

IS *MIRANDA* GOOD NEWS OR BAD NEWS FOR THE POLICE? THE USEFULNESS OF EMPIRICAL EVIDENCE

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I. INTRODUCTION

Most Americans today are familiar with the warnings that police officers generally give to suspects when they are arrested: “You have the right to remain silent [If] you give [up that right] anything you say [can and] will be used against you in [a] court of law. You have the right to an attorney. In the . . . event that [you] can’t afford one . . . the court will appoint one to you.”¹ These warnings derive from the United States Supreme Court’s

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1. *Law & Order: Special Victims Unit: Brotherhood* (NBC television broadcast Jan. 6, 2004); accord Richard A. Leo, *Questioning the Relevance of Miranda in the Twenty-First Century*, 99 MICH. L. REV. 1000, 1000 (2001) [hereinafter Leo, *Questioning*] (“The *Miranda* warnings themselves have become so well-known through the media of television that most people recognize them immediately.”); Meghan J. Ryan, *Miranda’s Truth: The Importance of Adversarial Testing and Dignity in Confession Law*, 43 N. KY. L. REV. 413, 416 (2016) [hereinafter Ryan, *Miranda’s Truth*] (“Most American adults can easily recite the *Miranda* warnings, probably because of their constant repetition on police procedural television shows.”); see also Steven D. Clymer, *Are Police Free to Disregard Miranda?*, 112 YALE L.J. 447, 449 (2002) (“Most people familiar with police television programs, movies, or books understand *Miranda* to require police to advise suspects of their rights to silence and counsel.”); *Law & Order: Special Victims Unit: Birthright* (NBC television broadcast Sept. 21, 2004) (“You have the right to remain silent. If you

1966 case of *Miranda v. Arizona*,² in which the Court held that, unless police officers take sufficient procedural safeguards before obtaining a suspect's statement pursuant to custodial interrogation, that statement is inadmissible.³ In *Miranda*, the Court indicated that providing so-called *Miranda* warnings is a way to sufficiently protect the suspects' rights against self-incrimination.⁴

When *Miranda* was decided, law enforcement feared that the decision would severely hamper police officers' ability to investigate cases and protect the public.⁵ Most commentators acknowledged that the decision would have an impact on law enforcement,⁶ but no one knew how severe that impact would be. Now, over fifty years after *Miranda* was decided, there are still questions about the full impact that the case has had on law enforcement. As

give up that right, anything you say can and will be used against you in a court of law."). These warnings derive from the Court's language in *Miranda v. Arizona*:

As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

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

2. *Miranda*, 384 U.S. at 436.

3. *See id.* at 444. The Supreme Court has since held that there are some exceptions to this rule—conditions under which an unmirandized confession under these circumstances would be admissible at trial. *See, e.g.*, *New York v. Quarles*, 467 U.S. 649, 651, 653 (1984) (finding a public safety exception to *Miranda*); *Harris v. New York*, 401 U.S. 222, 226 (1971) (finding that unmirandized statements may be used for impeachment purposes).

4. *See Miranda*, 384 U.S. at 444. Also, although "[t]he *Miranda* opinion is explicitly based on the Fifth Amendment right that one cannot be compelled to be a witness against oneself in a criminal case . . . *Miranda* is really rooted in a constellation of constitutional rights that includes not only the right not to incriminate oneself but also the rights to the assistance of counsel and due process." Ryan, *Miranda's Truth*, *supra* note 1, at 414.

5. *See* Richard A. Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 622 (1996) [hereinafter Leo, *Impact of Miranda*] ("In its immediate aftermath, the *Miranda* opinion was assailed by police, prosecutors, politicians, and media. Police officials complained indignantly that *Miranda* would handcuff their investigative abilities.").

6. *See id.*; Michael Wald et al., *Interrogations in New Haven: The Impact of Miranda*, 76 YALE L. J. 1519, 1578 (1967) ("*Miranda* provoked an immediate rash of comment The overwhelming majority warned that interrogations are essential to effective law enforcement. This assumption, coupled with the assumption about the impact of warnings on suspect behavior, led them to conclude that law enforcement would be substantially hampered by the *Miranda* rules."). Professor Leo has related:

In its immediate aftermath, the *Miranda* opinion was assailed by police, prosecutors, politicians, and media. Police officials complained indignantly that *Miranda* would handcuff their investigative abilities. Politicians linked *Miranda* to rising crime rates: Richard Nixon publicly denounced *Miranda* and other Warren Court decisions as representing a victory of the "crime forces" over the "peace forces" in American society, while individual congressmen called for Chief Justice Earl Warren's impeachment. Congress as a whole responded to *Miranda* by attempting legislatively to invalidate its holding in the Omnibus Crime Control and Safe Streets Act of 1968. Newspaper editorials deplored the Warren Court's "coddling of criminals," while cartoonists lampooned the logic of the *Miranda* decision.

Leo, *Impact of Miranda*, *supra* note 5, at 622 (footnotes omitted).

the question has been formulated for this Symposium, is *Miranda* good news or bad news for the police?⁷

This question of whether *Miranda* is good news or bad news for the police can have many different answers depending on what is considered good or bad news for the police. If we think of the police being on the side of fairness and equality, then *Miranda* might very well be a good thing to the extent that the rule puts all defendants on an even playing field—at least theoretically.⁸ If we think of the police being tasked with building cases against suspects, then *Miranda* might be a bad thing if it makes it less likely for suspects to confess.⁹ Of course, if we consider whether those confessions are reliable¹⁰ confessions or false confessions,¹¹ it might affect our determination as to whether *Miranda* is good or bad news overall and, perhaps separately, whether it constitutes good or bad news for the police. Also, *Miranda* might be good news for the police because of the sanitizing effect that the warnings have on confessions generally.¹² *Miranda* might be

7. See *11th Annual Criminal Law Symposium Schedule*, TEX. TECH L. REV. (Mar. 31, 2017), <http://texastechlawreview.org/wp-content/uploads/11th-Annual-Criminal-Law-Symposium-Schedule-1-1.pdf>.

8. There has been significant criticism, though, that many defendants lack the capacity to comprehend *Miranda* warnings, rendering the warnings in those circumstances ineffectual and putting these particular defendants on a different playing field than defendants with, for example, higher intelligence quotients. See, e.g., Morgan Cloud et al., *Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. CHI. L. REV. 495, 495 (2002) (“The results show that, in contrast to the nondisabled controls, mentally retarded people simply do not understand the warnings For mentally retarded people, the *Miranda* warnings are words without meaning.”); Richard Rogers et al., *The Comprehensibility and Content of Juvenile Miranda Warnings*, 14 PSYCHOL. PUB. POL’Y & L. 63, 75 (2008) (“The most obvious and far-reaching conclusion from the current data is that typical juvenile *Miranda* warnings are far beyond the abilities of the more than 115,000 preteen offenders charged annually with criminal offenses.” (citation omitted)).

9. See *Miranda*, 384 U.S. at 516 (Harlan, J., dissenting) (stating that the Court’s “rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it” because “[t]here can be little doubt that the Court’s new code would markedly decrease the number of confessions”). Justice White, dissenting, wrote: “The rule announced today will measurably weaken the ability of the criminal law to perform these tasks. It is a deliberate calculus to prevent interrogations, to reduce the incidence of confessions and pleas of guilty and to increase the number of trials.” *Id.* at 541 (White, J., dissenting).

10. Throughout this Article, I often use the terms “reliable” and “reliability” to indicate trustworthiness. Even though, in the scientific community, the terms “accurate” and “accuracy” may be more appropriate, “reliable” and “reliability” are in greater conformity with the legal literature. See Meghan J. Ryan, *Innocence Ignorance: The Failure to Acknowledge the Fallibility and Dignity Components of Humanity*, in Lucien E. Dervan et al., *Voices on Innocence*, 68 FLA. L. REV. 1569, 1582 n.87 (2016).

11. Recent data suggests that at least 253 out of 2,124 (or about 12%) wrongful convictions resulted, at least in part, from false confessions. See *National Registry of Exonerations*, U. MICH. L. SCH., https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&SortField=FC&SortDir=Asc&FilterField1=FC&FilterValue1=8_FC (last visited Nov. 24, 2017).

12. See Leo, *Questioning*, *supra* note 1, at 1021–22 (“By creating the opportunity for police to read suspects their constitutional rights and by allowing police to obtain a signed waiver form that signifies

considered bad news for the police simply because it requires more resources that the police probably consider to be already too limited.¹³ But *Miranda* might be good news if it requires the police to engage in more careful investigations—which could both improve the reliability of convictions and also foster increased skill among police officers.¹⁴

Over the course of the last fifty years, since *Miranda* was decided, there has been quite a bit of a discussion about whether *Miranda* is good news or bad news for the police. Much of this discussion has focused on the latter question—whether it is bad news.¹⁵ And bad news in this context generally seems to be defined as reducing the number of confessions and also crime clearance and conviction rates.¹⁶ The ideas here are that suspects' confessions lead to conviction of the guilty and that clearance and conviction

consensual and non-coercive interrogation, *Miranda* has helped the police shield themselves from evidentiary challenges, rendering admissible otherwise questionable and/or involuntary confessions.”).

13. See PETER W. GREENWOOD ET AL., *THE CRIMINAL INVESTIGATION PROCESS* 144 (1977) (noting that “[i]t was thought that Supreme Court rulings such as *Escobedo* (1963) and *Miranda* (1966), which imposed additional restrictions on the police and limited the police practice of interrogation, would encourage investigators to rely more heavily on the scientific analysis of physical evidence and less on confessions and other forms of evidence”); David A. Anderson, *Freedom of the Press*, 80 TEX. L. REV. 429, 517 (2002) (noting that “requiring police to give *Miranda* warnings costs the police time and money every time a suspect heeds the warning”).

14. Cf. XI NAT'L COMM'N ON LAW OBSERVANCE AND ENF'T, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT 5 (1931) (stating that egregious law enforcement practices—referred to in the report as “the third degree”—“[n]ot only . . . involve a flagrant violation of law by the officers of the law, but . . . also . . . tend[] to make police and prosecutors less zealous in the search for objective evidence” and quoting officials stating that employing these practices are “a short cut and make[] the police lazy and unenterprising” and that, “[i]f you use your fists, you are not so likely to use your wits”), quoted in *Miranda*, 384 U.S. at 447–48. Of course, improving the skills of police officers might be considered a negative effect if the skills developed consist of manipulating suspects. See Richard A. Leo, *Miranda's Revenge: Police Interrogation as a Confidence Game*, 30 L. & SOC'Y REV. 259, 266 (1996) [hereinafter Leo, *Miranda's Revenge*] (“In the past 30 years, police interrogators have refined their skills in human manipulation and become confidence men par excellence.”).

15. See, e.g., Paul G. Cassell, *Miranda's Social Costs: An Empirical Reassessment*, 90 NW. U. L. REV. 387, 390–91 (1996) [hereinafter Cassell, *Miranda's Social Costs*] (arguing through empirical evidence that “*Miranda* has significantly harmed law enforcement efforts in this country”); John J. Donohue III, *Did Miranda Diminish Police Effectiveness?*, 50 STAN. L. REV. 1147, 1148–49 (1998) (criticizing an empirical analysis of *Miranda's* effect on law enforcement conducted by Paul Cassell and Richard Fowles); Stephen J. Schulhofer, *Miranda's Practical Effect: Substantial Benefits and Vanishingly Small Social Costs*, 90 NW. U. L. REV. 500, 502 (1996) [hereinafter Schulhofer, *Miranda's Practical Effect*] (criticizing Paul Cassell's empirical analysis on *Miranda's* effect on law enforcement and concluding that, “[f]or all practical purposes, *Miranda's* empirically detectable harm to law enforcement shrinks virtually to zero”).

16. See, e.g., Paul G. Cassell & Richard Fowles, *Handcuffing the Cops? A Thirty-Year Perspective on Miranda's Harmful Effects on Law Enforcement*, 50 STAN. L. REV. 1055, 1063 (1998) [hereinafter Cassell & Fowles, *Handcuffing the Cops?*] (“The strongest candidate for such a statistic is the crime ‘clearance’ rate, the rate at which police ‘clear’ or solve crimes.”); Cassell, *Miranda's Social Costs*, *supra* note 15, at 391 (“*Miranda's* effects should be measured not by looking at suppression motions filed after police have obtained a confession, but rather by examining how many confessions police never obtain because of *Miranda*.”); Monica A. Walker, *Do We Need a Clear-Up Rate?*, 2 POLICING & SOC'Y 293, 304–05 (1992) (explaining that there are disadvantages to reporting clearance rates rather than conviction rates).

rates might be affected by suspects' post-*Miranda* reluctance to confess, and by the greater resources that might now be necessary to elicit these confessions.¹⁷

This Article questions the usefulness of empirical studies in examining this impact of *Miranda*. Part I provides a brief overview of the two generations of empirical studies attempting to examine *Miranda*'s impact on the police.¹⁸ Professor Paul Cassell and his collaborators have argued—for decades—that *Miranda* has caused suspects' confession rates, police clearance rates, and actual convictions to plummet.¹⁹ Most scholars have taken issue with their methods and conclusions, though, determining that *Miranda* has not had such a negative impact on the police.²⁰ Part II of this Article assays the difficulties associated with empirical studies.²¹ Good studies require good data—a challenge in the context of studying the impact of *Miranda* on the police.²² Even when reliable data is available, there are challenges to carrying out good empirical research.²³ Part III questions what the usefulness of good empirical studies is anyway.²⁴ Even if reliable results are achievable, what are we to glean from determining whether *Miranda* has made it more difficult for police officers and prosecutors to elicit confessions, clear crimes, and secure convictions?²⁵ This Article concludes by emphasizing the importance of considerations other than *Miranda*'s impact on the police. We should also take into account *Miranda*'s impact on others,

17. See Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16, at 1063–66.

18. See *infra* Part I.

19. See Cassell, *Miranda's Social Costs*, *supra* note 15, at 417 (“The ‘reliable’ studies . . . show . . . an average reported [confession rate] drop of 16.1%. In other words, based on the comparative studies, the best estimate is that *Miranda* results in a lost confession in roughly one out of every six criminal cases in this country.”); Paul G. Cassell, *The Statute That Time Forgot: 18 U.S.C. § 3501 and the Overhauling of Miranda*, 85 IOWA L. REV. 175, 255 (1999) (“If my conclusions in these earlier articles are correct, *Miranda* substantially harms the ability of law enforcement to protect society. Its technical rules prevent the conviction of countless guilty criminals, condemning victims of these crimes to see justice denied and fear crimes reprised.”); see also Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16, at 1060 (“defend[ing] the position that *Miranda* was an important cause of the 1966–1968 drop in clearance rates” and stating that, “[b]ecause confessions are needed to convict in about one out of every four criminal cases, *Miranda* results in the loss of criminal convictions in about 3.8% of all criminal cases (16% confession rate drop multiplied by the 24% confession necessity rate)”).

20. See George C. Thomas III & Richard A. Leo, *The Effects of Miranda v. Arizona: “Embedded” in our National Culture?*, 29 CRIME & JUST. 203, 244 (2002) (“Though he has garnered considerable attention from some of the nation’s top law reviews, as well as the media, Cassell’s quantitative claims have not been generally accepted in either the legal or the social science community.”); see also, e.g., Schulhofer, *Miranda’s Practical Effect*, *supra* note 15, at 502 (stating that Cassell’s work “carries a built-in risk of exaggerating *Miranda*’s current impact on police effectiveness” and that “a close look at the details shows that inconsistent and highly partisan procedures are necessary to bring *Miranda*’s supposed attrition effect up to Cassell’s 3.8% figure”).

21. See *infra* Part II.

22. See *infra* Part II.

23. See *infra* Part II.

24. See *infra* Part III.

25. See *infra* Part III.

such as suspects and the public. Too narrow an inspection of *Miranda*'s impact leads to a myopic view of the landmark case.

II. MULTIPLE GENERATIONS OF STUDIES

Since *Miranda* was decided, scholars have conducted a number of studies to examine whether the landmark case has really been detrimental to police investigations and prosecutors securing convictions. As Professor Thomas and Professor Leo so helpfully detailed in their 2002 article on the effects of *Miranda*, there have been (at least) two generations of studies examining the impact of the case.²⁶

In the first generation—studies from 1966 to 1973—there were about a dozen studies looking to clarify the impact.²⁷ Perhaps the most well-known study from this generation was one in which 127 Yale law students observed live interrogations in the New Haven Police Department and compared their observations to data from the pre-*Miranda* period.²⁸ The students found that *Miranda* had a small impact in these cases; in 5% of the cases *Miranda* seemed to have an adverse effect on the police officers' ability to elicit information, including confessions, from suspects.²⁹ The results from this generation of studies are somewhat mixed with respect to confession rates, though. For example, a study by James Witt found a reduced confession rate of about 2% resulting from *Miranda*,³⁰ a study by Richard Seeburger and Stanton Wettick, Jr. found a reduced confession rate of about 16.9%,³¹ and a

26. See Thomas & Leo, *supra* note 20, at 232–45 (explaining that, “[i]n the years immediately following the *Miranda* decision, scholars published approximately a dozen empirical studies that sought to fill this gap [in research]” and that, in the subsequent couple of decades, a handful of scholars continued studying this topic).

27. *Id.* at 232 (“In the years immediately following the *Miranda* decision, scholars published approximately a dozen empirical studies that sought to fill th[e] gap [in research on the subject].”).

28. *Id.* at 233 (“One of the earliest and most widely cited studies was conducted by Yale law students, who observed 127 live interrogations inside the New Haven Police Department during the summer of 1966 and then compared their observations to data they reviewed from approximately 200 cases from 1960 to 1965 in the New Haven Police Department.” (internal citation omitted)); see Wald et al., *supra* note 6, at 1521–24, 1529–30.

29. See Wald et al., *supra* note 6, at 1573 (“The data suggest a decline of roughly 10 to 15 percent from 1960 to 1966 in the number of people who gave some form of incriminating evidence over the entire time. The greatest drop was in written statements.”).

30. See James W. Witt, *Non-Coercive Interrogation and the Administration of Criminal Justice: The Impact of Miranda on Police Effectuality*, 64 J. CRIM. L. & CRIMINOLOGY 320, 325 (1973), cited in Thomas & Leo, *supra* note 20, at 234–35.

31. See Richard H. Seeburger & R. Stanton Wettick, Jr., *Miranda in Pittsburgh: A Statistical Study*, 29 U. PITT. L. REV. 1, 11 (1967) (finding “that before compliance with the *Miranda* requirements the Detective Branch obtained confessions in 54.4% of the cases and after compliance in only 37.5% of the cases”), cited in Thomas & Leo, *supra* note 20, at 237–38.

study by Evelle Younger found an *increased* confession rate of about 10%.³² But, despite these different observed changes in confession rates, these scholars generally found that *Miranda* had not negatively affected clearance and conviction rates.³³ For the most part, these early studies were not very statistically sophisticated,³⁴ but researchers ramped up their methodologies in the second generation of empirical studies.³⁵

With the second generation of studies—which Thomas and Leo defined as from 1996 to at least 2002 (the year their article was published)—social scientists jumped into the mix.³⁶ The conclusions coming out of this second generation of studies also produced somewhat mixed results. Probably most famous in this generation is a series of studies conducted by Paul Cassell.³⁷ In a 1996 study, Cassell concluded that *Miranda* resulted in a significant (about 16%) reduction in confessions.³⁸ Cassell’s conclusions were roundly criticized, though, perhaps most notably by Stephen Schulhofer.³⁹ Schulhofer and Cassell faced off in a number of dueling articles in the *Northwestern University Law Review* in 1996,⁴⁰ in the *Legal Times* later that

32. See Evelle J. Younger, *Results of a Survey Conducted in the District Attorney’s Office of Los Angeles County Regarding the Effect of the Miranda Decision Upon the Prosecution of Felony Cases*, 5 AM. CRIM. L.Q. 32, 35 (1966), cited in Thomas & Leo, *supra* note 20, at 233–34.

33. See Thomas & Leo, *supra* note 20, at 238 (reporting that researchers in this first generation of studies generally “reported that clearance and conviction rates had not been adversely affected by the new *Miranda* requirements” even if they observed a decline in the confession rate).

34. See *id.* (noting that “many of [the first-generation] studies are methodologically weak, perhaps because many were conducted by lawyers or law professors without any training in the research methods of social science”).

35. See generally *id.* at 238–45; see also text accompanying notes 36–46 (summarizing the second generation of studies).

36. See Thomas & Leo, *supra* note 20, at 238 (defining the second generation of studies as those conducted between 1996 and the time the article was written—2002); see, e.g., Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16, at 1055 n.aa (employing Fowles’s economic expertise); Leo, *Impact of Miranda*, *supra* note 5, at 623 (applying the author’s sociological expertise).

37. See Thomas & Leo, *supra* note 20, at 239 (“The best-known debate in the second-generation studies has been between Cassell and Schulhofer.”).

38. See Cassell, *Miranda’s Social Costs*, *supra* note 15, at 417 (“The ‘reliable’ studies . . . show confession rate drops . . . an average reported drop of 16.1%. In other words, based on the comparative studies, the best estimate is that *Miranda* results in a lost confession in roughly one out of every six criminal cases in this country.”).

39. See Thomas & Leo, *supra* note 20, at 244. Professors Thomas and Leo have stated:

Though he has garnered considerable attention from some of the nation’s top law reviews, as well as the media, Cassell’s quantitative claims have not been generally accepted in either the legal or the social science community. Instead, numerous scholars have disputed Cassell’s findings or inferences and criticized his objectivity, methodology, and conclusions.

Id. (citations omitted).

40. See generally Cassell, *Miranda’s Social Costs*, *supra* note 15; Schulhofer, *Miranda’s Practical Effect*, *supra* note 15.

year,⁴¹ once again in the *Northwestern University Law Review*,⁴² and in the *Harvard Journal of Law and Public Policy* in 1997.⁴³ Cassell then enlisted an economist to help author a rejoinder—again arguing that *Miranda* “handcuffed” law enforcement.⁴⁴ This heated debate has continued, and others have joined in, mostly on the side of Schulhofer rather than Cassell.⁴⁵ They have all involved criticisms—and sometimes quite harsh ones—of the data and methods employed in these various empirical studies.⁴⁶

Taking a bird’s-eye view of these studies—and putting aside their main question of whether *Miranda* was in fact good news or bad news for the police—raises two important, but sometimes overlooked or ignored, issues. First, these studies are a good example of the many challenges inherent in conducting empirical studies. These challenges range from securing reliable data to controlling multiple—often difficult-to-predict—variables. And the wide-ranging, ambitious project of studying *Miranda*’s effect on law enforcement exacerbates these challenges. The second issue that is important to address is the potential usefulness of these studies. Why have researchers expended so much effort on investigating the probably unknowable relationship between the *Miranda* decision and confession, clearance, or conviction rates? While it would be nice to know the exact effects of *Miranda* on law enforcement, is the assumption here that, if *Miranda* has been bad news for law enforcement, it should be discarded? It is important

41. See generally Paul G. Cassell, *True Confessions About Miranda’s Legacy*, LEGAL TIMES, July 22, 1996; Stephen J. Schulhofer, *Pointing in the Wrong Direction*, LEGAL TIMES, Aug. 12, 1996.

42. See generally Paul G. Cassell, *All Benefits, No Costs: The Grand Illusion of Miranda’s Defenders*, 90 NW. U. L. REV. 1084 (1996); Stephen J. Schulhofer, *Miranda and Clearance Rates*, 91 NW. U. L. REV. 278 (1996) [hereinafter Schulhofer, *Miranda and Clearance Rates*].

43. See generally Paul G. Cassell, *Miranda’s “Negligible” Effect on Law Enforcement: Some Skeptical Observations*, 20 HARV. J.L. & PUB. POL’Y 325 (1997); Steven J. Schulhofer, *Bashing Miranda Is Unjustified—and Harmful*, 20 HARV. J.L. & PUB. POL’Y 347 (1997) [hereinafter Schulhofer, *Bashing Miranda Is Unjustified*].

44. See generally Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16; see also Paul G. Cassell & Richard Fowles, *Still Handcuffing the Cops? A Review of Fifty Years of Empirical Evidence of Miranda’s Harmful Effects on Law Enforcement*, 97 B.U. L. REV. 685 (2017) [hereinafter Cassell & Fowles, *Still Handcuffing the Cops?*] (using a quantitative approach to discuss the harmful effects of *Miranda* on law enforcement and proposing an alternative to reduce these harms).

45. See generally, e.g., Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16; Cassell & Fowles, *Still Handcuffing the Cops?*, *supra* note 44; sources cited, *supra* note 43.

46. See, e.g., Donohue, *supra* note 15, at 1156 (“To the extent my brief exploration into current police practice is widely representative of police practice in the late 1960s and the ‘other-crimes’ effect is small, however, the conclusion of the Cassell-Fowles paper concerning the effect of *Miranda* on clearance rates is seriously compromised.”); Floyd Feeney, *Police Clearances: A Poor Way to Measure the Impact of Miranda on the Police*, 32 RUTGERS L.J. 1, 4 (2000) (“Although Professors Cassell and Fowles should be commended for their efforts to raise the *Miranda* debate from the rhetorical to the empirical level, their study fails to establish the conclusions that they reach.”); Schulhofer, *Bashing Miranda Is Unjustified*, *supra* note 43, at 371 (“The preceding discussion touches on many of the important flaws in Professor Cassell’s regression model; I have discussed others elsewhere.”); Schulhofer, *Miranda and Clearance Rates*, *supra* note 42, at 291 (“At least seven flaws in Cassell’s model impair the validity of [his] conclusions . . .”).

to remember that *Miranda*'s effect on law enforcement should not be the only factor considered in assessing the importance and usefulness of *Miranda*. Other matters, such as *Miranda*'s effect on the public and the importance of individuals' constitutionally-guaranteed rights, are also important factors to consider.

III. THE CHALLENGES OF EMPIRICAL STUDIES

There are a number of challenges associated with empirical studies generally and also with studying the particular relationship between *Miranda* and confession, clearance, or conviction rates. Most of these issues revolve around the particular questions asked and the quality of data available to study in the context of *Miranda*.

First, there is an issue about which particular question, and thus the proper data, researchers should examine to satisfy their research endeavors. In assessing whether *Miranda* has been good news or bad news for the police, there needs to be a determination of what constitutes good or bad news. In most of the more recent studies attacking this question, researchers have looked at all or some of the following: confession rates, clearance rates, and conviction rates.⁴⁷ For example, in his first law review article on the issue, Cassell explained the importance of studying confession rates.⁴⁸ But Cassell later turned to examining clearance rates to determine the impact of *Miranda* on the police.⁴⁹ His detractors have commented on whether these variables are useful in truly determining *Miranda*'s impact.⁵⁰ Making the question a

47. See generally, e.g., Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16 (examining clearance rates and corresponding losses in convictions); Cassell, *Miranda's Social Costs*, *supra* note 15 ("To quantify *Miranda*'s costs from lost cases, we must examine whether *Miranda* has produced any lost confessions through its combination of warnings, waivers, and questioning cut-off rules."); Schulhofer, *Miranda's Practical Effect*, *supra* note 15 (focusing on conviction rates).

48. See Cassell, *Miranda's Social Costs*, *supra* note 15, at 394 (explaining that "[t]o quantify *Miranda*'s costs from lost cases, we must examine whether *Miranda* has produced any lost confessions through its combination of warnings, waivers, and questioning cut-off rules," but also noting that, "[i]n assessing *Miranda*'s costs, . . . we need quantification not only of changes in the confession rate due to *Miranda* but also of the proportion of cases in which a confession is needed to convict").

49. See Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16, at 1063 ("Since regularly collected, long-term data on confession rates are unavailable, we must search for a second-best alternative. The strongest candidate for such a statistic is the crime 'clearance' rate, the rate at which police 'clear' or solve crimes."); see also Cassell & Fowles, *Still Handcuffing the Cops?*, *supra* note 44, at 702 (conceding that evidence on confession rates is limited and "that the existing empirical research on confession rates has not resolved the question of whether *Miranda* has hampered law enforcement over the long haul," and suggesting that clearance rates may be a useful variable to study in resolving the matter).

50. See, e.g., Feeney, *supra* note 46, at 113 ("Clearance rates are not just a poor way to measure the effect of the *Miranda* decision on the ability of the police to combat crime, they are a profoundly misleading and erroneous method for accomplishing this goal."); see also Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16, at 1060–66 (describing the advantages and disadvantages of studying confession, clearance, and conviction rates); Seeburger & Wettick, *supra* note 31, at 6–22 (examining

difficult one, there are both advantages and disadvantages to examining each of these variables. For example, confession rates have the most direct connection to the Supreme Court decision. This variable is probably the most clearly linked to the Supreme Court's call for police officers to warn suspects in custodial interrogation that they have "a right to remain silent, that any statement [they do] make may be used as evidence against [them], and that [they have] a right to the presence of an attorney, either retained or appointed."⁵¹ But as scholars seem to have concluded, the data related to confessions is quite limited.⁵² Confession rates have been systematically recorded only sporadically.⁵³ "[T]he only figures that exist were gathered by individual researchers for particular cities on a one-time basis."⁵⁴ There seems to be much better data, though, at least in terms of quantity, with respect to clearance rates.⁵⁵ In fact, the Federal Bureau of Investigation (FBI) has consistently collected clearance rate data since the 1950s.⁵⁶ However, clearance rates, as well as conviction rates, are much more removed from the *Miranda* decision than are confession rates, providing the opportunity for confounding variables—variables that could have contributed to, or even independently caused, any change in observed clearance or conviction rates⁵⁷—to bleed into the analysis. For example, anything from an increase in funding for police departments to changes in law, either by court or statute, could potentially affect clearance and conviction rates. To be sure, these and other variables could affect confession rates as well, but because clearance and conviction rates are more indirectly connected to *Miranda* than confession rates, there is a greater chance for such confounding variables to seep in and be confused with *Miranda*'s effects on clearance and conviction rates. Taking into account these complicating confounding variables and the advantages and disadvantages of focusing on confession rates, clearance rates, or conviction rates—or even something else—make designing a useful empirical study linking *Miranda* to its effect on the police a challenge.

both conviction and clearance rates); Witt, *supra* note 30, at 328–31 (examining both conviction and clearance rates).

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

52. See Cassell & Fowles, *Handcuffing the Cops?*, *supra* note 16, at 1062 (noting the limited nature of this data).

53. See *id.* at 1061–62.

54. *Id.* at 1062.

55. See *id.* at 1063 ("Since at least 1950, the FBI has collected clearance rate figures from around the country and reported them annually in the *Uniform Crime Reports* Because of this extended range of data, clearance rates might permit a broad perspective on *Miranda*'s effects."). Cassell has also stated that "conviction rate data in this country are notoriously bad." *Id.* at 1066.

56. See *id.*

57. See JEFFERY T. WALKER, *STATISTICS IN CRIMINAL JUSTICE: ANALYSIS AND INTERPRETATION* 32 (1st ed. 1999) ("A *confounding variable* is not the independent nor the dependent variable, but a variable that influences the relationship between these two.").

Beyond the decision of which variable(s) to study is the related question of how reliable the underlying data actually is. Empirical studies can only be as good as the data employed in them. And, as many of the scholars studying this area have noted, there are some real problems with the data here.⁵⁸ First, there is the question about how well this data is reported. For example, sometimes the police have changing incentives for showing a higher or lower clearance rate than actually exists.⁵⁹ Further, different jurisdictions, or even different departments, may have differing definitions of essential terms like “clearance rates.”⁶⁰ Additionally, to control for confounding variables in determining whether there really is a relationship between *Miranda* and, for example, clearance rates, additional data is necessary—data like changes in crime rates over time, resource allocations over time, and even the effects of other Warren Court decisions.⁶¹ Gathering reliable data on these factors, too, may be difficult. These types of issues pose real problems for the usefulness of information gleaned from these empirical studies. One might even say that this is a somewhat hopeless endeavor.

In addition to the challenge of focusing on the best question to examine and the overwhelming data problems involved with these empirical studies, there are a whole host of other issues, including methodology—whether the researchers employ, for example, a “panel data analysis” or an “interrupted time-series analysis” and the particular regression model used in the study.⁶² Even qualified experts can disagree on the proper approach to any particular empirical study like the one at issue here. And the limitations on the data available exacerbate these difficulties.

Now, empirical studies in the social sciences—like these studies of *Miranda*’s impact on the police—are often complicated. Yet, the work of social scientists can be incredibly useful. With respect to *Miranda*, though, it seems that the social science work might be more difficult because of factors like the potential unreliability of data, as well as the lack of data

58. See, e.g., Donohue, *supra* note 15, at 1151–56 (noting that the reporting of clearance rates may have changed over time and that changes in the number of cleared cases may not be entirely attributable to the *Miranda* decision); Feeney, *supra* note 46, at 11–18 (describing some of the problems with clearance rate data).

59. See Donohue, *supra* note 15, at 1151–55 (outlining the reasons why data on changes in clearance rates may not be accurate).

60. See Feeney, *supra* note 46, at 16–18 (“It is not surprising that different agencies interpreted the rules in different ways or that the FBI attempted over the years to clarify the rules in ways to make the interpretation more uniform.”).

61. A number of criminal procedure cases were decided during Justice Earl Warren’s tenure as the Chief Justice of the United States Supreme Court. These include *Mapp v. Ohio*, 367 U.S. 643 (1961), *Gideon v. Wainwright*, 372 U.S. 335 (1963), *Brady v. Maryland*, 373 U.S. 83 (1963), *Katz v. United States*, 389 U.S. 347 (1967), and *Terry v. Ohio*, 392 U.S. 1 (1968)—each of which could have potentially affected confession, clearance, and conviction rates.

62. For a good, and relatively brief, methodological critique of the 1998 Cassell and Fowles study examining the change in clearance rates resulting from the *Miranda* decision, see generally Donohue, *supra* note 15.

available. Additionally, there are interdisciplinary challenges when lawyers not trained in the social sciences are (at least hopefully) interfacing with social scientists who may not be trained in the law.⁶³ Further, there are always caveats and assumptions implicit in social science work, and there is the risk that lawyers who are not more familiar with social science studies may not take these caveats and assumptions seriously enough when assessing the work. All of these factors complicate the empirical study of *Miranda*'s impact on the police and the consumption and use of the conclusions reached in these studies.

IV. THE SIGNIFICANCE OF QUANTIFICATION

It is sometimes important to try to tackle difficult questions like “What is *Miranda*'s impact on the police?” even if the results reached are likely not entirely accurate. But, over fifty years after *Miranda* was decided, there is the question of why pinning down whether, and the extent to which, the case has suppressed confessions, lowered clearance rates, and decreased convictions remains important. Even if these *Miranda* studies are bulletproof (and do not suffer from any of the concerns related to focusing on the best variable(s) to study, problems with reliable data, and difficulties with methodology), why do we care about the results? Why do we even care whether *Miranda* is good news or bad news for the police? Perhaps the answer to this question is obvious: If it is good news for the police, then we should not lament the Supreme Court's 1966 opinion or try to argue for it to be overturned. Perhaps we could also argue that, if *Miranda* is good news for the police, then the Court ought not to cut back on the *Miranda* doctrine as it has in many ways since the seminal case was decided. One might even go so far as to argue that, if *Miranda* is indeed good news for the police, then the Court should be willing, and perhaps even anxious, to adopt more prophylactic rules like *Miranda*⁶⁴ in the criminal context or maybe even in

63. It is worth noting that the early empirical studies examining *Miranda*'s impact on the police often did not employ the expertise of social scientists. See Schulhofer, *Miranda's Practical Effect*, *supra* note 15, at 506–07 (stating that “virtually all the studies were conducted by lawyers or law professors not trained in the research methods of social science and they are replete with methodological weaknesses” (quoting Richard Angelo Leo, *Police Interrogation in America: A Study of Violence, Civility and Social Change* 332–33 (1994) (unpublished Ph.D. dissertation, University of California, Berkeley) (internal alterations omitted)); see also, e.g., Seeburger & Wettick, *supra* note 31; Younger, *supra* note 32. The most recent studies on the topic, though, have involved the work of economists and sociologists. See, e.g., Donohue, *supra* note 15, at 1148 (applying the author's economic expertise); Leo, *Impact of Miranda*, *supra* note 5, at 623 (applying the author's sociological expertise).

64. It is now well accepted that *Miranda* is a prophylactic rule. See *New York v. Quarles*, 467 U.S. 649, 654 (1984) (referring to “[t]he prophylactic *Miranda* warnings”); Joseph D. Grano, *Prophylactic Rules in Criminal Procedure: A Question of Article III Legitimacy*, 80 N.W. U. L. REV. 100, 106 (1985) (“*Miranda* provides a good illustration of a rule properly categorized as prophylactic.”); Michael J. Zydney Mannheim, *The Two Mirandas*, 43 N. KY. L. REV. 317, 320 (2016) (“*Miranda* set forth

other contexts as well. In contrast, then, perhaps if *Miranda* is bad news for the police, the Supreme Court should continue to cut back on the doctrine or perhaps even overrule it. Or, at a less extreme level, perhaps we should just complain that *Miranda* is bad for the police. *Miranda* could also be used as a cautionary tale about the possible negative effects of the Supreme Court adopting prophylactic rules in future cases.

Something largely missing among the many examinations of *Miranda* is a discussion of why the effects of the seminal case on the police should matter and the extent to which they should matter. But this remains an important piece of the puzzle. The language of the Fifth Amendment, which provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself,” suggests that the protection is absolute and that enforcement of the right should not depend on how it affects the police.⁶⁵ Similarly, the language of the Sixth Amendment, which was also implicated in the *Miranda* holding and which states that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense,” does not seem to contemplate weighing this privilege against its effect on the police.⁶⁶ And the *Miranda* opinion, itself, seems to eschew a determination that the decision is based on the impact that the rule will have on policing.⁶⁷ The Court’s language suggests that the *Miranda* holding is unconditional rather than dependent on weighing the costs and benefits of the rule.⁶⁸

While the *Miranda* Court seems not to have suggested that the rule hinges on policy considerations like the impact the rule has on the police, the *Miranda* decision does sweep more broadly than the language of the Fifth Amendment, so perhaps policy considerations like this are in fact relevant. Indeed, the rule set forth in *Miranda* has been said to go too far.⁶⁹ From the beginning, *Miranda* was criticized for being unmoored from the language of the Constitution.⁷⁰ Even the Court, itself, has said that the opinion is

prophylactic rules for police to follow in order to avoid subjecting suspects to coercive interrogation.”). *But cf.* *Dickerson v. United States*, 530 U.S. 428, 444 (2000) (stating “that *Miranda* announced a constitutional rule” (emphasis added)).

65. U.S. CONST. amend. V.

66. *Id.* amend. VI.

67. *See* *Miranda v. Arizona*, 384 U.S. 436, 479–91 (1966).

68. *See id.* at 479–81.

69. *See* *Oregon v. Elstad*, 470 U.S. 298, 306 (1985) (“The *Miranda* exclusionary rule . . . sweeps more broadly than the Fifth Amendment itself. It may be triggered even in the absence of a Fifth Amendment violation.”).

70. *See* *Miranda*, 384 U.S. at 531 (White, J., dissenting) (suggesting that “the Court’s holding [was not] compelled nor even strongly suggested by the language of the Fifth Amendment”); Gregory L. Diskant, *Exclusion of Confessions Obtained without Miranda Warnings in Civil Tax Fraud Proceedings*, 73 COLUM. L. REV. 1288, 1304–05 (1973) (“[T]here is no specific language in *Miranda* which gives significant support to the claim that the [F]ifth [A]mendment violation attaches at interrogation.”); *see also* Grano, *supra* note 64, at 106–11 (explaining how the *Miranda* holding is prophylactic); Timothy P. O’Neill, *Rethinking Miranda: Custodial Interrogation as a Fourth Amendment Search and Seizure*, 37

“prophylactic,” extending further than the language the Constitution might require.⁷¹ Rather than focusing on the constitutional text, the *Miranda* decision hinged on the Court’s concern about the interrogation practices police officers regularly employed to elicit confessions,⁷² the fragile relationship between the government and its citizens,⁷³ and the historically interpreted breadth of the constitutional provision protecting the right against self-incrimination.⁷⁴ Relying on this variety of considerations, the Court’s decision could possibly be said, at least in part, to engage in something resembling a policy-based cost-benefit analysis that should, indeed, take into account *Miranda*’s impact on law enforcement.

The majority opinion in *Miranda*, though, seemed to reject reliance on the rule’s potentially negative impact on the police. The Court explained that, “[T]he 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” and that this “right cannot be abridged.”⁷⁵ Further, despite the breadth of *Miranda*’s rule, the Court clearly stated in *Dickerson v. United States* that *Miranda* is a constitutional rule, not merely a regulatory rule or suggestion for police officers to follow.⁷⁶ Moreover, the Justices on the

U.C. DAVIS L. REV. 1109, 1111 (2004) (“[B]eginning in 1974, the Burger Court repeatedly held that *Miranda* warnings themselves were not actually required by the Fifth Amendment, but functioned rather as a ‘prophylactic’ that over-protected the right against self-incrimination”); William T. Pizzi & Morris B. Hoffman, *Taking Miranda’s Pulse*, 58 VAND. L. REV. 813, 816 (2005) (stating that “[t]he Court’s interpretation [in *Miranda*] was . . . an unprecedented stretch of the language of the Self-Incrimination Clause”).

71. *New York v. Quarles*, 467 U.S. 649, 654 (1984) (“The prophylactic *Miranda* warnings therefore are not themselves rights protected by the Constitution but are instead measures to insure that the right against compulsory self-incrimination is protected.” (internal quotations and alterations omitted)).

72. *See Miranda*, 384 U.S. at 445–47 (expressing concern about police interrogation practices, stating that “[a]n understanding of the nature and setting of this in-custody interrogation is essential to [the Court’s] decisions[,]” and explaining that, “[u]nless a proper limitation upon custodial interrogation is achieved . . . there can be no assurance that practices of this nature will be eradicated in the foreseeable future”).

73. *See id.* at 460 (“We have recently noted that the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens.”). Professor Philip Bobbitt might describe this as a structural or ethical approach to constitutional interpretation. *See* PHILIP BOBBITT, *CONSTITUTIONAL FATE: THEORY OF THE CONSTITUTION* Ch. 6 (1982).

74. *See Miranda*, 384 U.S. at 459–61 (stating that the Court “cannot depart from th[e] noble heritage” that the privilege against self-incrimination “has always been ‘as broad as the mischief against which it seeks to guard’” and explaining that “the privilege has consistently been accorded a liberal construction” in the United States Supreme Court). Professor Bobbitt might describe this as either a doctrinal or historical approach to constitutional interpretation. *See* BOBBITT, *supra* note 73, at chs. 2 & 4.

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

76. *See Dickerson v. United States*, 530 U.S. 428, 444 (2000) (“[W]e conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively. Following the rule of *stare decisis*, we decline to overrule *Miranda* ourselves.”).

Miranda Court were aware of the potentially significant impact on the police that the decision could have but still did not readily account for this impact in the ruling.⁷⁷ The majority only briefly referenced this concern.⁷⁸ In contrast, Justices Harlan, White, and Stewart, dissenting in *Miranda*, thoroughly considered the effect *Miranda* could have on the police.⁷⁹ Although the Court seemed to try to distance itself from such a concern, the Court took pains to make clear that the *Miranda* rule should not significantly burden police officers.⁸⁰

If the proper constitutional approach to assessing the scope of the Fifth Amendment's protection against compelled self-incrimination is actually a policy-based nebulous balancing of the advantages and disadvantages of a rule, then the impact of *Miranda* on the police is important information to consider. But then it is also important not to forget that there are other factors to consider as well. For example, one might consider the impact of *Miranda* in fostering trust among the public. Perhaps informing suspects of their rights creates goodwill among suspects and the community at large, encouraging the public to trust and cooperate with police officers. One might consider *Miranda*'s effect in deterring crime, if it has any effect in that area. One might consider what *Miranda* really focused on—the fairness to the defendants and the wily interrogation techniques employed by the police—something that, perhaps to the chagrin of the majority in *Miranda*, was not significantly diminished in the wake of the landmark case.⁸¹ Even *Miranda* itself focused on other considerations, like the adversarial-testing approach of the criminal justice system and a suspect's dignity.⁸²

77. See *Miranda*, 384 U.S. at 481.

78. See *id.*

79. See *id.* at 539–41 (White, J., dissenting) (“The rule announced today will measurably weaken the ability of the criminal law to perform . . . tasks [of incapacitation, deterrence, and rehabilitation]. It is a deliberate calculus to prevent interrogations, to reduce the incidence of confessions and pleas of guilty and to increase the number of trials.”). Justice Harlan, dissenting, said that, “What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it. There can be little doubt that the Court’s new code would markedly decrease the number of confessions.” *Id.* at 516 (Harlan, J., dissenting).

80. See *id.* at 479–91 (“The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we have noted, our decision does not in any way preclude police from carrying out their traditional investigatory functions.”).

81. See Charles J. Ogletree, *Are Confessions Really Good for the Soul?: A Proposal to Mirandize Miranda*, 100 HARV. L. REV. 1826, 1827 (1987) (“Although *Miranda* warnings may seem adequate from the detached perspective of a trial or appellate courtroom, in the harsh reality of a police interrogation room they are woefully ineffective.”); Charles D. Weisselberg, *Mourning Miranda*, 96 CAL. L. REV. 1519, 1521 (2008) (“The best evidence now shows that, as a protective device, *Miranda* is largely dead.”); see also Cloud et al., *supra* note 8, at 572 (“These empirical results demonstrate that the *Miranda* warnings are not ‘effective’ for the population of mentally retarded people, and likely are ineffective for many nonretarded people of below-average intelligence.”).

82. See *Miranda*, 384 U.S. at 460 (“We have recently noted that the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values.

V. CONCLUSION

There are numerous empirical studies examining whether *Miranda* has been good news or bad news for the police in terms of decreasing confession, clearance, and conviction rates.⁸³ As with all empirical studies, though, it is important to critically examine the methodologies employed and conclusions reached by the researchers conducting these studies.⁸⁴ In examining what impact *Miranda* has had on the police, there are real concerns about the reliability of the data on which these studies are built and also the formulations of the questions investigated and methodological frameworks within which these studies are conducted.⁸⁵ But even putting aside these concerns, it is important to assay why *Miranda*'s impact on the police actually matters over fifty years after the seminal case was decided and after the decision's resulting *Miranda* warnings have been thoroughly incorporated into both our criminal justice system and the national culture. Would such a determination affect how today's courts interpret the privilege against self-incrimination or how courts approach other questions of constitutional interpretation? If *Miranda*'s impact on the police is really relevant to determining the scope of criminal defendants' rights, then it is important not to lose sight of the fact that such a policy-based constitutional analysis would also entail examining the impact of *Miranda* on other stakeholders, such as society and criminal defendants themselves. Impact on the police would be just one of many relevant factors to consider.

All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens.” (citations omitted); see also Ryan, *Miranda's Truth*, *supra* note 1, at 414 (“The *Miranda* decision highlights the importance of adversarial testing and dignity.”).

83. See *supra* Part II.

84. See *supra* Part III.

85. See *supra* Part III.