	
Unsuccessful Interrogation	13	

more likely to have their cases resolved by plea bargaining ($p<.001$); and 26% more likely to be found guilty and thus convicted ($p<.001$).[81] Suspects who incriminated themselves during interrogation were also significantly likely to receive more punishment following their conviction ($p<.012$). These findings confirm the view of many criminal justice professionals that what happens during police interrogation will be fateful for the subsequent processing of the suspect's case in the criminal justice system.[82]

during interrogation was 24% more likely than his tight-lipped counterpart to be charged by prosecutors ($p<.002$).

[81] Moreover, if we examine only those cases in which the suspect spoke to detectives after the *Miranda* admonition (i.e., those cases in which an interrogation actually occurred), those suspects—whether or not they invoked their *Miranda* rights and whether or not they incriminated themselves—were 35% more likely to be eventually convicted ($p<.000$).

[82] Multiple regression analyses that controlled for whether an interrogation was suc-

F. SUMMARY

In sum, there are three sets of important findings. First, police use many of the standard interrogation tactics taught by training firms and advertised in training manuals; in my sample of cases the detectives employed an average of 5.62 tactics per interrogation. If a portrait of the typical interrogation emerges from the data, it involves a two-prong approach: the use of negative incentives (tactics that suggest the suspect should confess because no other course of action is plausible) and positive incentives (tactics that suggest the suspect will in some way feel better or benefit if he confesses). In approximately 90% of the interrogations I observed, the detectives confronted the suspect with some evidence (whether truthful or false) of his guilt and then suggested that the suspect's self-interest would be advanced if he confessed. Of the many interrogation tactics that detectives employed, only four were significantly likely to result in a successful interrogation: the appeal to the suspect's conscience ($p<.001$), identifying contradictions in the suspect's alibi ($p<.000$), the use of praise or flattery ($p<.005$), and offering moral justifications or psychological excuses to account for his behavior ($p<.004$).

The second important finding concerns the effects of *Miranda* on the criminal process. Almost one-fourth of the suspects in my sample chose to invoke their *Miranda* rights and thus either prevent or terminate police questioning. This is a far higher percentage than we might expect, since the conventional wisdom among police professionals and in the academic research literature is that virtually all suspects choose to waive their rights and speak to police.[83] Nevertheless, detectives successfully elicited incriminating information from suspects in 64% of the total number of cases in my sample, and in 76% of the cases in which any questioning occurred. The effects of *Miranda* on the subsequent processing of a suspect's case were limited, however. Suspects who waived their *Miranda* rights were 4% less likely to have their cases charged by prosecutors and 10% more likely to be convicted than suspects who invoked, but neither of these differences were statistically significant, nor was the relationship between a suspect's response to *Miranda* warnings and the severity of punishment statistically significant. The only statistically significant effect of *Miranda* in the criminal process was that suspects who waived their *Miranda* rights were twice as likely to have their case resolved by plea

cessful by the strength of the evidence prior to the interrogation confirmed the CHI2 findings in Table 16. In other words, as mentioned above, whether an interrogation is successful is significantly related at the .01 level to the likelihood that a suspect will be treated differently at every subsequent stage of the criminal process.

[83] Leo, *supra* note 12.

bargaining than suspects who invoked their *Miranda* rights ($p<.009$). And in my sample more than 98% of the plea bargains ultimately resulted in guilty verdicts.

The third, and perhaps most important, finding is that what happens inside an interrogation room exercises a statistically significant effect on the subsequent processing of a suspect's case at every stage in the criminal justice system. While a suspect's response to *Miranda* was not significantly likely to affect the subsequent processing of his case, a suspect's decision to provide detectives with incriminating information was fateful. Suspects who incriminated themselves during interrogation were significantly more likely to be charged by prosecutors ($p<.006$), significantly less likely to have their case dismissed ($p<.000$), significantly more likely to have their cases resolved by plea bargaining ($p<.001$), significantly more likely to be convicted ($p<.001$), and significantly more likely to receive more punishment than their counterparts who did not provide interrogators with any incriminating information ($p<.012$). These findings offer support for the widely held view among criminal justice officials that admissions and confessions are highly persuasive and damning evidence of guilt against a criminal suspect.[84]

V. Conclusion: Closing the Gap

I began this Article by pointing to the familiar contrast between how law is written in the books and how it is actually practiced by legal actors in the social world, arguing that the gap in our knowledge between legal ideals and empirical realities remains as wide as ever in the study of American police interrogation. In this Article I have tried to fill in this gap—a gap that has widened considerably in the last two decades due to the complete absence of any empirical research on police interrogation practices—by providing quantitative data from the almost 200 interrogations I observed in nine months of participant observation fieldwork at three police departments. I have systematically described the patterns in police techniques, suspect behavior, and interrogation outcomes in all of the 182 cases I observed, and I have analyzed the effects of police interrogation practices, *Miranda* warnings, and incriminating statements on the subsequent stages of the criminal process in my entire sample. I have sought to bring the reader inside the interrogation room in order to understand the characteristics, context, and outcomes of interrogation and confession in ordinary criminal cases that are not likely to make the published record on appeal. Although this Article breaks

[84] Leo, *Social Control*, *supra* note 17, at 99.

new ground as the first empirical study of its type in more than two decades, our understanding of contemporary American police interrogation practices and outcomes remains highly incomplete. If we are to close the gap in our knowledge between the ideal and reality that the *Miranda* Court decried, we need more primary data and empirical studies of everyday police investigative practices, especially in other regions of the country.

This study offers a number of findings with important academic, legal, and policy implications. For example, the *Miranda* Court lamented the tactics advocated in police interrogation training manuals and texts for exploiting the weaknesses of criminal suspects and threatening to overbear their rational decision-making capacity.[85] Yet this study indicates that these techniques—undermining a suspect's confidence in his denial of guilt, offering moral justifications for his behavior, and confronting suspects with fabricated evidence of their guilt, to name but a few—appear to be exceedingly common in contemporary American police interrogations. In addition, this study suggests that detectives have become increasingly successful at eliciting incriminating information from custodial suspects in the last thirty years; that one in five custodial suspects invokes his or her constitutional right to avoid cooperating with custodial police questioning; that most of the suspects who invoke their *Miranda* rights to silence or counsel have prior criminal records; that very few everyday police interrogations are "coercive" by contemporary judicial standards; that the overwhelming majority of everyday police interrogations last less than one hour; and that suspects who provide incriminating information to detectives are significantly more likely to be treated differently at every subsequent stage of the criminal process (from charging to sentencing) than their counterparts who do not. These findings confirm the view of many criminal justice professionals that what happens inside the interrogation room exerts a fateful effect on the processing of a defendant's case at every subsequent stage in the criminal justice system.[86]

One might thus ask: what has been the effect of *Miranda*? It is to this question that I will turn in the second article of this two part series. In that article, I will examine the broader legal, social, and political context in which the empirical findings of this study must be interpreted. In particular, I will analyze the general impact of the *Miranda* warnings—which have remained an ongoing source of legal and political controversy since their judicial creation almost thirty years

---

85 Leo, *supra* note 13, at 67-127.

86 *See* Leo, *Social Control*, *supra* note 17, at 99; SIMON, *supra* note 23, at 193-207.

ago[87]—on the behavior, ideology, and culture of contemporary American police interrogators.

87 *See supra* text at note 55.