New York v. Quarles: Dimming Miranda's Bright Line

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NEW YORK V. QUARLES: DIMMING MIRANDA'S BRIGHT LINE

I. INTRODUCTION

Contemporary Western society places high value upon two conflicting ideals: individual liberty and the rule of law. Nowhere is this opposition more evident than in a democracy, where the inherent tension between the rights of the individual and the rights of the citizenry—between individual liberty and public welfare—lies at the very foundation of the regime. The concern of the judiciary and the focus of constitutional law have traditionally been directed toward the relations between the individual and his government. Moreover, the founding fathers were adamant in their belief that the power of government should not be enhanced at the expense of the rights of the individual, and that limitations must be placed upon the government so as not to encroach upon individual liberty:

But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.²

Miranda v. Arizona³ and other cases dealing with the protection of the fifth amendment privilege against self-incrimination are indicative of the government's attempt to fulfill its obligation to control itself. The responsibility for this self-regulation must ultimately be exercised by the courts through judicial review. However, constitutional law is not static; it is constantly changing through a process of evaluation, adjustment, and even reversal.⁴ The decisions of the Supreme Court vacillate between both ends of the political spectrum in an attempt to achieve a balance, a sense of parity, between the rights of the accused and the welfare of the public.

It is within this context that we must examine New York v. Quarles,⁵ a landmark case decided by the Supreme Court on June 12, 1984, dealing with the fifth

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² The Federalist, No. 51 (J. Madison).
⁴ R. Cushman, Cases in Constitutional Law, xxxi (5th ed. 1979).
amendment protection against self-incrimination. The fifth amendment provides that no person shall be compelled in any criminal case to be a witness against himself. The Quarles decision recognized a "public safety" exception to the enforcement of this constitutional right, holding that when an interrogation is conducted under circumstances which represent a danger to the public resulting from the exigency of the situation, the officer does not have to read the suspect his rights as previously determined by the Court in Miranda v. Arizona:

1. the right to remain silent;
2. the fact that any statements may be used against him in court;
3. the right to the presence of an attorney during questioning; and
4. the fact that an attorney will be appointed free of charge if he cannot afford one.4

The Court's holding in Quarles clearly shifts the balance in favor of a concern for the public welfare. As one analyzes the Quarles decision and its significance with regard to the protection of individual rights, it should be kept in mind that "the Court has a proper role to play in a democratic society, and that this role and the values it brings to a democracy depend both on how it does its job and the decisions which it produces."7

II. STATEMENT OF THE CASE

Benjamin Quarles was initially detained and later formally arrested on the basis of statements made by a woman who identified him as the man who had just raped her. The victim described her assailant to police officers, indicated that he was carrying a gun, and stated that he had just entered a nearby supermarket. An officer entered the store and identified Quarles based upon the woman's description. The officer chased the suspect to the rear of the store with his gun drawn, then lost sight of him momentarily. When he saw the suspect again, the officer ordered him to stop and directed him to place his hands over his head; the officer then frisked him and found that his shoulder holster was empty. He handcuffed the suspect and, before reading the standard Miranda warnings, asked him where the gun was located. Quarles nodded to some empty cartons and answered: "the gun is over there." The officer retrieved the gun, formally arrested the suspect, and then read him his complete Miranda rights. Quarles informed the officers that he would answer questions without an attorney present and stated that he did own the gun.

A New York trial court ruled that the defendant's initial statement regarding the location of the gun be excluded because he had not previously been given the

4 *Miranda*, 384 U.S. at 467-73.
7 R. Cushman, *supra* note 4, at xxxi.
Miranda warnings. His other statements as well as the handgun were excludable as evidence tainted by the Miranda violation. The Appellate Division of the Supreme Court of New York and the New York Court of Appeals affirmed.

The issues before the Supreme Court on certiorari were essentially: (1) whether the defendant's initial statements regarding the location of the gun should be excluded due to the officer's failure to read him the Miranda rights prior to questioning; and (2) whether the defendant's subsequent statements and the physical evidence should be excluded as illegal fruits of the Miranda violation. The Court reversed the New York Court of Appeals on both of these issues. A five-member majority held that despite the fact Quarles was in police custody when he made his incriminating statements and that the case seemingly fell within the parameters of the Miranda decision, the arresting officer was nevertheless justified in omitting to read the defendant his rights because of the overriding importance of protecting the safety of the public. The Court thus fashioned a "narrow exception" to Miranda which operates to excuse the mandatory reading of rights in "situations presenting a danger to the public safety."

III. PRIOR LAW

A. The Pre-Miranda "Voluntariness Test"

The first case in which the Supreme Court dealt with the admissibility of confessions was Bram v. United States, a federal case decided in 1897. In Bram, a criminal defendant was stripped and subjected to extensive interrogation before making incriminating statements. In reversing his conviction, the Court spoke in terms which foreshadowed its reasoning almost seventy years later in its landmark Miranda decision, stating that "under the law of nature ... one accused could not be compelled to testify against himself." This philosophy—that the privilege against self-incrimination was fundamental and inalienable—was reaffirmed in the long line of cases which followed.

The Court summarized its attitude toward confession cases in Blackburn v. Alabama, where Chief Justice Warren stated:

As important as it is that persons who have committed crimes be convicted, there are considerations which transcend the question of guilt or innocence. Thus, in

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1 Quarles, 104 S. Ct. at 2633.
3 Id. at 547-48.
cases involving involuntary confessions, this Court enforces the strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will.13

Prior to the Court's adoption of the Miranda doctrine in 1966, the Court relied on "the more pliable dictates of the Due Process Clauses of the Fifth and Fourteenth Amendments"14 to determine whether an individual in police custody was coerced into giving an involuntary confession or was not given adequate warnings as to his rights. The standard to be applied was one of "voluntariness" which, as stated in Haynes v. Washington,15 depended upon an assessment of "[the] totality of circumstances evidencing an involuntary . . . admission of guilt."16 Under this test, the burden was placed on the state to prove that the accused knowingly and intelligently waived his right to counsel.17 Justice O'Connor, writing a concurring and dissenting opinion in Quarles, summarized the "totality of circumstances" test: "If the interrogation was deemed unreasonable or shocking or if the accused clearly did not have an opportunity to make a rational or intelligent choice, the statements received would be inadmissible."18

The evolution of the Court's position on the protection guaranteed by the fifth amendment was closely linked to cases involving the fourth amendment's protection against unreasonable search and seizure and the sixth amendment guarantee of right to counsel, as all three are intended to secure the rights of the individual and, in many cases, become factually and procedurally intertwined. Thus, the sixth amendment cases beginning with Powell v. Alabama19 developed collaterally with those cases which involved coerced confessions. Escobedo v. Illinois,20 which was "couch[ed] in sixth amendment language yet . . . dealt with a traditional fifth amendment problem,"21 brought both strains of cases together. In Escobedo, the accused asked to have a lawyer present during his interrogation; this request was denied, and the police obtained several incriminating statements from him. Justice Goldberg, writing for a majority of five, moved beyond the strictures of the earlier "voluntariness" rule:

[Where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into policy custody, the police carry out a process of interrogations that lends itself

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13 Id. at 206-07.
14 Miranda, 384 U.S. at 503.
16 Id. at 514.
17 Miranda, 384 U.S. at 503.
18 Quarles, 104 S. Ct. at 2635.
21 Warden, supra note 11, at 44.
to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, . . . no statement elicited by the police during the interrogation may be used against him at a criminal trial.\textsuperscript{22}

B. Miranda and Its Progeny

It was against this background of obvious concern, but rather nebulous solutions, that the Court handed down its famous \textit{Miranda} decision. The Court's earlier ruling in \textit{Escobedo} had created several difficult questions: whether the accused must specifically request the presence of an attorney; whether he had to be advised of his right to counsel; and whether he must be told that any statement that he made could be used against him.\textsuperscript{23}

The Warren Court selected \textit{Miranda} in an effort to clear up the uncertainty which shrouded the confession issue, because it represented a typical example of the conduct of an ordinary policy precinct interrogation. Miranda was arrested on charges of rape and kidnapping. He was taken to the police station for questioning and made a voluntary confession which, he acknowledged, was made in the absence of threats or promises. Importantly, however, Miranda was not informed of his right to the presence of an attorney during interrogation.\textsuperscript{24}

The Court's holding and message in \textit{Miranda} is emphatic and quite clear: "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."\textsuperscript{25}

The Court further maintained that:

\begin{quote}
We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.\textsuperscript{26}
\end{quote}

The "proper safeguards" referred to are, of course, the mandatory reading of what were to become known as the \textit{Miranda} rights. Thus, \textit{Miranda} went much further than the "voluntariness" rule of \textit{Haynes} and the "particular suspect" criteria of \textit{Escobedo}, substantially changing all prior law dealing with confessions by establishing a "presumption" that custodial interrogation is inherently coercive. Moreover, "[t]he requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual."\textsuperscript{27}

\begin{thebibliography}{9}
\bibitem{Escobedo} \textit{Escobedo}, 378 U.S. at 490-91.
\bibitem{Miranda} \textit{Miranda}, 384 U.S. at 492.
\bibitem{Id} \textit{Id.} at 444.
\bibitem{Id} \textit{Id.} at 467.
\bibitem{Id} \textit{Id.} at 476.
\end{thebibliography}
This intimate relationship between the *Miranda* warnings and the constitutional guarantee has been succinctly stated by one writer: "In short, when *Miranda* is violated, the fifth amendment is violated."

In sum, the effect of the *Miranda* holding was that it provided "concrete constitutional guidelines for law enforcement agencies and courts to follow"—a "bright line" test which could not be ignored. The Court's decision in *Miranda* was extremely controversial and prompted strong criticism from members of the Court, legal scholars, and law enforcement officials. Justice Clark dissented from the majority, arguing for the more flexible "totality of the circumstances" test. Justices Harlan, Stewart, and White also dissented, urging that the decision was the product of poor constitutional law and failed to adequately protect society's interest in efficient law enforcement. Each of these criticisms would be put forth again and again in the post-*Miranda* years, gradually chipping away at the concrete *Miranda* guidelines.

The character of the Court was dramatically altered as a result of the four appointments made during the Nixon administration: Chief Justice Warren Burger and Justice Harry Blackmun were appointed to the Court in 1969, replacing Chief Justice Earl Warren and Justice Abe Fortas; Justice Lewis Powell joined the Court in 1971, replacing Justice Hugo Black; and Justice William Rehnquist joined the Court in 1972, replacing Justice John Marshall Harlan. These four changes in the Court's composition replaced two of the original five-to-four *Miranda* majority.

The Warren Court and the Burger Court represent opposite ends of the precarious balance between the rights of the individual and the interest in the welfare of society, the Warren Court emphasizing "fairness" and the rights of the individual, and the Burger Court demonstrating its concern for "law and order and the necessity of punishing the factually guilty." These antithetical approaches are readily apparent when one examines the Burger Court's treatment of the self-incrimination issue. In the years following the *Miranda* decision, beginning in 1971 after Warren Burger had assumed the role of Chief Justice, the Court handed down eleven decisions concerning the scope and application of *Miranda*, and not a single item of evidence was held inadmissible under the authority of *Miranda*. Moreover, some scholars maintain the Burger Court has clearly eroded the primary logic and theory which were the cornerstones of the *Miranda* doctrine "by narrowing the scope of the original holding, by refusing to apply *Miranda* to situations clearly within the explicit purview of the *Miranda* rule, and by refusing to extend the *Miranda* protections

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29 *Miranda*, 384 U.S. at 442.
30 Id. at 502.
31 Id. at 508-09.
33 Id. at 405-07.
to suspects finding themselves in situations implicitly addressed by *Miranda.*

*Harris v. New York* was the first such opinion of the Burger Court. In *Harris,* the Court granted certiorari to decide whether defendant’s statements to police, though excludable due to police failure to give the mandatory *Miranda* warnings, would be admissible for the limited purpose of impeaching the defendant’s credibility as a witness. Chief Justice Burger, writing for the majority, held that *Miranda* was only a bar with respect to the government’s case-in-chief, and that it would not prevent the use of evidence for other purposes such as impeachment.

The Burger Court’s tendency to limit the application of the *Miranda* doctrine was clearly demonstrated in *Michigan v. Tucker.* The defendant in *Tucker,* while being interrogated on a charge of rape and assault, was read all of his *Miranda* rights with the exception of the right to appointed counsel. The Court took the opportunity to create a clear and emphatic distinction between *Miranda’s* prophylactic rule and the fifth amendment. Justice Rehnquist, in his majority opinion, held that the statements made by the defendant were admissible because the rights set forth in *Miranda* are “not themselves rights protected by the Constitution.” Rather, they are merely warnings which protect the constitutional right against compulsory self-incrimination. This conclusion is directly in conflict with the precepts on which the Warren Court’s *Miranda* decision was founded. In essence, *Tucker* stopped just one step short of overruling *Miranda,* thus resulting in further erosion of the once concrete *Miranda* standard.

Several other cases decided by the Burger Court have arguably expanded the reach of the *Miranda* doctrine. However, this expansion has focused on those circumstances which constitute custodial interrogation, and not on the question of the admissibility of evidence in the wake of a *Miranda* violation. Thus, taken together, *Harris* and *Tucker* demonstrate the Burger Court’s treatment of cases involving the consequences of *Miranda* violations. Some scholars have criticized this approach as “misrepresentation of precedent to give the appearance of consistency with earlier cases, arbitrarily limiting broad, prophylactic decisions to their particular facts, and a tendency toward eradication of *Miranda’s* bright line standard.”

It is against this background of case law—the rule established by the Warren Court, the Burger Court’s historical treatment of the *Miranda* progeny, and the charges of the Court’s critics and dissenters—that one must examine the reasoning

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3. *Id.* at 224.
5. *Id.* at 444.
and impact of the Court's decision in New York v. Quarles. Specifically, this Author shall consider whether Quarles is merely the next step in the dimming of Miranda's "bright line," or the elucidation of an intrinsic exception.

IV. THE RENQUIST MAJORITY

A. Some Preliminary Remarks

It is important at the outset to highlight some of the differences, both factual and philosophical, which serve to distinguish Quarles from its predecessor. Importantly, the linchpin in Miranda's analysis was the theory that custodial interrogation is inherently compelling and must be controlled through the proper safeguards. The Quarles decision, on the other hand, was not concerned solely with whether an admission of guilt or an incriminating statement was compelled. Rather, the issue which Quarles addressed was whether a "compelling" custodial interrogation may be justified on the basis of a legitimate need to protect the public safety. Miranda dealt explicitly with the protection of fifth amendment rights and provided a suitable vehicle for establishing a per se rule. It did not address the necessity of exceptions or limitations on the right recognized. Quarles discussed the issue more fully in a factual situation vastly different from that in Miranda. In addition, Miranda involved the traditional precinct custodial interrogation, whereas Quarles was based upon on-the-scene questioning immediately following the apprehension of the defendant. The key questions to consider in analyzing the Quarles decision are (1) whether the different factual situations necessitate or legitimize separate standards, and (2) based upon the facts present in Quarles, was there actually a danger to public safety.

B. The Cost-Benefit Analysis

Justice Rehnquist, writing the opinion for the Court, began his discussion with the declaration that "concern for public safety must be paramount to adherence to the literal language of the prophylactic rules enunciated in Miranda." Moreover, he emphasized the fact that there was "no claim that [defendant's] statements were actually compelled by police conduct which overcame his will to resist." In determining that a threat to public safety existed under the facts of the case, Rehnquist stated: "So long as the gun was concealed somewhere in the supermarket, with its actual whereabouts unknown, it obviously posed more than one danger to the public safety: an accomplice might make use of it, a customer or employee might later come upon it." Having established that the mandatory Miranda warnings are separate from the fifth amendment, Justice Rehnquist resorted to a "cost-benefit analysis" in defense of his public safety exception. He reasoned that the Miranda majority was correct in its assumption that society can bear the cost of fewer con-

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42 Quarles, 104 S. Ct. at 2630.
43 Id. at 2631.
44 Id. at 2632.
victions; however, the fact situation was noticeably different in the Quarles case: "Here, had Miranda warnings deterred Quarles from responding to Officer Kraft's question about the whereabouts of the gun, the cost would have been something more than merely the failure to obtain evidence useful in convicting Quarles." Rehnquist maintained that the cost in this case was the danger of an undisclosed gun in the grocery store and, while society can bear the cost of fewer convictions, it should not be required to do so in the face of a demonstrable danger to the public.

Justice Rehnquist was apparently content to sacrifice the clarity of the Miranda doctrine due to "the importance of [fashioning] a workable rule" to guide police officers. It was this utility, combined with the overriding concern of public safety, that lead Justice Rehnquist to the conclusion that: "We hold that on these facts there is a 'public safety' exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence, and that the availability of that exception does not depend upon the motivation of the individual officers involved." On the basis of this "public safety" exception, the statement "the gun is over there" should not have been excluded and, likewise, all subsequent statements and the handgun were not excludable as illegal fruits since "there was no violation of Miranda in [the] case. . . ."

C. Historical Bases

1. Federal Precedents

The public safety exception which Justice Rehnquist propounded is not an innovative concept. Its roots are deeply entrenched in the foundation of an "exigent circumstance" exception adopted and reaffirmed by the Supreme Court in other contexts, and is also closely related to the "rescue doctrine" developed by the progressive Supreme Court of California. In his defense of the "public safety" exception, Justice Rehnquist relied primarily on four federal precedents: Michigan v. Tyler, Warden v. Hayden, Johnson v. United States, and Mincey v. Arizona. The Tyler case stated the "exigent circumstance" doctrine in its most general sense with regard to fourth amendment search and seizure: "A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry reasonable." Warden v. Hayden, which involved a warrantless search of a house

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41 Id.
42 Id. at 2632.
43 Id.
44 Id. at 2633.
45 Id. at 2634 n.9.
54 Tyler, 436 U.S. at 509.
in which an armed robbery suspect was believed to be present, gives further clarity to the doctrine:

The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would endanger their lives or the lives of others. Speed here was essential and only a thorough search of the house for persons and weapons could have insured that [defendant] was the only man present and that the police had control of all weapons which could be used against them.55

This is a situation very similar to the facts surrounding the Quarles case: Was an immediate questioning of Quarles, prior to reading him his Miranda rights, and search of the premises the only way in which the police could have insured their safety and the safety of those in the store?

Johnson v. United States points to some additional qualifications of the “exigent circumstances” doctrine. Johnson involved a police search for opium without a warrant. The Court refused to justify the warrantless search on the basis of exigent circumstances, finding that: “No suspect was fleeing or likely to take flight. The search was of permanent premises, not of a movable vehicle. No evidence or contraband was threatened with removal or destruction.”56 The record from the New York Court of Appeals indicates that Quarles, like the defendant in Johnson, was adequately restrained and that the gun was definitely on the premises with no threat of removal.

Mincey v. Arizona involved a narcotics raid on the defendant’s apartment during which an undercover policeman was shot. An extensive warrantless search of the premises resulted in the seizure of between 200 and 300 items, and the defendant was convicted of narcotics violations. The Supreme Court, in an opinion by Justice Stewart, reaffirmed that “the need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.”57 However, this rule must be read in light of the Court’s holding in Terry v. Ohio58 that “a warrantless search must be strictly circumscribed by the exigencies which justify its initiation.”59 Justice Stewart maintained that on the basis of the facts presented, which included a police fatality, the search was not justified by “any emergency threatening life or limb” because all persons had been accounted for before the search began.60 The facts of Quarles clearly do not indicate any fatalities or direct threat to life or limb and, since the defendant had no accomplice, the whereabouts of all participants was known.

55 Hayden, 387 U.S. at 291 (emphasis added).
56 Johnson, 333 U.S. at 15.
57 Mincey, 437 U.S. at 392 (quoting Wayne v. United States, 318 F.2d 205, 212 (1963)).
59 Mincey, 437 U.S. at 392 (quoting Terry v. Ohio, 392 U.S. 1, 25-26 (1968)).
60 Id. at 393.
2. State Precedents

There is a line of relevant California cases to consider in the analysis of Justice Rehnquist's determination that a public safety exception was justified on the facts of the Quarles arrest. People v. Dean\textsuperscript{61} concerned the interrogation of the accused in order to determine the location of a kidnap victim. Although this case obviously was not binding upon the Supreme Court, its discussion of the exigency issue involved is extremely helpful:

The Fourth Amendment emergency doctrine has been applied for the purpose of protection of life. Where the preservation of life is at stake and consists of the sole motivating force behind the conduct of the officers, which conduct is reasonable under the circumstances, there is no rational basis to distinguish the protections of the Fifth Amendment from the protections of the Fourth Amendment. In either case, the issue is that of saving a life. For all practical purposes, the rescue doctrine under the Fifth Amendment and the emergency doctrine under the Fourth Amendment are one and the same to the extent that they operate to protect life.\textsuperscript{62}

Based on the discussion in Dean and the fourth amendment cases, it appears that Justice Rehnquist was correct in concluding that there is a "public safety" exception, "exigent circumstance" doctrine, or "rescue doctrine" implicit in Miranda, and that this doctrine may be applicable in many situations. However, the carefully developed exceptions in the case law also lead this Author to agree with Justice Marshall that, given the facts of the Quarles case, the public was not exposed to danger commensurate with that required to trigger the doctrine. There was no threat that the evidence would be removed: all persons had been accounted for, and there was no reason to believe that there was any emergency threatening life or limb. The sole justification, then, for the violation of Quarles' fifth amendment right was that "a customer or employee" might come upon the gun. An undisclosed gun in a situation completely controlled by the police when the arresting officer "knew with a high degree of certainty that the defendant's gun was within the immediate vicinity of the encounter" does not seem to constitute a significant threat to public safety.\textsuperscript{63}

Assuming that there is a valid public safety exception to Miranda, when is it applicable? Specifically, how serious must the threat to safety be in order to invoke the doctrine? The California Supreme Court, in its examination of the "rescue doctrine" prior to the Miranda decision, maintained that a critical factor to be considered was whether there was a life at stake. People v. Modesto\textsuperscript{64} concerned police efforts to discover the location of a twelve-year-old girl who was missing. The police had found her nine-year-old sister murdered and had arrested a suspect.

\textsuperscript{62} Id. at 885, 114 Cal. Rptr. at 562 (emphasis added).
\textsuperscript{63} Quarles, 104 S. Ct. at 2643. For further discussion, see infra notes 82-83 and accompanying text.
\textsuperscript{64} People v. Modesto, 42 Cal. Rptr. 417, 398 P.2d 753 (1965).
Before informing the defendant of his rights, the officers questioned him regarding the whereabouts of the girl. Chief Justice Traynor, writing for the majority, stated: "The paramount interest in saving [the girl's] life, if possible, clearly justified the officers in not impeding their rescue efforts by informing defendant of his rights to remain silent and to the assistance of counsel."6 People v. Dean,66 decided eight years after the Supreme Court's holding in Miranda, reaffirmed the vitality of the rescue doctrine in light of the mandatory Miranda warnings. In avoiding the strictures of the Supreme Court's ruling in Miranda, the California court observed that "[t]he majority opinion gives no guide to what officers should do when confronted with a balancing between the life of a victim and the protection of a suspect's constitutional rights."67 Miranda did not consider exigent circumstances involving an immediate threat to public safety.

We are convinced that the Modesto rule was not formulated in a vacuum which did not recognize Miranda considerations.

... It would seem to this court that even more basic than the right of a citizen not to be compelled to incriminate himself is the right of a citizen to his life.68

People v. Riddle69 also gave an extended analysis to the rescue doctrine in light of the requirements imposed by Miranda. Riddle, like the other California cases above, concerned police efforts to locate a missing woman following the arrest of a suspect who was believed to have been responsible for her disappearance. In its discussion of the principle of exigent circumstances the court stated that "application of the principle . . . is not restricted to situations where human life is at stake."70 In support of this statement the court cited the following examples: Warden v. Hayden71 (warrantless entry of a house by police in hot pursuit of fleeing suspect); Ker v. California72 (warrantless and unannounced entry to prevent imminent destruction of evidence); Michigan v. Tyler73 (warrantless search to extinguish a fire and investigate for arson); Wayne v. United States74 (forcible warrantless entry into an apartment to save human life); People v. Hill75 (warrantless entry into residence where the victim had been murdered two hours earlier); and People v. Sirhan76 (warrantless entry to seize evidence where a reasonable belief

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65 Id. at 423, 398 P.2d at 759.
66 Dean, 39 Cal. App. 3d 875, 114 Cal. Rptr. 555.
67 Id. at 879, 114 Cal. Rptr. at 558.
68 Id. at 882, 114 Cal. Rptr. at 559.
70 Id. at 574, 148 Cal. Rptr. at 175.
71 Hayden, 387 U.S. 294.
76 People v. Sirhan, 7 Cal. 3d 710, 102 Cal. Rptr. 385, 497 P.2d 1121 (1972), cert. denied, 410
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existed of a conspiracy to assassinate political candidates). Even in light of California's expansive view of the exigent circumstances doctrine, however, none of the factors specifically mentioned was present in Quarles.

The court in Riddle also reexamined Miranda "to determine whether its rules of procedure [were] intended to be absolute rules admitting of no exception." First, the court noted that "the factual situation presented in Miranda and discussed by the court was that of ongoing criminal investigation..." "In this respect the court’s rules for custodial interrogation do not take into account the possibility of emergency circumstances or consider the possibility of interrogation for purposes not primarily geared to criminal prosecution." Because Miranda had not addressed these factors, the court was justified in recognizing an exception. Second, the goal of Miranda was to eliminate the misconduct of police associated with "third-degree" questioning, an objective which is not relevant to on-the-scene or emergency questioning in situations involving an identifiable threat to public safety. Based upon these inherent limitations on Miranda's scope, the Riddle court concluded that "exigent circumstances may excuse compliance with the Miranda rules in instances of overriding need to save human life or to rescue persons whose lives are in danger." Under the Riddle court’s analysis, "an emergency sufficient to excuse the Miranda requirements" may arise if the following elements are met:

(1) Urgency of need in that no other course of action promises relief;

(2) The possibility of saving human life by rescuing a person whose life is in danger; and

(3) Rescue as the primary purpose and motive of interrogators.

A review of these factors suggests that Quarles did not fall within the exigent circumstances rule articulated by the California court. First, as previously discussed, the police officers in Quarles did have an alternate course of action; rather than violating Quarles’ fifth amendment rights by asking “where is the gun,” the officers merely had to seal off an area over which they already had control and to begin a search for the missing weapon. The urgency of need does not, in light of this alternative, appear to be sufficient. Second, there were no persons who needed to be rescued or who were in imminent danger. There was merely a remote possibility of harm to an undetermined group of people. Third, even if rescue was the primary purpose of the officers’ questioning, based upon the facts from the record, their motivation was arguably misplaced.


77 Riddle, 83 Cal. App. 3d at 574, 148 Cal. Rptr. at 175.
78 Id.
79 Id.
80 Id.
81 Id. at 576, 148 Cal. Rptr. at 176.
82 Id. at 576, 148 Cal. Rptr. at 177.
In the final analysis, the issue becomes one of priorities. When the Supreme Court handed down its decision in *Miranda*, it rejected the argument that society's need for interrogation outweighs the fifth amendment privilege against self-incrimination, citing to *Chambers v. Florida*, which stated in relevant part: "No higher duty, no more solemn responsibility, rests upon this Court than that of translating into living law and maintaining the constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution."\(^8\) When reading these words in light of the Court's later statement in *Mincey v. Arizona*,\(^5\) that "[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency,"\(^6\) one cannot help but think that *Miranda* was not intended to apply to situations where a life is imperiled. *People v. Willis*\(^6\) summarized this point: "The interest in saving a human life is considered to be outside the parameters of the constitutional protection afforded against self incrimination."\(^7\)

**VI. THE SEPARATE OPINIONS OF O'CONNER AND MARSHALL**

Though the *Quarles* majority utilized a type of cost-benefit analysis in discussing the application of *Miranda*, Justice O'Connor, concurring and dissenting in part, employed a strict constitutional method reflective of Chief Justice Warren's opinion in *Miranda*. She quoted approvingly from *Miranda*, stating that in the absence of *Miranda* warnings all statements are presumed to be coerced and must be excluded.\(^8\) She dissented from the majority on the grounds that:

The justification the Court provides for upsetting the equilibrium that has finally been achieved—that police cannot and should not balance considerations of a public safety against the individual's interest in avoiding compulsory testimonial self-incrimination—really misses the critical question to be decided . . . [which is] who shall bear the cost of securing the public safety when such questions are asked and answered. . . . *Miranda* placed that burden on the state.\(^9\)

An exigent situation does not diminish the compelling nature of custodial interrogation so as to justify shifting the burden from the state to the individual.\(^10\) On these bases, Justice O'Connor concluded that the statements made by the accused should be held inadmissible; however, she reasoned that "nontestimonial evidence such as the gun should not be suppressed. . . ."\(^11\)

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\(^8\) *Chambers v. Florida*, 309 U.S. 227 (1940).
\(^5\) *Id.* at 241.
\(^6\) *Mincey*, 437 U.S. 385.
\(^7\) *Id.* at 392.
\(^11\) *Id.* at 448, 163 Cal. Rptr. at 726.
\(^11\) *Quarles*, 104 S. Ct. at 2635 (quoting *Miranda*, 384 U.S. at 476-79).
\(^8\) *Id.* at 2636.
\(^9\) *Id.* at 2641. See infra notes 103-12 and accompanying text.
The dissenting opinion of Justice Marshall, joined by Justices Brennan and Stevens, is the most critical of the majority’s reasoning. Marshall charged that the majority misread *Miranda* completely, and ignored its emphatic statements that the rights of the fifth amendment cannot be abridged and that custodial interrogations are inherently coercive. The dissent also challenged the necessity of a public safety exception. “While the Fourteenth Amendment sets limits on [unconsented questioning], nothing in the Fifth Amendment or our decision in *Miranda v. Arizona* proscribes this sort of emergency questioning. All the Fifth Amendment forbids is the introduction of coerced statements at trial.”

A similar position was taken by the Fifth Circuit in *United States v. Castellano*. *Castellano* concerned a situation where the accused was arrested on the charge of possession of a firearm; police questioned Castellano as to the location of the weapon prior to reading him his *Miranda* rights. The court affirmed that:

> Even if the questions had a legitimate security purpose . . . *Miranda* warnings should have preceded them. First, . . . [i]f a detainee is truly dangerous, it is unlikely that he will reveal the location of weapons essential to his own security. Second, it would be difficult to define what is a “security” or “safety” inquiry . . . . Third, under existing authority the police may take direct action and search a suspicious, dangerous detainee. . . . Such a search would seem to provide much better protection than mere questioning. In sum, we feel that a “security” exception to *Miranda* would erode that doctrine measurably without providing substantially greater protection for the public.

Marshall urged that a public safety exception is not only unnecessary in a constitutional sense. Even if one assumes the legitimacy of such a limitation on *Miranda*, the dissent argued that it would be inapplicable to the facts of the *Quarles* case. The factual assumption that the public was in danger, Marshall observed, was incorrect and in conflict with the findings of the New York Court of Appeals:

> Quarles had been “reduced to a condition of physical powerlessness.” . . . Quarles was not believed to have, nor did he in fact have, an accomplice to come to his rescue. When the questioning began the arresting officers were sufficiently confident of their safety to put away their guns. As Officer Kraft acknowledged . . . “the situation was under control.”

These statements were in direct conflict with the majority’s findings of fact, leaving as the sole justification for invoking the exception the mere possibility that “a customer or employee might later come upon [the gun].”

Finally, the dissent challenged that “in the beguiling language of utilitarianism,
the Court has sanctioned *sub silentio* criminal prosecution based on compelled self-incriminating statements . . . in direct conflict with the Fifth Amendment . . . ." The majority countered this criticism, arguing that it "merely reject[ed] the . . . argument . . . that the statement must be *presumed* compelled because of Officer Kraft's failure to read him his *Miranda* warnings." It justified this contention on the grounds that "the *Miranda* Court itself recognized . . . the failure to provide *Miranda* warnings in and of itself does not render a confession involuntary." The dissent found this argument unpersuasive, and took the majority to task for *ad hoc* constitutional decision-making which threatened the effectiveness of the Bill of Rights as a safeguard of individual liberty. Accordingly, Justice Marshall found that Quarles' testimony should be inadmissible under the fifth amendment and would remand the matter of the admissibility of the gun for further consideration.

VII. *Miranda* and Nontestimonial Evidence

Although the majority does not dwell upon the issue of the admissibility of the gun, Justice O'Connor and Justice Marshall adopt substantially different views on the matter. Justice O'Connor maintained that *Wong Sun v. United States* would not, under its "fruit of the poisonous tree" analysis, bar the admission of the gun because of the prior *Miranda* violation. Rather, she contended that *Wong Sun*, properly read in light of *Michigan v. Tucker*, "leads to exclusion of derivative evidence only where the underlying police misconduct infringes a 'core' constitutional right." Because *Miranda* was merely a tool to implement a defendant's fifth amendment rights, and was not itself a right protected by the Constitution, the rule of *Wong Sun* would not apply to exclude the handgun.

It is significant that in her fervent defense of the mandatory reading of *Miranda* warnings, Justice O'Connor has strayed from the original underpinnings of the *Miranda* decision. Recall *Miranda's* declaration that "the requirement of warning, and waiver of rights is a fundamental with respect to the fifth amendment privilege," thereby making the *Miranda* warnings and the fifth amendment guarantee virtually synonymous. The focal point of Justice O'Connor's argument in support of *Miranda* is her acceptance of its presumption that custodial interrogations are inherently compelling. Thus, she favors the compulsory reading

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99 *Id.* at 2648.
100 *Id.* at 2651 n.5.
101 *Id.* n.5 (quoting *Miranda*, 384 U.S. at 457) (*but see the *Miranda* Court's discussion of the need for a prophylactic rule to better protect the defendant in a custodial setting)*.
102 *Id.* at 2649.
106 *Id.*
108 *Quarles*, 104 S. Ct. at 2635.
of *Miranda* warnings before questioning. However, in light of her analysis regarding the admissibility of the gun, she denies that these warnings rise to the level of "core" or "fundamental" constitutional rights, and therefore appears to be in accord with the major premise of Rehnquist's majority opinion.108

Importantly, the gun is probably as damaging to *Quarles* as is his statement, "the gun is over there." Thus, Justice O'Conner is in a curious position—arguing adamantly that *Miranda* rights must be given complete protection, and then nullifying the benefits of such protection by refusing to exclude tainted evidence. In support of her position, she relied on *Nix v. Williams*109 which held that "evidence which inevitably would have been discovered need not be excluded at trial because of independent police misconduct."110 Justice Marshall termed this approach "a radical departure from precedent,"111 arguing that the inevitable discovery theory had not been raised before the New York court and should be ruled upon by that court on remand.112 To insure that fifth amendment rights are not secured and then capriciously denied, Justice Marshall's position appears to be the wisest alternative. The court should rule on this matter only after full consideration by the lower courts.

**VIII. CONCLUSION**

Regardless of whether one accepts the theory that a "public safety" exception is unnecessary, already provided for in existing law, or an intrinsic corollary to the *Miranda* decision if read broadly, the result is the same—such an exception should not be in conflict with *Miranda* and the protection of fifth amendment rights. Of course, a strict reading of *Miranda* will lead to a different conclusion; however, the law should not be so rigid as to preclude flexibility in response to the evolution of new perspectives and situations. The law must not only be viewed as a just and equitable standard governing man's behavior. It must be a workable standard as well, malleable within reason in response to the exigencies of the situation, in order that the highest approximation of justice for all might be attained. In this respect, the scales of justice must weigh the conflicting priorities which they seek to secure.

In *New York v. Quarles*, the Court was faced with the difficult task of balancing the constitutional rights of the individual—vested and jealously guarded—and the welfare of the public. Justice Marshall argued persuasively that under the circumstances of this case, the fifth amendment rights of the accused were violated without justification. The facts did not demonstrate a danger to the public which

108 Compare O'Conner's characterization of *Miranda* warnings as a "nonconstitutional prophylactic," *id.* at 2640 n.4, with Rehnquist's assertion that such warnings "are not themselves rights protected by the Constitution. . . ." *Id.* at 2631 (quoting *Michigan v. Tucker*, 417 U.S. at 444).
110 *Quarles*, 104 S. Ct. at 2640 n.4.
111 *Id.* at 2649 n.11.
112 *Id.*
was sufficient to outweigh the interest of the Court in protecting the constitutional rights of the individual involved. However, the fact the exception was not applicable in this case does not undermine its validity and applicability in circumstances which warrant its use. The precedential cases relied on by the majority demonstrate that an “exigent circumstances” or “public safety” exception was not an anomaly created by the Quarles majority in an effort to further dim the “bright line” of Miranda. It is in fact an exception which, although not widely used, was nevertheless firmly established by other decisions.

The recent line of California cases cited above served to refine and clarify the parameters of the public safety exception in terms of an analogous “rescue doctrine.” By conceding the legitimacy of such an exception, these cases reach the question of when its use may properly be justified. The preservation of life is the primary justification offered by the California courts. In this respect the analysis is succinct: The right to life is fundamentally superior to the right against self-incrimination. However, based upon a fair reading of these cases, it is apparent that the threat to another’s life must be direct and immediate, not remote or undetermined as in the Quarles case. Justification of a public safety exception has also been grounded upon the need to prevent destruction of property and removal of evidence; neither of these factors was even remotely possible in Quarles.

The reasoning of the majority is sound in terms of its analysis of the existence and validity of the exception, but it falters with regard to its applicability. The reasoning of Justice O’Conner’s separate opinion is questionable at best. She defends Miranda in theory, only to nullify it in practice with an evidentiary distinction between the admissibility of testimonial and nontestimonial derivative evidence. She welcomes the accused to the fruitful table of constitutional protection, only to pull the chair out from under him. Justice Marshall’s dissent is significant both in terms of his critique of the majority’s factual application of the public safety exception and his analysis of its necessity. He argues in substance that the fifth amendment does not prohibit emergency questioning, but only the admissibility of coerced statements at trial. His reasoning on these issues is sound and persuasive. However, he appears excessively dogmatic to this Author in his adherence to the clear guidelines of Miranda, since the public safety exception, though theoretically unnecessary, is nevertheless valid, useful, and workable.

While this case is unquestionably significant in terms of its determination of another exception to Miranda, its impact on future litigation should not prove to be overwhelmingly disruptive. It is unlikely that an onslaught of cases in which the police can defend illegitimate violations of Miranda based upon Quarles’ public safety exception will be successful, provided that in case-by-case analyses the courts consistently apply proper scrutiny to determine if the facts disclose a genuine threat to the public safety.

When one considers the role of the judiciary and the myriad values which it seeks to uphold in its decisions, the philosophy and impact of the Quarles decision
should not be judged too harshly. Its significance should not be evaluated solely with respect to encroachment upon individual liberty, but rather in terms of its attempt to pursue and inculcate a higher goal—the welfare of the citizenry. The *Quarles* majority has merely adopted a philosophically-based inquiry from the natural law. The question has become: Is there an interest involved which is deemed to be ethically or morally imperative, such that it would outweigh the interest in the safeguard of individual liberty. This is admittedly not the definitive rule of *Miranda*, but one which reworks the balance of public and private interests by permitting the narrowing of a criminal defendant's privilege against self-incrimination to better secure the welfare of the public-at-large.

*W. Scott Campbell*