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Public-Safety Exception to Miranda: The Supreme Court Writes Away Rights - New York v. Quarles

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"PUBLIC-SAFETY" EXCEPTION TO *MIRANDA*: THE SUPREME COURT WRITES AWAY RIGHTS

New York v. Quarles
104 S. Ct. 2626 (1984)

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The United States Supreme Court, in 1966, issued one of its most controversial criminal procedure decisions. In *Miranda v. Arizona*,[1] the Court held that since custodial interrogation contains "inherently compelling pressures,"[2] a suspect in custody and facing interrogation must be informed of his constitutional rights against self-incrimination[3] and the right to counsel.[4] A violation of this rule will result in the suppression of any incriminating statements made by the suspect from trial.[5] Thus, *Miranda* promoted an individual's right to exercise free and informed judgment while under the suspicion of criminal conduct.

Recently, however, the Supreme Court carved out an exception to *Miranda* which undercuts the constitutional guarantees once afforded a criminal suspect by that decision. In *New York v. Quarles*,[6] the Court held that in situations where a police officer asks a suspect in custody questions reasonably prompted by a concern for public safety, any incriminating evidence thereby obtained is admissible at trial, regardless of

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1. 384 U.S. 436 (1966).

2. *Id.* at 467.

3. *Id.* at 444. The fifth amendment provides that "[n]o person shall . . . be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. The fifth amendment was held applicable to the states through the due process clause of the fourteenth amendment in Malloy v. Hogan, 378 U.S. 1 (1964).

4. *Miranda*, 384 U.S. at 444. The sixth amendment, held applicable to the states through the due process clause of the fourteenth amendment in Gideon v. Wainright, 372 U.S. 335, 339-40 (1963), provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. CONST. amend. VI. Although *Miranda* was explicitly a fifth amendment self-incrimination decision, the sixth amendment right to counsel was implicit in its holding. As the *Miranda* Court stated, "the presence of counsel . . . would be the adequate protective device necessary to make the process of police interrogation conform to the dictates of the [fifth amendment] privilege." *Miranda*, 384 U.S. at 466.

5. *But see* Harris v. New York, 401 U.S. 222 (1971). In *Harris*, the Court held that incriminating statements obtained in violation of *Miranda* may be used to impeach the testimony of a defendant, provided the statements were made voluntarily. Chief Justice Burger, writing for the majority, construed *Miranda* as only barring the prosecution from using improperly obtained statements in its case-in-chief. *Id.* at 224-25.

6. 104 S. Ct. 2626 (1984).

whether *Miranda* warnings were provided.[7] Although decisions after *Miranda* attempted to limit the scope of its holding,[8] *Quarles* was the first Supreme Court decision to recognize a "public-safety" exception to fifth amendment protections delineated by *Miranda*.[9]

This comment will first examine the history of custodial interrogation with respect to the fifth amendment privilege against compulsory self-incrimination. The *Quarles* decision will then be summarized, and each of its three opinions discussed. Finally, this comment will analyze *Quarles* based on its interpretation of *Miranda* principles, concluding that the adoption of a "public-safety" exception to *Miranda* undermines the rationale of that decision and presents an unworkable standard for law enforcement agencies to follow.

HISTORICAL BACKGROUND

A. Miranda v. Arizona

In *Miranda v. Arizona*,[10] the Supreme Court significantly altered the standard for admission, at trial, of incriminating statements elicited from a criminal suspect. Prior to *Miranda*, the Court applied a due process "voluntariness test" to determine the admissibility of a confession obtained through police interrogation.[11] The test required an examination of the "totality of the circumstances."[12] However, the *Miranda* Court recognized that the traditional "voluntariness" test did not adequately protect against sophisticated methods of circumventing the privilege

7. *Id.* at 2632.

8. *See infra* note 27 for cases limiting the scope of *Miranda*.

9. While the Court has never recognized such an exception in the fifth amendment area, it has made it clear that exigent circumstances can justify the police in conducting searches or making seizures without a warrant in the fourth amendment context. *See* Cupp v. Murphy, 412 U.S. 291 (1973) (acknowledging that a warrantless search is permissible to prevent the imminent destruction of evidence); Warden v. Hayden, 387 U.S. 294 (1967) (recognizing that the "hot pursuit" of a suspect is an exception to the warrant requirement).

10. 384 U.S. 436 (1966).

11. *See* Culombe v. Connecticut, 367 U.S. 568, 601-02 (1961); Reck v. Pate, 367 U.S. 433, 440-41 (1961); Spano v. New York, 360 U.S. 315, 322-24 (1959). For a general discussion of the "voluntariness" test, *see* C. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE §§ 147-150 (2d ed. 1972).

12. In analyzing the "totality of the circumstances," the courts balanced police conduct in eliciting the incriminating statements against the accused's ability to decide freely whether to admit, deny, or refuse to answer. *Miranda*, 384 U.S. at 534 (White, J., with Harlan and Stewart, JJ., dissenting). This balancing process included the consideration of such factors as the accused's age, education, level of intelligence, and prior experience with the police. *See* Gallegos v. Colorado, 370 U.S. 49 (1962) (age); Culombe v. Connecticut, 367 U.S. 568 (1961) (intelligence); Spano v. New York, 360 U.S. 315 (1959) (police experience); Crooker v. California, 357 U.S. 433 (1958) (education). Police tactics, such as depriving the suspect of sleep and threatening the suspect, were also considered. *See* Haynes v. Washington, 373 U.S. 503 (1963) (threats); Lisenba v. California, 314 U.S. 219 (1941) (deprivation of sleep).

against compulsory self-incrimination.[13] More importantly, the Court realized that in a custodial setting, there was inherent coercion which could undermine a suspect's desire to remain silent.[14] In order to alleviate these coercive pressures,[15] the *Miranda* Court held that the prosecution in a criminal case could not introduce any statement, inculpatory or exculpatory, made by a defendant during custodial interrogation, unless the prosecution has first demonstrated the use of safeguards effective to protect the defendant's fifth amendment privilege.[16]

These fifth amendment safeguards which the Court articulated are the now familiar *Miranda* "warnings."[17] Any incriminating statements[18] made during a custodial interrogation not preceded by *Miranda* warnings are inadmissible in the prosecution's case.[19] However, once the warnings are administered, a suspect may waive his rights, provided that the waiver is made voluntarily, knowingly, and intelligently.[20] Even if a valid waiver is made, in the event the suspect later indicated that he wishes to consult an attorney or not to be questioned, the interrogation

13. *See* Sonenshein, *Miranda and the Burger Court: Trends and Countertrends*, 13 LOY. U. L. REV. 405, 412-13 (1982) [hereinafter cited as Sonenshein].

14. *Miranda*, 384 U.S. at 457-58, 461, 470.

15. *Id.* at 467. The coercive atmosphere present in custodial interrogation places pressure on a suspect to make incriminating statements, and thus can jeopardize his fifth amendment privilege against self-incrimination. *Id.* at 461. "An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion . . . cannot be otherwise than under compulsion to speak." *Id.* The recitation of *Miranda* warnings was intended to dispel the coercion inherent in the custodial setting. *Id.* at 469.

16. *Id.* at 444.

17. The warnings include informing a suspect, prior to questioning, of his right to remain silent, of the fact that any statement he makes could be used against him in court, and of his right to the presence of an attorney, retained or appointed. *Id.* at 468-73.

18. The Court stated in *Miranda*:

> No distinction can be drawn between statements which are direct confessions and statements which amount to "admissions" of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner; it does not distinguish degrees of incrimination. Similarly, for precisely the same reason, no distinction may be drawn between inculpatory statements and statements alleged to be merely "exculpatory." If a statement made were in fact truly exculpatory it would, of course, never be used by the prosecution. In fact, statements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial or to demonstrate untruths in the statement given under interrogation and thus to prove guilt by implication. These statements are incriminating in any meaningful sense of the word and may not be used without the full warnings and effective waiver required for any other statement.

Id. at 476-77.

19. *Id.* at 444. *See supra* note 5 for the exception to the general rule that statements obtained in violation of *Miranda* are inadmissible in court.

20. *Id.* at 475. The *Miranda* Court adopted the standard for waiver of constitutional rights enunciated in Johnson v. Zerbst, 304 U.S. 458, 464 (1938). The Court added that a waiver will not be presumed from a "silent record," *Miranda*, 384 U.S. at 475; rather, a waiver must be "specifically made" after the warnings are provided. *Id.* at 470.

must cease.[21]

Miranda defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[22] Where a suspect is not in custody and therefore free to terminate a police interview, the coercive atmosphere is not sufficient to require *Miranda* warnings.[23] Likewise, even though a suspect is in custody, any volunteered statements to police are admissible in evidence because they are not the product of compulsion.[24] Thus, for *Miranda* to apply, both components, custody and interrogation, must be present.

Aftermath of Miranda

Decisions in the wake of *Miranda* further clarified such issues as what constitutes valid waiver of *Miranda* rights;[25] what constitutes the custodial situation which *Miranda* safeguards;[26] and what constitutes interrogation in a custodial setting.[27] In those cases, as well as in others involving *Miranda* principles, the Court, in order to preserve the clarity of *Miranda*, repeatedly refused to sanction attempts to bend the literal terms of that decision.[28] Consequently, once a court determined that the

21. *Id.* at 473-74.

22. *Id.* at 444.

23. *See, e.g.*, Oregon v. Mathiason, 429 U.S. 492 (1977) (per curiam) where the Supreme Court held that a suspect who "voluntarily" comes to the police station in response to a police request is not in custody, and is therefore not entitled to *Miranda* warnings; Beckwith v. United States, 425 U.S. 341 (1976) where the Court found that a defendant who was interviewed in his home was not in custody for *Miranda* purposes since he could have ended the meeting at any time.

24. The relevant language in *Miranda* is:

> In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today.

384 U.S. at 478.

25. *See, e.g.*, North Carolina v. Butler, 441 U.S. 369 (1979) where a suspect's refusal to sign a written waiver form was held not to automatically negate his waiver of his *Miranda* rights; Michigan v. Mosley, 423 U.S. 96 (1975) where the Court ruled that after a suspect has asserted his right to remain silent, *Miranda* does not *per se* preclude questioning in a subsequent session.

26. *See supra* note 22 for cases which considered the issue of "custody" after the *Miranda* decision.

27. In Rhode Island v. Innis, 446 U.S. 291 (1980), the Court defined interrogation as "any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect," in addition to express questions. *Id.* at 301.

28. *See, e.g.*, Minnesota v. Murphy, 104 S. Ct. 1136 (1984) (refusal to extend *Miranda* requirements to interview with probation officers); Fare v. Michael C., 442 U.S. 707 (1979) (refusal to

accused had been taken into "custody" and subjected to "interrogation" without the benefit of *Miranda* warnings, it has consistently forbidden the prosecution to introduce the accused's statements in its case-in-chief.[29]

Before *Quarles*, the Supreme Court considered *Miranda's* applicability to situations relating to the whereabouts of an incriminating weapon on two occasions. The first was in *Orozco v. Texas*[30] where a few hours after a murder had been committed, four police officers entered the defendant's home, and proceeded to question him about whether he had been present at the scene of the shooting and whether he owned a gun. The defendant admitted owning one, and after being asked a second time where the gun was located, he responded that it was hidden in the backroom. The officers, however, had failed to provide the suspect with his *Miranda* warnings. As a result, the Court suppressed all of the defendant's statements, holding that they were obtained in "flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*."[31]

Similarly, *Rhode Island v. Innis*[32] involved the location of a shotgun disposed of near a school for handicapped children. In that case, the arresting officer, in the suspect's presence, remarked, "there's a lot of handicapped children running around in this area, and God forbid one of them might find a weapon with shells and they might hurt themselves."[33] After hearing the comment, the suspect directed the officer to the weapon. Although the Court concluded that the suspect had not been subjected to interrogation,[34] it stated in dicta, had *Miranda* been implicated, the laudable motives of the officer would not reduce the scope of that decision.[35]

In short, prior to the *Quarles* decision, the Supreme Court required

equate request to see a probation officer with request to see an attorney for *Miranda* purposes); Beckwith v. United States, 425 U.S. 341 (1976) (refusal to extend *Miranda* to questioning in non-custodial circumstances).

29. *See, e.g.*, Estelle v. Smith, 451 U.S. 454 (1981); Orozco v. Texas, 394 U.S. 324 (1969); Mathis v. United States, 391 U.S. 1 (1968). *Cf.* Harris v. New York, 401 U.S. 222 (1971) (statements may be used for impeachment purposes).

30. 394 U.S. 324 (1969).

31. *Id.* at 326.

32. 446 U.S. 291 (1980).

33. *Id.* at 294-95.

34. *Id.* at 302. The Supreme Court held that there was no interrogation because the officers should not necessarily have known that their conversation was "reasonably likely to elicit an incriminating response." *Id.* The Court relied on the fact that there was nothing to indicate that the officers were aware that the defendant would be susceptible to an appeal to his conscience. *Id.* at 303.

35. *Id.* at 302.

the administration of *Miranda* warnings during custodial interrogations concerning the location of a weapon.[36]

FACTS OF THE CASE

On September 11, 1980, at approximately 12:30 a.m., a woman approached two police officers who were on road patrol in Queens, New York. She told them that she had just been raped. The woman described her assailant to the officers, and stated that he had just entered a nearby supermarket and was carrying a gun.

The officers drove to the supermarket, and while one of them radioed for assistance, the other, Officer Kraft, entered the store. Officer Kraft spotted the respondent, Benjamin Quarles, who fit the description given by the woman. Quarles then fled to the rear of the store with the officer in pursuit. After a brief chase, Officer Kraft cornered Quarles, ordered him to put his hands over his head, frisked him, and discovered that he was wearing an empty shoulder holster. By this time, other officers had arrived on the scene, and three of them had surrounded Quarles with their guns drawn.

After Officer Kraft handcuffed Quarles, he asked him where his gun was. Quarles gestured toward a stack of empty cartons a few feet away, and replied: "the gun is over there." Officer Kraft searched through the cartons and found a loaded .38 caliber revolver. He secured the gun, formally placed Quarles under arrest, and read him his *Miranda* warnings.[37] Quarles indicated that he would be willing to answer any questions without an attorney present. Officer Kraft then asked Quarles if he owned the gun, and Quarles responded that he did; he asked Quarles where he had purchased it, and Quarles replied in Florida.

Subsequently, Quarles was charged in the New York trial court with criminal possession of a weapon.[38] Before trial, Quarles moved to suppress his admissions to Officer Kraft and the weapon seized. The trial court held that Quarles' statement identifying the location of the gun and the gun itself had to be excluded because at the time, Officer Kraft failed to administer the preinterrogation warnings that Quarles was constitu-

36. *But see*, People v. Mullins, 188 Colo. 23, 532 P.2d 733 (1975); People v. Brown, 131 Ill. App. 2d 244, 266 N.E.2d 131 (1970); People v. Toler, 45 Mich. App. 156, 206 N.W.2d 253 (1973); State v. Lane, 77 Wash. 2d 860, 467 P.2d 304 (1970), all of which permit police officers to question suspects about the presence of dangerous weapons, in the absence of *Miranda* warnings, if the officers are motivated by concern for personal and public safety.

37. *See supra* note 16 for a description of the *Miranda* warnings.

38. 104 S. Ct. 2626, 2630. The state initially charged Quarles with rape and possession of a weapon, but only the latter charge was pursued. The record provides no information as to why the rape charge was dropped. *Id.* at 2630 n.2.

tionally entitled. In addition, it suppressed Quarles' subsequent statements as evidence tainted by the prior *Miranda* violation.[39] The Appellate Division of the Supreme Court of New York affirmed without opinion.[40]

The New York Court of Appeals granted leave to appeal and affirmed the lower courts' ruling.[41] It concluded that all of Quarles' statements and the gun were properly suppressed since Quarles was in custody and had not initially been given *Miranda* warnings.[42] Moreover, the court refused to recognize an "exigency exception"[43] because it found no indication that the public safety was jeopardized or that the interrogation was prompted by any such concern.[44] The court distinguished two New York decisions which had permitted interrogation without warnings as inapposite.[45]

The United States Supreme Court granted certiorari,[46] and reversed the Court of Appeals' decision to suppress the evidence and remanded for further proceedings. The Court determined that the case presented a situation where the concern for public safety outweighed adherence to the mandates of *Miranda*.

Reasoning of the Majority Opinion

Justice Rehnquist began the decision by articulating the scope of the fifth amendment privilege against compulsory self-incrimination.[47] The Court emphasized that fifth amendment protection extended only to those incriminating admissions which were a product of coercion.[48] Since there had never been any contention that Quarles' incriminating

39. *Id.* at 2630. *See* Wong Sun v. United States, 371 U.S. 471 (1963) where the Court held that the defendant's statement, made right after the unlawful invasion of his house, could not be used against him because it was a "fruit" of the illegal entry.

40. 85 A.D.2d 936, 447 N.Y.S.2d 84 (1981).

41. 58 N.Y.2d 664, 444 N.E.2d 984, 458 N.Y.S.2d 520 (1982).

42. 58 N.Y.2d at 666, 444 N.E.2d at 985, 458 N.Y.S.2d at 521.

43. *See supra* note 9 for examples of exigent circumstances recognized as exceptions to the fourth amendment warrant requirement.

44. 58 N.Y.2d at 666, 444 N.E.2d at 985, 458 N.Y.S.2d at 521.

45. *Id.* According to the court, in *People v. Huffman*, the question, "what are you doing back here?" was permitted because the police were attempting to clarify criminal activity which they inadvertently came upon, rather than trying to elicit incriminating evidence as in the instant case. 41 N.Y.2d 29, 359 N.E.2d 353, 390 N.Y.S.2d 843 (1976). In addition, the court stated that in *People v. Chestnut*, a similar question was permitted under the fourth amendment because the defendant had not been reduced "to a condition of physical powerlessness" as the defendant here. 51 N.Y.2d 14, 409 N.E.2d 958, 431 N.Y.S.2d 485, *cert. denied*, 449 U.S. 1018 (1980).

46. 103 S. Ct. 2118 (1983).

47. 104 S. Ct. 2626, 2630.

48. "Absent some officially *coerced* self-accusation, the Fifth Amendment privilege is not violated even by the most damning admissions." Id. at 2630-31 (quoting United States v. Washington, 431 U.S. 181, 187 (1977)).

statements to the police were "actually compelled" in traditional fifth amendment, pre-*Miranda* terms,[49] the Court found there was no constitutional imperative requiring the exclusion of the evidence.[50]

The majority proceeded to define the constitutional status of *Miranda* principles.[51] Referring to *Miranda* provisions as "prophylactic" standards[52] developed by the Court in order to provide "practical reinforcement"[53] for the fifth amendment right, Justice Rehnquist found the required warnings to be merely procedural safeguards which were not themselves constitutionally based.[54] Thus, the Court framed the issue of the case as whether Officer Kraft was justified in failing to adminsiter the "procedural safeguards" associated with the fifth amendment privilege since *Miranda*.[55]

After determining that the concealed gun posed a danger to the public,[56] the Court concluded that Officer Kraft properly questioned Quarles as to the weapon's whereabouts, even though no *Miranda* warnings were provided.[57] Based on the overriding interest in protecting the public, the Court theorized that a "public-safety" exception to *Miranda* should be recognized.[58] Under this exception, if an officer is reasonably prompted by concern for the public's safety, he will not be required to adhere to the strictures of *Miranda* when interrogating a suspect in custody. The Court opted for an objective standard because of the difficulty in measuring the subjective motivations of an officer, who, out of necessity, acted spontaneously at the time of arrest.[59]

In adopting its public-safety exception, the Court reasoned that the doctrinal underpinnings of *Miranda* have no application in situations

49. *Quarles*, 104 S. Ct. at 2631. The majority defined "actual compulsion" as conduct which would overcome an individual's will to resist. Since the Court required a showing of "actual compulsion," it was obligated to reject Quarles' contention that the statement must be *presumed* compelled because of the absence of *Miranda* warnings. *Id.* at 2631 n.5.

50. *Id.* at 2633 n.7.

51. *Id.* at 2630-31. The Court conceded that Quarles met the two prongs of *Miranda* necessary to come within its purview: he was in "custody" and was "interrogated."

52. *Id.* at 2631.

53. *Id.*, (quoting Michigan v. Tucker, 417 U.S. 433, 444 (1974)).

54. *Quarles*, 104 S. Ct. at 2631. The Court cited Michigan v. Tucker, 417 U.S. 433, 444 (1974) in support of this proposition.

55. *Quarles*, 104 S. Ct. at 2631.

56. *Id.* at 2632. According to the majority, the hidden gun posed a danger to the public because an accomplice might make use of it, or a customer or employee might later find it.

57. *Id.* at 2633.

58. *Id.* at 2632.

59. *Id.* at 2632 n.6. The majority noted that subjective standards have been rejected in other contexts. For example, in Rhode Island v. Innis, 446 U.S. 291, 301 (1980), the officer's subjective intent to incriminate was not determinative of whether "interrogation" occurred. And in United States v. Mendenhall, 446 U.S. 544, 554 n.6 (1980), the officer's subjective intent to detain was not determinative of whether a "seizure" occurred within the meaning of the fourth amendment.

where the public safety is at risk.[60] According to Justice Rehnquist, in *Miranda*, where the societal cost was fewer convictions, the deterrent aspect of the procedural safeguards was deemed acceptable in order to protect the fifth amendment privilege.[61] However, in the present case, where the safety of the public was endangered due to the missing weapon, the social utility of the *Miranda* safeguards diminishes.[62] Since considerations of public safety outweigh adherence to the rules enunciated in *Miranda*, the Court concluded that an exception to *Miranda* should be invoked.[63] In essence, Justice Rehnquist utilized a cost-benefit analysis in reaching his conclusion.

Another reason the Court advanced for its departure from *Miranda* principles was that the present state of law places officers in a dilemma whenever they question a criminal suspect who appears to know of some danger to the public's safety. According to Justice Rehnquist, under current law, if the police interrogate a suspect without reciting *Miranda* warnings, the suspect may provide information that the authorities can use to neutralize the volatile situation facing them, but any statement made by the suspect will be inadmissible at trial.[64] On the other hand, if police apprise a suspect of his constitutional rights in order to preserve the admissibility of evidence which may be revealed, the suspect may be deterred from responding to their questions, and the danger to the public may go undetected.[65] In Justice Rehnquist's view, therefore, "public-safety" exception eliminates the necessity of this "on-the-scene balancing process" by allowing police officers to follow their instincts when confronted with these situations.[66]

The Court conceded that its newly created exception reduces the clarity of the *Miranda* rule and deviates from precedent.[67] Nonetheless,

60. *Quarles*, 104 S. Ct. at 2632.

61. *Id.*

62. *Id.* at 2632-33. In the majority's view, if police are required to administer *Miranda* warnings before asking the location of a weapon, suspects in Quarles' position may be deterred from responding. *Id.* at 2632.

63. *Id.* Justice Rehnquist analogized to the fourth amendment where an "exigency exception" is recognized. *Id.* at 2630 n.3.

64. *Id.* at 2633.

65. *Id.*

66. Justice Rehnquist confidently stated, "[t]he exception will not be difficult for police officers to apply because in each case it will be circumscribed by the exigency which justifies it." In his opinion, police have the ability to "instinctively" distinguish between questions tied to public and personal safety and questions designed to elicit testimonial evidence. *Id.*

67. *Id.* The majority distinguished the present case from Orozco v. Texas, 394 U.S. 324 (1969) where the Supreme Court required *Miranda* warnings prior to interrogation concerning the location of a gun. In *Orozco*, according to the majority, the questioning, which took place in the suspect's home, was investigatory and did not relate to a need to protect the police or the public. *Quarles*, 104 S. Ct. at 2633 n.8. With respect to Rhode Island v. Innis, 446 U.S. 291 (1980), which also involved

the Court refused to penalize officers by excluding evidence they obtain out of concern for personal and public safety. Accordingly, the Court admitted the respondent's statement, "the gun is over there." Furthermore, since the Court found no *Miranda* violation, it also admitted the gun and the respondent's subsequent statements without discussion.[68]

Dissenting Opinion

In his dissent, Justice Marshall[69] first attacked the majority's abuse of the facts in fashioning its exception to *Miranda*. There was overwhelming evidence, in his opinion, to support the New York Court of Appeals' decision that Quarles' hidden gun did not pose a threat either to the arresting officer or to the public.[70] Justice Marshall cynically observed that a state court's findings warrant a " 'high measure of deference,' only when the deference works against the interest of a criminal defendant."[71]

Even more troubling to Justice Marshall was the majority's treatment of the legal issues, particularly its misunderstanding of *Miranda*. He objected to the majority's implication that the *Miranda* decision involved nothing more than a "judicial balancing act."[72] Rather, in his view, *Miranda* implemented a constitutional privilege which, under no circumstances, could be abridged.[73] The majority violated this principle unnecessarily, according to Justice Marshall, because the public safety can be sufficiently protected without the recognition of an exception to *Miranda*. He noted that *Miranda* and the fifth amendment do not prohibit emergency questioning; they only bar the introduction of coerced statements at trial.[74]

Justice Marshall also expressed concern over the exception's potential to destroy the clarity of the *Miranda* doctrine for both law enforce-

the whereabouts of a weapon, the *Quarles* Court dismissed it as inapplicable since there was no police interrogation. *Quarles*, 104 S. Ct. at 2633.

68. *Id.* at 2634.

69. *Id.* at 2641 (Marshall, J., Brennan, J., and Stevens, J., dissenting.)

70. *Id.* at 2642. Justice Marshall based his conclusion on Officer Kraft's testimony at the suppression hearing as well as on the findings of the New York Court of Appeals.

71. *Id.* at 2643, (quoting Sumner v. Mata, 455 U.S. 591, 598 (1982)).

72. *Id.* at 2645.

73. *Id.* Justice Marshall quoted a portion of the *Miranda* opinion:

> A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged.

Miranda v. Arizona, 384 U.S. 436, 479 (1966).

74. *Quarles*, 104 S. Ct. at 2648.

ment officers and members of the judiciary, citing this case as an example of the "chaos" the exception will release. He seriously questioned how law enforcement officers will react to the majority's new rule in the confusion of the real world if two appellate courts, the New York Court of Appeals and the United States Supreme Court, so fundamentally disagree over the danger to the public presented by the simple and clear facts of this case.[75] The end result, Justice Marshall predicted, will be controversy over the scope of the exception as well as mistakes in its application.[76]

Concurring and Dissenting Opinion

Justice O'Connor disagreed with the majority's ruling to admit the respondent's initial statement for reasons similar to those advocated by Justice Marshall. First, after examining the history of *Miranda* and its progeny,[77] she concluded that *Miranda* was more concerned with protecting the rights of criminal suspects than securing the public safety.[78] Secondly, she determined that a "public-safety" exception would distort the clear standards enunciated in *Miranda*.[79]

However, Justice O'Connor concurred with the majority's decision to admit the gun. Relying primarily on *Schmerber v. California*,[80] she noted that the fifth amendment privilege only bars compelled "testimony," not physical evidence derived therefrom.[81] Moreover, she found that the values underlying the privilege are not applicable in situations where the only evidence to be introduced is derivative; resulting not from actual compulsion, but from an unwarned statement.[82]

75. *Id.* at 2644.

76. *Id.* With respect to the admission of the weapon, Justice Marshall suggested that the order of the New York Court of Appeals to suppress the gun be vacated and the matter remanded for reconsideration in light of a recent decision, Nix v. Williams, 104 S. Ct. 2501 (1984). *Quarles*, 104 S. Ct. at 2650. In *Nix*, this Court interpreted *Wong Sun* as allowing the admission into evidence of constitutionally-tainted "fruits" that the government would have inevitably discovered. However, even under *Nix*, Justice Marshall still doubted whether the gun would be admissible at trial. *Quarles*, 104 S. Ct. 2649-50.

77. *Miranda*, 384 U.S. 436 (1966); California v. Beheler, 103 S. Ct. 3517 (1983) (per curiam); Oregon v. Mathiason, 429 U.S. 492 (1977); Beckwith v. United States, 425 U.S. 341 (1976); Michigan v. Mosley, 423 U.S. 96 (1975).

78. 104 S. Ct. at 2634-35.

79. *Id.* at 2636.

80. 384 U.S. 757 (1966).

81. *Quarles*, 104 S. Ct. at 2637. The defendant in *Schmerber* claimed that the privilege against self-incrimination prohibited the state from requiring him to submit to a blood test, the results of which would be offered to prove his guilt at trial. The blood tests were found to be admissible because they were nontestimonial in nature. *Schmerber*, 384 U.S. at 765 (1966).

82. *Quarles*, 104 S. Ct. at 2640.

ANALYSIS

Among the policy considerations and rationales inherent in *Miranda*,[83] none were adhered to by the *Quarles* Court in adopting its "public-safety" exception. At the outset of his opinion, Justice Rehnquist denigrated the importance of the *Miranda* warnings by stating that they are "not themselves rights protected by the Constitution,"[84] but merely "procedural safeguards" associated with the fifth amendment privilege against compulsory self-incrimination. The fallacy of this attempt to deny the constitutional basis of the *Miranda* warnings is illustrated by the language of *Miranda* itself, which holds "the requirement of warnings and waiver of rights [to be] fundamental with respect to the fifth amendment privilege and not simply a preliminary ritual to existing methods of interrogation."[85] Evidence obtained in the absence of warnings was considered to be obtained "under circumstances that did not meet the constitutional standards for the protection of the privilege."[86] In short, the fifth amendment privilege is fulfilled only when the individual is provided with *Miranda* warnings.[87]

By removing the constitutional underpinnings of *Miranda*, the Court ignored the core of that decision: that custodial interrogation is inherently coercive and that only compliance with the *Miranda* doctrine can eliminate that coercion. The majority did not contend that custodial interrogation prompted by a concern for public safety is any less coercive than custodial interrogations conducted for other purposes. Rather, the majority's only argument in support of its exception is that the police would be better able to secure the public's safety if they were not always required to observe the *Miranda* rule. But, the majority refused to recognize that *Miranda* was concerned with the coercive nature of custodial interrogations and a suspect's constitutional rights, not the public's welfare. Since the majority was unable to establish that custodial interrogations regarding the public safety are likely to be less coercive than interrogations into other matters, it cannot advocate a "public-safety" exception and remain loyal to the spirit of *Miranda*.[88]

83. *Miranda* warnings were designed to dispel the coercion inherent in the custodial setting, to provide clear standards for police officers to follow, and to alert suspects of their constitutional rights. *See* Sonenshein, *supra* note 12, at 413-15.

84. *Quarles*, 104 S. Ct. at 2631. Justice Rehnquist was quoting Michigan v. Tucker, 417 U.S. 433, 444 (1974).

85. *Miranda*, 384 U.S. at 476 (1966).

86. *Id.* at 491.

87. The sixth amendment right to counsel is also violated when *Miranda* is violated. *See supra* note 4.

88. *Quarles*, 104 S. Ct. at 2647 (Marshall, J., dissenting).

The Court's rejection of the respondent's argument that his statement, obtained in violation of *Miranda*, must be "presumed compelled" also indicates the Court's failure to adhere to the underlying premise of the *Miranda* decision. Prior to *Quarles*, there was no need to show actual compulsion because custodial interrogation was, by its nature, coercive under *Miranda*. However, even under the new rule created in *Quarles*, there is no question that "actual compulsion," as required by the Court, was involved. The respondent, in the middle of the night and in the back of an empty supermarket, was surrounded by four police officers whose guns were drawn pointblank at him. He was handcuffed when pointedly asked by Officer Kraft, "Where is the gun?" The respondent was placed in an intimidating atmosphere which pressured him to give self-incriminating testimony, a result abhorrent to *Miranda*.

In fact, the crux of the majority's exception is that interrogation conducted for the purpose of securing the public safety will be sufficiently coercive to provoke a response from the suspect regarding a known threat to the public.[89] By deliberately withholding *Miranda* warnings in situations where the public safety is at risk, police can elicit information from suspects who would be deterred from responding were they advised of their constitutional rights.[90] The police are then rewarded for their impermissible conduct because the unlawfully obtained evidence is admitted at trial. Thus, the "public-safety" exception is an unwise and unprincipled departure from *Miranda* and the proscriptions of the fifth amendment.

As justification for its exception, the majority analogized to the fourth amendment where a similar exception is permitted.[91] This analogy is erroneous considering that the fifth amendment exclusionary rule fundamentally differs from its fourth amendment counterpart. The first dissimilarity is that the fourth amendment exclusionary rule was created by the Supreme Court, while the fifth amendment exclusionary rule is constitutionally mandated.[92] A second major difference is that the fourth

89. *Id.*

90. *Id.*

91. *Id.* at 2630 n.3. As the majority pointed out, an exigent circumstances exception to the fourth amendment warrant requirement has long been recognized. In support of this proposition, the majority cited Michigan v. Tyler, 436 U.S. 499 (1978) which held that when a building is on fire, firemen may enter it and investigate the cause of the blaze without procuring a search warrant, and Warden v. Hayden, 387 U.S. 294 (1967) which held that when police are pursuing a felony suspect, they may search for him in a particular premises that they have reason to believe he has entered, and they may search for weapons without a warrant. The *Quarles* majority suggested that the exigency of the circumstances in the present case requires an exception to *Miranda* and the fifth amendment.

92. Evidence obtained through a violation of the fourth amendment's prohibition of unreasonable searches and seizures is inadmissible at trial, but not by constitutional mandate. Rather, the evidence is excluded because the Supreme Court decided in Weeks v. United States, 232 U.S. 383

amendment applies to tangible evidence; whereas, the fifth amendment covers oral evidence elicited from a suspect during custodial interrogation, which, under *Miranda*, is presumed coercive.[93] Because compelled testimony is inherently unreliable, the trustworthiness of evidence obtained in violation of the fourth amendment is greater than that of evidence obtained in violation of the fifth amendment.[94] And finally, as the majority itself admitted, the fifth amendment proscriptions, unlike the fourth's, are not dismissed upon a showing of reasonableness.[95]

As further support for its ruling, the majority contended that concerns for public safety outweigh adherence to the procedures articulated in *Miranda*. This reasoning is evidence of the majority's serious misunderstanding of that decision. Under *Miranda*, "there was not to be any 'balancing' of society's need for interrogation against a suspect's rights."[96] To the *Miranda* Court, the privilege against self-incrimination was absolute, and therefore could not be "abridged" under any circumstances.[97] Thus, the majority should not be allowed to avoid the strictures of the fifth amendment by "calculating special costs" which come into play when the public security is in question.[98]

Clearly, if concern for the safety of the arresting officer and the public is to override the rights traditionally afforded criminal suspects, then the basis for such action should be supported by the facts, which, in this case, it is not. Based on Officer Kraft's own testimony, the New York Court of Appeals expressly found that there was no threat of harm to the arresting officers at the time of the interrogation.[99] Quarles was apprehended away from the scene of the alleged rape by four police officers with drawn guns; he was frisked and found to be unarmed. Quarles was then handcuffed and the officers holstered their weapons since, as Officer Kraft acknowledged at the suppression hearing, "the situation was under control."[100] Contrary to the majority's intimations, Quarles did not have an actual or potential accomplice. Before the interrogation began,

(1914) that the fourth amendment protection would be more effective if the prosecution was not permitted to introduce unlawfully acquired evidence at trial. However, evidence obtained in violation of *Miranda* must be suppressed from trial in order to protect a defendant's privilege against self-incrimination. *See* Comment, *The Declining Miranda Doctrine: The Supreme Court's Development of Miranda Issues*, 36 WASH. & LEE L. REV. 259, 263 (1979).

93. *Id.*

94. *Id.* at 263-64, (citing Comment, *The Collateral Use Doctrine: From Walder to Miranda*, 62 NW. U.L. REV. 912, 930 (1968)).

95. 104 S. Ct. at 2630 n.3.

96. Sonenshein, *supra* note 12, at 414, *referring to Miranda*, 384 U.S. at 479.

97. *Miranda*, 384 U.S. at 479.

98. 104 S. Ct. at 2649 (Marshall, J., dissenting).

99. 58 N.Y.2d at 666, 444 N.E.2d at 985, 458 N.Y.S.2d at 521.

100. *Id.*

Quarles had been "reduced to a condition of physical powerlessness"[101] and was completely within the control of the police. If the officers had any reason to fear for their safety, they could have immediately removed Quarles from the scene. Thus, Quarles' arrest had been effectuated without risk to the officers' safety.

Furthermore, the chances of injury to the public were remote at best. Although the supermarket was open to the public, Quarles' arrest occurred during the middle of the night when the store was deserted, except for the clerks at the registers. The police could have easily warned anyone in the store about the danger of the discarded weapon or cordoned off the supermarket before searching for the gun.[102] Thus, the speculative danger which the majority posited cannot be the basis for an exception to the *Miranda* doctrine.

Not only did the majority erroneously assume that the public's safety was in danger, but it also disrupted the clarity of *Miranda*, one of the decision's "core virtues."[103] *Miranda* provided concrete guidelines for law enforcement agencies and courts to follow. In adopting a "public-safety" exception to *Miranda* however, the majority blurred that decision's "bright line" test of admissibility beyond recognition. Although the *Quarles* Court promulgated its test as a clear, objective one, in reality, it will require police to draw difficult legal distinctions under high pressure circumstances. Police will not only have to determine whether the objective circumstances permit custodial interrogation, they will also have to remember to recite *Miranda* warnings once the focus of the questioning shifts from securing the public's safety to eliciting testimonial evidence.[104] Since custodial interrogation may serve both purposes, the Court deceives itself by suggesting that the instincts of officers will render its decision self-executing.[105] Rather, courts will be required to make case-by-case evaluations based on the "totality of the circumstances," a result which the *Miranda* Court sought to avoid.

Impact of the Decision

The Court's "public-safety" exception will introduce new elements of uncertainty and obscurity into an area which once provided clear guidance to law enforcement officers and members of the judiciary. First, it is unclear whether the Court's exception to *Miranda* is actually based on

101. 58 N.Y.2d at 667, 444 N.E.2d at 986, 458 N.Y.S.2d at 522.
102. *Quarles*, 104 S. Ct. at 2643 (Marshall, J., dissenting).
103. *See* Fare v. Michael C., 439 U.S. 1310, 1314 (1978) (Rehnquist, J. on application for stay).
104. *Quarles*, 104 S. Ct. at 2644 (Marshall, J., dissenting).
105. *Id.* at 2644 n.4.

the reasonable belief of the police officer involved, or upon his perceptions and instincts. This ambiguity will supply police officers with an incentive to misapply the *Quarles* standard[106] since it is nearly impossible to ascertain, at the time of trial, whether the officer asked questions for the purpose of protecting himself and the public or for inducing incriminating statements. Under *Quarles*, a police officer will easily be able to frame questions to serve both purposes, thereby, avoiding the strictures of *Miranda*. Second, the exception's lack of clarity will require courts to make "intractable factual determinations"[107] based on the "totality of the circumstances." The end result, as Justice O'Connor predicted, will be "a fine-spun new doctrine of public safety exigencies incident to custodial interrogation, complete with the hair-splitting distinctions that currently plague our Fourth Amendment jurisprudence."[108]

CONCLUSION

In conclusion, the *Quarles* decision allows police officers to conduct custodial interrogations without advising suspects of their constitutional rights when some threat to the public exists. The Court reasoned that concerns for public safety must be paramount to adherence to the rules enunciated in *Miranda*. While such a theory may be appropriate under certain circumstances, it is not supported by the record in this case. Rather, the "public-safety" exception created by the Court reduces the clarity of *Miranda* guidelines, provides an unworkable standard for police officers and courts to follow, and allows coerced statements to be admitted at trial. Thus, the exception constitutes a serious erosion of an eighteen-year-old doctrine, and ultimately may be an abrogation of, rather than an exception to, *Miranda*.[109]

106. As Justice Jackson recognized, with respect to the fourth amendment, police officers will take advantage of any ambiguities in constitutional doctrines articulated by the Court. Brinegar v. United States, 338 U.S. 160, 182 (1949) (Jackson, J., dissenting). *See* Sonenshein, *supra* note 12, at 439.

107. Brief for Respondent, Pet. for Cert., p.32.

108. 104 S. Ct. at 2636 (O'Connor, J., concurring and dissenting). Justice O'Connor's prophecy appears to have come true in light of the recent Supreme Court decision Oregon v. Elstad, 105 S. Ct. 1285 (1985) where the Court held that a suspect who has once responded to unwarned custodial interrogation may later waive his fifth amendment right and confess after the receipt of *Miranda* warnings. Ironically, Justice O'Connor wrote the majority opinion.

109. Brief for Respondent, Pet. for Cert., p.38.