Handcuffing the Cops:
Miranda's Harmful Effects on Law Enforcement

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Executive Summary

The U.S. Supreme Court's 1966 decision in *Miranda v. Arizona* created a series of procedural requirements that law enforcement officials must follow before questioning suspects in custody. These rules specified that a suspect must be read the "Miranda warning," now famous from police shows on television, and then must be asked whether he agrees to "waive" those rights. If the suspect declines, the police are required to stop all questioning. Even if the suspect waives his rights, at any time during an interrogation he can halt the process by retracting the waiver or asking for a lawyer. From that point on, the police are not allowed even to suggest that the suspect reconsider.

These requirements have had a substantial detrimental impact on law enforcement and the police have found it more difficult to get a confession. After the *Miranda* decision:

- The fraction of suspects questioned who confessed dropped from 49 percent to 14 percent in New York.
- In Pittsburgh, the confession rate fell from 48 percent to 29 percent.
- An estimate from the best available studies is that, across the country, confession rates fell by about 16 percentage points.

With fewer confessions, the police found it more difficult to solve crimes.

- Following the decision, the rates of violent crimes solved by police fell dramatically, from 60 percent or more to about 45 percent, where they have remained.
- The rates of property crimes solved by police also dropped.

With fewer confessions and fewer crimes solved, there were also fewer convictions.

- Given that a confession is needed to get a conviction in about one of every four cases, a rough estimate is that there are 3.8 percent fewer convictions every year because of Miranda.
- This means that each year there are 28,000 fewer convictions for violent crimes, 79,000 fewer for property crimes and 500,000 fewer for other crimes.

Some defenders of the decision argue that fewer crimes were solved after *Miranda* for a good reason: the police were forced to abandon unconstitutionally coercive questioning techniques. However,

coercive questioning methods had begun to decline in the 1930 and 1940s, and even the Court agreed that genuinely coerced confessions were rare at the time of *Miranda*.

Defenders of *Miranda* also might argue that there is no causal link between the drop in crime clearance rates and the Supreme Court's new rules. However, when the percent of crimes solved (the clearance rate) is subjected to standard statistical techniques, with controls for other influences, the findings are that *Miranda* had a statistically significant effect on clearance rates for both violent and property crimes. Specifically:

- Between 8,000 and 36,000 more robberies would have been solved in 1995 in the absence of the *Miranda* ruling.
- Between 17,000 and 82,000 more burglaries, between 6,000 and 163,000 more larcenies and between 23,000 and 78,000 more vehicle thefts would have been solved.
- The ruling had a minimal impact on the solving of homicides, rapes and assaults.

The Supreme Court now holds that the *Miranda* rules are not constitutional requirements, but rather mere "prophylactic" safeguards designed to insure that the police do not coerce a confession from a suspect. The interests of both effective law enforcement and protection of society dictate that we should seek reasonable alternatives to the strictures of *Miranda*, alternatives that would simultaneously protect society's interest in effective law enforcement while safeguarding suspects against unconstitutional coercion.

Reasonable alternatives exist, and it is time to explore them fully. Other measures could be put in place to guard against coercive techniques to acquire a confession that at the same time allow police to obtain more confessions from criminals. For example, there could be a requirement that police officers videotape custodial interrogations, or that questioning take place before a magistrate. Alternatively, the courts could simply return to the historical "voluntariness" approach to the admissibility of confessions, where the court excludes confessions deemed "involuntary" because of physical force, threat of physical force or when factors such as the length of interrogation and the types of questions asked are considered.

In short, *Miranda* has, as its critics charge, "handcuffed the cops." It is time to consider removing these shackles and regulating police interrogation in less costly ways.

Introduction

In 1963, Ernesto Miranda, 23, who had dropped out of school in the ninth grade and had a prior arrest record, was picked up by Phoenix police as a suspect in the kidnapping and rape of an 18-year-old girl. After two hours of questioning, Miranda confessed orally to the crime. He then wrote out and signed a brief statement admitting and describing the rape. It contained a typed paragraph stating that his confession was made voluntarily without threats or promises of immunity and that he had full knowledge of his rights and understood that the statement could be used against him. At Miranda's trial, the confession was admitted despite his lawyer's objections, and Miranda was convicted and sentenced to 20 years in prison.

Miranda's appeal eventually reached the U.S. Supreme Court. In 1966, in its landmark decision in *Miranda v. Arizona,* the Court established procedural requirements that law enforcement officials must follow before questioning suspects in custody, and overturned Miranda's conviction because police had not followed the new rules. The Court's 5-4 ruling specified four warnings that police must deliver to criminal suspects about to be questioned. Unless the warnings were read, nothing an arrested suspect might say afterwards during questioning, even in the anguish of conscience, could be used against him in court.

"The Supreme Court specified four warnings that police must deliver to criminal suspects about to be questioned."

Miranda was retried and again convicted. The confession could not be used, but a former girlfriend testified that he had told her about the kidnapping and rape. After Miranda was paroled in 1972, he was in and out of prison before he was stabbed fatally in a bar at the age of 34. Ironically, a suspect in the stabbing was unsuccessfully questioned and was released, and no one was ever charged in the death.

The changes wrought by *Miranda* can be best understood by comparing the new rules to those in place before the decision. Before June 13, 1966, police questioning of suspects in custody was covered by the "voluntariness" doctrine. Under the Fifth and Fourteenth Amendments to the Constitution, courts admitted a defendant's confession into evidence if it was voluntary, but they excluded any involuntary confession. In making the voluntariness determination, courts considered a host of factors. For example, if police officers or prosecution investigators used physical force or the threat of force, courts deemed the resulting confession involuntary. Courts also considered such factors as length of interrogation and types of questions asked in making the voluntariness determination.[1]

Miranda v. Arizona[2] radically changed these rules, adding a stringent warning-and-waiver requirement. Under this approach, a confession police obtained from a suspect in custody would not be admissible in court unless that suspect had been read his or her rights. The rights specified are familiar to anyone who has ever watched a police show on television:

You have the right to remain silent.

Anything you say can be used against you in a court of law.

You have the right to talk to a lawyer and have him present with you while you are being questioned.

If you cannot afford to hire a lawyer, one will be appointed to represent you before you answer any questions.

While the *Miranda* "warnings" are the most famous part of the decision, perhaps even more important are additional requirements that the Court imposed. After reading a suspect his rights, an officer must ask whether the suspect agrees to "waive" those rights. If the suspect refuses to waive — that is, declines to give his permission to be questioned — the police must stop questioning. At any time during an interrogation, a suspect can halt the process by retracting his waiver or asking for a lawyer. From that point on, the police cannot even suggest that the suspect reconsider.

"After a suspect declines to waive his Miranda *rights, the police cannot even suggest that the suspect reconsider."*

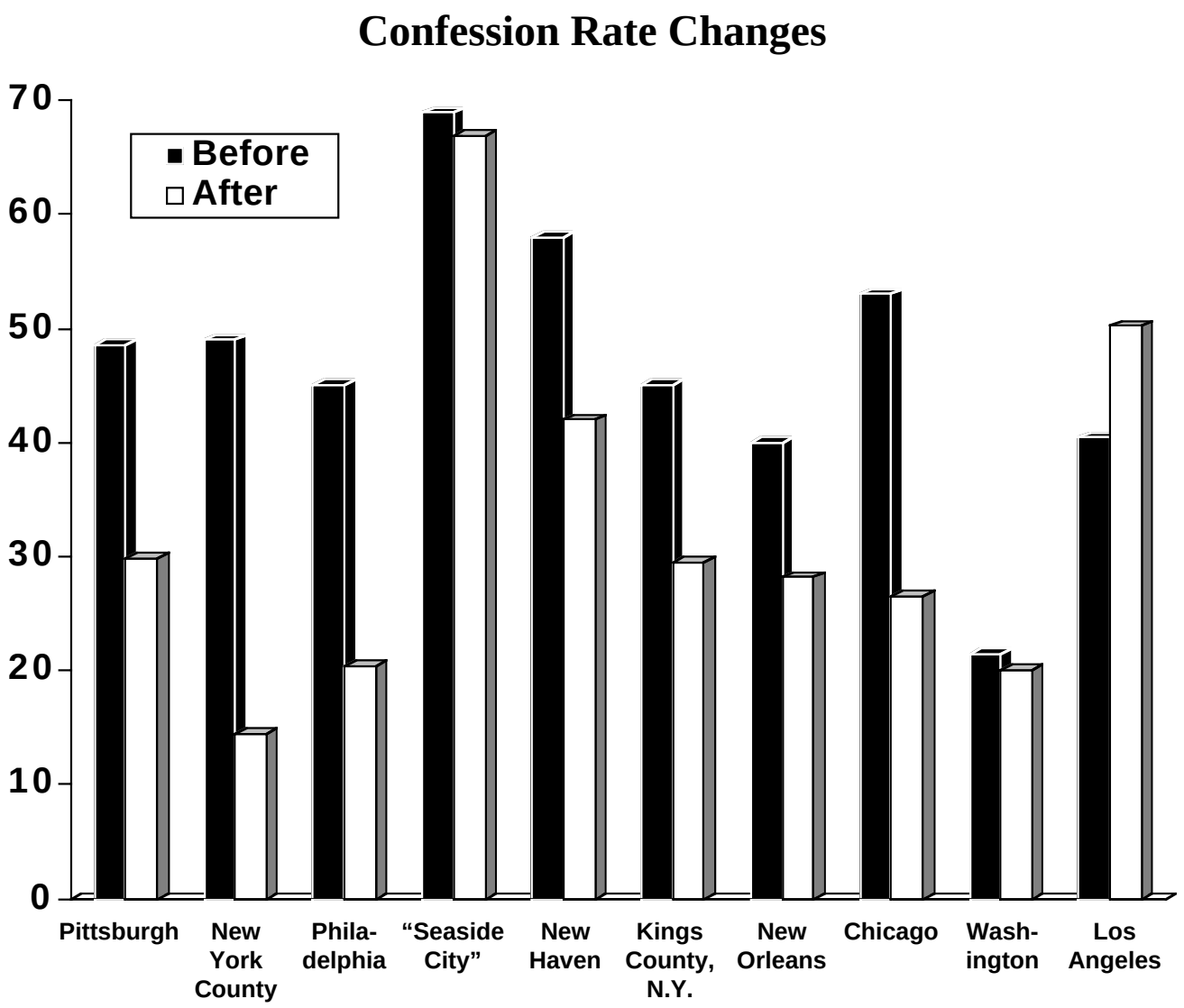
At the time *Miranda* was handed down, dissenting Justice John M. Harlan clearly warned that the decision would "entail harmful consequences for the country at large. How serious those consequences may prove to be only time can tell."[3] Other critics of the decision predicted that it would "handcuff the cops." This question of *Miranda*'s practical effect has far more than academic significance. Since 1966, the Supreme Court has repeatedly held that *Miranda* is a realistic preventive measure —"a carefully crafted balance designed to fully protect both the defendants' and society's interests."[4] If the costs of *Miranda* are greater than is generally acknowledged, the Court would presumably need to rethink the current doctrine. What, then, are the costs?

Confession Rates and *Miranda*

Immediately after *Miranda*, a handful of researchers attempted to measure the effects of the decision. The studies generally suggested significant reductions in the number of suspects giving confessions under the new rules. For a recent article in the *Northwestern Law Review*, I exhaustively canvassed the empirical evidence on *Miranda*'s social costs in terms of lost criminal cases.[5] Examining direct information — before-and-after studies of confession rates in the wake of the decision — I concluded that *Miranda* significantly depressed the confession rate.[6] For example, in 1967:

- Research revealed that confession rates in Pittsburgh fell from 48 percent of suspects questioned by detectives before the decision to 29 percent after.[7]
- New York County District Attorney Frank Hogan testified before the Senate Judiciary Committee that confessions fell even more sharply in his jurisdiction, from 49 percent before *Miranda* to 14 percent after.[8]

FIGURE I



Source: Paul G. Cassell, "*Miranda's* Social Costs: An Empirical Reassessment," *Northwestern Law Review* 90, 1996, p. 387. For further details about these statistics, see pp. 395-418.

The Decline in Confessions. Virtually all of the studies just after *Miranda* found that confession rates had declined, as shown in Figure I. The sole exception was a study in Los Angeles, which has been revealed to be badly flawed.[9]

"Confession rates fell by about 16 percentage points after Miranda*."*

The reliable data from the before-and-after studies[10] show that confession rates fell by about 16 percentage points after *Miranda*. In other words, if the confession rate was 60 percent before *Miranda*, it was 44 percent after — meaning that in about one of every six criminal cases *Miranda* resulted in a lost confession. The reliable studies also indicate that confessions are needed in about 24 percent of all cases to obtain a conviction. Combining these two figures produces the result that about 3.8 percent (16% x 24%) of all criminal

cases in this country are lost because of the restrictions imposed by *Miranda*.[11] Extrapolating across the country, each year there are 28,000 fewer convictions for violent crimes, 79,000 fewer for property crimes and 500,000 fewer for crimes outside the FBI crime index.

"Because of the restrictions, there are 28,000 fewer convictions for violent crimes, 79,000 fewer for property crimes and 500,000 fewer for other crimes each year."

Studying Long-Term Effects. These estimates of *Miranda*'s harmful effects come solely from before-and-after studies that rely on data from the months immediately preceding and following *Miranda*. The studies accordingly fail to capture *Miranda*'s long-term effects, effects that would reflect criminal suspects' full understanding of the protection *Miranda* offers them. To gain a better view of *Miranda*'s historic effects, we need some solid statistical indicator that extends beyond 1967 and, indeed, into the 1990s.

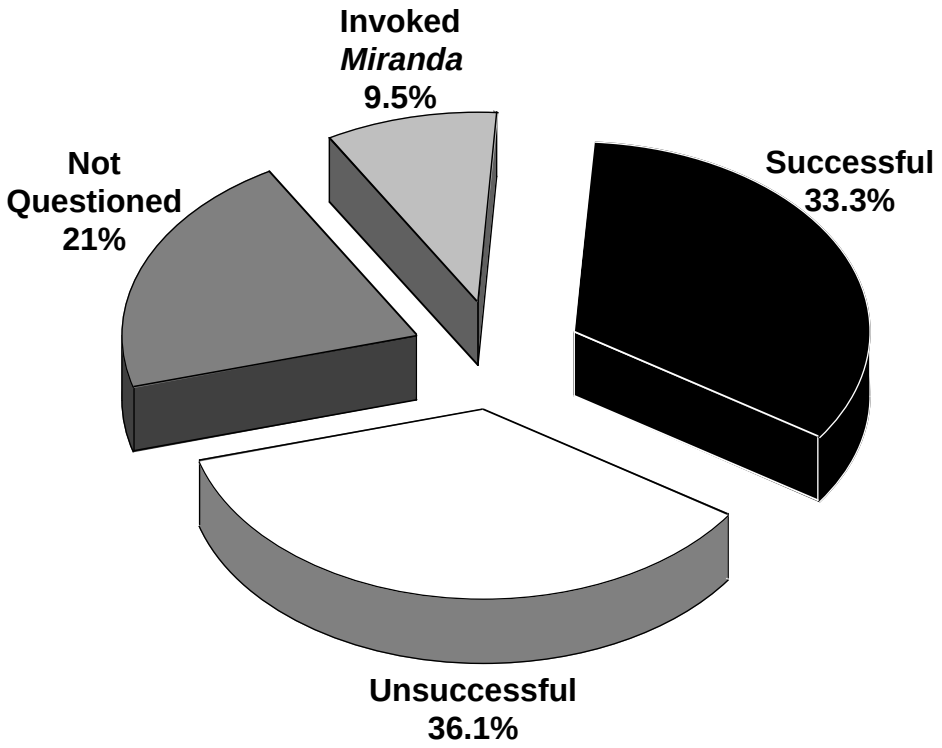
In theory, the ideal study would review confession rates since 1967 to see whether, despite initial declines after the decision, the rates have since "rebounded" — in other words, a before-and-after study of confession rates over several decades rather than several months. Unfortunately, no such statistics exist. The only figures that do exist were gathered by individual researchers for particular cities on a one-time basis. Although broad generali-

"Twenty-eight years after Miranda, *only 33 percent of police interrogations led to a confession in Salt Lake County, compared to a pre-*Miranda *nationwide average of 55 to 60 percent."*

FIGURE II

Salt Lake County Confession Rates

(1994)



Source: Paul G. Cassell and Bret S. Hayman, "Police Interrogation: An Empirical Study of the Effects of *Miranda*," *UCLA Law Review* 43, 1996, p. 839.

zations are hazardous, confession rates before *Miranda* were probably 55 percent to 60 percent.[12] After *Miranda*, the few studies available reveal lower confession rates. The most recent empirical study, in 1994 in Salt Lake County, Utah, found an overall confession rate of only 33 percent.[13] [See Figure II.]

"Confessions are needed to obtain convictions about one-fourth of the time."

Richard Leo's 1993 study from Berkeley, Calif., found an in-custody questioning success rate by detectives of 64 percent. If we adjust this figure for comparability with earlier studies, it translates into an overall confession rate of about 39 percent.[14] A 1979 National Institute of Justice study of Jacksonville, Fla., and San Diego, Calif., reported confession rates of 33 percent and 20 percent, respectively. When statements admitting presence at a crime scene are added, the overall rates for incriminating statements rise to 51 percent and 37 percent, respectively.[15] A 1977 study of six cities reported a confession rate of 40 percent.[16]

Taken together, these studies suggest that confession rates have been lower since *Miranda*. But this conclusion, too, could be attacked on the grounds that studies from individual cities may not be applicable across the country. Because no national data exist, we must search for an alternative measure.

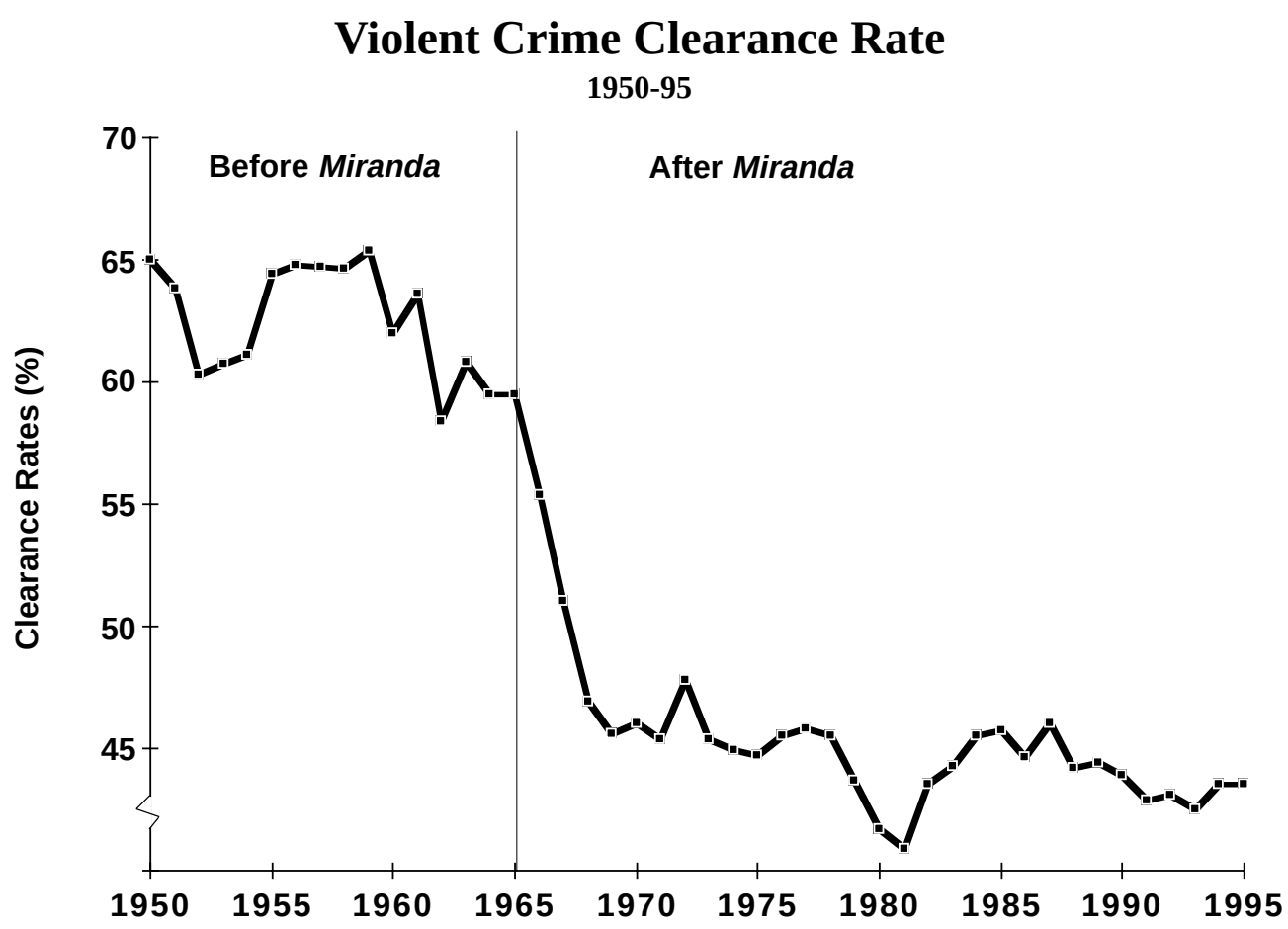
Crime Clearance Rates and *Miranda*

"Clearance rates — the rates at which crimes are solved — are another way to measure the impact of Miranda*."*

The most meaningful alternative measure of the frequency of confessions is the clearance rate — the rate at which police officers "clear," or solve, crimes. Since at least 1950, the Federal Bureau of Investigation has collected clearance rate figures from around the country and reported this information annually in the *Uniform Crime Reports*.[17] The clearance rate appears to be a reasonable (if understated) alternative measure for the confession rate. If *Miranda* prevents a confession, a crime may go unsolved. As one leading police interrogation manual explains, "Many criminal cases, even when investigated by the best qualified police departments, are capable of solution only by means of an admission or confession from the guilty individual or upon the basis of information obtained from the questioning of other criminal suspects."[18]

Clearance rates have been widely viewed — especially by *defenders* of the *Miranda* decision — as a statistic that would reveal its effects. For example, a widely cited passage in Professor Stephen Schulhofer's 1987 article praising *Miranda* reported the prevailing academic view that, while some studies suggested declining confession rates after the decision, within a "year or two" clearance "rates were thought to be returning to pre-*Miranda* levels."[19] While an apparent consensus exists that clearance rates at least partially gauge *Miranda*'s impact, one note of caution should be sounded. Police

FIGURE III



Source: FBI Uniform Crime Reports.

can record a crime as "cleared" when they have identified the perpetrator and placed him under arrest, even where the evidence is insufficient to indict or convict.[20] As a result, clearance rates fail to capture any of *Miranda*'s harmful effects if these show up only after a crime has been cleared. This means that clearance rates understate *Miranda*'s effects.

"The number of violent crimes solved fell about 25 percent after Miranda*."*

The Decline in Clearance Rates. Surprisingly, no one has made a close examination of the national data from the FBI's *Uniform Crime Reports*. In a recently published article, Professor Richard Fowles and I showed that crime clearance rates fell sharply all over the country immediately after *Miranda* and remained at these lower levels over the next three decades.[21] For example, in both 1966 and 1967 the FBI reported that a drop in clearance rates was "universally reported by all population groups and all geographic divisions."[22] A long-term perspective on crime clearance rates comes from plotting the FBI's annual figures. Figure III illustrates the national crime clearance rate from 1950 to 1995 for violent crimes (nonnegligent homicide, forcible rape, aggravated assault and robbery).

As the numbers show, violent crime clearance rates were fairly stable from 1950 to 1965, generally hovering at or above 60 percent. They even increased slightly from 1962 to 1965. Then, in the three years following *Miranda*, the rates fell dramatically — to 55 percent in 1966, 51 percent in 1967 and 47 percent in 1968. Violent crime clearance rates have hovered around 45 percent ever since—about 15 percentage points, or 25 percent, below the pre-*Miranda* rate. Because *Miranda* probably took effect over several years — while both police practices and suspect talkativeness adjusted to the new rules — simple visual observation of the long-term trends suggests that *Miranda* substantially harmed police efforts to solve violent crimes.

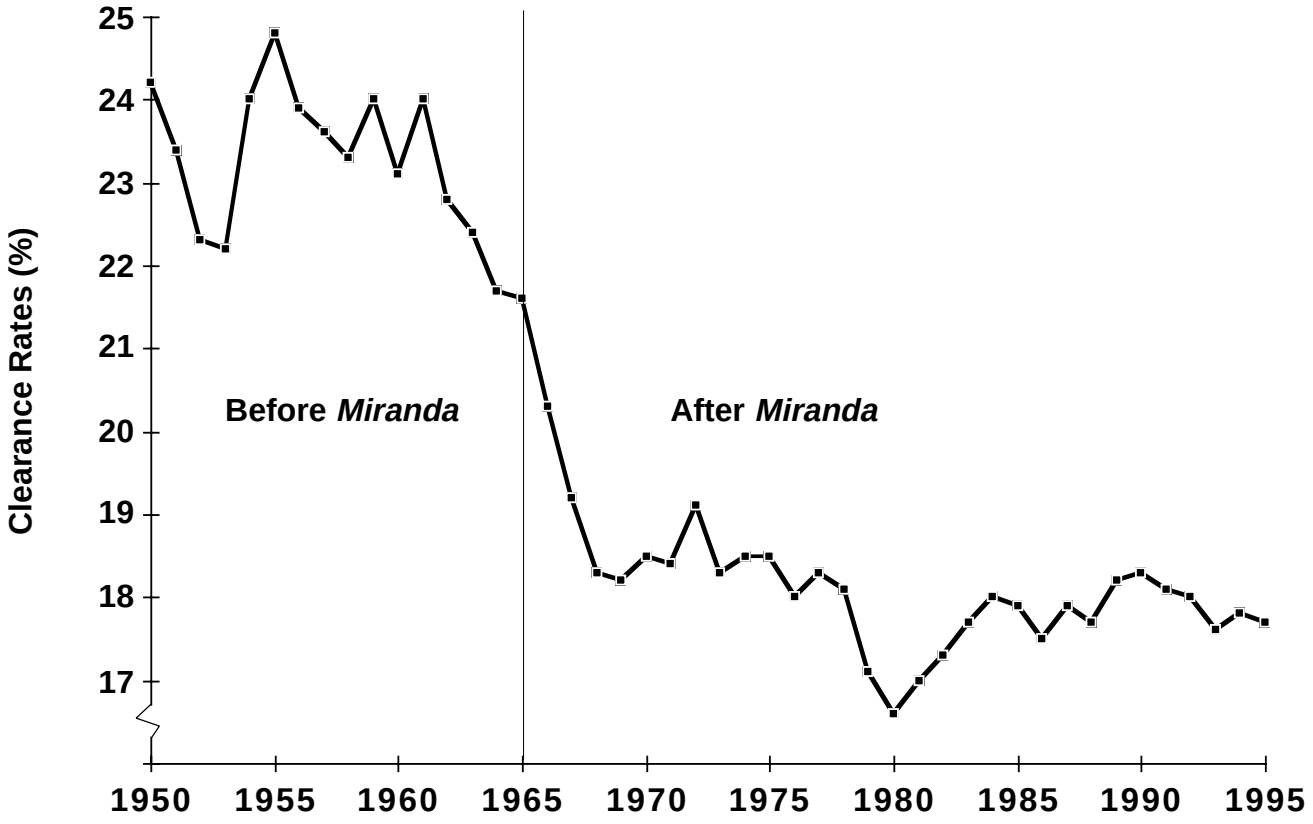
"The number of property crimes solved also fell."

The annual crime clearance rate during the same period for the property crimes of burglary, vehicle theft and larceny present the same pattern, as shown in Figure IV. The rate at which police cleared property crimes fluctuated somewhat from 1950 to 1960, declined from 1961 to 1965, then fell at an accelerating rate from 1966 to 1968 and generally stabilized thereafter. Here again, during the critical post-*Miranda* period, clearance rates dropped, although somewhat less dramatically than clearance rates for violent crime.

FIGURE IV

Property Crime Clearance Rates

1950-95



Source: FBI Uniform Crime Reports.

Did *Miranda* Cause the Decline? The graphs of crime clearance rates, particularly violent crime clearance rates, nicely fit the handcuffing-the-cops theory advanced by *Miranda*'s critics and disprove the suggestion that there was any sort of "rebound" of clearance rates after the decision. Defenders of *Miranda* nonetheless might argue that this does not prove any causal link between the drop in clearance rates and the Supreme Court's new rules. The link, however, is strongly suggested by the striking timing of the sharp drop, originating in 1966 (and not earlier) and concluding in the year or two after. Moreover, it is important to recall that it was *Miranda*'s defenders who first suggested exploring clearance rates as evidence of *Miranda*'s effects.

The connection between the decline in clearance rates and *Miranda* was contemporaneously recognized. During the critical 1966–68 period, the *Uniform Crime Report* listed as explanatory causes for falling clearance rates "court decisions which have resulted in restrictions on police investigative and enforcement practices" along with "the sharp increase of police workloads in criminal and noncriminal matters; the almost static ratio of police strength to population, which is not commensurate with the sharp increase in crime; and the increasing mobility of those who commit crimes."[23]

"Most police chiefs believe Miranda *raised obstacles to law enforcement."*

Assessments from law enforcement officers who questioned suspects both while free from and subject to *Miranda*'s constraints confirm the importance of *Miranda* in the drop in clearance rates. Perhaps the best interviews of officers on the streets were conducted by Otis Stephens and his colleagues in Knoxville, Tenn., and Macon, Ga., in 1969 and 1970. Virtually all the officers surveyed believed that Supreme Court decisions had adversely affected their work, and most blamed *Miranda*.[24]

Similarly, in New Haven, Conn., Yale students who observed interrogations during the summer of 1996 interviewed most of the detectives involved plus 25 more. They reported that "[t]he detectives unanimously believe [*Miranda*] will unjustifiably [help the suspect]."[25] They also reported that "[t]he detectives continually told us that the decision would hurt their clearance rate and that they would therefore look inefficient."

Law student Gary L. Wolfstone sent letters in 1970 to police chiefs and prosecutors in each state and the District of Columbia. Most agreed that *Miranda* raised obstacles to law enforcement.[26]

In "Seaside City," James Witt interviewed forty-three police detectives some time before 1973. Witt reported that the detectives "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 ... [and] were quick to refer to a decline in their clearance rate when discussing problems emanating from the *Miranda* decision."[27]

While other social changes in the 1960s might have affected police performance, these changes were unlikely to account for the sharp 1966-68 drop in clearance rates. For example, although illegal drug use certainly increased during the 1960s, the increase continued into the 1970s and 1980s. Other social changes may have had some indirect effect on police effectiveness, but again such long-term changes are not strong candidates for an unexplained portion of the 1966-68 drop in clearance rates.

Finally, the conclusion that *Miranda* caused a significant part of the 1966–68 decline in clearance rates is supported by a wide range of information, and also by common sense. The conclusion suggested here is simply that when the Supreme Court imposed unprecedented restrictions on an important police investigative technique, the police became less effective. This is not a counterintuitive assertion, but instead a logical one.

Confirming the Effect on Clearance Rates

"Standard statistical techniques also show that the Miranda *decision was the primary cause of the drop in crimes solved."*

As theory and contemporaneous police reports suggest that the *Miranda* decision was a primary cause of the 1966 to 1968 drop in clearance rates, so do standard statistical techniques. The generally accepted device for sorting through competing possibilities is multiple regression analysis.

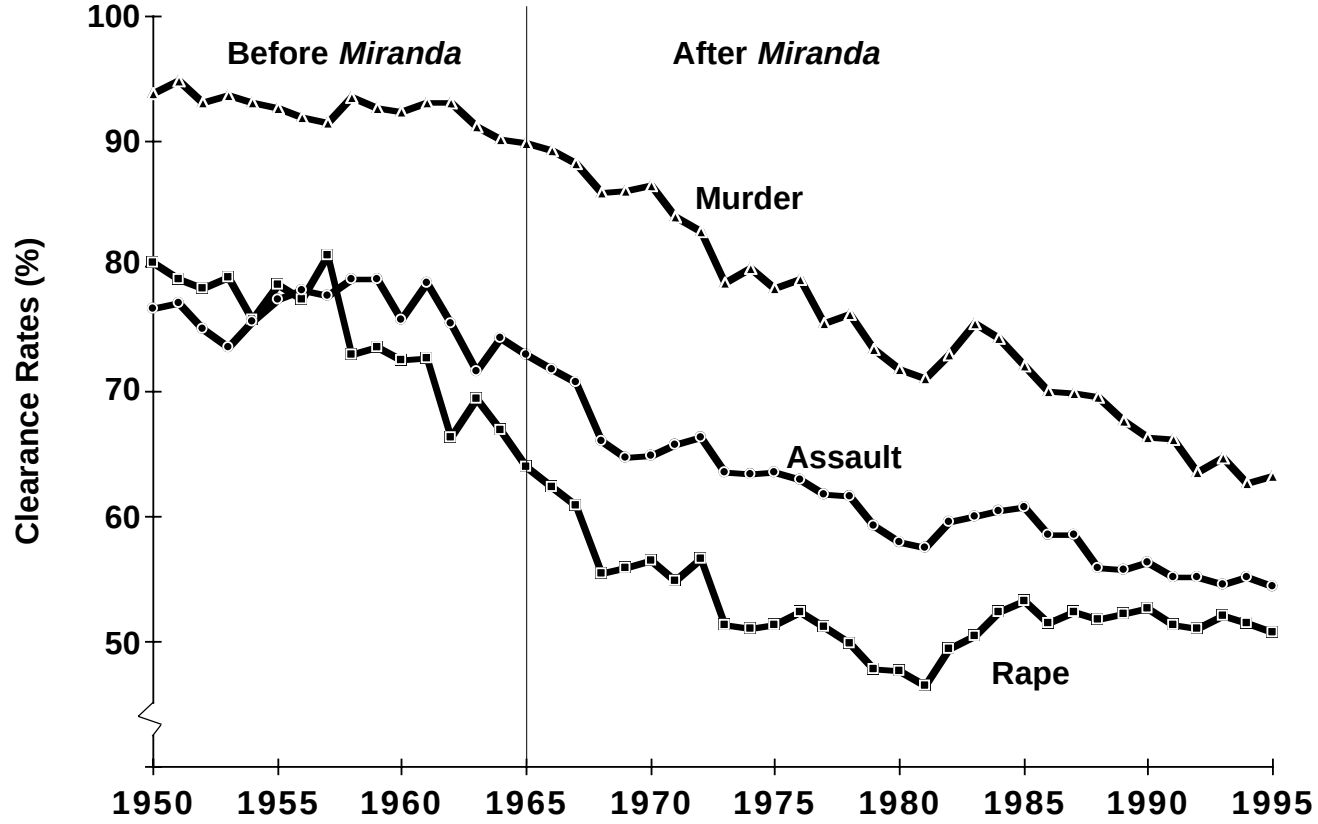
The Regression Model. The first step in developing a regression model is to identify relevant variables for the equations. For our dependent variable, Professor Fowles and I used clearance rates at a national level based on FBI data.[28] For control variables, the factor most commonly cited as affecting the clearance rate is the crime rate. The standard argument is that as police officers have more crimes to solve, they will be able to solve a smaller percentage of them. Apart from the crime rate, the most often cited factors influencing clearance rates are law enforcement officers and expenditures on law enforcement. To control for such influences, we added variables for the number of law enforcement personnel per capita and the dollars spent on police protection per capita by state and local governments, adjusted for inflation by the consumer price index. We also controlled for the interactions between these variables and the overall number of crimes—what has been called the "capacity" of the system.[29]

Other variables have been identified in the criminal justice literature as having some bearing on clearance rates or, more generally, crime rates. We controlled for the percentage of juveniles in the population, the unemployment rate, disposable per capita real income, labor force participation, live births to unmarried mothers, levels of urbanization and the distribution of crimes committed in large and small cities. Finally, to capture the effects of the *Miranda* decision, we included a "dummy" variable in the equations. This was assigned the value of 0 before *Miranda*, + in the year of *Miranda* (1966) and 1 thereafter.

FIGURE V

Individual Violent Crime Clearance Rates

1950-95



Source: FBI Uniform Crime Reports.

"Without Miranda, *the number of crimes police would have solved would have been 6.7 percentage points higher for violent crimes and 2.2 percentage points higher for property crimes."*

***Miranda's* Significant Effect.** The findings, detailed in Appendix Table I, are that *Miranda* had a statistically significant effect on clearance rates for both violent and property crimes.

- The coefficient associated with the *Miranda* variable implies that violent crime clearance rates would be 6.7 percentage points higher without *Miranda*.
- The coefficient associated with the Miranda variable indicates that property crime clearance rates would be 2.2 percentage points higher.

In 1995 the violent crime clearance rate was 45.4 percent and the property crime clearance rate 17.7 percent: [30]

- The regression equations suggest that without *Miranda* the violent crime clearance rate would have been 50.2 percent (43.5 percent + 6.7 percent).
- The equations suggest that the property crime clearance rate would have been 19.9 percent (17.7 percent + 2.2 percent).

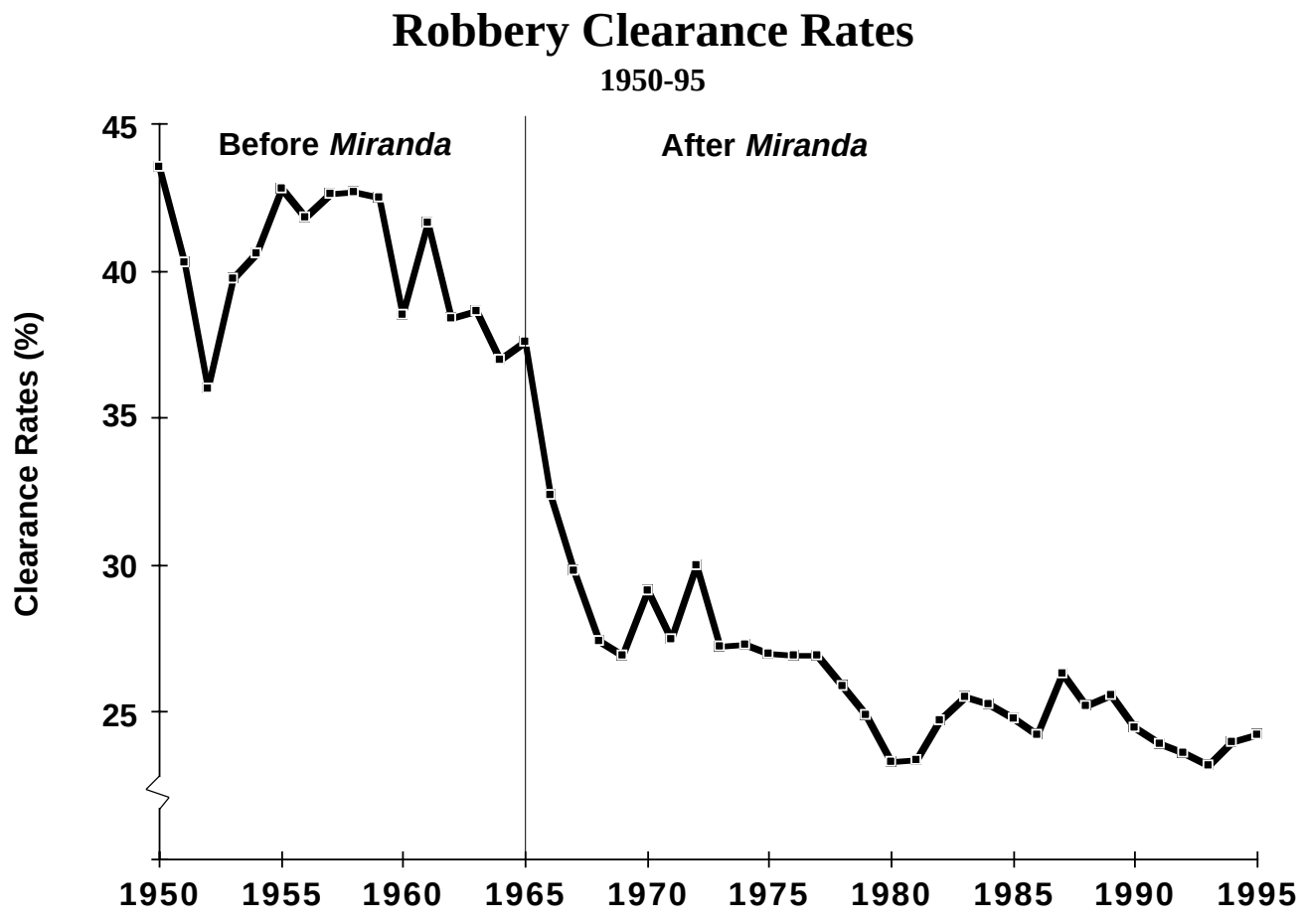
The Effect on Clearing Individual Crimes. These findings are for the total categories of "violent" and "property" crime. There is a danger, of course, that such aggregations may obscure what is happening in individual crime categories. For this reason, we ran separate regressions on the individual violent and property crimes. Figure V depicts clearance rates for the violent crimes of homicide, rape and aggravated assault. Figure VI depicts the clearance rate for robbery (shown separately because its clearance rate is so much lower). Except for robbery, all exhibit a long-term downward trend, but not a sharp downward break in the 1966 to 1968 period.

"Miranda had a significant effect on robbery clearances but not on other violent crimes."

The sharp reduction in robbery clearances shown in Figure VI suggests that robbery clearances are the most likely to be affected by *Miranda*. The results of the regression analyses [see Appendix Table II] confirm that Miranda had a significant effect on robbery clearances but not on other violent crimes.

Clearances of property crimes (burglary, larceny and vehicle theft) all exhibit a long-term downward trend, as Figure VII shows. Larceny and

FIGURE VI

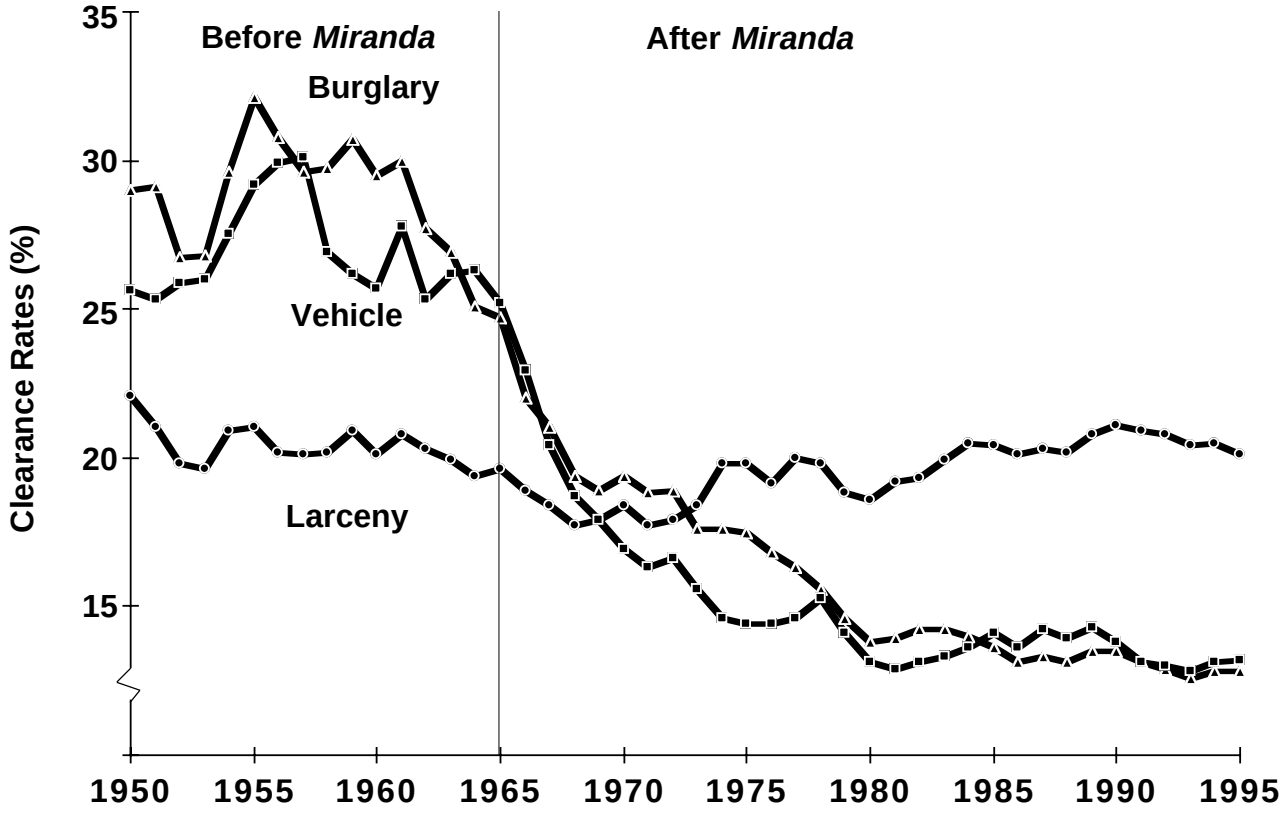


Source: FBI Uniform Crime Reports.

FIGURE VII

Clearances of Individual Property Crimes

1950-95



Source: FBI Uniform Crime Reports.

"The percent of property crimes solved all exhibit a long-term downward trend."

vehicle theft clearances show particularly sharp drops in the 1966 to 1968 period, while the sharp drop in burglary clearances extends from 1961 to 1968. These visual observations track the regression results [reported in Appendix Table III]. The *Miranda* variable has a statistically significant downward effect on clearance rates for larceny and vehicle theft. For burglary, the *Miranda* variable is not statistically significant at the conventional 95 percent confidence level (but is significant at a 90 percent confidence level).

The regression equation controls for two of the factors cited in the *Uniform Crime Report* as possible reasons for the clearance rate decline: the increase in police workloads and the static ratio of police strength. Increased mobility of those committing crimes is possible, but seems an unlikely explanation for a sudden, three-year shift in crime clearance rates. Increasing mobility could affect clearances only over the long haul. That leaves the first factor — "court decisions which have resulted in restrictions on police investigative and enforcement practices" — as the logical candidate for explaining the sudden drop in clearance rates.

The Range of the *Miranda* Effect. Having considered various models for the *Miranda* effect, we set out a short summary of our findings and the range of the possible effect of the decision on clearance rates. Table I displays the pertinent information.

The first column sets out the clearance rate for the various crime categories for 1995 — for example, a 24.2 percent clearance rate for robbery. The second column shows the range of the *Miranda* effect found in considering all possible combinations of the variables in our equations.[31] For example, depending on the model specification, robbery clearances were somewhere between 1.6 and 7.2 percentage points lower, depending on what variables one includes or excludes. To provide some context for these figures, the third column sets out the rate at which clearances would have increased without the *Miranda* effect. For example, given that only 24.2 percent of robberies were cleared in 1994, increasing the clearance rate by 1.6 to 7.2 percentage points would have meant the clearance of 6.6 percent to 29.7 percent more robberies. Because of interest in the absolute number of crimes affected, we estimate in the last column how many more crimes would have been cleared in 1995 in the absence of the *Miranda* effect. Our equations suggest, for instance, that without *Miranda* between 8,000 and 36,000 more

"Without Miranda, *between 8,000 and 36,000 more robberies would have been solved in 1995."*

TABLE I

Summary of the Range and Size of the Effect of the *Miranda* Variable

Crime	1995 Clearance Rates	Range of *Miranda* Effect	Percentage Increase Without *Miranda*	1995 Additional Cleared Crimes Without *Miranda*
Violent	43.5%	3.7%-8.9%	8.5%-20.4%	56,000-136,000
Murder	63.2%	0%*	0%	0
Rape	50.8%	0%*	0%	0
Robbery	24.2%	1.6%-7.2%	6.6%-29.7%	8,000-36,000
Assault	54.4%	0%*	0%	0
Property	17.7%	0.7%-2.9%	3.9%-16.3%	72,000-299,000
Burglary	12.8%	0.8%-3.7%	6.2%-28.9%	17,000-82,000
Larceny	20.1%	0.1%-2.4%	0.4%-11.9%	6,000-163,000
Vehicle	13.2%	1.7%-6.0%	12.8%-45.4%	23,000-78,000

* = no robust, statistically significant *Miranda* effect found.

Source: Paul G. Cassell and Richard Fowles, "Handcuffing the Cops? A 30-Year Perspective on *Miranda's* Harmful Effects on Law Enforcement," 50 Stanford Law Review 1055, 1998.

robberies would have been solved in 1995. It should be emphasized again that these estimates are quite conservative. They capture only *Miranda*'s impact on crime clearances, ignoring some of the effects on prosecutions and convictions at later points in the criminal justice system.

Explaining the Pattern. Our equations suggest a *Miranda* effect on clearance rates for robbery, larceny and vehicle theft (and possibly burglary), but not homicide, rape and assault. What could explain this pattern? No doubt the reasons are complex, but reasonable possibilities suggest themselves.

What might be called crimes of passion or emotion — murder, rape and assault — were apparently unaffected by *Miranda*, while crimes of deliberation — robbery, larceny, vehicle theft and possibly burglary — were affected. These categories are oversimplifications; obviously there are coolly calculated murders and impulsive car thefts. But if the generalizations are more often correct than incorrect, they correspond with the larger body of evidence suggesting that *Miranda* more substantially affects police success in dealing with repeat offenders and professional criminals.[32]

"Police clear some kinds of crime through confessions more often than others."

Still another explanation is that police may more often clear some kinds of crimes through confessions. A study of the New York City Police Department around the time of *Miranda* reported widely varying ratios of clearances to arrests across crime categories.[33] The ratio of clearances to arrests is well in excess of 1 for some crimes — specifically burglary, grand larceny, grand larceny vehicle and robbery. Police might arrest, for example, a professional burglar who would confess not only to the burglary for which he was apprehended, but to several he had previously committed. For other crimes—specifically homicide, rape and assault—the ratio was quite close to 1. This suggests that confessions may play a more important role in clearances of such crimes as burglary, vehicle theft, larceny and robbery, and thus clearance rates for these crimes are more susceptible to changes in confession procedures.

Another possibility is resource shifts by police to maintain high clearance rates for the most serious and less numerous crimes such as murder or rape. After *Miranda*, police may have responded to the difficulties created by the Supreme Court by reassigning some officers to the homicide division. Police agencies are frequently judged by their effectiveness in solving the most notorious crimes, especially murders. This transfer of resources would produce lower clearance rates for less visible and more numerous crimes like larceny or vehicle theft.

Assessing the Impact of *Miranda*

Has *Miranda* handcuffed the cops? The answer turns, of course, on what one means by handcuffed. Our analysis does not support extreme

detractors of *Miranda* —who predicted immediately after the decision that law enforcement would grind to a halt. But *Miranda*'s pragmatic critics today make a more modulated claim: that the decision has seriously impeded police effectiveness in ways that could be avoided through reasonable changes in the *Miranda* rules.

The Costs to Police Effectiveness. The evidence collected here supports this more tempered argument. In particular:

- The before-and-after studies show that substantial numbers of criminal convictions are lost every year.
- The clearance rate regression shows that large numbers of cases are never solved because of *Miranda*.

To put *Miranda*'s costs into some perspective, one might compare them to the costs of the Fourth Amendment exclusionary rule, long considered a major—if not *the* major—judicial impediment to effective law enforcement. In creating a "good faith" exception to the exclusionary rule, the Supreme Court cited statistics tending to show that the rule resulted in the release of between 0.6 percent and 2.35 percent of individuals arrested for felonies.[34] The Court concluded that these "small percentages ... mask a large absolute number of felons who are released because the cases against them were based in part on illegal searches or seizures." The before-and-after studies and clearance rate data suggest that *Miranda*'s costs are higher than those of the exclusionary rule. It is also virtually certain that these costs fall most heavily on those in the worst position to bear them, including racial minorities and the poor.[35]

A final way of showing *Miranda*'s harm is through the truism that a policy with no benefit imposes costs that are too high. If *Miranda*'s costs can be reduced or eliminated without sacrificing other values, they should be — and as quickly as possible. What converts *Miranda*'s harm into tragedy is that these uncleared crimes are largely unnecessary.

Police Coercion: A Declining Problem. Sometimes it is argued that clearance rates declined after *Miranda* for a good reason: the police were forced to abandon unconstitutionally coercive questioning techniques. On this view, declining clearance rates measure not the social cost of criminals unfairly escaping, but rather the social benefit of police abandoning impermissible questioning techniques. This explanation is far-fetched for several reasons.

"Genuinely coerced confessions were already rare at the time of Miranda*."*

First, genuinely coerced confessions were, statistically speaking, rare at the time of *Miranda*. It appears to be common ground in the literature that, as the result of increasing judicial oversight and police professionalism, coercive questioning methods began to decline in the 1930s and 1940s.[36] By the 1950s, coercive questioning had, according to a leading scholar in the area, "diminished considerably."[37] When the Supreme Court began issuing more

detailed rules for police interrogation in the 1960s, it was dealing with a problem "that was already fading into the past."[38] Chief Justice Warren's majority opinion in *Miranda*, while citing the Wickersham Report and other accounts of police abuses, acknowledged that such abuses were "undoubtedly the exception now" and that "the modern practice of in-custody interrogation is psychologically rather than physically oriented."[39] At about the same time, the President's Commission on Law Enforcement and the Administration of Justice reported that "today the third degree is almost nonexistent" and referred to "its virtual abandonment by the police."[40] The empirical surveys provide good support for Professor Gerald Rosenberg's assessment: "Evidence is hard to come by, but what evidence there is suggests that any reductions that have been achieved in police brutality are independent of the Court and started before *Miranda*."[41]

Beyond the relative infrequency of unconstitutional interrogation techniques, the *Miranda* rules themselves were not well tailored to prevent coerced confessions. Justice Harlan's point in his *Miranda* dissent has never been effectively answered. He wrote: "The new rules are not designed to guard against police brutality or other unmistakably banned forms of coercion. Those who use third-degree tactics and deny them in court are equally able and destined to lie as skillfully about warnings and waivers."[42] It is not clear why police using rubber hoses before *Miranda* would have shelved them afterwards — at least in the generally short time period following the decision during which the confession rate changes were observed.

Moving Beyond *Miranda*

Today, with the benefit of 30 years of interpretations, we know the *Miranda* mandate is not a constitutional requirement.[43] Specifically, the Court has held that *Miranda* rules are only safeguards whose purpose is to reduce the risk that police will violate the Constitution during custodial questioning. This means that the *Miranda* rules can be changed without impinging on the Fifth Amendment — without, that is, compelling a defendant to witness against himself. Typical of this line of cases is *Michigan v. Tucker*,[44] in which the court explained that *Miranda* established a "series of recommended 'procedural safeguards.' ... The [*Miranda*] Court recognized that these procedural safeguards were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected."[45]

"The Court held that the Miranda *rules are only safeguards and not a constitutional requirement."*

What *Miranda* Requires. The Court has based these safeguards on a purely pragmatic, cost-benefit assessment. The Court has specifically stated that the *Miranda* rules rest not on constitutional requirement but rather are a "carefully crafted balance designed to fully protect *both* the defendant's and society's interests."[46] While the Court has never said precisely what costs it is willing to tolerate in this cost-benefit calculation, it has likely understated their

magnitude, as the new evidence presented in this study demonstrates. The Court's calculation of *Miranda*'s costs and benefits becomes even more problematic when the possibility of reasonable, less harmful approaches to regulating police questioning is factored in. When the Court announced *Miranda* in 1966, significant efforts to reform the rules regarding interrogations were under way.[47] The decision itself seemed to invite continued exploration of such alternatives, promising that "[o]ur decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform."[48]

Exploring Alternatives. The Court's promise has proven to be an empty one. In the three decades since *Miranda*, reform efforts have been virtually nonexistent. The reasons are not hard to imagine. No state is willing to risk possible invalidation of criminal convictions by using an alternative to *Miranda*.

The failure to explore other approaches cannot be attributed to lack of viable options. For example:

- The states might be permitted to videotape interrogations as a substitute for the *Miranda* procedures.
- The states might be allowed to bring an arrested suspect before a magistrate for questioning.[49]
- The Court might simply abandon the grand social experiment of *Miranda* and return to the long-standing "voluntariness" test for the admissibility of confessions.[50]

Videotaping might be the best solution to the problem of regulating police interrogations envisioned in *Miranda*'s encouragement to "Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws."[51] Videotaping would better protect against police brutality, end the "swearing contest" about what happens in secret custodial interrogations and allow suspects who are manipulated into falsely confessing to prove their innocence.[52] At the same time, even when coupled with limited warnings of rights, videotaping does not appear to significantly depress confession rates.[53]

"There are viable options, such as videotaping interrogations."

Questioning under the supervision of a magistrate would offer more judicial oversight than *Miranda*, but might be structured so as to result in more evidence leading to conviction. But, as with videotaping, because of constitutional issues lurking in the background and the Court's failure to indicate whether this might be a permissible alternative to *Miranda*, this approach has remained nothing more than hypothetical for criminal procedure professors.

Finally, the voluntariness test that was the prevailing approach to assessing confessions in this country for almost two centuries is supported by the notion that Constitutional interpretation ought to be consistent with the

framers' intent. The voluntariness standard is also supported by an explicit though largely untested congressional directive, making it the touchstone for admitting confessions in federal cases.[54]

The evidence collected here argues in favor of earnestly considering these alternatives to *Miranda*. Justice Harlan's dissenting opinion warned that the new rules were "a hazardous experimentation" with the country's safety whose full effects "only time could tell."[55] The experiment's results are now in. The data suggest that *Miranda* has seriously harmed society by hampering the ability of the police to solve serious crimes. Indeed, based on crime clearance rates, *Miranda* may be the single most damaging blow to the nation's crime-fighting ability in the last half century. In short, it appears that *Miranda* has, as its critics charge, "handcuffed the cops." It is time to consider removing those shackles and regulating police interrogation in less costly ways.

"It appears that Miranda *has, as its critics charge, 'handcuffed the cops.'"*

NOTE: Nothing written here should be construed as necessarily reflecting the views of the National Center for Policy Analysis or as an attempt to aid or hinder the passage of any bill before Congress.

APPENDIX TABLE I

Violent and Property Crime Clearance Rates (1950-95)

OLS Regressions on Clearance Rates for Cities (*t* statistics in parenthesis)

Variable	Violent Crimes	Property Crimes
Miranda	-6.731 (-3.936)**	-2.272 (-4.080)**
Crime Rate	-0.226 (-1.096)	0.00580 (.086)
Police Officers	-9.940 (-1.540)	1.633 (0.777)
Police Dollars (Real)	0.162 (0.662)	-0.0422 (-0.530)
Officer Capacity	2.509 (1.445)	0.572 (1.012)
Dollar Capacity	-6.806 (-0.609)**	0.602 (0.166)
Juveniles	-0.388 (-0.691)	-0.0923 (-0.504)
Labor Force Participation	0.634 (1.561)	0.0453 (0.342)
Unemployment	0.970 (2.992)**	0.458 (4.340)**
Per Capita Income (Real)	0.00451 (2.698)**	0.00288 (3.448)**
Births to Unmarried Women	0.0213 (0.099)	0.0926 (1.326)
Urbanization	2.509 (2.067)*	0.460 (1.166)
Crime in Small Towns	0.166 (1.496)	-0.0366 (-1.013)
Trend over Time	-1.250 (-3.041)**	-0.508 (-3.800)**
Intercept	2267.9 (3.068)**	962.9 (3.999)*
Adjusted R^2	.983	.980
Root MSE	1.114	0.362
Durbin-Watson	2.065	2.102

** = significant at .01 level * = significant at .05 level † = significant at .10 level

APPENDIX TABLE II

Total and Individual Violent Crime Clearance Rates (1950-95)

OLS Regressions on Clearance Rates for Cities (*t* statistics in parenthesis)

Variable	Violent	Murder	Rape	Robbery	Assault
Miranda	-6.731 (-3.936)**	-2.078 (-1.097)	0.374 (-0.148)	-5.306 (-2.858)**	-0.629 (-0.356)
Crime Rate	-0.226 (-1.096)	-0.546 (-2.384)*	0.0350 (0.115)	0.213 (1.017)	-0.286 (-1.341)
Police Officers	-9.940 (-1.540)	-3.734 (-0.522)	-4.551 (-0.477)	5.342 (0.814)	-7.053 (-1.057)
Police Dollars (Real)	0.162 (0.662)	0.203 (0.750)	0.0491 (0.136)	-0.341 (-1.369)	-0.161 (0.639)
Officer Capacity	2.509 (1.445)	1.266 (0.658)	-1.153 (-0.449)	-1.195 (-0.677)	2.718 (1.514)
Dollar Capacity (Real)	-6.806 (-0.609)**	-12.28 (-0.992)	12.47 (0.755)	18.46 (1.624)	-10.370 (-0.898)
Juveniles	-0.388 (-0.691)	1.057 (1.700)†	-1.757 (-2.115)*	-0.259 (-0.454)	-0.304 (-0.525)
Labor Force Participation	0.634 (1.561)	0.314 (0.699)	0.256 (0.427)	0.174 (0.422)	0.381 (0.909)
Unemployment	0.970 (2.992)**	0.569 (1.585)	-0.121 (-0.253)	0.785 (2.379)*	1.131 (3.372)**
Per Capita Income (Real)	0.0045 (2.698)*	0.000573 (0.309)	-0.00247 (-0.487)	0.00329 (1.935)†	0.00362 (2.093)*
Births to Unmarried Women	0.0213 (0.099)	0.00953 (0.040)	0.0554 (0.175)	0.216 (0.994)	-0.064 (-0.293)
Urbanization	2.509 (2.067)*	1.245 (0.927)	-1.237 (-0.689)	-0.134 (-0.109)	2.964 (2.363)*
Crime in Small Towns	0.166 (1.496)	-0.361 (-2.940)**	0.176 (1.076)	0.0451 (0.399)	0.0500 (0.435)
Trend over Time	-1.250 (-3.041)**	-0.530 (-1.165)	-0.506 -0.833)	-1.103 (-2.637)* (-2.038)*	-1.230 (2.895)**
Intercept	2267.9 (3.068)**	1035.7 (1.265)	1158.1 (1.059)	1390.406 (2.081)*	1299.858 (1.861)†
AdjustedR^2	.983	.986	.978	.983	.981
Root MSE	1.114	1.234	1.647	1.133	1.151
Durbin-Watson	2.065	2.078	2.199	2.185	2.019

** = significant at .01 level * = significant at .05 level † = significant at .10 level

APPENDIX TABLE III

Total and Individual Property Crime Clearance Rates (1950-95)

OLS Regressions on Clearance Rates for Cities (*t* statistics in parenthesis)

Variable	Property	Burglary	Larceny	Vehicle
Miranda	-2.272 (-4.080)**	-2.549 (-2.840)**	-2.360 (-3.314)**	-4.148 (-3.424)**
Crime Rate	0.00580 (.086)	-0.00915 (-0.084)*	-0.0627 (-0.728)	0.00181 (0.012)
Police Officers	1.633 (0.777)	3.187 (0.941)	-0.312 (-0.116)	-2.328 (-0.509)
Police Dollars (Real)	-0.0422 (-0.530)	0.0232 (0.181)	0.0387 (0.380)	-0.0772 (-0.445)
Officer Capacity	0.572 (1.012)	1.762 (1.934)†	1.320 (1.825)†	-0.787 (-0.640)
Dollar Capacity (Real)	0.602 (0.166)	-4.042 (-0.689)	-6.525 (-1.401)	3.968 (0.501)
Juveniles	-0.0923 (-0.504)	-0.610 (-2.072)	0.0455 (0.195)	-1.078 (-2.709)*
Labor Force Participation	0.0453 (0.342)	0.294 (1.383)	0.0639 (0.378)	0.523 (1.820)†
Unemployment	0.458 (4.340)**	0.706 (4.105)**	0.561 (4.156)**	0.108 (0.472)
Per Capita Income (Real)	0.00288 (3.448)**	0.00219 (2.491)*	0.00249 (3.579)**	0.00180 (1.522)
Births to Unmarried Women	0.0926 (1.326)	0.0809 (0.718)	0.00925 (0.103)	-0.0820 (-0.540)
Urbanization	0.460 (1.166)	2.190 (3.440)**	0.415 (0.822)	0.745 (0.867)
Crime in Small Towns	-0.0366 (-1.013)	-0.0136 (-0.234)	-0.0621 (-1.343)	0.0640 (0.814)
Trend over Time	-0.580 (-3.800)**	-1.204 (-5.580)**	-0.274 (-1.600)	-0.682 (-2.343)*
Intercept	962.9 (3.999)**	2190.1 (5.645)**	504.6 (1.638)	1290.2 (2.463)*
AdjustedR^2	.980	.992	.789	.983
Root MSE	0.362	0.584	0.464	0.789
Durbn-Watson	2.102	1.944	2.078	1.687

** = significant at .01 level * = significant at .05 level †= significant at .10 level

Notes

[1] In one of Sherlock Holmes' stories, as a suspect is nabbed and warned immediately of his right to remain silent, A. Conan Doyle pays glancing tribute to "the magnificent fair play" of British law. However, the *Miranda* rules go much further than the standard British warning. Whereas in pre-*Miranda* days the Federal Bureau of Investigation required a warning to suspects, Justice John Marshall Harlan noted in dissent that the FBI procedures fell easily short of *Miranda*'s "formalistic rules" for the whole country. Harlan said, "There is no indication that FBI agents must obtain an affirmative 'waiver' before they pursue their questioning. Nor is it clear that one invoking his right to silence may not be prevailed upon to change his mind."

[2] 384 U.S. 435 (1966).

[3] *Miranda*, 384 U.S. at 504 (Harlan, J., dissenting).

[4] *Moran v. Burbine*, 475 U.S. 412, 433 n.4 (1986).

[5] Paul G. Cassell, "*Miranda's* Social Costs: An Empirical Reassessment," 90 *Northwestern University Law Review* 387 (1996).

[6] The term "confession" rate as used here includes not only full confessions to a crime but also "incriminating statements" useful to the prosecution.

[7] Richard H. Seeburger and R. Stanton Wettick Jr., "*Miranda* In Pittsburgh—A Statistical Study," 29 *University of Pittsburgh Law Review* 1, 12-13 (1967).

[8] See *Controlling Crime through More Effective Law Enforcement: Hearings before the Subcommittee on Criminal Laws and Procedure of the Senate Committee on the Judiciary*, 90th Congress, 1st Session 1120 (1967) [hereinafter *Controlling Crime Hearings*].

[9] The study gathered evidence on "confessions" before *Miranda* and "confessions and other statements" after *Miranda*. Because this latter category is broader than the first, it is impossible to meaningfully compare the two statistics. The law clerk who actually collected the data agrees that the figures from Los Angeles "prove nothing." See Paul G. Cassell, "*Miranda's* 'Negligible' Effect On Law Enforcement: Some Skeptical Observations," 20 *Harvard Journal of Law and Public Policy* 327, 332 (1997), quoting now-U.S. Court of Appeals Judge Stephen S. Trott, who collected the data.

[10] Data from L.A. are excluded for the reasons given in the preceding note; from the District of Columbia because police did not generally follow the *Miranda* requirements, and from Chicago because the data are limited to homicides. See Cassell, *supra* note, at 418.

[11] See Cassell, *supra* note, at 438-39. For further discussion of this estimate, compare Stephen J. Schulhofer, "*Miranda's* Practical Effect: Substantial Benefits and Vanishingly Small Social Costs," *Northwestern University Law Review* 500 (1997) with Paul G. Cassell, "All Benefits, No Costs: The Grand Illusion of *Miranda's* Defenders," *Northwestern University Law Review* 1084 (1996).

[12] See Paul G. Cassell and Bret S. Hayman, "Police Interrogation: An Empirical Study of the Effects of *Miranda*," 43 *UCLA Law Review* 839, 871 (1996); see also Christopher Slobogin, *Criminal Procedure: Regulation of Police Investigation: Legal, Historical, Empirical and Comparative Materials* 6, 1995, Supp., concluding that a 64 percent confession rate is "comparable to pre-*Miranda* confession rates"; compare George S. Thomas III, "Plain Talk About the *Miranda* Empirical Debate: A 'Steady-State' Theory of Confessions," 43 *UCLA Law Review* 933, 935–36 (1996), deriving lower estimate with which to compare studies.

[13] See Cassell and Hayman, *supra* note, at 869. For an interesting though ultimately unpersuasive argument that the Salt Lake County confession rate is actually higher, see Thomas, "Plain Talk About the *Miranda* Empirical Debate," 944–53.

[14] See Cassell and Hayman, *supra* note, at 926–30, discussing Richard A. Leo, "Inside The Interrogation Room," 86 *Journal of Criminal Law and Criminology* 266 (1996).

[15] Floyd Feeney et al., *Arrests Without Conviction: How Often They Occur and Why* 142 (1983).

[16] See Gary D. Lafree, "Adversarial and Nonadversarial Justice: A Comparison of Guilty Pleas and Trials," 23 *Criminology*

289, 302 (1985).

[17] See Federal Bureau of Investigation, *Uniform Crime Reports, Crime in the United States 1995* (1996) [hereinafter cited as *UCR*-year].

[18] Fred E. Inbau et al., *Criminal Interrogation and Confessions* at xiv (2d ed. 1986).

[19] Stephen J. Schulhofer, "Reconsidering *Miranda*," 54 *University of Chicago Law Review* 435, 436 (1987).

[20] Federal Bureau of Investigation, *Uniform Crime Reporting Handbook* 41-42 (1984).

[21] Paul G. Cassell and Richard Fowles, "Handcuffing the Cops? A Thirty Year Perspective on *Miranda's* Harmful Effects on Law Enforcement," 50 *Stanford Law Review* (1998). For more details about our analysis of clearance rates, including methodological issues, see ibid. For further discussion of this analysis, compare John J. Donohue III, "Did *Miranda* Diminish Police Effectiveness?," 50 *Stanford Law Review* 1147 (1998), confirming some aspects of the analysis and raising questions about others, with Paul G. Cassell and Richard Fowles, "Falling Clearance Rates After *Miranda*: Coincidence Or Consequence," 50 *Stanford Law Review* 1181 (1998), responding to Donohue.

[22] *UCR*-1966, *supra* note, at 27; *UCR*-1967, *supra* note, at 30.

[23] *UCR*-1967, *supra* note, at 30.

[24] See Otis H. Stephens et al., "Law Enforcement and the Supreme Court: Police Perceptions of the *Miranda* Requirements," 39 *Tennessee Law Review* 407 (1972); see also Otis H. Stephens Jr., *The Supreme Court and Confessions of Guilt* (1973).

[25] See Project, "Interrogations in New Haven: The Impact of *Miranda*," 76 *Yale Law Journal* 1519, 1611-12 (1967).

[26] See Gary L. Wolfstone, "*Miranda* — A Survey of Its Impact," 7 *Prosecutor* 26, 27 (1971).

[27] James W. Witt, "Noncoercive Interrogation and the Administration of Criminal Justice: The Impact of *Miranda* on Police Effectuality," 64 *Journal of Criminal Law and Criminology* 320, 325, 330 (1973).

[28] FBI clearance rates have been criticized as subject to interdepartmental variations in what constitutes solving or "clearing" a crime, but the figures used here come from the aggregate national clearance rate, comprised of reports filed by thousands of law enforcement agencies. Even if a particular city reported rates in a questionable fashion, our results would be unaffected if any manipulations did not change significantly in the several years surrounding *Miranda* or if any changes in the manipulations were relatively small in comparison to the total number of reports nationally. These are both reasonable assumptions. See James Alan Fox, *Forecasting Crime Data: An Econometric Analysis* 7 (1978), concluding that the problem of data manipulation is "not overly troublesome" for time series analysis that "does not involve cross-sectional data, but rather a time series from the *same* population"; Charles R. Tittle and Alan R. Rowe, "Certainty of Arrest and Crime Rates: A Further Test of the Deterrence Hypothesis," 52 *Social Forces* 455, 456 (1974), although manipulation is possible, "such biases would seem to be distributed throughout the various police departments so that the validity of a study which examines internal variations in the entire body of data . . . would be unaffected.".

[29] See Stephen J. Schulhofer, "*Miranda* and Clearance Rates," 91 *Northwestern University Law Review* 278, 291 (1996).

[30] *UCR*-1994, *supra* note, at 208 Table 25.

[31] This is known as "extreme bounds analysis." For further explication, see Cassell and Fowles, *supra* note, at 1103-06.

[32] See Cassell, *supra* note, at 464–66, on collecting the available evidence.

[33] Peter W. Greenwood, *An Analysis of the Apprehension Activities of the New York City Police Department* 18-19 (1970).

[34] See *United States v. Leon*, 468 U.S. 897, 908 n.6 (1984), citing Thomas Y. Davies, "A Hard Look at What We Know (and Still Need to Learn) about the 'Costs' of the Exclusionary Rule: The NIJ Study and Other Studies of 'Lost' Arrests," 1983 *American Bar Foundation Research Journal* 611, 621, 667.

[35] Compare Charles Murray, *Losing Ground: American Social Policy, 1950–1980*, at 117 (1984), reviewing crime statistics and concluding: "Put simply, it was much more dangerous to be black in 1972 than it was in 1965, whereas it was not much more dangerous to be white."

[36] See Cassell, *supra* note, at 473-74, collecting references.

[37] Richard A. Leo, "From Coercion to Deception: The Changing Nature of Police Interrogation in America," 18 *Crime, Law & Social Change* 35, 51 (1992).

[38] Fred P. Graham, *The Self-Inflicted Wound* 22 (1969).

[39] *Miranda*, 384 U.S. at 448–49.

[40] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 93 (1967).

[41] Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 326 (1991).

[42] *Miranda*, 384 U.S. at 505 (Harlan, J., dissenting).

[43] See generally Joseph Grano, *Confessions, Truth and the Law* 173–98 (1994).

[44] 417 U.S. 433 (1974).

[45] Ibid. at 443–44.

[46] *Moran v. Burbine*, 475 U.S. 412, 433 n.4 (1986).

[47] See Office of Legal Policy, *U.S. Department of Justice Report to the Attorney General on the Law of Pre-Trial Interrogation* 40–41, 58–61 (1986).

[48] *Miranda*, 384 U.S. at 467.

[49] William Schaefer, *The Suspect and Society* (1967); Henry Friendly, "The Fifth Amendment Tomorrow: The Case for Constitutional Change," 37 *University of Cincinnati Law Review* 671, 721–25 (1968); Akhil Reed Amar, *The Constitution and Criminal Procedure: First Principles* 76-77 (1997).

[50] See Barry Latzer, "Toward the Decentralization of Criminal Procedure: State Constitutional Law and Selective Disincorporation," 87 *Journal of Criminal Law and Criminology* 63, 101-11 (1996), suggesting this approach through disincorporation of *Miranda*.

[51] *Miranda*, 384 U.S. at 467.

[52] See Harold J. Rothwax, *Guilty: The Collapse of Criminal Justice* 237 (1996); Cassell, *supra* note, at 486–92; Paul G. Cassell, "Protecting the Innocent from False Confessions and Lost Confessions — and from *Miranda*," *88 Journal of Criminal Law and Criminology* 497 (1998).

[53] See Cassell, *supra* note, at 489–92.

[54] See 18 U.S.C. § 3501 (1992); see *Davis v. United States*, 114 S. Ct. 2350, 2358 (1994) (Scalia, J., concurring), arguing § 3501 "reflect[s] the people's assessment of the proper balance to be struck between concern for persons interrogated in custody and the needs of effective law enforcement"; *United States v. Crocker*, 510 F.2d 1129 (10th Cir. 1975), concluding that § 3501 is constitutional; *U.S. v. Rivas-Lopez*, 988 F. Supp. 1424 (D. Utah 1997), also concluding that § 3501 is constitutional.

[55] 384 U.S. at 504 (Harlan, J., dissenting).

About the Author

Paul Cassell is a Professor of Law at the University of Utah College of Law. Before assuming his current position, Professor Cassell served as a federal prosecutor for three years and as an Associate Deputy Attorney General in the U.S. Department of Justice for two years. He also served as a law clerk to Chief Justice Warren E. Burger on the U.S. Supreme Court and to then-Judge Antonin Scalia on the U.S. Court of Appeals for the D.C. Circuit. He has testified often before congressional committees and published widely on issues pertaining to criminal justice. His most recent publications include "*Miranda's* Social Costs: An Empirical Reassessment" in the *Northwestern University Law Review* and "Police Interrogation in the 1990s: An Empirical Study of the Effects of *Miranda*" in the UCLA Law Review. His articles on *Miranda* have also appeared in the *Wall Street Journal, National Review* and the *Legal Times*. Professor Cassell is actively involved in the crime victims' rights movement, and served as counsel for 89 victims of the Oklahoma City bombing in their efforts to obtain the right to observe court proceedings. He is a graduate of Stanford Law School, where he served as President of the Stanford Law Review.

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The National Center for Policy Analysis is a nonprofit, nonpartisan research institute founded in 1983 and funded exclusively by private contributions. The mission of the NCPA is to seek innovative private-sector solutions to public policy problems.

The center is probably best known for developing the concept of Medical Savings Accounts (MSAs). Sen. Phil Gramm said MSAs are "the only original idea in health policy in more than a decade." Congress approved a pilot MSA program for small businesses and the self-employed in 1996 and voted in 1997 to allow Medicare beneficiaries to have MSAs.

In fashioning the 1997 budget deal, members of Congress relied on input from the NCPA's Center for Tax Policy. The Balanced Budget Act incorporated many key NCPA ideas, including the capital gains tax cut and the Roth IRA. Both proposals were part of the pro-growth tax cuts agenda contained in the Contract with America and first proposed by the NCPA and the U.S. Chamber of Commerce in 1991. Two other provisions — an increase in the estate tax exemption and the abolition of the 15 percent tax penalty on excess withdrawals from pension accounts — also reflect NCPA proposals.

The NCPA has also developed the concept of taxpayer choice — letting taxpayers rather than government decide where their welfare dollars go. Sen. Dan Coats and Rep. John Kasich have introduced a welfare reform bill incorporating the idea. It is also included in separate legislation in the House sponsored by Jim Talent and J.C. Watts.

Another important area is entitlement reform. NCPA research shows that elderly entitlements will require taxes that take between one-half and two-thirds of workers' incomes by the time today's college students retire. A middle-income worker entering the labor market today can expect to pay almost $750,000 in taxes by the time he or she is 65 years of age, but will receive only $140,000 in benefits — assuming benefits are paid. At virtually every income level, Social Security makes people worse off — paying a lower rate of return than they could have earned in private capital markets. To solve this problem, the NCPA has developed a 12-step plan for Social Security privatization.

The NCPA has also developed ways of giving parents the opportunity to choose the best school for their children, whether public or private. For example, one NCPA study recommends a dollar-for-dollar tax credit up to $1,000 per child for money spent on tuition expenses at any qualified nongovernment school — a form of taxpayer choice for education.

The NCPA's Environmental Center works closely with other think tanks to provide common sense alternatives to extreme positions that frequently dominate environmental policy debates. In 1991 the NCPA organized a 76-member task force, representing 64 think tanks and research institutes, to produce *Progressive Environmentalism*, a pro-free enterprise, pro-science, pro-human report on environmental issues. The task force concluded that empowering individuals rather than government bureaucracies offers the greatest promise for a cleaner environment. More recently, the NCPA produced *New Environmentalism*, written by Reason Foundation scholar Lynn Scarlett. The study proposes a framework for making the nation's environmental efforts more effective while reducing regulatory burdens.

In 1990 the center created a health care task force with representatives from 40 think tanks and research institutes. The pro-free enterprise policy proposals developed by the task force became the basis for a 1992 book, *Patient Power*, by John Goodman and Gerald Musgrave. More than 300,000 copies of the book were printed and distributed by the Cato Institute.

A number of bills before Congress promise to protect patients from abuses by HMOs and other managed care plans. Although these bills are portrayed as consumer protection measures, NCPA studies show they would make insurance more costly and increase the number of uninsured Americans. An NCPA proposal to solve the problem of the growing number of Americans without health insurance would provide refundable tax credits for those who purchase their own health insurance.

NCPA studies, ideas and experts are quoted frequently in news stories nationwide. Columns written by NCPA experts appear regularly in national publications such as *The Wall Street Journal, The Washington Times* and *Investor's Business Daily*. NCPA Policy Chairman Pete du Pont's radio commentaries are carried on 290 radio stations across America. The NCPA regularly sponsors and participates in *Firing Line Debate,* which is aired on 302 public broadcasting stations. The NCPA additionally sponsors several one-hour televised debates on the PBS program *DebatesDebates* shows each year.

According to Burrelle's, the NCPA reached the average household 10 times in 1997. More than 35,000 column inches devoted to NCPA ideas appeared in newspapers and magazines in 1997. The advertising value of this print and broadcast coverage was more than $90 million, even though the NCPA budget for 1997 was only $3.6 million.

The NCPA has one of the most extensive Internet sites for pro-free enterprise approaches to public policy issues. All NCPA publications are available on-line, and the website provides numerous links to other sites containing related information. The NCPA also produces an on-line journal, *Daily Policy Digest,* which summarizes public policy research findings each business day and is available by e-mail to anyone who requests it.

What Others Say about the NCPA

"...influencing the national debate with studies, reports and seminars."

— TIME

"...steadily thrusting such ideas as 'privatization' of social services into the intellectual marketplace."

— CHRISTIAN SCIENCE MONITOR

"Increasingly influential."

— EVANS AND NOVAK