

“EVERYONE KNOWS THEIR MIRANDA RIGHTS”: Implicit Assumptions and Countervailing Evidence

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In its landmark decision in *Miranda v. Arizona* (1966), the Supreme Court of the United States buttressed the Constitutional privilege against self-incrimination by requiring as a procedural safeguard that various aspects of this privilege be clearly communicated to custodial suspects. Members of the public often believe that their continually media-fueled familiarity with Miranda warnings results in an adequate understanding of Miranda rights—a frequently erroneous assumption that may diminish counsel’s motivation to investigate Miranda waivers and may influence court rulings on the validity of such waivers. The current investigation examined Miranda rights misconceptions held by two groups of pretrial defendants: those arrested more recently (i.e., less than 2 weeks ago) and those arrested less recently (i.e., 4 weeks ago or more). The misconceptions of these groups were then contrasted with those of undergraduate students representing a more educated and comparatively unstressed segment of American society. Results revealed a host of widely-held misconceptions, including a fundamental misunderstanding of the function of the “right to remain silent” as a legal protection. Moreover, many misconceptions appeared unrelated to intelligence, education, or prior contacts with the criminal justice system. The implications of these findings are discussed with respect to the validity of Miranda waivers.

Keywords: Miranda rights, Miranda warnings, constitutional protections

More than four decades have passed since the *Miranda* decision (*Miranda v. Arizona*, 1966) enshrined the Constitutional protections afforded to custodial suspects against self incrimination. As a prophylactic safeguard, the rights to silence and counsel must be communicated via Miranda warnings or “other fully effective means” (*Miranda*, p. 478) or else the arrestee’s statement may be

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excluded from evidence. The purpose of these communications is to ensure that “the accused must be adequately and effectively apprised of his rights” (*Miranda*, p. 467). As the Supreme Court of the United States subsequently ruled (*California v. Prysock*, 1981, p. 360), this need not be reduced to “verbatim recital of the words” copied from the *Miranda* opinion. Moreover, the Court explicitly cautioned against scrutinizing every single phrase (e.g., “if and when”) by concluding that “[r]eviewing courts therefore need not examine Miranda warnings as if construing a will or defining the terms of an easement” (*Duckworth v. Eagan*, 1989, p. 203). As a result, marked variation exists across jurisdictions with respect to the content of Miranda warnings and the communication of such safeguards (Rogers, Harrison, Shuman, Sewell, & Hazelwood, 2007; Rogers, Hazelwood, Sewell, Harrison, & Shuman, 2007).

The Court has consistently asserted that if self-incriminatory statements are to be admitted into evidence, then Miranda warnings must have been stated, irrespective of the suspect’s alleged prior familiarity (*Orozco v. Texas*, 1969; *Oregon v. Elstad*, 1985; *Dickerson v. United States*, 2000); however, a number of cases betray an ongoing assumption that many defendants do, in fact, already know their Miranda rights. In *Miranda* itself, the Court observed that “[t]he accused who does not know his rights and therefore does not make a request may be the person who most needs counsel” (pp. 470–471), thus implying that most persons are already aware that they need not incriminate themselves. For instance, in his dissent in *Orozco v. Texas* (1969), Justice Byron White referred to those situations in which a defendant is already “aware of what his right to silence is,” and maintained that it is “sheer fancy to assert that his answer to every question asked him is compelled unless he is advised of those rights with which he is already intimately familiar” (p. 329). Much is often made of the allegedly instructive effect of prior encounters with peace officers in establishing knowledge of Miranda rights. In *Fare v. Michael C.* (1979), the Court made repeated references to the alleged Miranda-related savvy of “an experienced older juvenile” with “considerable experience with the police” (pp. 725–726), while in *Yarborough v. Alvarado* (2004) it was asserted that “suspects with prior law enforcement experience may understand police procedures and reasonably feel free to leave unless told otherwise” (p. 668).

Inundated with television images of police arrests and “Mirandized” suspects, most Americans believe they know their Miranda rights (Rogers, 2008). Most persons can even recite a familiar series of Miranda-type statements beginning with “You have the right to remain silent.” As observed by Nguyen (2000), “the presumption—one supported by the cultural ubiquity of Miranda warnings on cop shows on television—remains that suspects *already know their rights* and that reading them is generally enough” (p. 61; emphasis added). While acknowledging the pervasive influences of police dramas, Godsey (2006) raised strong doubts whether custodial suspects actually know their Miranda rights. Moreover, he argued that typical Miranda warnings may actually mislead custodial suspects (e.g., the immediate availability of legal counsel) rather than serving educative and prophylactic functions.

A nationally-based community survey conducted for the National Legal Aid and Defender Association (Belden, Russonello, & Stewart, Inc., 2001) appears to provide broad support for the notion that the general public understands its

Miranda rights. This survey found that most persons recognized that suspects have the right to remain silent (81%), the right to counsel (95%), and the right to indigent-based free legal services (88%). Interpretation of these findings should be tempered, however, by the fact that this survey did not require participants to *identify* suspect's rights, but rather to answer yes-no questions gauging the ability to simply *recognize* such rights.

From a contrasting perspective, studies conducted in Virginia (Payne & Time, 2000; Payne, Time, & Gainey, 2006) found that close to 90% of police chiefs either agreed or strongly agreed with the notion that members of the general public are misguided in their perceptions of Miranda warnings, although more than 80% of these police chiefs did believe that most *offenders* already knew their Miranda rights (Payne et al., 2006). Surveying a separate sample of college students, Payne et al. (2006) identified similar assumptions of a misguided public, but only a slight majority of students (53.8%) believed most offenders already knew their Miranda rights.

As part of programmatic Miranda research, Rogers and his colleagues (Rogers, Harrison, Hazelwood, & Sewell, 2007; Rogers, Hazelwood, Harrison, Sewell, & Shuman, 2008) explored the reasons expressed by pretrial defendants for exercising or waiving their Miranda rights. Such reasons suggested that many defendants had incomplete or inaccurate knowledge of their Miranda rights and other relevant data affecting their waiver decisions (e.g., not asking for counsel due to a lack of funds). However, these studies do not directly assess knowledge of Miranda rights because they evaluated only *expressed* reasons related to decision-making rather than overall information.

Rogers, Shuman, and Drogin (2008) postulated that beliefs about Miranda knowledge (e.g., already known by criminal defendants) might explain why Miranda issues are frequently overlooked by defense attorneys. If custodial suspects are already knowledgeable about their Miranda rights, then problems with Miranda warnings and their administration would be rendered moot by applying a "totality of circumstances" standard. In advancing this proposition, Rogers (2008) conservatively estimated that "318,000 suspects waive their rights annually while failing to comprehend even 50% of representative Miranda warnings" (p. 777). However, defense attorneys rarely contest the validity of Miranda waivers, despite the high prevalence of these waiver and potential importance to the verdict (i.e., exclusion of confessions). In an informal questioning of more than 100 public defenders, Rogers found none acknowledged having raised Miranda issues—even for initial investigation—while defending more than 22,000 felony cases in the last 12 months.¹ In light of the conflicting assumptions and potential effect on legal counsel, data are clearly needed on defendants' understanding of *Miranda* and Miranda-related material.

This article is organized into two major components. First, we describe the development and validation of a research measure to assess Miranda-related knowledge (i.e., the Miranda Quiz). Second, we examine data collected via our programmatic Miranda research on two divergent samples: pretrial defendants and college students. Pretrial defendants were obviously selected because they are

¹ To protect the anonymity of the participants, no further details are provided.

central to this investigation. Given the retrospective nature of this research, Miranda knowledge may change over time. Therefore, we investigated Miranda knowledge for two groups: defendants with recent arrests (i.e., less than 2 weeks) and those with later arrests (i.e., more than 1 month). In marked contrast to pretrial defendants, college students were included to address the “upper-bounds” of Miranda comprehension in a bright, well-educated sample tested under non-stressful circumstances.

Development of the Miranda Quiz

The purpose of the Miranda Quiz was to assess salient issues related to Miranda comprehension and subsequent waivers. For Miranda components, the process of selecting issues was informal. In the development of the Miranda Rights Scale (MRS; Rogers, 2006), recently arrested defendants from a county jail and mentally disordered defendants from a competency restoration unit were asked to provide their reasons for exercising and waiving their Miranda rights. Their open-ended responses were categorized according to similar content areas, providing valuable insights about potential misconceptions. Our rationale for the selected misconceptions is summarized in the subsequent paragraphs.

Right to silence. Miranda warnings almost never—944 of 945 sampled Miranda warnings, or 99.9% (Rogers, Hazelwood et al., 2008)—inform custodial suspects that their *silence* cannot be used as evidence against them. Without specifically being told, many defendants misinterpret the word “right” as a choice or something correct rather than a Constitutional protection. Believing that both choices (talking or silence) are likely to be incriminating, defendants may opt to waive their rights—reasoning that it is better to talk than to be convicted with silence (Rogers, Shuman et al., 2008). Regarding the Constitutional protection, the Supreme Court of the United States held in *Miranda* that “it is impermissible to penalize an individual for exercising his Fifth Amendment privilege” (p. 468, footnote 37), and later affirmed this perspective in *Wainwright v. Greenfield* (1986) when ruling that a prosecutor’s attempt to use an arrestee’s silence in the face of repeated Miranda warnings as evidence of sanity violated the Due Process Clause of the Fourteenth Amendment.

Risks of talking. While always cautioning defendants that their statements can be used against them (Rogers, Hazelwood et al., 2008), Miranda warnings do not address the admissibility of retracted statements, unsigned Miranda waivers, or “off the record” comments. Therefore, defendants may be uninformed about these parameters. Regarding unsigned waivers, the Supreme Court held in *North Carolina v. Butler* (1979) that a valid Miranda waiver may be made verbally or even inferred from the arrestee’s conduct. Such waivers must, of course, still be “knowing and intelligent” (*Davis v. U.S.*, 1994, p. 458; *Edwards v. Arizona*, 1981, p. 483). Numerous federal cases have indicated that when interrogators characterize a conversation as “off the record,” this will negatively affect admissibility, although such cases also illustrate that defendants will find it difficult to prove that this characterization of their statements actually occurred during questioning (*U.S. v. Rowell*, 1992; *U.S. v. Swint*, 1994; *Walker v. Wilmot*, 1979).

Right to counsel. The confidentiality of attorney-client communications is an important consideration for suspects in deciding whether to exercise the right

to counsel. However, Miranda warnings rarely inform (0.4%) custodial suspects that they are allowed to meet privately with their attorneys before any interrogation.² Immediately following a request for counsel, pre-interrogation inquiries must stop and formal interrogation is not to be initiated. In a written survey of lawyers attending the California Association for Criminal Justice's (CACJ) Capital Case Defense Seminar (Rogers, 2005), 70.3% thought this information would be essential for informed decisions regarding Miranda waivers. The *Miranda* decision recognized the importance of private communications, acknowledging no less than three separate times the historical emphasis on enabling counsel "to confer with his client in private" (p. 485). Federal courts subsequently have affirmed this notion with observations that "the essence of the Sixth Amendment right is, indeed, privacy of communication with counsel" (*U.S. v. Rosner*, 1973, p. 1224) and that interference with such privacy "would make the defendants reluctant to make candid disclosures" to their attorneys (*U.S. v. DiDomenico*, 1996, p. 299). Regarding requests for an attorney, the Supreme Court has required specific, unambiguous language, ruling in *Davis v. U.S.* (1994) that "maybe I should talk to a lawyer" is not the same as "I want a lawyer" (p. 462).

Free legal services. In Miranda warnings, descriptions of legal services for indigent defendants (see Rogers, Hazelwood et al., 2008) typically state that services are provided (65.5%), but do not specify that they are free. Moreover, these statements require on average a Flesch-Kincaid reading level of 10.20, which exceeds the reading comprehension of most pretrial defendants. These findings raise an important question whether custodial suspects understand that neither they nor their families are responsible for legal expenses. The Supreme Court had already established prior to *Miranda*—in *Gideon v. Wainwright* (1963)—that "lawyers in criminal courts are necessities, not luxuries," such that "in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him" (p. 344). Failure to convey to the defendant the availability of free legal services was a critical factor in the Court's decision in *California v. Prysock* (1981), and this was the central focus of the frequently cited Florida case of *Thompson v. State* (1992), in which a new trial was granted on the basis of the police having failed to convey to the accused that a "free" attorney was available prior to questioning (p. 17).

Continuing legal rights. In *Miranda* (p. 479), the Court affirmed that rights could be asserted at any point, "Opportunity to these rights must be afforded to him throughout the interrogation." Even when Miranda rights have been waived, they can be reasserted, as reflected in a plethora of state and federal appellate cases (e.g., *People v. Davis*, 1991; *State v. Laurie*, 1992; *U.S. v. Pitre*, 1992; *U.S. v. Scott*, 1995). However, potential sources of confusion are twofold. First, a minority of Miranda warnings (19.2%; Rogers, Hazelwood, et al., 2008) omit this prong entirely. Second, about one-fourth (24.9%; see Rogers, Hazelwood et al., 2008) of the remaining warnings use difficult-to-comprehend legalistic phrases, such as "withdraw your waiver" to convey the continuing nature of a suspect's rights.

² Unpublished findings from Rogers, Hazelwood, Harrison, et al. (2008).

Misperceptions about Miranda. Regarding misperceptions, Kassin's (2005) seminal work suggested that innocent persons may not heed Miranda warnings due to a misperception that these admonitions are intended to protect the guilty and thus have no bearing on the innocent. Other misperceptions may include (a) the uniformity of Miranda warnings across jurisdictions and (b) limits to their applicability (e.g., what constitutes "custody"). The relevance of this phenomenon lies, again, in the "knowing" aspect of a "knowing and intelligent" waiver (*Davis v. U.S.*, 1994, p. 458; *Edwards v. Arizona*, 1981, p. 483).

Police practices during pre-interrogation. The Supreme Court has consistently acknowledged—both prior and subsequent to its decision in *Miranda*—that an appropriate level of deception is an acceptable and important component of securing confessions (*Illinois v. Perkins*, 1990; *Jackson v. Denno*, 1964; *Moran v. Burbine*, 1986). Even in *Miranda* (1966), the Court expressed no overt disapproval of the fact that investigators lied to Ernesto Miranda when asserting that he had been positively identified as the perpetrator. However, the Court has also held that an intelligent waiver of Miranda rights necessitates that "the defendant knows what he is doing and his choice is made with eyes open" (*Iowa v. Tovar*, 2004, p. 88). If custodial suspects are not aware that some degree of police deception is expressly approved, then they may take at face-value an interrogator's assertions about incriminating evidence and even the pending criminal charges.

Methods

Samples

Defendant sample. In the current study, 149 defendants were recruited from two separate sites in Texas and Oklahoma. Detainees in Texas were recruited from a county jail that services a diverse array of both rural and urban areas surrounding Dallas, Texas, while Oklahoma participants were enlisted from two Tulsa-area jails, accessed through the Tulsa Oklahoma Indigent Defense System (OIDS) office. The defendant sample consisted of 111 (74.5%) male and 38 (25.5%) female defendants with a mean age of 32.12 ($SD = 10.64$) years and averaging nearly a high school education ($M = 11.59$, $SD = 1.70$). Detainees were primarily European American (85; 57.0%), with a sizable proportion of minority populations represented by Native Americans (25; 16.8%), African Americans (19; 12.8%), Hispanic Americans (5; 3.4%), and Asian Americans (1; 0.7%). The remaining participants reported their ethnicities as bi-racial (9; 6.0%) or "other." Only one male defendant (0.7%) declined to divulge his ethnicity. Detainees' self-reported experience with the criminal justice system ranged considerably, with an average of approximately ten ($M = 10.60$, $SD = 10.60$) prior arrests.

College. A total of 119 college undergraduates from the University of North Texas participated in a separate Miranda study, during which they were administered a number of Miranda-related measures, including the Miranda Quiz. These students included 48 (40.3%) males and 71 (59.7%) females, who were recruited via online sign-up and represent a cognitively high-functioning population in a nonstressful environment. Undergraduates ranged in age from 18 to 45 ($M = 21.59$, $SD = 5.05$) years, and had completed, on average, their sophomore year in college ($M = 14.49$, $SD = 1.21$ years of education). The student sample consisted

of 69 (58.0%) European Americans, 19 African Americans (16.0%), 18 Hispanic Americans (15.1%), and 11 Asian Americans (9.2%), with an additional 2 (1.7%) participants reporting their ethnicity as “other.”

Measures

Defendants and college undergraduates were administered an extensive battery of psychological and cognitive measures as part of two larger studies within the programmatic research on *Miranda*. We summarize here the measures relevant to the current investigation.

Wechsler Abbreviated Scale of Intelligence (WASI). The WASI (Wechsler, 1999) is a well-validated abbreviated intelligence test that corresponds well to the longer WAIS-III (Wechsler, 1997), demonstrating excellent concurrent validity and reliability (i.e., $r_s > .90$). The WASI uses four scales (Vocabulary, Similarities, Block Design, and Matrix Reasoning) to generate estimates of an examinee’s verbal and nonverbal abilities.

Wechsler Individual Achievement Test – 2nd Edition (WIAT-II). The WIAT-II (Psychological Corporation, 2002) is a measure of academic achievement that produces grade equivalent estimates in addition to standard scores for both Reading Comprehension and Listening Comprehension subtests. WIAT-II subtest reliability estimates are high (i.e., r_s from .80 to .98), with extensive adult normative data.

Miranda Quiz. The Miranda Quiz is a self-report questionnaire in which examinees make a forced-choice true-false rating of 25 statements assessing misconceptions about Miranda rights. As previously described, items were generated based on previous research detailing common misconceptions in waiving or exercising one’s Miranda rights, organized into seven content areas: Right to Silence, Risks of Talking, Right to Counsel, Free Legal Services, Continuing Legal Rights, Misperceptions about Miranda, and Police Practices.

A panel of four legal experts with considerable Miranda-related knowledge³ independently rated the content and scoring of the Miranda Quiz. As evidence of content validity, agreement among experts was excellent ($ICC_{\text{category}} = .93$; $ICC_{\text{scoring}} = .94$). To more fully address Continuing Legal Rights, an additional item (i.e., “Once you give up the right to silence, it is permanent”) was included. The agreement was recalculated with this additional item and remained excellent ($ICC_{\text{category}} = .96$; $ICC_{\text{scoring}} = .97$).

Procedure

Defendant sample. Participants were recruited from either holding cells or from general population at each jail site. Texas defendants were selected from a list of names at random, while Oklahoma detainees with OIDS attorneys volunteered for participation via sign-up sheets that were posted in each housing facility. To preserve the sample’s generalizability, only minimal exclusion criteria for participation were utilized: (a) lack of fluency in English, (b) recent violent

³ The expert panel was composed of Eric Drogin, J. D., Ph. D., ABPP; Steven Erickson, J. D., Ph. D., LLM; Daniel W. Shuman, J. D.; and Charles D. Weisselberg, J. D.

behavior that would put researchers at risk, or (c) inability to provide written informed consent.

Measures were administered in two quasi-random patterns to reduce ordering effects, with the Miranda Quiz given prior to any other Miranda-related measures to avoid contamination from learning the material. For their involvement in the study, each defendant was provided with nominal compensation (\$15.00) that was deposited in their institutional accounts as an external incentive for participation.

College sample. Participants volunteered for the study via online sign-up and were tested in a single session of approximately 1 hour. Exclusion criteria were minimal; all participants were required to be fluent in English and currently enrolled in at least one class. After written informed consent was obtained, the Miranda Quiz was administered first; its results were used in the current study. Participants were subsequently involved in a mock-crime study involving their subsequent comprehension of Miranda warnings after being subjected to situational stresses (i.e., being caught “red-handed”).

Compensation in the study consisted of two research credits, which can be used as extra credit in many undergraduate classes.

Results

We begin the examination of failed understandings with general observations about the offender sample as a whole. It is followed by within-groups (recent vs. later arrests) and between-group (defendants vs. college students) comparisons.

Misconceptions by Defendants

The *right to remain silent* might better be reconceptualized as the *risk to remain silent* for a substantial minority of pretrial defendants. About 30% (see Table 1) view silence, by itself, as incriminating evidence. A much smaller number (9.4%) believes their silence will be punished via retaliatory actions with police “piling on” the charges. Despite these obvious inaccuracies, it is interesting to note, only a small minority of defendants (31.5%) rates their overall knowledge of Miranda as “poor.” In general, these defendants are likely to believe there is nothing to lose—and possibly something to gain—by relinquishing their “right” to silence.

Nearly all defendants (95.9%) accurately understand that their statements can be used as evidence against them. However, many defendants inaccurately believe in nonexistent safeguards as partial protections against self-incrimination. Approximately one fourth (25.9%) mistakenly believe a waiver must be signed to be valid, whereas slightly more than half (52.0%) erroneously conclude that “off the record” comments cannot be used legally against them. A much smaller number (12.8%) even believe they can retract past deceptive statements without peril. Belief in these illusory safeguards may affect the decisional process and contribute to implicit waiver decisions.

Although the right to counsel may seem self-explanatory, many defendants have limited understanding of the precision required to invoke this right and its concomitant advantages. In *Davis v. U.S.* (1994), the Supreme Court held that use of qualifiers, such as “maybe,” can invalidate the request for counsel. This precision of language is lost on approximately two-thirds (69.1%) of defendants.

Table 1
Miranda Quiz Items and Percent Failed Across Defendant and College Groups

Item	Defendant			College			X^2_1	X^2_2	X^2_3
	Total <i>n</i> = 149	Recent <i>n</i> = 89	Later <i>n</i> = 55	Total <i>n</i> = 119	Arrest <i>n</i> = 27	None <i>n</i> = 92			
<i>Right to Silence</i> The statement, "You have the right to remain silent," means that your silence cannot be used against you at trial. If you remain silent, your silence can and will be used as evidence against you. The longer you remain silent, the more charges the police will bring against you.	30.9	32.6	27.3	36.4	34.6	37.0	.92	.45	.05
<i>Risks of Talking</i> If you lie to the police, you can always retract it without hurting your case. The police can never use what you say against you, if you don't sign a Miranda waiver. If you ask for something to "be off the record" during the interrogation, it can't be used legally against you. If you talk, anything you say can and will be used as evidence against you.	12.8	11.4	14.5	7.6	7.4	7.6	1.96	.31	.001
<i>Right to Counsel</i> If you ask for a lawyer, the police should stop questioning you. If you ask to speak to a lawyer, the police can ask you questions until the lawyer gets there. Even if you have an attorney, you won't have a chance to talk privately before the interrogation. In seeking legal assistance, it means the same thing if you say, "I want a lawyer," or "I might want a lawyer."	25.9	23.0	30.9	20.3	11.1	23.1	1.11	1.10	1.84
	52.0	54.5	45.5	37.8	29.6	40.2	5.37*	1.12	1.00
	4.1	4.5	1.8	1.7	0.0	2.2	1.28	.75	.60
	12.1	16.9	5.5	26.3	29.6	25.3	8.85**	4.04*	.20
	30.2	36.0	20.0	41.5	42.3	41.3	3.70*	4.13*	.01
	18.1	18.0	18.2	12.6	7.4	14.1	1.52	.001	.86
	69.1	70.8	67.3	53.8	40.7	57.6	6.64**	.20	2.39

Table 1 (continued)

Item	Defendant			College			X ₁ ²	X ₂ ²	X ₃ ²
	Total n = 149	Recent n = 89	Later n = 55	Total n = 119	Arrest n = 27	None n = 92			
One reason to have a lawyer is to reduce the likelihood of coercion.	11.6	10.3	10.9	4.2	7.4	3.3	4.62*	.01	.87
<i>Free Legal Services</i>									
“Indigent defendants” are those defendants who have been formally indicted.	17.8 _a	18.4 _b	0.0 _c	58.5	38.5	64.1	34.99***	— _c	5.50*
If you don’t have money, there is no reason to ask for a lawyer.	2.0	1.1	3.6	.8	0.0	1.1	.62	1.05	.30
If the court appoints you a lawyer, your family will end up paying the costs.	18.8	19.1	16.4	14.3	18.5	13.0	.96	.17	.51
<i>Continuing Legal Rights</i>									
If told before the interrogation that you can “withdraw your waiver,” it means you can reassert your Miranda rights.	39.5	39.8	37.0	37.0	37.0	37.0	.17	.11	.000
If you confess to the police, you still have the right to ask for a lawyer, even days later.	12.2	13.5	9.3	4.2	3.7	4.3	5.31*	.57	.02
Once you give up the right to silence, it is permanent.	37.2	38.6	30.9	26.9	14.8	30.4	3.17	.88	2.59
<i>Misperceptions about Miranda</i>									
Miranda rights apply only to guilty suspects.	6.7	2.2	12.7	2.5	0.0	3.3	2.52	6.38**	.90
Miranda warnings are the same everywhere so there is no reason to listen when they are read to you.	19.6	22.7	12.7	16.8	11.1	18.5	.34	2.21	.81
Miranda rights don’t apply if you are not in custody.	62.2	59.1	65.5	59.7	55.6	60.9	.17	.58	.25
If detained by other authorities (e.g., store security), Miranda still applies.	79.7	76.1	89.1	68.1	55.6	71.7	4.73*	3.71*	2.52

(table continues)

Table 1 (continued)

Item	Defendant			College			X^2_1	X^2_2	X^2_3
	Total <i>n</i> = 149	Recent <i>n</i> = 89	Later <i>n</i> = 55	Total <i>n</i> = 119	Arrest <i>n</i> = 27	None <i>n</i> = 92			
<i>Police Practices</i> It is legally wrong to pretend an eyewitness identifies you as the criminal. If the police lie to you, you can always retract your statement without hurting your case. Police are legally allowed to accuse you of fictitious crimes (i.e., crimes that never happened) during the interrogation.	64.2	61.4	70.9	47.1	51.9	45.7	7.88**	1.36	.32
	32.0	27.6	40.0	39.8	46.2	38.0	1.77	2.37	.56
	55.4	50.0	63.6	52.9	37.0	57.6	.16	2.55	3.55

Note. X^2_1 = Comparison between total offender and total college samples; X^2_2 = comparison between offenders recently arrested and those with later arrests; X^2_3 = comparison between college students with arrests versus no arrests. Since length of incarceration was dichotomized to examine group differences between recently and later arrested defendants, five participants were lost who had been incarcerated between the 2-week and 4-week interval distinction. Because Tulsa detainees were recruited from the Oklahoma Indigent Defense System (OIDS), these participants were excluded from analysis for the item, “Indigent defendants” are those defendants who have been formally indicted,” to control for any prior knowledge of this terminology.

^a*N* = 92 offenders. ^b*N* = 89 recently arrested offenders. ^c Because only one later arrested defendant remained after removing Tulsa participants for analysis of this item, cell sizes were not large enough to compute a X^2 statistic.
* *p* < .05. ** *p* < .01. *** *p* < .0005.

While most defendants recognize that their request for an attorney should stop police questioning, a critical issue involves its timing; 30.2% inaccurately believe that questioning can continue until their lawyers are physically present. In addition, a substantial minority do not believe they will have the opportunity to confer with counsel in private, thereby vitiating a primary advantage of seeking counsel.

Regarding other Miranda components, nearly all defendants understand that legal services are provided to those in financial need. However, the use of abstruse words (e.g., indigent) and the lack of specificity about who bears the costs of legal services contribute to misunderstandings about this Miranda component. Concerning their continuing legal rights, defendants have disparate views of their right to silence and right to counsel. Three times as many defendants mistakenly believe that their right to silence cannot be reasserted as compared to their right to legal counsel (i.e., 37.2% vs. 12.2%).

Defendants commonly have misperceptions about the applicability of Miranda rights which may affect their decisional process (see Table 1). Beyond these misconceptions, defendants hold widespread fallacies about the legal acceptability of deception in pre-interrogation and interrogation practices. The majority erroneously believe that police are not allowed prevarications about eyewitness identifications (64.2%) or non-existent charges (55.4%). Waiver decisions premised on good-faith disclosures by law enforcement may be—at best—misguided.

Miranda research is retrospective in its evaluation of pretrial defendants and is, therefore, vulnerable to the criticism that defendants become educated during their pretrial detention so that they appear more knowledgeable at the time of evaluation as compared to the time they were Mirandized. However, comparisons of recent and later arrests suggest no overall patterns attributable to timing (see Table 2). Of particular concern, however, recently Mirandized defendants were more likely than their counterparts to have fallacies about the advantages of asserting their right to counsel. Substantially more believed that police questioning would continue (16.9% vs. 5.5%)—at least until the attorney was physically present (36.0% vs. 20.0%).

Comparisons of Miranda Misconceptions

As noted in the introduction, pretrial defendants were compared to college students, who represented the upper-bound of Miranda knowledge—an educated segment of the public far removed from the stresses of arrest, detention, and pre-interrogation. Although item comparisons are summarized in Table 1, overall patterns are more observable at the component level (see Table 2). Of the five Miranda components, negligible differences (Cohen's d s < .10) were observed for the Right to Silence and Right to Counsel. For the remaining three Miranda components, college students had a slightly better grasp of the Risks of Talking ($d = .34$) and Continuing Legal Rights ($d = .29$), whereas defendants have a moderately better understanding of Free Legal Services ($d = .53$). Ironically, the better-educated college students were much more likely to confuse *indigent* with *indicted* (58.5% vs. 17.8%; see Table 1). Inspection of the Miranda Quiz Total

Table 2
Knowledge of Miranda Components and Police Practices: Defendants and College Students

	Defendants (<i>n</i> = 149)		College students (<i>n</i> = 119)		<i>F</i>	<i>d</i>
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>		
Right to Silence	76.06	25.73	77.87	26.50	.32	.07
Risks of Talking	75.67	22.12	82.98	20.31	7.77**	.34
Right to Counsel	71.54	19.48	71.93	21.52	.02	.02
Free Legal Services	86.35	20.87	75.35	21.02	18.27***	.53
Continuing Legal Rights	69.80	26.38	77.31	25.28	5.57*	.29
Miranda Misperceptions	57.72	18.81	63.24	20.02	5.38*	.29
Police Practices	48.99	30.65	53.22	32.86	1.18	.13
Miranda Quiz Total	69.40	10.65	71.83	10.10	3.62	.23
	Recent Arrests ^a (<i>n</i> = 89)		Later Arrests ^a (<i>n</i> = 55)		<i>F</i>	<i>d</i>
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>		
Right to Silence	76.78	25.33	75.76	26.80	.05	.04
Risks of Talking	75.56	21.64	76.82	22.49	.11	.06
Right to Counsel	69.21	20.01	75.64	17.51	3.84	.34
Free Legal Services	86.52	21.15	86.06	20.98	.02	.02
Continuing Legal Rights	68.91	26.01	73.33	25.98	.98	.17
Miranda Misperceptions	59.55	19.40	55.00	16.24	2.11	.25
Police Practices	52.81	30.49	41.82	30.24	4.45*	.36
Miranda Quiz Total	69.66	11.21	69.45	9.34	.01	.02

^a Please note that five defendants were removed because they fell between the criteria for recent and later categories; therefore, these means will differ slightly from those presented above.

* $p < .05$. ** $p < .01$. *** $p < .0005$.

scores found less than a three-point difference between the criterion groups. This minimal difference was maintained for both recent and later arrests.

Correlates of Miranda Knowledge

A commonsensical notion would be that better educated and brighter individuals would have a better grasp of their Miranda rights. This notion is partially dispelled by our earlier comparisons of defendants with nearly a high school education to college students with several years of university education. However, an argument could be made that college students' general lack of direct experience (i.e., arrests and exposure to Miranda warnings) may limit our findings. Therefore, we examined relevant correlates focusing on the defendant sample (see Table 3). Perhaps the most salient finding is that years of "attained" education had virtually no relationship to Miranda knowledge. For the five Miranda components, the average correlation was $-.01$ (absolute $M r = 1.05$).

We found that verbal intelligence as well as reading and listening comprehension produced modest correlations with Miranda Quiz Total scores; however, none account for even 10% of the variance. Examining the components of

Table 3
Relationships Between Defendants' Miranda Knowledge and Their Intelligence, Achievement, and "Attained" Education

	Intelligence		Comprehension		Background		
	Full Scale	Verbal Performance	Reading	Listening	Education	Arrests	
Miranda Quiz							
Total	.24**	.25**	.18*	.25**	.31***	.02	.13
Right to Silence	.15	.18*	.10	.14	.17	.06	-.08
Risks of Talking	.27**	.23**	.26**	.20*	.25**	-.01	.21*
Right to Counsel	-.04	.05	-.11	.05	.07	-.07	.10
Free Legal Services	.06	.04	.05	.11	.20*	.05	.11
Continuing Legal Rights	.19*	.17*	.14	.16	.29**	-.08	.09
Police Practices	.12	.10	.13	.15	.11	.03	.09
Miranda Misperceptions	.02	.03	.003	-.01	-.06	.10	-.10

Note. Education is operationalized as highest grade completed according to defendants' self-report.

* $p < .05$. ** $p < .01$. *** $p < .001$.

Miranda, the basic rights to silence and counsel were mostly unrelated to cognitive abilities. In contrast, the risks of talking demonstrated overall correlates involving both comprehension and intellectual abilities. In general, these data provide little evidence that Miranda knowledge and misknowledge is a product of years in the classroom, intelligence or comprehension of oral or written materials.

Self-Appraisals of Miranda Knowledge

The aforementioned assumption that "everyone knows their Miranda rights" is likely perpetuated by the public's frequent, informal exposure to warnings through popular television shows and rote recitation of partial Miranda warnings. A salient question is whether these past exposures and individuals' subsequent self-appraisal of their knowledge of Miranda are accurate. However, among the combined sample of defendants and college students, self-appraisals appear only marginally indicative of actual Miranda knowledge. Participants reporting "poor" knowledge performed significantly less well on the Miranda Quiz than those participants with "good" or "excellent" reported knowledge (see Table 4). Nonetheless, these differences when expressed as overall percentages were relatively small (i.e., less than 6%), leaving considerable room for misconceptions. As a more focused analysis, we examined average performance for the five Miranda components for poor, good, and excellent self-appraised knowledge. Although a predicted trend was observed, it failed to achieve statistical significance.

Discussion

Miranda warnings may play a subsidiary role in providing Constitutional protections if most defendants, by virtue of previous learning and prior arrests,

Table 4
Self-Appraisals of Miranda Knowledge

	"Poor" appraisal (<i>n</i> = 69)		"Average" appraisal (<i>n</i> = 182)		"Excellent" appraisal (<i>n</i> = 12)		<i>F</i>	<i>d</i> ₁	<i>d</i> ₂	<i>d</i> ₃
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>				
Miranda knowledge	67.01 _a	10.30	71.30 _b	10.28	72.67 _b	7.78	4.78**	.42	.57	.13
Average component knowledge	73.70 _a	12.92	76.93 _a	11.55	80.08 _a	10.51	2.51	.27	.51	.27

Note. Participant numbers do not reflect the total sample because a small number of individuals (*n* = 5) declined to provide an appraisal of their Miranda knowledge; Miranda knowledge = Miranda Quiz Total score (%); Average Component Knowledge = Average score on the five components included on the Miranda Quiz (%). Groups with different subscripts denote significantly different groups. For effect sizes, *d*₁ = Cohen's *d* between "poor" and "average" appraisal groups, *d*₂ = Cohen's *d* between "poor" and "excellent" appraisal groups, *d*₃ = Cohen's *d* between "average" and "excellent" appraisal groups. For *F* ratios, ***p* < .01.

have already gained sufficient Miranda knowledge to make their waiver decisions "with eyes open" (*Iowa v. Tovar*, 2004, p. 88). Based on commonsensical notions about intelligence, education, and past Miranda advisements, some defense attorneys may simply assume adequate understanding. Even if they were to systematically query defendants on their case load, they are likely to remain uninformed. When asked directly, few defendants (31.5%) believed that they had a poor understanding of their Miranda rights. Moreover, self-appraised knowledge of Miranda has little utility for identifying those with critical Miranda misconceptions.

Findings of the current study provide strong countervailing evidence against the common assumption that Miranda is ubiquitously understood (Nguyen, 2000) within our mainstream culture. These data help to underscore the pronounced discrepancies between what the public believes it knows and what it actually knows. Similar to Belden et al. (2001), the current findings suggest most persons can recognize their basic rights to silence and legal counsel. However, the more critical question is whether they have an *accurate working knowledge* of their rights. For instance, do they understand that their right to silence is constitutionally protected against self-incrimination? With 36.4% of college students and nearly as many defendants (30.9%) erroneously concluding that silence is likely to incriminate, the idea of an accurate working knowledge for most defendants is highly suspect. On this point, the current findings support the police survey data by Payne et al. (2006) indicating that the public is largely misguided in their perceptions of Miranda rights. However, our data strongly question the general perception of police officers that defendants are better informed.

Legal Implications

A common theme in the current investigation is that precision and exactitude of language result in more confusion than clarity (Rogers, Hazelwood, Sewell, Harrison, & Shuman, 2007). Although the term "withdraw your waiver" is a

precise example of legal terminology, this precision is lost in translation. Irrespective of their background, more than one-third of defendants do not understand the meaning of this term in the context of Miranda warnings. Given that one-fourth (i.e., 24.9%; see Rogers, Hazelwood et al., 2008) of ongoing legal rights are expressed in legalese, this degree of incomprehensibility has far-reaching implications for procedural justice. Issues of precision also affect the assertion of Miranda rights. Understandably, the Supreme Court in *Davis v. U.S.* (1994) wanted to avoid the slippery slope into ambiguity in its nonacceptance of imprecise language. However, the potential difficulty is that most defendants may not understand this bright-line rule demarcating “I want a lawyer” from “I might want a lawyer.” In the current study, the clear majority mistakenly believed these statements were equivalent.

Beyond their prophylactic purpose, an important legal question is whether Miranda warnings also serve a curative function. The current findings clearly demonstrate the widespread misassumptions and misinformation about Miranda rights and waivers. These findings hold for defendants with more than a dozen arrests,⁴ as well as for college students with no arrest histories whatsoever (see Table 1). If ritualistic recitals of Miranda warnings assist some defendants who harbor no misconceptions but convey no meaningful communication to other defendants possessing erroneous beliefs, is this Constitutionally sufficient? Alternatively, do Constitutional protections require that Miranda warnings, when relevant to a particular case, perform a curative function in remedying fallacies and misconceptions which may occlude the “eyes-open” *Tovar* requirement for the Miranda waiver decision? Pragmatically, jurists may be reluctant to consider the latter option, if viable options are not easily effectuated.

Public Policy Implications

Miranda and its progeny continue to inspire running battles in criminal jurisprudence and social policy alike. The notion that arrestees should be informed regarding the nature of a custodial interrogation at its inception has remained incessantly divisive. The first salvo was fired by Justice John Harlan in his dissent to the *Miranda* decision itself, when he asserted—under the explicit heading of “Policy Considerations”—that the institution of these warnings “represents poor constitutional law and entails harmful consequences for the country at large.” He added that their widespread implementation would “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.” Justice Harlan concluded that, overall,

⁴ Only three items produced significant differences between those with more prior contacts versus fewer prior contacts with the criminal justice system. Defendants with more than a dozen arrests performed better than their counterparts on two items: “If the police lie to you, you can always retract your statement without hurting your case” ($X^2 = 8.46, p = .004$), and “If you ask for something to ‘be off the record’ during the interrogation, it can’t be used legally against you” ($X^2 = 7.14, p = .01$). Interestingly, defendants with more prior arrests demonstrated poorer performance on the following item, “If detained by other authorities (e.g., store security), Miranda still applies” ($X^2 = 4.51, p = .03$) than defendants with fewer arrests.

“the social costs of crime are too great to call the new rules anything but a hazardous experimentation” (*Miranda*, pp. 514–517).

Little has changed in the ensuing four and a half decades, inspiring one team of criminal justice professors to observe that “*Miranda* is so doctrinally confused that legal scholars have difficulty seeing how it can continue to exist with any semblance of coherence” (Zalman & Smith, 2007, p. 938). The current investigation serves to alleviate some of this “confusion” with its evidence-based explication of the nature and bases of widely held misconceptions regarding *Miranda* warnings. It is likely, however, that these findings will be brandished as vigorously by those favoring the extension of *Miranda* as those calling for its abolition. Some commentators will likely argue that persistent misunderstanding of these warnings convincingly demonstrates that they are an ineffectual instrument of flawed social policy, while others will tout the identified misconceptions as a compelling reason to administer such warnings all the more diligently. One welcome byproduct of this dual applicability may be increased credibility of *Miranda* research as a whole, enabling policy makers to view these investigations as overtly favoring neither “defense” nor “prosecution” perspectives.

The current investigation went beyond comprehension of *Miranda* warnings per se to investigate how common misperceptions regarding *Miranda* rights and police practices could have a profound effect on *Miranda* waiver decisions. This broadened perspective may have relevance in determining the validity of individual waivers as it relates to the totality of circumstances. However, it is further a matter of public policy how *Miranda* misperceptions and relevant contextual issues should be addressed. What institutions, if any, should bear the responsibility of educating a misinformed public? Alternatively, should infrequent but life-altering decisions be a matter of individual responsibility?

Miranda research must address directly the curative functions of *Miranda* warnings and other relevant information. If warnings are grossly inadequate for correcting *Miranda* misconceptions, then pragmatic alternatives must be developed and be rigorously tested. From a public policy perspective, we argue that proving what doesn’t work is initially useful, but ultimately unhelpful. The effectiveness of interventions should be evaluated in different contexts and levels of duress. Waiting until the very last moment—after arrest, custody, and pre-interrogation—may be too late to correct serious misconceptions. Public policy must be informed by pragmatic research.

The mode of communication may also play an important role in remedying common *Miranda* misconceptions. Although relatively few jurisdictions provide custodial suspects with taped *Miranda* warnings (Kassin et al., 2007), a videotaped format would lend itself to addressing what *Miranda* rights do and do not mean. *Miranda* investigations could systematically evaluate what material performed a curative function.

The education of attorneys regarding the *Miranda* misperceptions of pretrial defendants must be a priority. Defense attorneys, in particular, bear the direct responsibility of evaluating each *Miranda*-waiver in ascertaining whether the decision was knowing and intelligent. Their frequent over-appraisals of defendants’ *Miranda*-related abilities may compromise procedural safeguards and jeopardize Constitutional protections.

Concluding Thoughts

While the general public and criminal attorneys may implicitly believe that “everyone knows their Miranda rights,” the current findings raise questions whether this knowledge is cursory—or even illusory—for a significant number of criminal defendants and their educated counterparts. The countervailing evidence in this investigation suggests that the criminal justice system may wish to re-evaluate past assumptions equating Miranda familiarity with knowledge. In particular, defense counsel may wish to actively consider each defendant’s actual Miranda knowledge instead of making facile assumptions based on education, intelligence and past experiences in being arrested and Mirandized. For their own part, prosecutors may wish to adopt a proactive stance in removing abstruse warnings and providing clearly conveyed information. Fears that doing so will result in reduced convictions are unduly magnified (Payne et al., 2006) as most defendants appear motivated to talk and are willing to do so, even when cognizant of their own peril (Weisselberg, 2008).

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