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James W. Witt

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NON-COERCIVE INTERROGATION AND THE ADMINISTRATION OF CRIMINAL JUSTICE: THE IMPACT OF MIRANDA ON POLICE EFFECTUALITY

JAMES W. WITT*

Possibly the most significant and pressing problem currently confronting constitutional government in the United States is the necessity to effect a balance between the rights of the individual and the rights of society. Nowhere is this problem more obvious than in the conflict surrounding recent applications by the courts of the self-incrimination clause of the Fifth Amendment to the criminal accused.

Much of the current debate over the rules protecting the rights of suspects against self-incrimination swirls around the controversial *Escobedo*[1] and *Miranda*[2] decisions. Countless negative allegations, regarding the impact of these rulings on law enforcement and crime in general, have been circulated by spokesmen both in and out of law enforcement. Since most of these allegations have no foundation in fact, this study is designed to empirically examine the impact that *Miranda* has had on the effectiveness of one western police department. This writer has made an effort to deal with this topic both from the theoretical viewpoint of a scholar and the practical viewpoint of a former police officer. The main conclusion to be drawn from this study is that the *Miranda* decision does not appear to have had a significant impact upon that effectiveness.

Most of the concern over the *Miranda* decision emanates from the belief that the ruling has had a detrimental impact upon police interrogation procedures directly and police effectiveness indirectly. The problem of what constitutes proper police interrogation practices in a democratic society is not new.

BACKGROUND

Historically, the revulsion against police interrogation was spawned from the displeasure caused by judicial inquisition in political cases.[3] Interrogation has become a police function forthtuitously and it has never been legally sanctioned.[4] However, even without legalization, questioning has been felt by some authorities to be "an indispensable instrumentality of justice."[5] Due to the increasing Supreme Court supervision over state police interrogation practices, one of the most perplexing and contentious questions in American criminal procedure has evolved—should law enforcement authorities be permitted to utilize post-arrest questioning?

The arguments championing the elimination of, or the placing of vigorous restraints upon, post-arrest questioning seem to rest upon several interrelated premises. Some writers hold the guarantees of the Bill of Rights to be more important than any reduction of police efficiency caused by restrictions on police interrogation.[6] Other writers examine the psychological aspects of post-arrest questioning and conclude that the safeguards provided by recent Supreme Court decisions are almost futile.[7] These writers appear to be making a case for the complete elimination of post-arrest questioning. However, one writer finds the psychological aspects of incommunicado interrogation to be less damaging to one's mental health than the stresses of everyday life.[8] A few authorities expound the virtues of the modern scientific techiques for detection, which they feel should preclude the need for any questioning in many

* Head, Department of Criminal Justice, Armstrong State College.

[1] Escobedo v. Illinois, 378 U.S. 478 (1964).

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

[3] Wigmore, *The Privilege Against Self-Incrimination: Its History*, 15 HARV. L. REV. 610 (1902).

[4] MAYERS, SHALL WE AMEND THE FIFTH AMENDMENT? 87 (1959).

[5] *See, e.g.*, Ashcraft v. Tennessee, 322 U.S. 143, 160 (1944) (Jackson, J., dissenting).

[6] *See* Weisberg, *Police Interrogation of Arrested Persons: A Skeptical View*, 51 J. CRIM. L. C. & P.S. 37 (1961). *See also* Kamisar, *What Is An "Involuntary" Confession?*, 17 RUTGERS L. REV. 732 (1963); Pye, *The Supreme Court and the Police: Fact and Fiction*, 57 J. CRIM. L. C. & P.S. 405 (1966); Schaefer, *Federalism and State Criminal Procedure*, 70 HARV. L. REV. 26 (1956); Vorenberg, *Police Detention and Interrogation of Uncounselled Suspects: The Supreme Court and the States*, 44 B.U.L. REV. 425 (1964).

[7] *See, e.g.*, Driver, *Confessions and the Social Psychology of Coercion*, 82 HARV. L. REV. 59 (1968); Rothblatt & Pitler, *Police Interrogation: Warnings and Waiver—Where Do We Go from Here?*, 42 NOTRE DAME LAW. 494 (1967).

[8] Marx, *Psychosomatics and Coerced Confessions*, 57 DICK. L. REV. 1 (1952).

cases.[9] Seemingly their rationale is that, in most cases, the utilization of modern investigative techniques should cause the arrest to take place, only after the investigation produces sufficient evidence to sustain it. Finally, others recognize that police interrogation is an established practice but they perceive its dangers. This group advocates that interrogation be used under controlled conditions.[10]

Support for those advocating the necessity of post-arrest questioning can be found in pre-*Miranda* decisions relative to confessions[11] in the argument that it serves as a means for innocent suspects to clear themselves,[12] and in its utility for averting a breakdown of the trial court system.[13] Generally, the most prevalent justification for this position rests in the contention that it is necessary for effective law enforcement in modern urban life.[14] This position, which is rooted in the concept of police efficiency and the general social utility of post-arrest questioning, claims many adherents[15] as well as critics.[16]

In contrast to the antagonists of post-arrest interrogation, the protagonists seem to reason that a stable and safe society is dependent upon an efficient police department. Therefore, some sacrifices of individual rights and liberties must be made in order to achieve this end. Also intertwined with this rationale is the assumption that "men with honest motives and purposes do not remain silent when their honor is assailed."[17]

To all appearances, most of the above arguments fail to surpass the narrow bounds of emotion. Therefore, it is imperative that such an important issue be subjected to empirical analysis.

Methodology

Upon examining the literature during the initial phase of this study, the author found that very little reliable data were available regarding the behavior and attitudes of law enforcement officers or their interrogation procedures. There are no dissertations dealing with the topic. Since 1965, there have been several published studies, of varying degrees of sophistication, analyzing the effects of either the *Escobedo* or *Miranda* decisions on law enforcement;[18] however, most of these studies are preoccupied with the impact of these decisions on obtaining confessions, rather than the interrogation process.[19] From those studies dealing with police interrogation procedures, the

[9] *See, e.g.*, Hughes, *Confessions and Their Uncertainty*, 14 Loyola L. Rev. 173 (1967–1968); Mueller, *The Law Relating to Police Interrogation Privileges and Limitations*, 52 J. Crim. L. C. & P.S. 2 (1961).

[10] *See* Pound, *Legal Interrogation of Persons Accused or Suspected of Crime*, 24 J. Crim. L. & C. 1017 (1934) where the author advocated questioning in the presence of counsel before a magistrate as a solution to the excesses of post-arrest questioning. It is interesting to note that Pound, too, was writing at a time when "law and order" was a major issue in the United States. Realizing the futility of trying to fortify the rights of criminals during this period, Pound's solution was to eliminate the justification for illegal interrogation, i.e., to preserve law and order by substituting a procedure that offered safeguards for the accused.

[11] *See, e.g.*, Crooker v. California, 357 U.S. 433, 441 (1958); Cicenia v. LaGay, 357 U.S. 504, 509 (1958).

[12] *See* Robinson, *Massiah, Escobedo, and Rationales for the Exclusion of Confessions*, 56 J. Crim. L. C. & P.S. 459 (1965).

[13] Barrett brings out this point in *Police Practices and the Law—From Arrest to Release or Charge*, 50 Calif. L. Rev. 45 (1952).

[14] *See, e.g.*, Inbau, *Police Interrogation—A Practical Necessity*, 52 J. Crim. L. C. & P.S. 16 (1961) as an illustration of the most prolific proponent of this argument.

[15] Some who have taken this position include Bator & Vorenberg, *Arrest, Detention, Interrogation and the Right to Counsel*, 66 Colum. L. Rev. 62 (1966); Craig, *To Police the Judges—Not Just Judge the Police*, 57 J. Crim. L. C. & P.S. 305 (1966); Kuh, *The "Rest of Us" in the "Policing the Police" Controversy*, 57 J. Crim. L., C. & P.S. 244 (1966); Thompson, *The Supreme Court and the Police: 1968*, 57 J. Crim. L. C. & P.S. 419 (1966); Williams, *Police Interrogation Privileges and Limitations under Foreign Law: England*, 52 J. Crim. L. C. & P.S. 50 (1961).

[16] *See, e.g.*, Craig, *Criminal Interrogation and Confessions: The Ethical Imperative*, 1968 Wis. L. Rev. 173 (1968); Kamisar, *On the Tactics of Police Prosecution Oriented Critics of the Court*, 49 Cornell L. Q. 436 (1964).

[17] U. S. v. Mammoth Oil Co., 14 F.2d 705, 729 (8th Cir. 1926).

[18] *See, e.g.*, N. Sobel, The New Confession Standards 140–151 (1966); a statistical study dealing with the impact of the *Escobedo* decision upon the confession rate of the Detroit Police Department in Souris, *Stop and Frisk or Arrest and Search—the Use and Misuse of Euphemisms*, 57 J. Crim. L. C. & P.S. 263–64 (1966); Younger, *Interrogation of Criminal Defendants—Some Views on Miranda v. Arizona*, 35 Fordham L. Rev. 255 (1966). *See also* Medalie, Zeitz and Alexander, *Custodial Police Interrogation in Our Nation's Capital: The Attempt to Implement Miranda*, 66 Mich. L. Rev. 1347 (1968); Robinson, *Police and Prosecutor Practices and Attitudes Relating to Interrogation as Revealed by Pre- and Post-Miranda Questionnaires*, 1968 Duke L.J. 425 (1968); Seeburger & Wettick, *Miranda in Pittsburgh—A Statistical Study*, 29 U. Pitt. L. Rev. 1 (1967); Comment, *Interrogation and the Criminal Process*, 374 Annals 47 (1967); Comment, *Interrogation in New Haven: The Impact of Miranda*, 76 Yale L. J. 1641 (1967).

[19] The New Haven Study and the studies by Robinson and that of Medalie, Zetiz and Alexander are those dealing in some respect with the impact of court decisions upon police interrogation procedures. *See* note 18 *supra*.

author was able to avail himself of a pre-tested questionnaire and some tried methods of analysis.

In order to test for police effectiveness, it was necessary to tap information contained in police files. Normally, this source is unavailable to social scientists; however, being a former police officer the writer was able to gain access to the files of a West Coast police department. The Chief of the department in question, a former supervisor of the writer, was gracious enough to open his department's files to the author. However, he requested that the department not be identified in the study, hence the pseudonym "Seaside City."

Seaside City, California, is an eight-square-mile enclave in the Los Angeles metropolitan area, with a population of 83,249 at the time this study was effected.[20] Only 6.2 per cent of the population is nonwhite,[21] and the median income is $6,845 per year.[22] Educationally, the residents average 12.3 years of completed school work and 57.3 per cent finished high school.[23]

Although principally a residential community, a major aircraft manufacturing facility and numerous small manufacturing firms and subcontracting firms are located within its city limits. The University of California at Los Angeles is situated near enough to make Seaside City an attractive place for many academicians to reside. A large urban renewal program has been instrumental in clearing away some of the worst slums in the beach area of Seaside City. These slums have been replaced by luxury high rise apartments.

Since Seaside City is a semitropical beach city located within a major metropolitan area, law enforcement is a complex business. Nearly 12 million people visit its beach recreation areas every year,[24] and its location makes it an attractive place for social undesirables to congregate. Consequently, there has been a steady rise in Seaside City's "Crime Index"[25] over the past five years—a rise that has kept it in the upper five per cent of the cities of comparable size.

Due to the geographic location of Seaside City, the make-up of its residents, and the fine quality of police employed by the city, its crime patterns will not resemble those of other cities of comparable size; therefore, one should be very cautious about drawing generalizations from this study and applying them to cities of comparable size.

The Department

At the time of this study, there were 128 police officers in Seaside City, exclusive of 39 civilian employees. These men were organized into three divisions—investigation, uniform and staff services. Twenty-five of the officers were assigned to the detective bureau and three to the vice squad. The department was under the supervision of a chief, who could be categorized as a progressive "old-timer."

Although the department's salaries and benefits were higher than the national average for municipal police officers, the department experienced a high rate of personnel turnover. This was probably due to the attractive opportunities available in private industry in Southern California. In order to offset this situation, the department had instituted a "Police Cadet" program[26] and a helicopter patrol.

Since this study is basic in nature, no attempt will be made to test precise assumptions. Only tests of general assumptions will be made. The assumptions to be tested are, on the one hand, that the *Miranda* decision has hindered police effectiveness, and, on the other, that it has not. From numerous casual discussions with law enforcement officers, materials from other studies, and the media, it was ascertained that police officers felt that the *Miranda* decision was adversely affecting them in five areas: (1) in the outcome of formal interrogation, (2) in the collateral functions of interrogation, (3) in the amount of stolen property recovered, (4) in their conviction rate, and (5) in their clearance rate. Therefore, these five assumptions will be tested as a measure of police effectiveness. Before testing these assumptions, an attempt will be made to ascertain the police's evaluation of the importance

[20] 1 United States Bureau of the Census, United States Census of Population: 1960 1-72 (1963), *passim*.

[21] *Id.* at 1-184.

[22] *Id.* at 1-341.

[23] *Id.* at 1-337. All of the above figures are higher than the national median for cities in the same category as Seaside City.

[24] *See* Seaside City's Annual Report—1967-68, 6 (1968).

[25] Seven crimes—murder, forcible rape, robbery, aggravated assault, burglary, larceny ($50.00 and over in value) and auto theft—are used by the FBI as an index to measure crime. See Crime in the United States, Uniform Crime Reports 4 (1969).

[26] Under this program, college students, 18-25 years of age, are paid to work under the supervision of veteran officers at a multiplicity of assignments. When the cadet reaches the age of 21 and/or has enough college credits, he can qualify to become a regular police officer.

of interrogation and determine the need for interrogation.

In order to test these former suppositions, data were obtained from the files of the Seaside City Police Department. Due to limited time and resources, only cases dealing with murder, forcible rape, robbery[27] and burglary were utilized in this study. It would have been desirable to have used data predating 1964, but all files prior to that data were unavailable. The area of inquiry was further narrowed by using only those cases in which suspects were actually arrested and incarcerated by the Seaside City Police Department. This eliminated all cases in which suspects were detained for questioning but never incarcerated. As the result of this elimination process, 478 cases remained to comprise the sample. Each of these cases was read and analyzed by the author who, in many cases, used analytical methods gleaned from the New Haven Study.[28]

The author fully recognizes the problems involved in trying to prove a causal relationship between *Miranda* and the various assumptions to be tested; however, this does not preclude the establishment of trends. This study differs from those cited above in that more assumptions are tested and, whenever possible, comparisons are made with other studies. The general working hypothesis of this study was that police effectiveness was being impaired by the *Miranda* decision. It was further anticipated that a high degree of negative impact would be found when each of the above assumptions were tested.

The Seaside City Study

In the wake of the Supreme Court decisions limiting police interrogation came utterances by scholars,[29] police officials and prosecutors[30] and jurists[31] portending a foreboding future for law enforcement. Most of these observers discerned a correlation between police interrogation and effective law enforcement. Sparse reliable information was offered by any of these critics to support their grim premonitions.

In order to ascertain the degree of importance placed upon interrogation by investigative personnel in the Los Angeles area,[32] forty-three detectives were asked to respond to the following question: "Are there ways in which investigation could possibly replace interrogation as a means for crime solution?"[33] The responses to the question, which is similar to the one responded to in the New Haven Study, compare favorably with those obtained by the New Haven interviewers, even though differences in approach make it difficult to compare the data in the immediate undertaking with those of other germane studies.

In the New Haven Study 71 per cent of a sample of 21 detectives felt that interrogation was indispensable, 19 per cent thought that it was not absolutely necessary for effective law enforcement, but it would be too costly to replace, and 10 per cent felt that the elimination of interrogation would not impede their work.[34]

Therefore, when asked abstractly, the results indicate that the respondents in the immediate study perceived interrogation to be necessary for effective law enforcement.[35]

The Correlation Between Interrogation and Crime Solution

In order to collate surety with reality, i.e., determine whether interrogation is essential to

[27] This does not include cases of strong-arm robberies where one juvenile robbed another.

[28] *See Interrogation in New Haven, supra* note 18.

[29] *See* Inbau, *supra* note 14.

[30] *See, e.g.*, the N. Y. Times, August 22, 1964, at 23, col. 5; N. Y. Times, May 14, 1965, at 39, col. 1; N. Y. Times, September 10, 1965, at 1, col. 1; N. Y. Times, November 27, 1965, at 1, col. 1; N. Y. Times, January 24, 1966, at 35, col. 1; N. Y. Times, July 23, 1966, at 54, col. 5; N. Y. Times, August 6, 1966, at 9, col. 2.

[31] *See, e.g.*, critical remarks made by an appellate court judge in N. Y. Times, August 6, 1966, at 9, col. 2; English, *Lawyers in the Station House?* 57 J. Crim. L. C. & P.S. 283 (1966).

[32] Only veteran detectives, who had been same prior to the *Escobedo* decision in 1964, were utilized in this portion of the study in order to secure a more valid perspective of the problem.

[33] Since the Seaside City Police Department did not have an adequate number of personnel that could qualify as respondents, detectives from the Los Angeles Police Department and the Los Angeles County Sheriff's Department were utilized in this portion of the study. This does not seem to present a methodological problem because of the following: (a) the departments have adjacent jurisdictions that overlap in some instances, (b) the crime problem is the same in the three jurisdictions, i.e., major metropolitan crime, (c) the caliber of personnel appears to be the same, and (d) these personnel are equally well trained.

[34] The respondents in both studies perceiving an absolute need for interrogation differed in their reasons. In the New Haven Study 54 per cent thought interrogation was necessary due to the lack of evidence in many cases and 46 per cent saw its need resting in its complemental effects. See New Haven Study, *supra* note 18, at 1592, note 195. Cf. Table 1.

[35] It should be noted that during the interviews none of the respondents criticized the courts for excluding involuntary confessions. Their primary concerns were that legal interrogation procedures were being emasculated and that interrogation might be completely eliminated in the future.

TABLE 1

DETECTIVE EVALUATION OF THE IMPORTANCE OF INTERROGATION

Evaluation	Seaside City Study (N = 43)	
	No.	%
No alternate methods could substitute for interrogation	28	65
1. Interrogation compliments other investigative methods and there can be no substitutions	20	72
2. In many cases evidence does not exist	8	28
Interrogation not absolutely necessary but other means are too costly in terms of time and resources	12	28
Interrogation could be eliminated without loss to law enforcement	3	7
	43	100

TABLE 2

NEED FOR INTERROGATION

	N = 478 Cases	
	No.	%
Interrogation essential	75	16
Interrogation important	38	8
Interrogation not important	40	8
Interrogation unnecessary	325	68
	478	100

the solution of most crimes, an examination was made of 478 files from the Seaside City Police Department. Each of the 478 cases was read and analyzed by the author, who, in most cases, utilized analytical methods gleaned from the New Haven Study.[36]

Using the "Evidence-Investigation Scale" set forth in the New Haven Study,[37] a judgment was made regarding the amount of evidence available in each case for a conviction. Admittedly, the danger involved when a researcher attempts to assume the role of judge and jury is immense. However, judgment in this instance was fortified by the researcher's seven years of police experience and his numerous years of studying the law and the court system. On the basis of these data, the need for interrogation was categorized as being "essential", "important", "not important", or "unnecessary".[38] The number of "essential" and "important" interrogations should be one indicator of the importance of interrogation to the solution of the specific crime for which the suspect is accused. It should be recognized that interrogation has other uses than merely solving crimes. These uses will be examined later.

Table 2 indicates that interrogation was found to be "necessary", i.e., "essential" or "important", in only 24 per cent of the cases reviewed. Generally, the figures in Table 2 compare favorably with those in the New Haven Study, where interrogation was deemed "necessary" in only 13 per cent of the cases, "not important" in 9 per cent, and "unnecessary" in 77 per cent of all cases.[39]

After taking into account the possible bias involved in gathering the data, it appears that in most cases interrogation was not needed to solve the immediate crimes for which the suspects were accused.[40] Hence, if the respondents were referring to crime in general when they equated the necessity

[36] *See Interrogation in New Haven, supra* note 18.

[37] *Id.* at 1582–1588.

[38] Interrogation was deemed "essential" if there appeared to be no physical evidence, witnesses or other investigative substitutes; "important" if there were some small leads, but very little other evidence; "not important" if a sizable amount of evidence existed for conviction or little difficulty was foreseen in securing same; and "unnecessary" if the evidence seemed to exist overwhelmingly against the suspect. See the New Haven Study, *supra* note 18, at 1583–1584.

[39] *Interrogation in New Haven, supra* note 18, at 1585. The 11 per cent difference in the finding relative to the "necessity" to interrogate may be due to the writer's bias, when analyzing his data. Due to the court's current preoccupation with the accused's civil rights and the difficulties involved in predicting the amount of evidence needed for conviction, there probably was a tendency by the writer to overestimate the amount of evidence needed for conviction in some cases. In a field patrol setting, the results of the President's Crime Commission Study revealed that in all of the 30 felony arrests observed, there was enough evidence for arrest without the need for field interrogation. Reiss and Black *supra* note 18, at 56. In an examination of 47 murder, burglary and robbery cases, Sobel found that confessions secured through interrogation were "essential" or "helpful" in only 21 per cent of the cases. See Sobel, *supra* note 18, at 146.

[40] Any comparisons drawn between the findings in the New Haven Study and the immediate study must be guarded, due to the quality of the personnel interviewed and the crime problem in each jurisdiction. Based upon the New Haven Study's observations as compared with the writer's, the Seaside City personnel would appear to be more professionalized. Also, the New Haven police are not confronted with the same crime problems as those encountered by departments in large metropolitan areas.

TABLE 3

OUTCOME OF FORMAL INTERROGATION (MURDER, FORCIBLE RAPE, ROBBERY, BURGLARY)

Outcome	1964 (N = 105)		1965 (N = 80)		1966 (N = 69)		1967 (N = 104)		1968 (N = 120)		Pre-Miranda (N = 224)		Post-Miranda (N = 254)	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Suspect not questioned			1	1	3	4	1	1	19	16	4	2	20	8
Suspect refused to talk	6	6	5	6	3	7	10	10	10	8	14	6	22	9
Interrogation unproductive	27	26	18	23	7	10	19	18	19	16	49	22	41	16
Signed confession	7	7	6	8	4	6	1	1	2	2	17	8	3	1
Oral admission of guilt	40	38	38	48	38	55	43	41	42	35	96	43	105	41
Signed statement	3	3	1	1					2	2	4	2	2	1
Oral incriminating evidence	19	18	8	10	10	15	30	29	26	22	33	15	60	24
Insufficient data	2	2	1	1	1	1					3	1	1	1
Interrogation productive but form unknown	1	1	2	3	1	1					4	2		
	105	101*	80	101*	69	99*	104	100	120	101*	224	101*	254	101*
% cases questioning unsuccessful		67		70		77		71		61		69		67

* Percentages might not total 100 due to rounding.

to interrogate with the solution of crimes, their assumptions are not supported by the above data.

OUTCOME OF FORMAL INTERROGATION

The respondents were in almost complete agreement over the effect that the *Miranda* warnings were having on the outputs of formal interrogation. Most believed that they were getting many fewer confessions, admissions and statements. Hence, one could assume that since the police have been required to fulfill the *Miranda* requirements, there has been a considerable decrease in the quantity of confessions, admissions and statements being obtained by law enforcement officers.

In order to test this assumption, a comparison was made between the various outputs of formal interrogation prior to the Seaside City Police Department's compliance with the *Miranda* dictum and the outputs subsequent to the compliance. For the purposes of this comparison, July 1, 1966 was the date when the Seaside City detectives began to observe the *Miranda* precepts.[41]

The figures in Table 3[42] reveal that questioning was successful[43] in 69 per cent of the cases before complying with the *Miranda* requirements, and in 67 per cent of the cases after compliance. There was a drop of 7 per cent in the number of signed confessions after compliance, but this figure is inconclusive due to procedures followed by the Seaside City detectives.[44]

Another comparison of some consequence can be made between the pre-*Miranda* year of 1964 and the post-*Miranda* year of 1967—years in which the arrest rate was almost the same. In 1964, 67 per cent of the interrogations were successful, as compared with 71 per cent in 1967. Furthermore, the police were able to secure oral admissions of

[41] In January of 1965, a ruling by the California Supreme Court, in the case of People v. Dorado, 398 P.2d 361 (1965), expanded the scope of the Escobedo decision in California. *Dorado* required the police to advise a suspect of his right to counsel before interrogating him. Even though the California police were restrained more than police in other jurisdictions by this ruling, most officers agreed that their chances for useful interrogation were not significantly impaired by *Dorado*. Since the respondent's principal complaints were directed toward *Miranda*, the date when it took effect was used for this comparison.

[42] Table 3 is a modified version of a table used in the New Haven Study, *supra* note 18, at 1589, n. 184.

[43] "Successful" as used in this context means that the police were able to get a signed confession, an oral admission of guilt, a signed incriminating statement or some type of oral incriminating evidence or other useful material for conviction through interrogation.

[44] From the files, it was impossible to make any determination regarding *Miranda's* impact on the Seaside City police's ability to secure signed statements or confessions. This material was not appended to the reports. Although it is the department's policy to secure a signed statement whenever possible, the reports did not reflect that this policy was being followed. From conversations with the detectives, it was obvious that since *Miranda* and the court's preoccupation with procedural matters, they do not want to question suspects in cases where they have enough evidence to convict without interrogation. The human factor is probably involved here, too, in that unenterprising detectives can now rationalize their indolence.

TABLE 3 (*Continued*)

OUTCOME OF FORMAL INTERROGATION (MURDER, FORCIBLE RAPE, ROBBERY, BURGLARY)

Outcome	1966			
	Pre-Miranda (N = 39)		Post-Miranda (N = 30)	
	No.	%	No.	%
Suspect not questioned	3	8		
Suspect refused to talk	3	8	2	7
Interrogation unproductive	4	10	3	10
Signed confession	4	10		
Oral admission of guilt	18	46	20	67
Signed statement				
Oral incriminating evidence	6	15	4	13
Insufficient data			1	3
Interrogation productive but form unknown	1	3		
	39	100	30	100
% cases questioning successful		74		80

guilt in only 38 per cent of the cases before complying with *Miranda*, but were able to get the same evidence in 41 per cent of the cases after compliance. It should also be noted that prior to compliance with the *Miranda* precepts, 18 per cent of the suspects interrogated incriminated themselves. However, after compliance, 29 per cent performed the same act.

A comparison of the percentage of cases, in which interrogation was successful by years, reveals that the percentage had dropped 16 per cent since the peak year of 1966—from 77 per cent in 1966 to 61 per cent in 1968.[45] However, one would be hard pressed to try to attribute this decline to *Miranda* because, as the figures in Table 3 indicate, there were no attempts made to interrogate 16 per cent of the suspects in 1968. One would seem to be on firmer ground in holding that *Miranda* had an indirect effect on successful interrogation.

Table 3 also reveals that more suspects were refusing to talk to the police. Again, this could be due to *Miranda*; however, due to the small percentage of increase in this figure, it would seem that there could be a more plausible answer. This increase may simply be the result of enlarged publicity via the mass media or verbally from confidants and others through which suspects have been made more aware of their rights.

Generally speaking, the above assumption does not seem to be supported by the data. There is little indication from the above data that the *Miranda* requirements have materially affected the outcome of formal police interrogation in Seaside City. Although different approaches were used, the findings of some of the other interrogation studies lend support to this conclusion.[46]

COLLATERAL FUNCTIONS OF INTERROGATION

When responding to the question, "In what ways besides getting evidence for trial is the information from interrogation used?" the interviewees cites several collateral functions performed by the interrogation process.[47] Most respondents were quick to point out that the performance of these functions had been considerably impeded by the *Miranda* decision. Hence, the assumption that interrogation provides the means

[45] It is noteworthy that from January through June, 1966, *i.e.*, before the *Miranda* requirements took effect, the police were successful in 74 per cent of their interrogations. However, after initiating their warning procedure in July, they were successful in 80 per cent of their interrogations for the remainder of the year.

[46] After *Escobedo*, the Detroit Study recorded a mere 2.8 per cent drop in the confession rate. Souris, *supra* note 18, at 1573. The New Haven Study registered a "10 to 15 per cent" decline in the number of suspects giving incriminating evidence, *supra* note 18, at 1573. However, the New Haven researchers attributed this decline to factors other than *Miranda*. *Id.* at 1563. The Pittsburgh Study discovered a 16.9 per cent drop in the confession rate subsequent to *Miranda* and attributed this decline largely to *Miranda*: Seeburger and Wettick, *supra* note 18, at 11.

[47] Table 4 is a slightly modified version of its counterpart in the New Haven Study. *Interrogation in New Haven*, *supra* note 18, at 1593 n. 197.

by which several important collateral functions needed for effective law enforcement are fulfilled. Since the *Miranda* decision, these functions have been seriously curtailed in Seaside City.

In looking at Table 5, one perceives that the police were able to obtain additional information in four important areas as the result of interrogation. In a five-year span, the police were able to implicate accomplices in 12 per cent of the interrogations,[48] solve other crimes in 18 per cent,[49] recover stolen property in 10 per cent, and help suspects clear themselves in 15 per cent of the cases[50] where post-custodial questioning was utilized.

The interesting figures in Table 5 are those depicting the decline in the percentage rate of the instances in which the police were getting collateral results from interrogation. This decline is accompanied by a parallel increase in the percentage of cases in which no collateral results were being obtained. The reasons listed above for the decline in the rate of successful cases of interrogation might well apply here, but it might well be the case that *Miranda* has had an adverse impact on these figures. For example, the Seaside City detectives did not significantly curtail their efforts to interrogate suspects until 1968.[51] Yet, as Table 5 indicates, in the year following *Miranda* there was a 2 per cent drop in instances of accomplice implication, a 10 per cent decrease in the crime clearance figures, and a 3 per cent decline in cases where stolen property was recovered through interrogation. Prior to *Miranda*, there had been a steady increase in these figures.

Table 5 reveals that interrogation has furnished some important collateral benefits for law enforcement in Seaside City and that there has been a diminution of these benefits since the *Miranda* decision. Therefore, it would appear that the above assumption has received some corroboration from the data.

TABLE 4

DETECTIVE DESCRIPTION OF THE PURPOSES OF INTERROGATION

Purpose	Seaside City Study (N = 32)	New Haven Study (N = 21)
	No.*	No.*
Implicate accomplices	25	14
Solve other crimes	24	16
Recover stolen goods	23	9
Understand criminal motivation	2	8
General criminal intelligence	26	6
Eliminate narcotics sources	5	5
Remove weapons from circulation	1	3
Plea-bargaining		2
Help suspects clear selves	7	2
Detour suspects into other processes		2
Personal satisfaction		2
Public relations	1	1
Lecture youths and first offenders		1
Make good informant out of suspect	2	
Be able to personally help the suspect by knowing him better	3	

* The numbers are not mutually exclusive.

EFFECT OF THE MIRANDA DECISION ON THE PERCENTAGE OF STOLEN PROPERTY RECOVERED

Another problem of grave concern for the respondents was what they perceived to be a decline in their recovery rate of stolen property. They attributed this decline to *Miranda* because of the restrictions it imposes upon their talking to suspects. In contrast to the New Haven Study where only 9 per cent of the respondents felt that recovering stolen property was a reason for interrogation, 23 per cent of the respondents in the Seaside City Study held this view.[52] From this information it is possible to assume that, due to the restraints imposed upon the interrogation procedures by the *Miranda* requirements, the police are recovering less stolen property.

From the figures in Table 6 it would appear that if questioning suspects is a major criterion for recovering stolen property, *Miranda* is having little, if any, impact on the Seaside City police. Over a ten-year period, the Seaside City police

[48] The results of the New Haven Study indicate that interrogation helped the New Haven police to identify or implicate accomplices in 27 out of 90 cases, or 30 per cent of the time; however, they downgrade these results. *Interrogation in New Haven, supra* note 18, at 1593–94.

[49] The New Haven researchers found that interrogation was instrumental in clearing 12 unsolved crimes or "... 10 to 15% of all crimes investigated ..." during their study. *Id.* at 1595 n.203. The clearance rate variable is one that is open to serious questions as to its utility. This will be discussed further, when the clearance rate of the Seaside City police is analyzed.

[50] This figure coincides with the numerous incidents, related by the respondents, of suspects refusing to talk due to legal advice not to do so, or befuddlement as the result of being issued the Miranda warnings.

[51] *See* Table 3 *supra.*

[52] *See* Table 4 *supra.*

TABLE 5

EXTRA RESULTS FROM INTERROGATION (N = 478 CASES)

Results	1964 (N = 105)		1965 (N = 80)		1966 (N = 69)		1967 (N = 104)		1968 (N = 120)		Average	Pre-Miranda (N = 224)	Post-Miranda (N = 254)
	No.	%	No.	%	No.	%	No.	%	No.	%	%	%	%
Implicate accomplices	10	10	10	13	10	15	14	13	12	10	12	12.3	11.6
Solve other crimes	16	15	20	25	18	26	17	16	15	13	18	22.3	14.3
Recover stolen property	8	8	10	13	11	16	13	13	5	4	10	11.9	8.0
Help suspect clear self	26	25	7	9	2	3	26	25	8	7	15	14.3	15.0
Nil	54	51	44	55	36	52	52	50	89	74	58	54.9	62.9

NOTE: Numbers and percentages are not mutually exclusive.

TABLE 6

PROPERTY—STOLEN AND RECOVERED

	1960	1961	1962	1963	1964
Property stolen*	$420,327	$443,397	$500,367	$576,721	$686,141
Property recovered	34,872	50,379	45,537	111,979	78,544
Per cent of recovery	8%	11%	10%	19%	11%
	1965	1966	1967	1968	1969
Property stolen*	$894,440.	$783,940	$977,207	$1,227,134	$1,315,988
Property recovered	50,575	83,284	84,080	105,369	180,869
Per cent of recovery	6%	10%	9%	8%	15%

* Stolen autos are not included in the above figures.

NOTE: Average rate of recovery for the above period = 10.6 per cent per year.

recovered an average of 10.6 per cent of their stolen property each year. In the pre-*Miranda* years, they recovered 10.7 per cent of their stolen property. In the three post-*Miranda* years, they recovered the same amount—10.7 per cent. If the 15 per cent recovery rate in 1969 is not an aberration, an argument could be made that *Miranda* has helped the recovery rate by requiring more stringent investigation. This argument could gain some support from the figures in Table 5 that indicate a sharp decrease in the amount of stolen property recovered through interrogation.

Regardless of how one chooses to interpret the above data, the results do not seem to be consistent with the assumption.

CONVICTION RATE

The number of accused convicted at the trial stage would seem to afford another indicator of the impact of *Miranda* upon law enforcement effectiveness. The respondents continuously cited instances to the interviewer in which cases were dismissed at the trial level due to some legal technicality. Many of these technicalities, according to the respondents, had their roots in the *Miranda* requirements. They also felt that limitations on the interrogation procedures were keeping them from building stronger cases at a time when they were greatly needed. Therefore, one could assume that procedural technicalities, emanating from *Miranda* and *Miranda's* impact upon the police's efforts to build strong cases through interrogation, have resulted in a decrease in the conviction rate.

Table 7 contains the figures for all felony convictions in Seaside City for a nine-year period as taken from the Department's annual reports. Since the data regarding convictions were not available in any other form, the total conviction rate for these periods will be used for the purpose of this study. Hence, the specific cases used in this study are included in these figures. As evinced in

TABLE 7

CONVICTION RATE

	Guilty	Guilty of a Lesser Offense	Acquitted or Otherwise Dismissed	% of Cases in Which Defendant Found Guilty	% of Cases in Which Defendant Guilty of a Lesser Offense
1961	115	67	12	94	36
1962	65	80	17	90	53
1963	67	61	9	93	48
1964	31	91	14	90	50
1965	30	70	12	89	70
1966	40	64	6	95	62
1967	48	80	20	87	54
1968	38	65	20	84	63
1969	28	60	25	78	68
Pre-Miranda (1961–66) Totals	348	423	70	92	55
Post-Miranda Totals	114	205	65	83	64

Table 7, there was a 9 per cent drop in the conviction rate—from 92 per cent of 841 cases in the pre-*Miranda* years to 83 per cent of 384 cases in the post-*Miranda* period. Other figures reveal that 64 per cent of the 83 per cent of those found guilty in the post-*Miranda* period were found guilty of lesser offenses. This is in contrast to the 55 per cent in the pre-*Miranda* period.[53]

In testing the above assumption, the figures contained in Table 8[54] reveal that in most of the 478 cases examined in this study, there was very strong evidence against the accused when he went to trial. When this fact is added to the remarks made by many of the interviewees chiding the district attorney's office for prosecuting only "sure" cases, the above assumption appears to be somewhat doubtful.[55]

The above facts in conjunction with the data from Table 2, showing that interrogation was necessary in only 24 per cent of the cases handled by the Seaside City police, would indicate that only strong cases reached the trial stage. With the outcome of the case at the trial level being dependent upon such imponderables as attorneys' acumen, judges' attitudes, jury capriciousness and witness availability, it would be difficult to attribute a drop in the conviction to a specific court decision or, for that matter, court decisions generally.

Table 7 also reveals that 9 per cent more accused have been convicted of lesser offenses in the post-*Miranda* years. From the data available to this

TABLE 8

EVIDENCE FOR THE PROSECUTION

Witness	% Seaside City	% New Haven
Police	59	78
Complainant as witness	34	57
Eyewitness	22	25
Expert	18	25
Alleged confession or admission	43	19
Family and friends of complainant	5	18
Accomplice—turned state's evidence	5	9
Other witnesses	20	7

NOTE: Percentages indicate the per cent of cases each source of evidence was utilized. Since each case might contain several sources, the percentages will not total 100.

[53] The Pittsburgh Study reported a decline of .4 per cent in the conviction rate in the post-*Miranda* period in Allegheny County, Pennsylvania. *See* Seeburger & Wettick, *supra* note 18, at 19.

[54] The format for this table was taken from *Interrogation in New Haven*, *supra* note 18, at 1580.

[55] The fact that District Attorney Younger is informed in the matter can be seen in a comment from his study. Upon acknowledging that his office's conviction rate had dropped 10.2 per cent due to the exclusion of several confessions with consequential acquittals, Mr. Younger remarked, "Since each of these 22 cases was filed prior to *Miranda*, we can anticipate that this same problem will not occur when cases filed after *Miranda* reach the superior court." *See* Younger, *supra* note 18, at 38–39.

TABLE 9

CLEARANCE RATE—CRIME—SEASIDE CITY

	Murder			Rape			Robbery			Burglary			Totals		
	No. of Crimes	Crimes Cleared	% Crimes Cleared	No. of Crimes	Crimes Cleared	% Crimes Cleared	No. of Crimes	Crimes Cleared	% Crimes Cleared	No. of Crimes	Crimes Cleared	% Crimes Cleared	No. of Crimes	Crimes Cleared	% Crimes Cleared
1960	5	4	80	6	3	50	78	42	54	826	110	13	905	159	18
1961	1	1	100	11	6	55	136	47	35	866	304	35	1014	358	35
1962	5	4	80	20	12	60	127	39	31	992	225	23	1144	280	24
1963	5	5	100	19	10	53	117	37	32	971	176	18	1112	228	21
1964	6	5	83	26	13	50	149	38	26	1102	129	12	1283	185	14
1965	7	7	100	12	6	50	150	58	39	1207	223	18	1376	294	21
1966	1	1	100	11	0	0	154	48	31	1086	133	12	1252	182	15
1967	3	3	100	31	16	52	169	27	16	1419	250	18	1622	296	18
1968	7	5	71	54	14	27	254	46	18	1698	253	15	2011	318	16
1969	4	4	100	66	30	46	229	37	16	1736	232	13	2035	303	15
1960–66 Total	30	27	90	105	50	48	911	309	34	7850	1300	17	8896	1686	19
1967–69 Total	14	12	86	149	60	40	652	110	17	4853	735	15	5668	917	16

researcher, it was not possible to ascertain to what extent this figure was affected by *Miranda*. However, allowing that the *Miranda* requirements could possibly contribute to this increase, there would seem to be two more plausible explanations for this situation. First, there could be a substantial degree of plea bargaining[56] being practiced by the prosecutors. This could result from incompetent or overtaxed prosecutors or by the simple fact that the court system itself is too strained to handle the cases.

Second, the prosecutor's office might have the tendency to reduce charges in cases where the conviction of a felony could involve grave additional problems for the accused, to circumvent a mandatory minimum sentence, or to avoid a community obloquy that could be affixed to an accused convicted of certain offenses.

To test this assumption adequately, one would have to examine each case in which an accused was found not guilty or guilty of a lesser offense and tabulate the reasons for these results. Since these data were not available, the evidence for the above assumption would have to be deemed inconclusive.

[56] This refers to the procedure whereby the prosecutor and defense counsel will negotiate an agreement by which the accused pleads guilty either of a lesser charge or for a more desirable sentence recommendation by the prosecutor.

THE CLEARANCE RATE[57]

Again, most of the respondents were quick to refer to a decline in their clearance rate when discussing problems emanating from the *Miranda* decision. Other police officials have expressed the same concern,[58] and justification for these apprehensions can be found in the UNIFORM CRIME REPORTS. In the years 1960–1968 the Crime Index rose 122 per cent, but the Clearance Rate declined to −32 per cent.[59] Hence, one could assume that the clearance rate is adversely affected by court decisions which limit the police's ability to question suspects about crimes—crimes which they might have committed other than the one for which they are charged.

Table 9 sets forth the complete figures for the clearance rates of the crimes dealt with in this study over a ten-year period of time. These data were obtained from the annual reports of the

[57] This refers to "... the percentage of crimes known to the police which the police believe have been 'solved'." *See* SKOLNICK, JUSTICE WITHOUT TRIAL 168 (1966). It is one of the means used by the police to measure their effectiveness.

[58] The Deputy Commissioner for Community Relations of the New York City Police Department attributed a 10 per cent decline in their clearance rate to Supreme Court decisions in the N. Y. Times, February 21, 1967, at 36, col. 3.

[59] *See* CRIME IN THE UNITED STATES: UNIFORM CRIME REPORTS, 32 (1968). During this period the population rose 11 per cent.

Seaside City Police Department and were available in no other form. The cases utilized in the present undertaking are included in these totals. As the figures in Table 9[60] indicate, the clearance rate for the Seaside City police did drop 3 per cent in the post-*Miranda* period. Furthermore, the chart shows that the decline has affected all four categories of crimes used for this analysis.[61] However, the decline did not begin in the 1966 *Miranda* year; in fact, the clearance rate actually rose 3 per cent in the first year following *Miranda* with subsequent decreases. If *Miranda* did have an adverse effect on the clearance rate, it is reasonable to assume that it would be reflected in the 1967 figures. Since this was not the case, it would be hard to assume that a revival of the pre-*Miranda* interrogation procedures would rally the clearance rate.

It would seem that any decline in the clearance rate could not be totally attributed to *Miranda*. Factors such as increased police workloads without commensurate increases in manpower, increasing criminal mobility and the plain fact that the police are interrogating fewer people would have to be taken into consideration in any valid analysis of the clearance rate.

Even though crimes can be cleared through interrogation, many authorities question the use of the clearance rate as a means to measure law enforcement efficiency.[62] In many instances the suspect will help the police solve other crimes as a means of mitigating his own circumstances; therefore, what is accomplished? The case has usually been lying dormant in the pending file and the stolen property, if any, is seldom recovered.

The data above would appear to lend some corroboration to the assumption being tested. The police do clear crimes by questioning people. Therefore, if the *Miranda* decision causes the police to interrogate fewer people, either through indolence or fear of losing their principal case on technicalities, then *Miranda* does affect the clearance rate. This conclusion must be guarded because it is possible that the trend in the clearance rate may change. One could conclude from the above data, as did Pye in his article,"... that the data now available do not support the repeated assertions that the right to interrogate is a panacea for a dropping clearance rate."[63]

From the results of the Seaside City Study, one would have to conclude that *Miranda's* impact on the effectiveness of law enforcement in that area has been meager. It is highly improbable whether any true analysis of *Miranda's* impact on law enforcement can be made from data like that presented above. If *Miranda* has had an impact, this would be more likely to show up at the filing stage[64] of the legal proceedings and these data are not available for analysis. Also, and very importantly, there is no way of determining how many cases never reach the filing stage due to the impact of *Miranda*.

The available studies of this problem, including the immediate study, are limited both in size and implication. However, none suggests the thesis that the confession decisions are fossilizing the interrogation process. Although the results of this study do not lend themselves to generalization, they do seem to suggest reservations about any unqualified claim that interrogation is valueless.

Conclusions

The crucial problem of attaining a balance between individual rights and societal interests lies at the heart of the controversy over post-arrest interrogation. The solution to this problem cannot be found in the Framers' intent or in abstract theories of individual rights. It must be found in the context of the times. Normally, in a representative democracy, the development of systems of criminal procedure is the prerogative of the legislature; however, in the United States, the judiciary, on occasion, has been charged with this task. This study was initiated to evaluate the impact that the handiwork of the judiciary has had upon the effectiveness of the police.

[60] This table is modeled after one used in the Pittsburgh Study. *See* Seeburger & Wettick, *supra* note 18, at 21.

[61] In the Pittsburgh Study it was found that the post-*Miranda* clearance rate exceeded the pre-*Miranda* rate by 1.4 per cent. *Id.* at 21.

[62] For general criticism of dependence upon police statistics, see Shulman, *The Measurement of Crime in the United States*, 57 J. Crim. L. C. & P.S. 483 (1966). For criticism of the clearance rate specifically, see Foote, *Law and Police Practice*, 52 Nw. U.L. Rev. 23–24 (1957); Kasimar, *On the Tactics of Police Prosecution Oriented Critics of the Court*, 49 Cornell L.Q. 466–67 (1964); Pye, *supra* note 6, at 412–13; Skolnick, *supra* note 57, at 168–81; *Interrogation in New Haven*, *supra* note 18, at 1596.

[63] *See* Pye, *supra* note 6, at 412.

[64] This is the stage where the police present their case to the district attorney and he decides whether there is enough evidence for trial. By being restricted in their interrogation procedures, the police could be restrained from building a strong enough case for trial.

What has been the impact of the *Miranda* decision on police effectiveness? A review of the various studies dealing with the topic indicates that the impact of *Miranda* has been slight. In the immediate study it was found that even though the officers conceived interrogation to be essential in solving most crimes, it was actually necessary in only about one quarter of the cases surveyed. Furthermore, an analysis of 478 cases by the author produced very little indication that the *Miranda* requirements had materially affected the outcome of formal police interrogation, or any other factors such as the recovery of stolen property. Even though there had been a decline in both the conviction and clearance rates of the Seaside City Police Department, for the reasons set forth in this study one would be hard pressed to attribute those declines specifically to *Miranda*.

Interrogation performs many collateral functions for the police. It is here that the impact of *Miranda* was more distinct. The police were found to be implicating fewer accomplices, clearing fewer crimes and recovering less property through interrogation, and helping fewer suspects clear themselves. Therefore, the writer concludes that the impact of *Miranda* on law enforcement in the jurisdiction studied was slight. This substantiates the findings of related studies. The results do not support the thesis that police interrogation is unnecessary.

In order to balance the scale upon which rest the rights of the individual and the interests of society, the proponents in each camp will have to realize that they are playing a game of give-and-take. Those championing the rights of the individual must be ready to sacrifice some individual rights and liberties in order to foster a type of society in which all can enjoy a certain measure of rights. On the other hand, those championing the cause of society must understand that police efficiency has to yield on occasions to the rights and liberties of the individual.