JUDICIAL BEHAVIOR AND THE MIRANDA DOCTRINE: A QUESTION LEVEL ANALYSIS

By:
Gretchen Elizabeth Edelman

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the requirements of the Sally McDonnell Barksdale Honors College

Oxford May 2017

Approved by

Advisor: Professor Charles E. Smith, Jr.

Reader: Professor Jack Nowlin

Reader: Professor John Winkle
Judicial Behavior and the Miranda Doctrine: A Question Level Analysis

Gretchen Edelmen

Abstract

The attitudinal model of the Supreme Court is now a well accepted and valid way to explain the voting behavior of justices, as judicial preferences dictate the eventual voting that occurs in cases. While many studies have looked at overall judicial ideologies through a variety of different measures, this paper is the first that looks at judicial ideology and determines preferences within a single doctrine through a question level analysis using ideal point estimation. To explore this measure of ideology inside a single-issue area I use the Miranda doctrine and its progeny cases to score judicial votes on each question that the court addressed regarding Miranda. Along with determining these ideological scores and accompanying analysis, this thesis contains a complete history of the progeny cases. The results here indicate that judicial preferences can be scored within an issue area or single-doctrine as well as across issue areas as in the past, and opens up further avenues of research in separate issue areas along with the revelations made about Miranda and the court already presented.
## Contents

1 Introduction 3

2 Literature Review 5

3 Doctrinal History and the Cases 11
   3.1 The Warren Court 14
   3.2 The Burger Court 22
   3.3 The Rehnquist Court 43
   3.4 The Roberts’ Court 51

4 Methods 55

5 Results 56
   5.1 Theta Variable and Discussion 56
      5.1.1 The Liberal and the Conservative 57
      5.1.2 Comparing $\theta$ and Rice through Residuals 60
   5.2 A Discussion on the Alpha Term 65

6 Median Justice 71

7 Conclusion 72

8 List of References 74

## List of Figures

1 Theta Scores of Supreme Court Justice’s 58
2 Rice-Bayes Regression Plot 63
1 Introduction

The judicial system, and particularly the United States Supreme Court, has recently become a hot-button issue in national politics, evidenced by not just academia’s interest in the subject, but mainstream media making it a talking point as well. These claims are evidenced by the 900-plus results on Google Scholar that have been published in the last twelve months, and the recent new articles on the nomination of Judge Gorsuch, or how Senate Majority Leader Mitch McConnell made nominations an issue in American politics. While the Supreme Court is currently a very salient issue, the study of the issues surrounding the Court is very recent especially compared to other areas in political science. The earliest published papers and studies regarding the court began to appear in the late 1800’s and early 1900’s, more than one hundred years after the creation of the court. While many of these early studies focused on the scope of the Supreme Court and its constitutional ability to make and shape decisions, the area of interest that I am studying is in regards to individual justices’ decision making on issue-areas - how justices vote.

Judicial voting patterns are an important area of study as how it can reveal how justices decide a case - strategically, sincerely, or a number of other ways. The interest in this issue area is due to a number of factors but particularly because justices are appointed for life and are therefore insulated from many political pressures. Additionally their political preferences, or preferences otherwise lack transparency when they decide a case, as our only record of how the decide is in the opinions authored by one but signed by many, and the steps taken to get their are very opaque. Scholars have looked at voting patterns in a number ways with
a number of different theories and ways to score these votes, almost all focusing on the way cases are decided. However, this approach is problematic because the court does not vote on cases, rather the justices answer specific constitutional questions that are posed by the court. My work on this thesis addresses justice-voting on a question basis rather than on a case-by-case basis, as well as assigning a case weight for each case and how much influence it has on an eventual ideological score given to a justice.

My thesis scores each question answered by the court on a justice-by-justice basis as either conservative or liberal. These scores, 0 for liberal and 1 for conservative are done in regards to a precedent case and each progeny case is broken down to the question-level and then scored. While many cases only answer one constitutional question in regards to the progeny, some answer more than one resulting in multiple scores for a single case. I chose to examine how the Fifth Amendment moves over time in this conservative-liberal voting framework with *Miranda v. Arizona* as my precedent case and the subsequent cases representing a progeny where one or more question relating to the doctrine had been addressed. The coding and identification of the cases was only one part of the research though, as the justice’s voting patterns were then examined and compared to other literature as well as assessed on their own as the question-level analysis is unique to this paper.

The thesis continues after this introduction with a literature review, discussing relevant works regarding judicial voting and some of the problems associated with pasts approach by other scholars. In particular, the Segal-Cover Voting Scores and the Rice, et al. scores while be discussed and the differences in my approach with the approach of those two works being contrasted with the approach I take. Following the literature review is a methods and data section where the coding procedure is discussed, data manipulation is discussed and presented as well as any relevant insight that was gleaned is presented. For transparency, as well as a qualitative look at the conservative-liberal movement of the cases, a chapter is
dedicated to the discussion of each and every case where the facts and questions the court addressed are discussed, as well as how and why each case was coded is addressed. Finally, the paper concludes with a summary of the work presented here, how this contextualizes in the greater literature on judicial voting, and further avenues of research as this paper is limited in its scope to voting on the Miranda doctrine.

2 Literature Review

The study of the Supreme Court voting patterns presented here rely on justice’s addressing individual constitutional questions in through the decisions they make, and then aggregating these preferences to identify a pattern and create a predictive model. Furthermore, the assumption here is that the attitudinal model is the correct way model of judicial preferences, and support for this assumption is provided from a plethora of literature. The approach explained above to explain Supreme Court behavior has been used by many scholars to create an expansive body of literature on how and why the court and its justices decide and vote on cases. The earliest work on the court’s behavior occurred in The Roosevelt Court by C. Herman Pritchett, and while this work does not provide a theory of judicial decision making, it did examine non-unanimous decision making as well as laid the foundation for the field.

Although a relatively new area of study for political science, with Pritchett’s book published in 1947, many scholars since then have tried to explain how the Supreme Court make decisions and the ideology of justices and the court, and many studies subsequently attempted to score and predict judicial behavior. The approach taken here centers around the attitudinal model, as well as the court’s ability to make policy with its rulings. The court is able to ignore the preferences of all other actors - the President, Congress, the mass public, and special interests
- because the Court is insulated from other pressures (Segal and Spaeth, 1993). The second claim, the court’s ability to make policy, is clearly demonstrated in *Miranda* and its progenies; when *Miranda v. Arizona* was decided, the case created sweeping policy change across the United States. The decision brought with it a statement of rights that subsequently had to be read to every person under arrest in every jurisdiction across the country. Although the policy was first created with *Miranda*, as we will see this is far from the last prescription the court would write regarding this doctrine.

A similar approach is also taken by Segal and Spaeth in "The Supreme Court and the Attitudinal Model Revisited" in which their favored model, as well as mine, is the attitudinal model where decisions are be made along ideological (attitudinal) preferences in terms of liberal or conservative political doctrine. In this work they describe an attitude as “interrelated set of beliefs about an object or situation” and that justices are outcome oriented (Spaeth and Segal, 2002). While defining the attitudinal model, their work also supports it as the Segal and Spaeth (2002) find that in many issue areas a justices ideological preferences are statistically significant in how they will decide any given case. Even in work that was designed to refute the attitudinal model, support for model as ideological preferences have a significant impact on judicial decisions (Begara et al. 2003). This approach has not been universally accepted however, with many scholars applying different models to the court. Segal and Spaeth (2002) themselves take time to discuss a rational choice model, the legal model along with strategic voting as a common explanation for the Supreme Court’s behavior.

One work that makes alternative claims of judicial behavior is "Supreme Court Justices as Strategic Decision Makers: Aggressive Grants and Defensive Denials on the Vinson Court" by Boucher and Segal (1995) make claims that the court is constrained by Congress while acknowledging that the ideological preferences of the court do in fact play an important role. With that being said their own work shows that the Court often challenges Congress, and acts completely unconstrained
for most periods during the analysis with the exceptions of what they identify as “shifts” in the Supreme Court. Notably, they contend that the court now acts unconstrained, reinforcing the choice of the attitudinal model for forward looking analysis, at least in the near future as a paradigm shift is almost impossible to predict ahead of time. Another often explored approach to voting patterns has been strategic voting, in which justices employ sophisticated voting behavior to shape their decisions. One approach developed in Sophisticated Voting and Gate-Keeping in the Supreme Court a measure of justices’ preferences for outcomes on the merits of a given case based on their votes on the merits on similar, but different cases from the past. This examination of similar merits to predict similar cases in the future is analogous to my approach of examining how justices answer questions of case in a single issue area to then predict outcomes on similar questions and issue areas. While the approach is similar, the theoretical basis, as mentioned earlier, is different from mine.

Ultimately, the authors in "Sophisticated Voting and Gate-Keeping in the Supreme Court" examine an outcome in conjunction with a grant of certiorari at the case-level unit of analysis. However, Calderia, Wright and Zorn (1999) only go as far to say that sophisticated voting occurs during agenda setting, and fail to make sweeping claims about voting on case outcomes once they occur. Although claims are made that because sophisticated voting may occur at a point in the process they occur throughout the process and most importantly when justices decide a case (Calderia et al. 1999). The evidence for this broad of a claim cannot be borne out simply through cert voting especially given that a majority of votes is not needed for the court to hear a case. Other research has examined how the grant of cert to glean information about judicial behavior as well. In fact, some scholars have failed to find a Unlike the work by Calderia, Wright, and Zorn other scholars have shown that justice’s acting on their preferences do so not only when rendering a decision but also when deciding to hear a case (Brenner, 1979). Although these cert votes are also conditioned on the fact that justice’s need
complete information to determine if granting a cert will result in their preferred outcome, it only requires that justices believe they have complete information to shape their voting preferences. That is if a justice wishes to affirm, he will vote to grant cert when he thinks that at least five other justices will also vote to affirm the lower court decision.

The use of cert to reveal preferences is also reflected in the cue theory. The cue theory was developed as a result of such studies by Joseph Tanehaus, and while the basis of the theory stands up, which is that certain characteristics of the case cause it to be issued a grant certiorari, it has been adapted and sharpened to more precisely define the cues. This is done with the use of hindsight as the issues that are important to the court and for at the time the case was heard allow for an observer to more accurately determine what a cue was at that point. In this sense the theory is not so much predictive in determining what cases are heard, but rather reactive and in need of constant revision, as cue theory essentially says “justices will hear cases they think are important (Teger and Kosinski, 1980).”

The revision of the cue theory does allow for one to see what issues were important to the court at a given time through systematically evaluating a given cue, but does not provide a predictive measure. While similarly in my model I look backwards to determine what the court did do through the testing of a single issue area before looking to see how the court behaviors in the future. Similarly to cue theory, the main goal of the models developed in this paper is to explain behavior that has happened, and then assign a normalized quantitative scale to explain judicial behavior. Unlike the cue theory however, the models developed here could be applied to predict judicial votes especially in the same issue area assuming that there is enough data points for a given area and given justice. Although this to has limitations as a justice who has heard few cases, and none on an issue area studied, would make it difficult or impossible to determine future voting.

As pointed out by McGuire, et al. “the ideological direction of the Court’s
judgment and not the content of the underlying rule may, but need not coin-
cide,” which they contend systematically biases studies that code outcomes. This
systemic bias is a problem which I also try to address by coding answers to ques-
tions rather than outcomes of cases. The study, Measuring Policy Content on the
Supreme Court, also examines judicial behavior through the grant of certiorari
and whether the court affirms or reverses a lower court decision. They find that
a court’s decision to affirm run counter to the court’s ideological preferences and
votes to reverse match the court’s ideological preferences, when applied to individ-
ual justices this pattern holds but changes direction as justices move further from
the court’s ideological center. Ultimately, the authors recommend that “for the
ideological position of an opinion should rely upon decisions (or votes) to reverse
as the appropriate set of decisions (or votes) from which to generalize.”

However, this work has been contested by Caldeira and Wright (1990) which
contests that these findings by McGuire et al. (2009) are a result of their focus
on the modern court rather than including paradigm shifts in the court’s history
(Calderia and Wright, 1990). The historical review of the entire court’s history
is something I try to mirror by reviewing an entire issue area’s movement over
time. Ultimately, Rice et. al’s (2016) work finds that “a series of major changes
in the Court’s history precipitated shifts in the Court’s agenda, but only when the
Court was given nearly complete control over its agenda and expansive jurisdic-
tion did the Court began to systematically vote,” and this systemic voting is the
cornerstone to my research as well as many others. Their work leaves the open the
individual analysis of the court’s justices, an avenue of research that is addressed
here, although has been addressed by many other scholars as well and their work
is also discussed below. Additionally Rice, et al. (2016) develop their own set of
scores across doctrine’s, that unlike the other scores and similar to mine are un-
constrained in nature. However, unlike the scores for ideological issues developed
here, they work across issue areas to determine a justice’s overall ideology rather
than an ideology related to one doctrine.
The Segal-Cover scores developed in the paper "Ideological Values and the Votes Court U.S. Supreme Court Justices" which examine newspaper editorials prior to confirmation. These scores also heavily rely on the work by Segal and Spaeth (2002) mentioned earlier as they are based on the attitudinal model, measuring the ideological preferences therefore implicitly implying acceptance of the attitudinal model as their preferred model of the court (Segal and Spaeth, 2002). The scores they then developed on information prior to confirmation are strongly correlated to the votes the justices then made on actual cases, making their model a valid predictor of the Supreme Court. Segal and Cover (1989) also argue that their work shows that justices are not bound by legal doctrine and justices are free to use whatever doctrine they choose in making decisions. The lack of judicial restraint in regards to stare decisis and attitudinal voting also plays an important role in once again reinforcing the attitudinal model of the court, which is a key assumption that I build off of when coding decisions as liberal or conservative. If justices were deciding the case based on some objective set of criteria my work here, and many others would be a moot point. This work was important for mine additionally as it helped explain differences in decisions between justices at the case level, which provides a similar frame of reference to my model which explains differences at the question level.

Although not explicitly compared to the model I develop in this paper, Martin-Quinn scores developed in "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court 1953-1999" by Andrew D. Martin and Kevin M. Quinn, also warrant discussion. The Martin-Quinn are unique most notably because they show how Justice’s preferences change over time. The scores change because they are derived from dynamic item response and a Bayesian approach which instead look at votes as a function of policy preferences; first by developing a theoretical model of decision making and then operationalizing that it into a statistical model. This is juxtaposed with the Segal-Cover Scores which are static, as mine are, and are not designed, nor do they show movement of
justice’s preferences over time. The scores developed by Martin and Quinn are also based on the attitudinal model and that justices vote their true preferences when voting on the merits. The attitudinal model is also coded into my work along liberal-conservative answers to a give question in a case, this is especially for non-unanimous cases as a way to reconcile how justices reach separate conclusions given the same facts.

3 Doctrinal History and the Cases

In order to properly code each justice’s question decision as either liberal or conservative a thorough understanding of the fifth amendment, the precedent case, and its progeny is absolutely necessary. The relevant case history begins with *Miranda v. Arizona*, and is the precedent case that each subsequent case involving a suspect’s right to be informed of the Constitutional guarantees under the then established *Miranda* rights and strengthened the previously incorporated Fifth Amendment. Following a discussion and dissection of *Miranda* in order will be a discussion of the facts of each relevant progeny cases, with the facts of each case summarized, as well as how the justice’s addressed the relevant Fifth Amendment and *Miranda* questions that compose the cases. A discussion of the cases and subsequent coding of how the questions were answered also adds important transparency to the research, in an effort show that the coding decisions that were made were not arbitrary but rather fit with a traditional understanding of liberal or conservative doctrine.

The fifth amendment protects against self-incrimination among other rights such as double jeopardy, due process, and the right to a grand jury. Protection against self-incrimination was originally recognized as compelled testimony that would incriminate yourself during a criminal trial and had its origins in the religious persecution faced by Puritans during the 17th Century and eventually
became law in England. By the time the Constitution was designed in the United States the right against self-incrimination was well-established, especially as a safeguard against the use of torture to compel testimony. The Fifth Amendment’s “[No person]...shall be compelled in any criminal case to be a witness against himself.” However, extending the right, that was essentially a right to silence during trial, to before trial such as during trial did not come until 1966 with the Supreme Court’s ruling in *Miranda v. Arizona*.

The warning derived from this case is now ingrained and incorporated in the United States legal system and culture, but our pop culture as well. The warning: you have the right to remain silent, anything you say can and will be used against you in a court of law, you have the right to an attorney, if you cannot afford an attorney one will be appointed to you, canonized by shows such as Law and Order is a warning that most can now recite, without realizing where or when this right was established. The warnings were originally a policy suggestion by the Warren Court to help administer their ruling in *Miranda* that was actually a consolidation of several different cases. The question before the court was whether the Fifth Amendment right of protection against self-incrimination extended to police interrogation.

The consolidation of cases that resulted in *Miranda* all had defendants who were subject to a variety of different interrogation techniques and eventually confessed guilt without ever being informed of his Fifth Amendment rights at any time during the interrogation (*Miranda v. Arizona*, 1966). In each of the four cases the defendant was isolated in a room without representation, and essentially cut-off from the outside world, and in all four of the cases the confessions were admitted at trial despite the lack of warning and coercive environment of the interrogation.

On March 13, 1963 Ernesto Miranda was arrested in his home on suspicion of kidnapping and rape, and was subsequently brought to the police station for questioning. The interrogation lasted two hours, during which the officers obtained an oral and written confession from Miranda. Both of these confessions were
admitted into evidence at trial and used to convict Miranda, who was sentenced to twenty to thirty years for rape and kidnapping. The confession was admitted despite objections from his defense attorney on the grounds that Miranda was not advised of his right to have an attorney present during the interrogation, and the police admitted to this fact. An appeal to the Arizona Supreme Court affirmed his conviction and held that Miranda’s constitutional rights were not violated because he was not explicitly denied a right to counsel.

In 1966 *Miranda v. Arizona* had finally made its way on appeal to the Supreme Court, which also decided *Vignera v. New York*, *Westover v. United States*, and *California v. United States*. All of these cases addressed the question of whether or not Fifth Amendment protections extend beyond the courtroom and to police interrogation. More specifically the case addressed whether “statements obtained from an individual who is subjected to custodial police interrogation” are allowed to be used against an individual in a criminal trial and if “procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself” are necessary (*Miranda v. Arizona*, 1966).

The court issued a five to four decision on the matter in favor of Miranda, in which they established and incorporated the Fifth Amendment decision outside of criminal court proceedings and “serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves (*Miranda v. Arizona*, 1966). Chief Justice Earl Warren authored the decision, and was joined in the majority by Justices Black, Fortas, Brennan, and Douglas. Chief Justice Warren wrote of the inherently coercive nature of police interrogation and that these “pressures which work to undermine the individual’s will to resist and to compel him to speak where he would otherwise do so freely.” Because of these pressures the court held that a suspect the prosecution may not use statements arising from “custodial interrogation” unless certain procedural safeguards are in place prior to questioning, which included
“the defendant’s right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.”

The majority opinion in *Miranda*, gave way to the *Miranda* doctrine as well as the *Miranda* warnings we know today. The doctrine is made up of a few key elements outlined in the court holding’s which included the right against self-incrimination during police interrogation and the right to counsel before as well as during any questioning, and the procedural safeguards in place to ensure that the suspect is aware of his rights. The decision went as far as to outline the needed effectiveness for the warning’s which inform the suspect of: his right to remain silent and anything said can and will be used against the individual in court, his right to an attorney and counsel will be available to him during interrogation whether or not he can afford one. This safeguard warning was adopted almost verbatim by many police forces, and should sound familiar as the Miranda warning described on Law & Order at the beginning of the discussion.

### 3.1 The Warren Court

At the time of *Miranda* the ruling was controversial, with some believing that the ruling did not go far enough in protecting the rights of the criminally accused, while others argued that the ruling handicapped police to such an extent that another confession would never be obtained by police. This paper, however, is not concerned with whether or not the decision in Miranda was correct, rather how the decision shaped legal doctrine and the expansion or contraction of the Fifth Amendment rights of the criminally accused. Over the last fifty years though, an ongoing discussion born from *Miranda v. Arizona* and the *Miranda* doctrine established in the Court’s opinion, that the Fifth Amendment and *Miranda* was far from settled on the accused’s right against self-incrimination.

The decision in Miranda goes as far to say that the mere “fact of lengthy in-
petitioner’s confessions were the “involuntary end product of coercive influences, and thus constitutionally inadmissible in evidence (Davis v. North Carolina, 1966).” In Davis the court defined its duty to “examine the entire record and make an independent determination of the ultimate issue of voluntariness,” applying the English Common Law principles of he totality of the circumstances voluntariness analysis (Davis v. North Carolina, 1966). The court determined that the fact that the petitioner was not advised of his right to remain silent or of his right to counsel at the outset of interrogation, as well as the fact that no one other than the police spoke to the petitioner for sixteen days. In Davis, as well as other early post-Miranda cases the court is applying the traditional voluntariness analysis rather than new Miranda doctrine because Miranda was not viewed as retroactive in its effect and therefore
not directly applicable in those cases.

The challenges and clarification of *Miranda* continued with a case with another decision coming the same week as *Davis v. North Carolina*. The case, *Schmerber v. California* centered around the petitioner who was arrested for drunk driving while receiving treatment for injuries in a hospital from an accident that he was involved in. While the accused was being treated, a police officer order the doctor to take a blood sample on the grounds that Schmerber smelled of liquor. Although Schmerber’s counsel advise him not to consent to the blood sample, and he did not consent to the test. Despite his objections and the objection of counsel, the blood test was admitted into evidence and used to convict the petitioner.

The petitioner rejected to the blood test as evidence on the grounds of his right to be free of unreasonable searches and seizure, that his right to counsel was violated, that he was denied due process and the blood test was a violation of his right to be free from self-incrimination. While the court found in favor of California regarding all issues raised by Schmerber, of note to this paper are the rulings relating to the petitioner’s right to be free from self-incrimination. On this matter, in a five to four decision, the majority held that the privilege against self-incrimination only extends when the information provided by the accused is testimonial or communicative in nature, and that a blood test was testimonial in nature (*Schmerber v. California*, 1966). This second case, *Schmerber v. California*, decided immediately after *Miranda*, helped to clarify the scope of what is self-incrimination as guaranteed by the Fifth Amendment, although only Justice Harlan’s concurrence mentioned *Miranda* directly.

The next case relating to *Miranda* and its newly established doctrine was *Sims v. Georgia*, centered around the voluntariness of statements made by a defendant and more so, the judicial procedure in the case. The petitioner of this case claimed that his confession was not made voluntarily prior to said confession being admitted into evidence, however the testimony to this point was conflicting and the judge never made a ruling on the matter - instead leaving it to the jury.
to decide the matter. The Supreme Court held in an eight to one decision that this was unacceptable, and that the judge must rule on the voluntariness of a confession before it is admitted into evidence and heard by a jury. This case set the precedent that self-incrimination are a judicial issue and not to be left to juries.

_Clewis v. Texas_ was based on the “totality-of-circumstances” established by the court’s opinion in _Davis v. North Carolina_ a year early. This case involved a petitioner, Clewis, who challenged that his confession was introduced into evidence at trial despite objections that he did not give the confession voluntarily. The court determined that Clewis’ statements were in fact involuntary as, among other circumstances, was given very little food or water as well as deprived of sleep, was not allowed to consult with counsel and remained unrepresented for a lengthy period of time following his arrests, and had little contact with anyone besides police officers (_Clewis v. Texas_, 1967). This case was decided unanimously, and once again by the Warren court. It was the first time since _Davis_ that the totality-of-circumstances test was applied in practice, with the reaffirming its position in _Miranda_ that involuntary statements amount to a violation of the Fifth Amendment protections and will not be admissible in court.

While some of the cases immediately following the court’s landmark decision regarding our Fifth Amendment rights are more tangentially related to _Miranda_, the next case the court decided explicitly extends to the _Miranda_ warnings in 1968 when the Court decided _Mathis v. United States_. The case’s petitioner claimed that his Fifth Amendment rights were violated when the Internal Revenue Service questioned Mathis, while he was already in state custody, about certain tax returns in what the investigator claimed was a “routine investigation.” The investigator never mentioned to Mathis that any evidence he gave could be used against him, that he had a right to remain silent, and a right to counsel, or that one would be appointed for him if he was unable to afford counsel.

The district court and Court of Appeals upheld his conviction despite his objections to the evidence obtained by the IRS investigator, however the Supreme
Court, in a five to three decision, ruled in favor of Mathis. The court rejected the IRS’s argument that no warnings were needed because tax investigations can conclude in no charges being brought, or civil charges being filed. However, as the IRS admits investigation can and often do lead to criminal charges being brought as was the case here. Instead the court also ruled that custody is to be broadly defined as any police custody as it is in *Miranda* and ruled that tax investigations are not immune from the *Miranda* warning requirement to be given to a person in custody, whether or not such custody is in connection with the case under investigation (*Mathis v. United States*, 1968). This case once again expanded the scope of *Miranda* this time to include tax investigations, and to add clarity to “custody” as any state custody, although the court contended this was clear in the original language of *Miranda*.

*Harrison v. United States*, the next case involving one’s *Miranda* rights, the petitioner had made statements to the police that were later deemed inadmissible on appeal, however during his initial trial he testified regarding these statements. His testimony, although not the original statements, were read at his retrial and he was again convicted, and again Harrison appealed claiming that his testimony should now be inadmissible because it was fruit-of-the-poisonous-tree, a direct result of his unconstitutional interrogation. The court held that his previous trial testimony was in fact, also, inadmissible because “the same principle that prohibits the use of illegally obtained confessions likewise prohibits the use of any testimony impelled thereby (*Harrison v. United States*, 1968).” The court also places the burden of proof on the government that the defendant would give the same testimony if the illegal statements were never admitted, writing instead “the Government must show that its illegal action did not induce petitioner’s testimony, and no such showing was made here (*Harrison v. United States*, 1968).” This ruling strengthened the *Miranda* protections that the court had previously established and applied the fruit-of-the-poisonous-tree to the *Miranda* doctrine.

*Campbell Painting Corporation v. Reid* was one the first early case decided
in favor of the respondent and narrowed the scope of Miranda rather than expanding it. The case involved Campbell Painting Corporation which was under investigation for violation of a New York City statute involving bid rigging. New York also had a law that upon refusal of "a person" to testify before a grand jury such person and any corporation of which he is an officer or director shall be disqualified for five years from contracting with any public authority and any existing contracts may be canceled by the authority without penalty or damages. When subpoenaed the then-president refused to testify before a grand jury as well as sign his waiver of immunity, and claimed that since he was no longer president the statute did not apply. The court rejected both of these arguments, ruling most importantly that the “constitutional privilege against self-incrimination is a personal one, applying only to natural individuals,” and not corporations, along with ruling that an appellant cannot claim this privilege for a corporation (*Campbell Painting Corporation v. Reid*, 1968). This seven to two decision authored by Justice Fortas clearly narrowed *Miranda* and its doctrine, however did not undermine its applicability to individuals in criminal proceedings.

Although *Campbell* was a narrowing of the right from self-incrimination, the next case, *Orozco v. Texas* once again represented another liberal decision expanding the rights of the criminally accused. Evidence used to convict Orozco was his own testimony in which he admitted to police that he had been at the scene of the crime, and to owning a pistol as well as the location of said pistol. The police arrived at the boardinghouse where Orozco was residing and began to question him. The pistol was obtained by information given to officers at around 4 A.M. while still in the boardinghouse, never moving Orozco to the police station for interrogation. Although he was not brought to the station or formally booked, the officers considered him to be “under arrest.” At trial, the testimony showed that when the petitioner was detained at his residence and questioned he was never informed of his Fifth Amendment’s - to right to remain silent, his right to have the advice of a lawyer before making any statement, and his right to have a
lawyer appointed to assist him if he could not afford to hire one.

The state argued that because Orozco was questioned in his own bed, and familiar surroundings that Miranda did not apply and the testimony was in fact admissible. However, the Supreme Court did not agree - writing of “the absolute necessity for officers interrogating people ”in custody” to give the described warnings (Orozco v. Texas, 1968).” The court reiterated its opinion that when any persons is interrogated and “otherwise deprived of his freedom of action in any significant way,” Miranda warnings are required. The six to two decision by the court and the majority opinion by Justice Black emphasized that this was not an expansion of Miranda in anyway but completely consistent with the holdings in that case. Regardless, the ruling once again reinforced the importance of the Self-Incrimination Clause of the Fifth Amendment, and reiterated that custody does not occur solely at a place but is predicated on the restriction of freedoms as well.

The court faced two questions in its next case Boulden v. Holman, however only one of the questions brought by the petitioner was in regards to a violation of his right from self-incrimination. In this case the petitioner was sentenced to death and after the conviction was affirmed by the Supreme Court of Alabama he requested federal habeas corpus relief on the grounds that the confession introduced at trial was in violation of his right from self-incrimination. At the time of his trial the District Court held a full hearing on the voluntariness of the confession before it was introduced into evidence and found that no constitutional violation was made with the appellate court affirming their decision regarding the confession. The court wrote, in an unanimous decision, that although the issue of voluntariness was a close one, they agree with the findings of the district court and court of appeals (Boulden v. Holman, 1969). Boulden demonstrated that the totality-of-the-circumstances and other relevant rulings relating to Miranda were incorporated in the judicial system across the country.

The last case regarding the Fifth Amendment and Miranda that the Warren
Court heard was *Frazier v. Cupp*, which involved two constitutional questions relating to the *Miranda* doctrine as well as a two other questions for the court to consider. The other two questions involved statements made by the prosecuting attorney who erroneously but sincerely believed was going to testify, and a Sixth Amendment search and seizure issue. The pertinent facts relating to *Miranda* begin when Frazier was arrested and the officers asked him a number of preliminary questions, following this questioning he was advised of his rights under the Fifth Amendment as well as his right to an attorney. As questioning continued Frazier requested an attorney, however the officer interrogating him convinced Frazier to continue without counsel and he eventually signed a written confession. The confession was admitted into trial over the petitioner’s objections. Along with the question of whether the confession was made involuntarily because of the ignored request for a lawyer was whether the trial judge adheard to the totality of the circumstances test.

On both of these questions the court ruled in an unanimous decision for the respondent with the majority opinion authored by Justice Marshall. The court held it was possible that the officer took the petitioner’s statement not as a request but a comment made in passing, and therefore there was no denial of a right to counsel (*Fraizer v. Cupp*, 1969). Additionally the court found that the district court again correctly applied the “totality of the circumstances” and did not err in finding the petitioner’s confession voluntary. The court again affirming their affinity for this test in determining voluntariness and affirmation by the Supreme Court in *Frazier* offered further evidence that lower courts were applying the doctrine satisfactorily. The final case of the Warren court regarding *Miranda* again drew back the rights of the criminally accused that had been so vastly expanded by the initial ruling; a lawyer must be asked for directly and forcefully and no passing comment will suffice.
3.2 The Burger Court

*Harris v. New York* was the first case heard by the Burger court, a notably more conservative court than the prior Warren court. The case involved Sixth and Fourteenth Amendment challenges along with the Fifth Amendment challenge we consider here. *Harris* centered around two sales of heroin by the defendant to an undercover police officer, and upon arrest made statements to the officer before he was mirandized. The statements were never used in trial, however when Harris took the stand he claimed that he never made. The prosecution challenged the truthfulness of this testimony, and then introduced the statements made the petitioner as well as prior police testimony and forensic evidence. The trial judge additionally instructed the jury to only consider this testimony as to the credibility of the witness, and not as evidence for the trial. At no point did the prosecution try to introduce the statements as evidence of guilt to the drug charges conceding to the inadmissibility of the statements, and only as to whether or not the defendant perjured himself.

Although the statement’s were never used as evidence for guilt, they were still used to impeach Harris’ credibility and the use of these statements for perjury purposes are what the court had to address and whether this constituted a violation of the petitioner’s rights. The court held that although *Miranda* was still good law, inadmissible evidence under the *Miranda* doctrine is not inadmissible against an accused in the petitioner’s case was not barred for all purposes. The ruling by the Court was a five to four decision in which it ruled that the petitioner’s rights were not violated and further wrote that “that the shield provided by *Miranda* could not be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances (*Harris v. New York*, 1971).” This ruling was again a narrowing of *Miranda* and the rights of the criminally accused, although unsurprising given the composition of the court at the time.

Our first plurality opinion that we encounter on this abbreviated history of the
cases that have shaped the *Miranda* doctrine is *California v. Byers*. In this case the respondent refused to supply the police with his name and address after he was involved in an automobile accident that resulted in property damage. Although this was in violation of California law, the respondent claimed that supplying officers with the information on the grounds that it would violate his privilege against self-incrimination. The court did not share the petitioner’s view however. The court ruled that Byers rights were not violated by supplying authorities with his name and address, as this law was noncriminal and regulatory in nature, and without self-reporting would be near impossible to accomplish, as well as the fact that the “possibility of self-incrimination is not substantial, does not infringe the privilege against self-incrimination (*California v. Byers*, 1971).” Additionally, the court held that a ruling in favor of the respondent would be an extraordinary extension so hold that such information is in fact testimonial in nature, which is what the Fifth Amendment protects against. The possibility of involvement in the legal process is not akin to testifying against one’s self.

The ruling in *California v. Byers* appears more pragmatic than anything else, although a close five to four vote made it so. The decision is a conservative one because at some level an individual’s rights are being limited in that the police can require biographical information to be provided. However, one would hardly call this an extensive expansion of police powers, or a severe burden on the criminally accused. While this case may not have shifted the doctrine much, the next case *Kastigar v. United States* did represent a substantial shift in one’s rights. *Kastigar* dealt specifically with grand jury testimony, and what happens if an individual invokes their Fifth Amendment right despite a state offer of immunity.

In *Kastigar* the petitioner was compelled by the state to testify in front of a grand jury after receiving immunity where any testimony provided could not be used against him in criminal proceedings. Despite this promise of immunity, *Kastigar* still invoked of his Fifth Amendment right and was subsequently held in contempt of court. The court had to determine whether forcing a witness to testify
after he invokes his Fifth Amendment rights, when said witness has been granted immunity, is legal. The court held that this compelled testimony is in fact constitutional. In a five to two decision the court wrote that “transactional immunity would afford broader protection than the Fifth Amendment privilege (Kastigar v. United States, 1972).” The court was saying that even though the government was compelling testimony, the offer of immunity is extending an individual’s rights far enough to allow this compulsion. Justice Powell authored the opinion that once again provided a conservative ruling and found the court siding with the government with this ruling highlighted the departure from the pro-criminal rights attitude of the previous Warren court and exemplified the conservative nature of the Burger court.

The next case the court decided, Zicarelli v. New Jersey State Commission of Investigation, also involved a witnesses rights when immunity has been granted. In this case the appellant invoked his Fifth Amendment right will being questioned about organized crime, racketeering, and political corruption. Zicarelli was then granted statutory immunity, however he argued that this protection was not enough and he needed full transactional immunity citing his fear of foreign prosecution. The petitioner also argued that “responsive” answers is unconstitutionally vague, although the New Jersey Supreme Court did not agree, finding that the immunity offered was in fact enough protection. The court agreed with this lower court ruling, with another five to two majority in favor of the government.

The court held that the New Jersey statute was “coextensive” enough to protect one’s privilege against self-incrimination, and is therefore sufficient enough to compel testimony as ruled in Kastigar. The court also went further than Kastigar in extending the government’s right to compel testimony, writing that “privilege protects against real dangers, not remote and speculative possibilities” and that Zicarelli did not convince the court that any real danger existed (Zicarelli v. New Jersey State Commission of Investigation, 1972). This ruling continues the Burger court’s trend of of limiting the rights of others in favor of extending government’s
rights and abilities. The ruling once again affirmed the government’s right to compel testimony for a grand jury as long as immunity is granted, and extended this right to include immunity other than full transactional immunity.

After a number of decisively split decision’s by the court regarding the Fifth Amendment, in Lefkowitz v. Turley the court delivered a unanimous ruling. The case involved a challenge to a New York statute that required if a public contractor refuses to waive immunity or testify concerning his state contracts then he will be barred from further business with the state for five years. The appellees in this case were architects who had various contracts with the city, and when they were summoned to testify before a grand jury regarding criminal charges they refused to sign waivers of immunity and their contracts were subsequently cancelled. The architects believed that these actions by the state violated their Fifth Amendment right against self-incrimination, and a District Court agreed with them. The Supreme Court agreed with this ruling, holding that the state’s interests in “maintaining the integrity of its civil service and of its transactions with independent contractors, like other state concerns, cannot override the requirements of the Fifth Amendment (Lefkowitz v Turley, 1973).”

The court also revisited its two previous decisions in Zicarelli and Kastigar, stressing the importance of immunity when the state compels testimony, and in the absence of testimony ruling that testimony cannot be compelled. The court went on to say though, that the state can require employees or contractors testimony and cancel contracts otherwise only if immunity is “sufficient to supplant their Fifth Amendment privilege.” This unanimous ruling finally put a stop to the continued growing ability of the government to compel a witness from individuals and once again stressed the importance of immunity if testimony is to be compelled. The court made a decisive decision and set firm limits for the government, and ensuring that the people will not be subject to compulsion without a promise of protection from criminal proceedings.

The court followed up its unanimous decision in Lefkowitz v. Turley with a
near unanimous, eight to one decision in *Michigan v. Tucker*. In this case the accused was advised of his right to remain silent and right to a lawyer, although not the right to have a lawyer provided for him if he could not afford one. When the respondent was questioned by the police after these warnings he gave statements that incriminated him that were then used in his trial and eventually lead to a conviction. The arrest and conviction of the respondent predated *Miranda*, and the court admitted that the full procedural safeguards were not provided to the respondent. However, the court also found that nothing the police did deprived respondent of his privilege against self-incrimination and thus no rights were violated. The court also ruled that “the failure to advise respondent of his right to appointed counsel had no bearing upon the reliability of Henderson’s testimony (*Michigan v. Tucker*, 1974).” Ultimately, the court ruled that the evidence obtained was admissible, and Tucker’s conviction was upheld. Although this case was not ruled in favor of the criminally accused, it did not specifically limit one’s right against self incrimination. Instead the ruling provided important clarification that Fifth Amendment claims must actually relate to compelled or coerced testimony. Even with this, the ruling was still a conservative one in favor of the government.

The next case allowed the court to revisit its ruling in *Harris v. New York*. In *Harris* the court ruled statements given by a defendant in violation of his Fifth Amendment rights and the *Miranda* doctrine, and therefore inadmissible in court can be used for impeachment purposes. In *Oregon v. Hass* the defendant was mirandized upon arrest and requested to telephone a lawyer, however police informed the suspect that he could not speak to his lawyer until he arrived at the station. Between the time the suspect requested a lawyer and reaching the station he provided inculpatory evidence, that was subsequently ruled inadmissible for the prosecution’s case. In the court’s holding in *Oregon v. Hass* however, the court decided that such information is admissible in impeachment proceedings if, as the defendant did in this case, testified to the contrary after the evidence for the case.
in chief. This six to two decision narrowed the rights of the criminally accused by reaffirming Harris and allowing impeachment proceedings to use previously inadmissible evidence.

The Fifth Amendment allows an individual to invoke the right to remain silent, but what happens when that silence is used against them in court? This question is what the court had to decided in *United States v. Hale*. The case involved a man accused of robbery who refused to speak with the police when questioned about the money found on his persons. At trial the prosecutor attempted to impeach the respondent and caused Hale to admit that he had not offered the alibi to the police at the time of his arrest, the judge told the jury to disregard this line of questioning but did not declare a mistrial. The Court of Appeals however, ruled that the inquiry into the defendant’s silence impermissibly prejudiced the jury and violated his *Miranda* rights as guaranteed under the Fifth Amendment.

In *Hale*, the Supreme Court agreed with the appellant court and granted the respondent a new trial on the grounds that the “respondent’s silence during police interrogation lacked significant probative value, and, under these circumstances, any reference to his silence carried with it an intolerably prejudicial impact (*United States v. Hale*, 1974).” The court believed that using one’s right to remain silent in an adversarial way was a violation of the right. The majority opinion authored by Justice Marshall also held that Hale’s previous silence was not enough to garner “inconsistent testimony” especially since he had repeatedly asserted his innocence throughout the proceedings. This decision by the court protected the rights of the criminally accused and ensured them that their silence could not be used against them in trial proceedings. The liberal decision by the court was an important one to guarantee that *Miranda* and the right to remain silent would not be infringed upon.

Two years later, the court faced its next challenge regarding *Miranda* when it heard *Brown v. Illinois* the court had to determine whether a suspect’s statements were admissible when he had been properly mirandized but arrested without
probable cause or a warrant. The accused petitioned to suppress the statements however they were admitted and on appeal the Illinois State Supreme Court recognized that the arrest was in fact illegal, the statements made were admissible because the *Miranda* statements were enough to break “the causal connection between the illegal arrest and the giving of the statements.” The United States Supreme Court disagreed with the State Supreme Court that providing *Miranda* warnings were not enough to break this causal connection. The Illinois court erred in finding that any subsequent statement, was admissible so long as it was voluntary and not coerced in violation of the Fifth Amendment (*Brown v. Illinois*, 1975).

The court believed that the Fifth Amendment was a secondary issue in this case though, with it only needing to be considered after the Fourth Amendment violation per *Wong Sun*. Although *Miranda* can be an important factor in determining whether statements can be admitted or whether they are “fruits” of an illegal search, the burden is on the state to prove admissibility. The court’s six to three decision in *Brown* ruled that *Miranda* alone does not determine admissibility if other constitutional violations exist and, that if statements are to be admitted, the burden of proof lays with the prosecution that no constitutional violation occurred. The next case that appeared on the court docket once again posed a new and unique question to the justices that was not addressed in the original *Miranda* doctrine.

In the case *Michigan v. Moseley*, the respondent was originally arrested for a series of robberies, upon arrest he was properly mirandized. Moseley agreed to questioning though eventually stating that he no longer wanted to speak whereupon the interrogation immediately stopped and he was brought to a cell. A few hours later, a different police officer brought Moseley out of his cell to question him about a murder unrelated to the robberies, before questioning about the murder Moseley was once again read his *Miranda* rights. During the course of this second interrogation Moseley made statements implicating himself in the murder
and despite a motion to suppress, the statements were eventually used to convict the petitioner of murder. The defendant appealed his conviction and when the case reached the Supreme Court they were tasked with answering the question: Does the re-interrogation of a suspect who had previously invoked his right to silence violate the suspect’s Fifth Amendment rights as decided under *Miranda v. Arizona*?

The court held that re-interrogation after the right to silence is invoked is not a “per se violation of *Miranda* rights, as long as the suspect’s invocation of his rights is honored (*Michigan v. Moseley*, 1975). The court’s original findings in *Miranda* do not address re-interrogation after an invocation at all, whether it is or is not permitted, and if it is permissible under what circumstances. The particulars of this case - the amount of time that had passed between the first and second interrogation, the fact that the respondent was again read his rights before re-interrogation, and that his right to silence had originally been honored - all played a part in the court’s decision. Beyond this case, the court held that *Miranda* only required that the suspect’s right to refuse to answer questions be honored, but not that the right extended indefinitely and re-interrogation could occur. The conservative ruling once again carved out an exception to the right to remain silent and when how that right is applicable.

With the court deciding to hear the next case, *Garner v. United States*, they were able to decide another question regarding what is and what is not compulsory self-incrimination. In this case the petitioner filed a tax return in which he admitted to gambling; this information was then used in a federal gambling conspiracy case despite objections over a Fifth Amendment violation. The court returned a unanimous decision on this matter, writing that no violation occurred because the petitioner made incriminating disclosures on his tax return rather than invoking his Fifth Amendment. The court did not believe that “there [was] no factor depriving petitioner of the free choice to refuse to answer” and that if one does not claim the privilege to remain silent, his disclosures cannot be consid-
ered compelled (Garner v. United States, 1976). The court essentially established that if you do not claim your right to remain silent when answering questions, you cannot claim that your right was violated in another conservative decision that was pro-prosecutorial.

The case Beckwith v. United States was another case involving taxes, however this case centered around an IRS investigation similar to Mathis v. United States. In Beckwith the petitioner made statements incriminating himself during a noncustodial interview in a criminal tax investigation, and was never mirandized. The statements were held admissible by the trial judge, and the Supreme Court upheld this decision in a seven to one vote. The majority held in the ruling that the statements should be admissible because the petitioner was never brought into custody. The court reiterated that Miranda does not apply except when "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way (Beckwith v. United States, 1976)." Beckwith v. United States once again was a conservative ruling that narrowed the scope of Miranda, this time ruling that it does not apply unless custody has been established, and freedom of movement is restricted.

The case United States v. Manujando brought another unanimous decision from the court, and another case revolving around grand jury testimony. In this case the respondent was informed of right to counsel, his right to remain silent and that anything other than truthful answers could result in perjury charges. Even after these warnings, Manujando made false statements regarding his involvement in the sale of narcotics and was subsequently charged with perjury. The respondent successfully suppressed his grand jury testimony at District Court which ruled that he was entitled to full Miranda warnings. However, when this case reached the Supreme Court on appeal, they did not agree with the lower court ruling. The Supreme Court held that individuals called before a grand jury as a witness are not entitled to full Miranda warnings, and that “failure to give such warnings is no
basis for having false statements made to the grand jury suppressed in a subsequent prosecution of the witness for perjury based on those statements (United States v. Manujando, 1976).” This unanimous court ruling was a strong conservative signal and one that once restated that Miranda applies to the criminally accused and not all persons in all legal situations.

The first Miranda case over which Justice John Paul Stevens once again revisited the issues addressed in United States v. Hale, the prosecution using a defendant’s silence against him. Doyle v. Ohio allowed the court to re-address this issues when the petitioners, Doyle and Wood, gave exculpatory testimony at trial that they had never offered the police or the prosecution. The defendants were then cross-examined as to why they never offered up the exculpatory evidence to police, despite their counsel’s objections to this line of questioning.

The court held that this line of questioning violated the Fourteenth Amendment’s due process clause because “post-arrest silence following such warnings is insolubly ambiguous (Doyle v. Ohio, 1976).” The court further held that by using an arrestee’s silence, which is a guaranteed right under Miranda, to impeach an explanation offered later on at trial is fundamentally unfair. After all, the court wrote, Miranda is a promise that one’s silence will not be used against him as evidence. This liberal opinion by the court guaranteed to the criminally accused that their silence would be respected and that the right to remain silent will not and cannot be used against you. After this expansion of rights and reaffirmation of Hale, the Supreme Court once again revisited grand jury testimony and its recent ruling in Manujando when it heard United States v. Wong.

The case, like others the Court had heard, featured a defendant who perjured himself when giving grand jury testimony. After the petitioner gave false testimony, the court held that such testimony is not entitled to the grounds on that no effective warning of the Fifth Amendment warning was given. The Court further held that the Fifth Amendment does not condone perjury, which is not justified “even the predicament of being forced to choose between incriminatory truth and
falsehood, as opposed to a refusal to answer (United States v. Wong, 1977).” This ruling was consistent with Manujando, as well as the Court reiterating that the legal system offers alternatives for challenging the government and “lying is not one of them.” The case once again demonstrated the court’s contempt for perjury and that compelled testimony in a grand jury setting must be truthful, or not at all. However, this is not the last time that the Court would have to decide how to treat grand jury testimony, as it would be addressed again in their next case United States v. Washington.

In a grand jury investigation for a car theft the petitioner made statements implicating himself. He was informed of his right to remain silent, as well as several other warnings consistent with Miranda, testified nonetheless and was then indicted for the theft. The respondent was never informed that he may be indicted for his testimony, and because of this a lower court held that his testimony was obtained in violation of his Fifth Amendment rights. The Supreme Court disagreed however, ruling that the respondent had received a set of comprehensive warnings which “dissipated any element of compulsion to self-incrimination that might otherwise have been present (United States v. Washington, 1977).” The majority also wrote that Miranda protections are satisfactory for grand jury proceedings and that the a defendant’s rights are “neither impaired nor enlarged” by such proceedings. The court’s position on grand jury testimony remained steadfast through Washington and Chief Justice Burger offered another conservative opinion. The court would continue its trending of reaffirming prior decisions in Lefkowitz v. Cunningham.

A New York statute requiring unimmunized testimony or the loss of a powerful political office were the options that one could choose from under this statute. The court held that this was unconstitutional as it essentially compelled testimony from the respondent. Most importantly the court held that the “Government cannot penalize assertion of the constitutional privilege against compelled self-incrimination by imposing sanctions to compel testimony that has not been
immunized (Lefkowitz v. Cunningham, 1977).” This writing by the majority ensured that one’s Fifth Amendment rights remain intact and that threats to one’s livelihood, among other factors, cannot be made absent immunity.

The Supreme Court’s next case once again brought the issue of immunized grand jury testimony to the forefront. The case, New Jersey v. Portash, involved a public employee’s grand jury testimony that was given under a grant of immunity. When the respondent was brought up on charges of misconduct in office and extortion, the trial judge ruled that the grand jury testimony could be used to impeach his testimony if he testified. As a result of this ruling Portash did not testify, and was subsequently convicted. On appeal the New Jersey Supreme Court reversed the trial judges’ decision and ordered a retrial, a decision the United States Supreme Court agreed with. The high court, in a seven to two majority opinion, held that it was a violation of the Fifth Amendment.

The Court wrote the respondent’s testimony before the grand jury under a grant of immunity could not constitutionally be used against him in the later criminal trial. . The court further wrote that because immunized testimony is coerced testimony and “any balancing of interests so as to take into account the interest in preventing perjury as held in Harris v. New York and Oregon v. Hass (New Jersey v. Portash, 1979).” The court once again had to balance the interest in truthful grand jury testimony with an individual’s right from coerced testimony; this time ruling liberally, by protecting an individual from its coerced testimony from being used against him.

North Carolina v. Butler, the next case on the Court’s docket, forced the court to answer the question of whether or not an express waiver of rights is required by Miranda. The case involved Wille Thomas Butler who was properly mirandized and indicated that he understood his rights but refused to sign the waiver the officer provided him with stating such. Butler did however, agree to talk to police, but when that testimony was later introduced to be used against him, he moved to suppress, a motion that the North Carolina Supreme Court agreed with. When
the case eventually made its way to the Supreme Court, a five to three majority held that express waiver was not in fact required by the *Miranda* doctrine. The conservative opinion continued that it was up to the lower courts to decide if an individual waived its implied rights, once again limiting the rights of the criminally accused and expanding the ability of police to interrogate around *Miranda*.

The court delivered another conservative ruling in *Fare v. Michael* when it ruled that a juvenile waived his right when he agreed to speak to police after requesting his probation officer. The Court had to answer whether or not, after being properly mirandized, a juvenile who has asked for his probation officer but not a lawyer trigger the Fifth Amendment protection against self-incrimination. In a five to four decision, the court held that the request does not invoke such protection, and that court’s most continue to consider the totality of the circumstance to determine waiver of rights. Additionally, they found that Michael did knowingly waive his rights.

With the next case the Internal Revenue Service once again found its way in front of the Supreme Court when it compelled an individual to produce handwriting samples during an investigation. The question before the court in *United States v. Euge* was whether this was within the IRS’ power and if it was a constitutional violation on the basis of a Fifth Amendment violation. In a six to three decision the court answered this question by ruling that the IRS was within its right to force a handwriting sample from the respondent and that no Fifth Amendment violation of Euge’s rights occurred. The court held that handwriting was not testimonial evidence, similar to *Schember v. California* where it was held that blood samples are not compelled testimony. The ruling once again extended the state’s ability to compel an individual to produce evidence and marked another conservative decision by the Burger court.

In what was becoming a familiar pattern with the Miranda progeny cases, the question of if grand jury testimony was permissible was once again before the Supreme Court. This time the court had two questions before to it answer in
*United States v. Apfelbaum.* Both concerned itself with 18 U.S.C. § 6002, which protected compelled testimony given under immunity from being used against the defendant except for “a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.” The court first had to decide that if the respondent, who had given false testimony, had his rights violated when the testimony was then used against him and if so, how much of the testimony may be used. The court answered both these questions unanimously, ruling that the exemption is perfectly constitutional as untruthful testimony is not protected by the Fifth Amendment. Additionally, the Court unanimously held that Congress created a blanket exemption between truthful and untruthful testimony, and that once a defendant commits perjury his testimony is no longer immunized or barred from use against him. These conservative rulings once again reaffirmed the court’s decision to protect only truthful testimony, and that if an individual decides to give untruthful testimony he will not be protected from perjury. The Supreme Court has repeatedly held that the Fifth Amendment cannot be applied retroactively and in situations where immunity has been accepted.

The Court’s next case, *Rhode Island v. Innis*, provides one of the classic decisions of the *Miranda* progeny cases. In this case the respondent was arrested and unarmed at the time, was read his *Miranda* rights upon arrest, and then requested to speak to a lawyer. While in transit to the police station, an officer commented on how disastrous it could be if a young child from the nearby handicapped school found the shotgun involved in the robbery Innis was accused of. Upon hearing this comment, Innis told the police to turn the car around so he could show them where said shotgun was. The Supreme Court eventually became tasked with answering the question if this passing comment made by the officer amounted to “interrogation” and violated the suspect’s Fifth Amendment rights as described under *Miranda*.

The court once again issued a conservative ruling, with a six to three majority holding that *Miranda* applied only when a suspect was under “express questioning
or its functional equivalent.” The court decided that these passing comments by
the police did not amount to anything near interrogation. Additionally, they
wrote in the opinion that under Miranda the police “should know are reasonably
likely to elicit an incriminating response from the subject,” and that the officers’
conversation had no reasonable expectation to elicit an incriminating response.
Again, limiting the rights of the criminally accused and allowing more leeway for
the police (Rhode Island v. Innis, 1980).

Estelle v. Smith was a case that entangled the Fifth Amendment with the
controversial and often studied issue of the death penalty. In Texas, after the
respondent was found guilty of murder, and was subsequently sentenced to death
by a jury after answering questions relating to his likelihood to commit violent
crimes. Part of the testimony at sentencing was from a psychiatrist who examined
Smith, and then testified to those findings. This testimony is at the center of the
questions before the Supreme Court, and where the Court found a constitutional
error in admitting the testimony. The defendant received no warnings that his
meeting with the doctor could be used against him, which created a Fifth Amend-
ment violation (Estelle v. Smith, 1981). This unanimous liberal decision held that
the privilege extended to all parts of criminal proceedings and anytime his own
testimony may be used against him.

The court followed up its unanimous decision in Estelle v. Smith with an-
other unanimous decision in Edwards v. Arizona, although this case centered
around the admission of a confession after re-interrogation. Unlike in Michigan v.
Moseley, which involved re-interrogation regarding a different crime, in Edwards
the accused was questioned about the same crime and after invoking his right to
counsel rather than right to silence. The court had to determine whether or not
the testimony given at the re-interrogation of the suspect a day later and after he
again was read his rights was constitutional. The court ruled unanimously that
the police acted unconstitutionally and the suspect’s confession should never have
been admitted into trial. Although the opinion acknowledged that he may have
voluntarily waived his rights, once counsel is invoked the waiver must be voluntary and intelligent (Estelle v. Smith, 1981). The court further held that a valid waiver of the right to counsel “cannot be established by showing only that he responded to police-initiated interrogation after being again advised of his rights” unless the criminally accused “initiated further communication” or counsel was present (Estelle v. Smith, 1981). This ruling protected the criminally accused to a new degree especially once the right to counsel was invoked as well as putting new limits on the police’s ability to question suspects.

The next case marks the first Fifth Amendment challenge heard by Justice Sandra Day O’Connor and a third straight unanimous decision by the court. This time the court revisited the issue of compelled blood tests which involved a South Dakota statute held that refusal to submit to a blood alcohol test could result in the loss of one’s license. In South Dakota v. Neville the respondent was warned he could lose his license if he failed to submit to the test after being pulled over on suspicion of drunk driving but not that failure to do so would be used against him in court. The South Dakota Supreme Court held that this was a violation of Neville’s privilege against self-incrimination but the Supreme Court unanimously disagreed.

In a seven to zero decision the court held that the admission into evidence of the refusal does not violate his Fifth Amendment rights because the test is legitimate. The subsequent evidence of refusal is no less legitimate as evidence because the “State offers a second option of refusing the test, with the attendant policies for making that choice (South Dakota v. Neville, 1983).” The court furthered its opinion on this question when it held that the police’s failure to warn him the suspect that his refusal may be used against him is not fundamentally unfair. The unanimous majority reasoning that it was not done to deceive him nor was it an implicit promise not to use the evidence. In South Dakota v. Neville the police are once again absolved of any wrong doing and the conservative ruling allowed more leeway in how to legislate suspects or the criminally accused.
The court’s first plurality opinion on the Fifth Amendment occurred in *Oregon v. Bradshaw* when the respondent began speaking with police after invoking his right to an attorney and remain silent when initially arrested. He eventually agreed to take a polygraph test after he initiated a conversation with police and was re-read his rights several times. Unlike *Edwards* though, the court held that there was no violation of Bradshaw’s rights. The high court wrote that Bradshaw initiated the conversation, and therefore no violation of the *Edwards* rule, which needed the express waiver of rights after asking for counsel, occurred. The Supreme Court agreed with the trial court, that when examining the totality of the circumstances of this case, the waiver was express and voluntary. Although, four justices did sign a majority that wrote of a “two-step test” to determine if a defendant initiated conversation and if the waiver was voluntary and intelligent, this test failed to garner a majority form the court.

The next case *United States v. Doe* produced a split decision, one liberal ruling and one conservative ruling, with the respective answers to the questions before the court. In Doe, the respondent was asked to produce business records, without any promise of immunity, during a federal grand jury investigation into corruption. The respondent refused and the court was tasked with determining if providing the records was compelled testimony and whether this compulsion amounted to a violation of the Fifth Amendment. The Court answered the first question, with six to three majority, that the records were not privileged under the Fifth Amendment. The opinion stating that “where the preparation of business records is voluntary, no compulsion is present” and that no where does the respondent claim the records were prepared involuntarily (*United States v. Doe*, 1984).” This conservative decision once again gave a very narrow definition to what is compelled and what is testimonial in nature, allowing the government to subpoena more information from an individual.

The answer to the second question, however, was a liberal decision which protected the rights of the criminally accused. While the court held that documents
may be requested, that if such a request comes it must be accompanied by a
grant of immunity. As with past issues relating to compelled testimony in front
of a grand jury the court continues to uphold that no compulsion shall take place
without immunity. Although this case involved documents from an individual
rather than statements made by an individual the liberal ruling, as in past cases,
was the majority’s opinion. The court followed up these to six to three deci-
sions with another six to three decision when asked if whether or not to suppress
statements made to a probation officer.

The respondent in *Minnesota v. Murphy* was a man who made incriminating
statements to his probation officer regarding a rape and murder he committed. When Murphy made these statements he was not under arrest and the trial court
found the confession to be voluntary, however the Minnesota Supreme Court held
that the confession was inadmissible as the probation officer know his statements
may be incriminating and were a violation of Murphy’s Fifth Amendment rights. When the United States Supreme Court decided the case, they reversed the de-
cision, holding instead that while the state may require an individual to meet
with their probation officer, this does not create an exception to the rule that one
must assert the privilege against self-incrimination. The court’s conservative rul-
ing allows statements made to a probation officer, specifically those about crimes
unrelated to probation are admissible. Murphy was not granted a violation of his
Fifth Amendment rights because he never tried to assert these rights.

The public safety exception to the *Miranda* doctrine was carved out in the case
*New York v. Quarles*. This case involved a man matching a suspect’s description
who was stopped, and during the officer’s frisk an empty holder was detected. The
empty holster prompted the officer to question the suspect regarding the location
of his firearm to which the respondent answered, and was then arrested and read
his rights. The court was tasked with determining if this violated *Miranda*, and
held it did not. The court wrote the public safety exception into existence as the
location of the gun was of immediate interest as so no one was injured by the gun
or that it did not fall into the hands of another assailant. This immediate interest in keeping the public safe was a conservative decision and the basis as to why a Fifth Amendment violation did not occur even though Quarles was questioned without his rights being read.

The court followed up *New York v. Quarles* with another two question case, *Berkemer v. McCarty* which centered around a man arrested following a traffic stop. An officer pulled McCarty over after he was observed driving erratically and had him perform a “balance test” which McCarty failed. The officer then questioned McCarty as to whether he was under the influence of any drugs or alcohol to which McCarty answered that he had consumed beer and marijuana. Following this admission he was arrested and brought to the station where the officer once again questioned him about any drugs or alcohol that may have been in his system - all of this occurring without any the suspect being read any *Miranda* warnings. McCarty challenged the admissibility of these statements on the grounds that he was never read his rights and the court had to decide if the questioning that occurred at the traffic stop was a Fifth Amendment violation absent any warnings, and if the questioning at the police station was a violation of the Fifth Amendment.

In both of these questions the court ruled unanimously. To answer the first question, regarding the questions asked when McCarty was pulled over, the court found that no violation of rights had occurred. Justice Marshall wrote for the court that prior to formal arrest the suspect was not under in custody and therefore *Miranda* did not apply, and compared the stop to a non-custodial ‘Terry stop.’ However, a liberal decision followed this conservative one when the court answered the second question. This time holding that McCarty was entitled to be read his rights when the police formally arrested him following the traffic stop and the statements he made at the station were thus inadmissible. Although the petitioner argued that an exception should be made for misdemeanors or arrests following traffic stops, Justice Marshall rejected this in his opinion holding that *Miranda*
was necessary anytime custody occurred.

The court heard a challenge to the federal government’s requirement for males to register for the Selective Service System in order to qualify for financial aid from a college or university following *Berkemer v. McCarty*. The respondent in the case, *Selective Service System v. Minnesota Public Interest Research Group*, believed that it was a Fifth Amendment violation for the federal government to require that men disclose to their universities whether or not they had registered for the draft. The court, in a six to two decision, held that there was no compulsion present in this law because one chooses to seek financial aid, absent a student being compelled no Fifth Amendment violation can occur. The court held that requiring a student to reveal whether or not he had registered in order to receive financial aid was not the same as forcing him to incriminate himself.

The next question that faced the court involved a suspect, who upon arrest, made unprompted incriminating statements in his home before he was mirandized. After he was transported to the station, the sheriff then read Elstad his rights, and the suspect elected to execute a written confession. The case, *Oregon v. Elstad*, asked the court to answer if Elstad written confession was involuntary due to the statements he made at his home before his rights were read to him. On this matter the court issued a conservative opinion, holding that the unwarned statements Elstad made are inadmissible. However, the subsequent statements after he was mirandized, and if the statements are knowingly and voluntarily, need not be suppressed. With this holding, ”the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion,” the court issued another conservative decision and furthered the ability of the government when prosecuting crimes (*Oregon v. Elstad*, 1985).

With the court’s next case, *Moran v. Burbine* they had to once again consider if police action violated the rights of the accused. In this case the police arrested a suspect, and questioned him during which time he signed three waiver’s to demonstrate that he knowingly waived his right to an attorney. The accused was
originally brought in on robbery charges the police discovered his connection to a murder, and following questioning he signed three statements admitting to said murder. While this was happening the respondent’s sister contacted a lawyer on behalf of her brother on what she believed were only robbery charges. Burbine was unaware of his sister’s actions and when the attorney contacted police about Burbine, he was told that Burbine would not be questioned until the next day and never informed the accused about the lawyer.

The court then had to determine if an unrequested attorney attempting to contact a defendant who was subsequently given misleading information about the investigation as well as the police’s failure to notify the defendant of such contact amounted to a violation of the self-incrimination clause of the Fifth Amendment. The court answered this question with a resounding no, in a six to three vote, which held that the failure to inform the suspect of the lawyers call did not affect Burbine’s ability to waive his rights. Justice O’Connor further explained in her majority opinion that the suspect was never formally charged with murder so the right to counsel had yet to attach, and the waivers show that Burbine was aware of his rights and the confession was uncoerced (Moran v. Burbine, 1986).

The next cases the court heard was a consolidation of two cases from Michigan, Michigan v. Jackson and Michigan v. Bladel which the court consolidated into Michigan v. Jackson. Both of which involved the police interrogating a suspect and producing a confession after the suspect had requested and been appointed counsel but before he could meet with his attorney. The court determined in a six to three decision that the defendant’s rights were violated when he was interrogated after requesting and being appointed counsel but before he was able to meet with said attorney. The Supreme Court held in a liberal decision that initiating such an interrogation violated both the Fifth Amendment right against self-incrimination as well as the Sixth Amendment right to an attorney. The only way interrogation or additional questioning could occur without an attorney after one had been requested is if the defendant initiated the conversation.
The court had another opportunity in its next case to either expand or contract where the Fifth Amendment applied. In *Allen v. Illinois* the petitioner was convicted and the state was attempting to have him declared a “sexual dangerous person.” The court relied on psychiatrist testimony, among other witness testimony and evidence to make the case at a bench trial, and eventually won their case. The court had to decide if the Illinois Sexually Dangerous Person Act represented civil or criminal proceedings and if during those proceedings the petitioner was guaranteed his Fifth Amendment rights. The court ruled in favor of Illinois, holding that this was not a criminal proceeding but because of the details and required prior conviction this was a civil matter. Allen, therefore, was not entitled to his right against self-incrimination as the right only extended to criminal matters, marking another conservative decision and a narrowing of an individual’s rights.

### 3.3 The Rehnquist Court

The first *Miranda* case of the Rehnquist court comes next in *Colorado v. Connelly*, where Connelly walked up to a police officer unprompted and confessed to a murder. Upon this admission, the officer then immediately mirandized Connelly, although he indicated he would like to keep speaking. At trial, it was revealed the respondent had schizophrenia and his attorney attempted to suppress the statements on the grounds that they were not made voluntarily. However, the court held that no element of government coercion occurred, noting that the Fifth Amendment and *Miranda* protect against government coercion and “goes no further than that (*Colorado v. Connelly*, 1986). The seven to two decision marked a conservative start for the Rehnquist court, limiting to how far coercion goes and who must be doing the coercing for a violation to occur. The next case the Rehnquist court heard allowed them to revisit *Edwards v. Arizona*.

The case *Connecticut v. Barrett* centered around whether the oral statements a suspect made, after being read and signing a waiver that he understood his
rights, refused to sign any written statements without counsel. Despite this, he never explicitly expressed a right to counsel, and indicated that he would still speak to the police at which time he admitted involvement regarding the sexual assault, which he was under investigation for. The court ruled that his refusal to write a confession had no bearing on his oral statements, and that the police did not “trick” or otherwise coerce the suspect and his decision to speak was voluntary. The court wrote that “Miranda rules were designed to protect defendants from being compelled by the government to make statements, they also give defendants the right to choose between speech and silence (\textit{Connecticut v. Barrett}, 1987).” The unanimous vote by the court sent a strong signal that if you decide to voluntarily waive your right to speak, your Fifth Amendment rights’ are not automatically invoked.

The court next addressed whether or not a suspect’s rights were violated if he was not informed about the crimes he is to be questioned about relevant to his informed decision about his waiver of his Fifth Amendment rights. With another seven to two majority in \textit{Colorado v. Spring} the court held that the Constitution does not require the suspect to know every nuance about the interrogation, rather just that it is understood anything he says can be used against him. The statements were not coerced and knowledge of the content of the interrogation does not affect the suspect’s ability to understand his rights. The court once again expanding the government’s ability during questioning and placing the burden on the suspect to invoke his rights.

The court finally returns to a case in Arizona when it decided \textit{Arizona v. Mauro}, where the suspect’s conversation with his wife was knowingly observed and recorded after Fifth Amendment rights had been invoked and honored. The police only observed the meeting and no questioning took place, however the defense moved to suppress the statements made during this time. The court disagreed, relying on \textit{Innis} and \textit{Miranda} that “questioning or its functional equivalent” did not take place and therefore no violation of rights occurred. A number of case-specific
factors such as concerns for the wife’s safety were used to justify the officer’s presence but more broadly a hope of confession did not constitute a violation as well as the voluntariness of the statements lead to the five to four ruling in Arizona’s favor. The court reinforcing that in order for a violation to occur an interrogation must take place, and that an indefinite right to be free from self-incrimination does not exist.

In *Greer v. Miller* the Rehnquist court had the chance to revisit *Doyle v. Ohio* and decide if a prosecutor questioning a defendant’s silence, which was objected to and sustained, required a reversal of conviction or ruling of a mistrial. The court held that no reversal was required as no Doyle violation occurred, the trial court immediately sustained an objection as well as instructed the jury to disregard the line of questioning. Ultimately the respondent’s silence was protected so no violation of rights was sustained, and the jury was not “infected” enough to warrant a reversal in another six to three conservative ruling by the court.

Justice Anthony Kennedy voted on his first Fifth Amendment case in *Braswell v. United States* where the court ruled that corporations are not entitled to Fifth Amendment rights. The case involved a custodian of a corporation’s records who refused a subpoena on Fifth Amendment self-incrimination grounds. The court held however, that the records belonged to an individual in a representative rather than individual capacity so this personal privilege cannot apply. The court, in this five to four conservative decision, also expressed concern about the government’s ability to prosecute white collar crime and enforce regulations. The court once again limited the application of the Fifth Amendment, limiting it to only individuals with its ruling in *Braswell*. The court’s next case also involved how far Fifth Amendment protections go when the petitioner in *Doe v. United States* failed to turn over bank records during grand jury proceedings.

While initially producing some foreign bank records, Doe refused to produce additional documentation for the grand jury investigation instead invoking his Fifth Amendment rights. He was then ordered to sign forms which would allow
the foreign banks to release any and all accounts he was able to withdraw from, and Doe again refused on Fifth Amendment grounds, citing that this was compelled testimony. This time the court revisited its decisions in Fisher, and United States v. Doe, 465 U. S. 605 and ruled that no compulsion took place because the petitioner was not supplying the grand jury with testimony, as this was not written or oral communication (United States v. Doe, 1981). The court further held that since Doe had already admitted that foreign accounts exist, and the banks would actually be supplying the documents, he was not offering any evidence to the court. The conservative ruling in this case gave the government the ability to further gather evidence during grand jury proceedings.

The specific language of the Miranda warnings given to a suspect were the court’s focus in its next Fifth Amendment case, Duckworth v. Eagan. The petitioner, Gary Eagan was a suspect in a murder investigation and met with police and signed a waiver with warnings that said counsel would be provided “if and when” he went to court. The following day the respondent was questioned again, signed a different waiver informing him of his rights, and then provided the police with a confession and physical evidence of the murder. In a five to four decision the court held that the warnings provided to the suspect were sufficient, and that as long as a they “reasonably conveyed the suspect’s constitutional rights” the exact language from Miranda was not necessary (Duckworth v. Eagan, 1989). The decision in Duckworth v. Eagan marked another conservative ruling, and gave police more leeway in what constitutes sufficient warnings. The Supreme Court once again had to address police conduct and if it violated an individual’s Fifth Amendment rights as guaranteed by the Constitution.

In one of the more high profile Miranda cases, Illinois v. Perkins, the court had to decide if testimony gathered by undercover officer’s violated a suspect’s Fifth Amendment rights as outlined in Miranda. The respondent, Perkins, was an inmate who confessed to committing a murder, absent any coercion or warnings, to his cellmate who actually happened to be an undercover officer. The court
held that because there was no police dominated environment, nor any danger of coercion *Miranda* does not apply. As *Miranda* was intended to protect individuals in police custody, being questioned by police, where a compulsion to confess might exist. The eight to one conservative ruling was another win for the government, and expanded the scope of tactics that may be used against the criminally accused. The court followed up this eight to one conservative ruling, with another eight to one conservative ruling in *Pennsylvania v. Muniz*. In this case the court ruled that incriminating utterances prior to *Miranda* warnings are admissible in trial proceedings and do not constitute impermissible self-incrimination under the Fifth Amendment. The statements used, according to the court, were physical in nature as evidence, as they went to the driver’s mental state of intoxication rather than used for content. The court also held that information freely given, and not elicited by the officer is also admissible in court. While the court narrowed the rights of the accused in this case, in *Minnick v. Mississippi*, the next Fifth Amendment case considered, the court expanded the rights of the criminally accused. The relevant facts of this case are as follows; Minnick requested and met with his lawyer, police then interrogated him and secured a confession without his lawyer present and refused to sign a waiver of his rights during said interrogation, he then moved to suppress the statements on the grounds his rights were violated when his lawyer was not allowed to be present for police questioning.

In a six to two decision, the court agreed with the petitioner, relying on its ruling in *Edwards v. Arizona*, that once the right to counsel was invoked no interrogation could occur without counsel present unless the right was expressly waived by the accused. The court further wrote that the right to an attorney is not satisfied simply by meeting with the attorney outside of interrogation. On this occasion the court expanded the rights of the criminally accused and ensured that counsel would be present during interrogation if the suspect invokes the right. The history of *Miranda* progeny cases once again brings us back to Arizona, where it all started, and a popular theme for the court in the totality of the circumstances
doctrine. In *Arizona v. Fulminante* the court had to decide if the petitioner’s confession, which was obtained by a paid FBI informant who offered Fulminante protection in exchange for a confession, was admissible. The court also had to decide if a second confession made to the informant’s wife was admissible or if it was poisonous fruit of the first confession.

The court came down to a narrow five to four liberal ruling in this case, holding that both confessions violated the respondent’s Fifth Amendment rights. The first confession was given while trying to secure protection, making the confession a result of coercion and therefore inadmissible, as the court held that “fear of violence” caused Fulminante to confess (*Arizona v. Fulminante* 1990). Further, the second confession was closely tied to the first and therefore also inadmissible; both of these rulings were based on the totality of the circumstances, which the court once again demonstrated was the correct way to evaluate such questions - even if Arizona had done so erroneously. The court made another important distinction in this case, that the confessions could not be dismissed as “harmless error” as in this case they played a pivotal role in Fulminante’s conviction. Both of these liberal rulings ensured rights for an individual on trial, that his coerced statements will be dismissed and if admitted a conviction may not stand.

What happens if while a suspect is being questioned he makes an ambiguous statement such as “maybe I should talk to a lawyer?” This was the next question that the court had to answer in *Davis v. United States*, whereas suspect after being informed of his rights and knowingly waived them made an ambiguous request for a lawyer. The officer conducting the interrogation then stopped and clarified if the petitioner would in fact like a lawyer and reminded Davis of his right to counsel, to which the suspect declined and decided to continue answering questions. The court held that there was violation of the Davis’ Fifth Amendment rights, and *Evans v. Arizona* was properly applied. The unanimous decision by the court was that questioning may continue after an ambiguous request for a lawyer was made, and although it was proper for the investigator to clarify the suspect’s
request it is not necessary. The court’s unanimous conservative ruling made it necessary that the criminally accused assert their right to counsel in a direct and unambiguous way if the request is to be honored and questioning is to cease.

Exceptions were continually being carved out for *Miranda*, with conservative court rulings narrowing what was originally an expansive liberal ruling. With the court considering *Dickerson v. United States*, the case directly challenged Congress’ ability to overrule *Miranda* and whether or not *Miranda* was even constitutional. The petitioner, Dickerson, gave a statement to the FBI before being read his Miranda rights. The government contested that these statements should not be suppressed under 18 USC Section 350 which states that voluntarily made confessions are admissible evidence as long as they were made voluntarily. The court ruled that with this law the government was attempting to create a voluntariness statute that would overrule the *Miranda* decision, and this was unconstitutional. The decision in *Miranda* was a constitutional decision and therefore cannot be overruled by Congress.

The seven to two decision also reaffirmed *Miranda* as a constitutional decision, although not with particularly strong language. The majority opinion, authored by Chief Justice William Rehnquist, wrote that “Whether or not this Court would agree with *Miranda*’s reasoning and its rule in the first instance, stare decisis weighs heavily against overruling it now (*Dickerson v. United States*, 2000).” With the opinion further stating that any overruling of *Miranda*, or any Constitutional decision would require some “special justification” and the liberal answer to these two questions made sure that the precedent set by *Miranda* would not be overruled by Congress or by the United States Supreme Court itself.

The court returned to narrowing or expanding *Miranda* when it considered the progeny case *Yarborough v. Alvarado*. The respondent who was seventeen at the time was questioned, without being read any warnings, by police but at the time was not placed under arrest. Statements obtained during this interview were then used to convict Alvarado of second degree murder and attempted robbery.
Although it is not disputed that Alvarado was under any sort of formal arrest the court was forced to consider if age, as he was a minor, and experience with the police must be considered when determining “in custody” for the purposes of mirandizing an individual. The court disagreed with the respondent’s claim that these other factors should be considered when determining, and instead wrote that only objective criterion should be considered by police as this was the purpose of *Miranda* in the first place. A subjective test would be too hard for police to apply according to the court, and therefore in a five to four conservative decision the criterion for applying and mirandizing a suspect stood.

After this close five to four decision, the court issued another five to four decision in *Hiibel v. Nevada*. The petitioner, Hiibel, refused to provide police investigating an assault with his name in violation of Nevada state law. The failure to identify himself led to his arrest and conviction, Hiibel challenged the conviction on the grounds that it violated his Fifth Amendment right against self-incrimination. The court disagreed, ruling that no Fifth Amendment violation occurred because Hiibel never claimed that providing the police with his name would incriminate him in any way. While the court respected the petitioner’s belief that providing his name was unreasonable, the conservative ruling recognized the state of Nevada’s necessity of such a law and absent a compulsion that incriminated an individual, a state would require information to be provided.

In a four-justice plurality decision the court held that a post-*Miranda* confession is only admissible only if there was a significant break in the questioning to give the suspect reasonable belief that he is not required to speak with the police. The case *Missouri v. Seibert* involved a woman who was interrogated and gave a purposely un-*Mirandized* confession, and was then immediately *Mirandized* and repeated her confession to the officer. In a concurring opinion that provided the fifth vote, Justice Kennedy wrote that the evaluating the break is necessary only if the police used the two-interrogation technique deliberately as they had with the respondent. The liberal decision by the court protected the rights of the criminally
accused from deceitful police tactics meant to coerce a confession.

With *Miranda* being put through many challenges and test, the court next pondered if physical evidence that was found as a result of un-mirandized statements should be admissible at trial. In *United States v. Patane*, the officers in the case were in the middle of mirandizing the respondent when he told them to stop because he knew his rights, and then told the police that a gun was in his house. Patane was an ex-felon and it was illegal for him to own a gun; with his permission the police searched his house and found said weapon, which lead to his prosecution. The government and Patane disagreed on whether or not the physical evidence, in this case the gun, that was found as a result of un-*Mirandized* statements should be admitted. The court, in a plurality opinion, wrote that the government is able to use such physical evidence even if the testimony is inadmissible because it violated the defendant’s Fifth Amendment rights. The conservative opinion marked another “win” for the government and allowed prosecution to use evidence obtained from inadmissible statements as long as no physical force was used.

### 3.4 The Roberts’ Court

After *Patane* the court experienced a few new faces joining the bench, with Chief Justice Roberts joining the bench along with Justices Samuel Alito and Sonia Sotomayor receiving their appointments before the next progeny case in *Maryland v. Shatzer*. This case involves the respondent, Shatzer, who was initially questioned about sexually abusing his child and then invoked his Fifth Amendment rights. Three years later a different detective re-read him his rights and questioned Shatzer regarding the same accusations, waived his rights and confessed. This second confession is where Shatzer claimed his Fifth Amendment rights per *Edwards v. Arizona* as he was never afforded the opportunity to meet with counsel and did not initiate additional conversation himself. The Supreme Court disagreed and found that the substantial amount of time that had passed between the two
interrogations and coinciding break in custody meant that Edwards did not apply. This unanimous decision by Justice Scalia held that if an individual can return to his normal life for fourteen days free from the pressure of interrogation Edwards no longer holds.

The specific language of Miranda warnings once again came into question in Florida v. Powell. The respondent claimed that his Fifth Amendment rights were violated because the warnings he received state that he had the right to talk to an attorney but the warnings did not explicitly state that one could be present during interrogation. The Supreme Court disagreed with earlier court’s rulings on this matter and held that Miranda only requires that a suspect’s rights are reasonably conveyed to him, which the court found that the officer’s in this case did. The majority further held that no specific words are required and this reasonableness is the only test needed. The seven to two vote was another conservative ruling in the Miranda progeny cases, and allowed police more flexibility when informing an individual of their rights.

The court’s next case, Berghuis v. Thompkins, involved a suspect who claimed his Miranda rights were violated when he refused to sign a waiver of those rights, or make eye contact with police, even though he spoke with police and never asked for a lawyer. Although a court of appeals agreed with the suspect, Thompkins, the Supreme Court found that they had improperly expanded the Miranda rule. In a five to four decision Justice Kennedy wrote that Thompkins failed to invoke his right to counsel or to remain silent because he failed to unambiguously, and further reasoned that he waived said rights when he “knowingly and voluntarily” spoke with police. The court’s next case allowed them to revisit Fare v. Michael, and how Miranda applies to juvenile suspects.

The case, J.D.B. v. North Carolina featured a thirteen year old boy who was questioned by police at school, in front of school officials but without his parents, and without being read any rights. During the interrogation petitioner, J.D.B. confessed to a string of burglaries both later moved to suppress his confession on
the grounds of a Fifth Amendment violation. The Supreme Court then considered whether or not a juvenile suspect’s age should influence the reading of *Miranda* rights, as the boy was under arrest, but was still being interrogated at the time. In a five to four liberal decision the court held that a child’s age needs to be considered when determining custody for the purposes of *Miranda* as the child’s age plays an important factor. The decision lead to an end of the bright line rule for establishing custody, at least according to the dissent authored by Justice Alito.

The court, following *J.D.B. v. North Carolina*, decided *Howes v. Fields*. In this case a suspect already in jail on unrelated charges was questioned regarding sexual abuse of a thirteen-year-old and was subsequently convicted on related charges. At the time of questioning the respondent was not mirandized, although he was advised that he could end the interrogation at any time and return to his cell. The lower courts agreed with Fields, and found that his Fifth Amendment rights were violated. Upon review by the United States Supreme Court however, the lower court ruling was reversed. The majority opinion, authored by Justice Alito, in which he wrote that imprisonment and questioning about outside events do not automatically create a custodial situation per Miranda. The fact that Fields could return to his cell at any time and was informed of this right was the key to this conservative ruling, and why the court determined that no violation of his rights occurred.

The final case coded in this analysis was *Salinas v. Texas* which was decided in 2013. The petitioner in this case was accused of a double homicide and was questioned regarding the incident, but was not under arrest at the time and therefore no *Miranda* rights were read nor required. The court had to determine if these statements were admissible in court and, therefore, if the Fifth Amendment Self-Incrimination Clause allows non-mirandized silence to be introduced as evidence. The court concluded that Fifth Amendment protections do not extend to defendants who decide to remain silent and an individual must explicitly invoke
his Fifth Amendment rights. The court did carve out two exceptions to the explicit claim, a defendant does not need to take the stand to claim privilege and failure to claim Fifth Amendment protection does not apply if the government coerced statements. This final decision put the burden to enact an individual’s Fifth Amendment right on the individual rather than a burden on the government to respect such a privilege. This conservative decision marks the end of the cases examined in for my purposes with this chapter serving as a history of the cases and their respective decisions.
4 Methods

I am novice with advanced statistical methods, and here quote correspondence
with my adviser as introduction to the method of extracting the ideological content
from my data. “The ideal point model estimated is due originally to Bafumi,
Gelman, and Park (2005) and explained further in Gelman and Hill (2007). It has
the basic form:

\[ Pr(y_{ij} = 1) = \text{logit}_1(\alpha_i(\theta_j - \beta_i)) \]

Equation (1) is an adaptation of Gelman and Hill’s Equation (14.13, p. 316). Here, \( Pr(y_{ij} = 1) \) is the probability of a conservative vote on a case (indexed by
i) by an individual justice (indexed by j). It is presumed that these probabilities
follow the logistic function and depend on three parameters: two at the level of
the case (alpha and beta) and one at the level of the justice (theta). One of the
case-level variables – beta – is trivial in that it is determined by the number of
conservative (scored 1) votes on a case. The other case-level variable – alpha –
is unique in that it represents a case weight where high values indicate higher
importance or discrimination for justice ideology in determining the votes.” No
previous study in judicial politics has examined the relationship between cases and
justice-level ideology inside a single doctrine. Additionally, many studies exclude
unanimous decisions, however I use a complete dataset on all decisions made by
the court.

The ideology variable (theta) is also a first, as no previous study has even at-
t tempted a sophisticated estimation strategy for judicial ideology against a funda-
mental precedent as doctrine inside an area of the law develops over time. Caldeira,
Wright, and Zorn (1999) crudely estimate judicial ideology inside so-called “issue-areas” using codes from the Supreme Court Database that categorize cases in very broad areas of public law. They use the proportion of cases inside an issue area where a justice votes for the more conservative party in the case to distinguish the justices ideologically in that area. These measures are not determined against a precedent in a single doctrinal area of the court’s jurisprudence. They are less-aggregated than most ideology measures, but not focused as is the case here on one doctrine.

In the following section(s), I examine the case-level (importance) variable and the justice-level (ideology) variable estimated from my data as well as compare and contrast these to previous measures, especially what happens when a justices overall ideological score is compared to a their doctrinal score. I also enter into a brief discussion into the median justice on the doctrinal issue, *Miranda*, and how this compares to the natural court.

5 Results

Below significant results and findings of this study are discussed.

5.1 Theta Variable and Discussion

As just mentioned the theta term is the score developed for each justice inside the doctrine of *Miranda*, and this is the first time such an ideological score has been developed for a single doctrine issue area. An examination of the ideological scores in a vacuum reveal how justices behave - how liberal or how conservative they are within *Miranda*. Additionally, these quantitative results lead to some important distinctions in judicial behavior in regards to Miranda my work, when comparing the measures to the ideological scores developed by Rice et. al or Sega and Cover, which are broad measures of ideology across issue areas. To compare I looked at
the residuals between both of these measures as well regress the two other scores against my own. Below are some of the qualitative insights into the court that I gleaned from examining and comparing the scores.

An important note before these discussions begin however is the differences in scale of my data and the Rice, et al. scores as well as the Segal-Cover scores. Unlike my ideology scores, the Rice, et al. data scores liberal justices as greater than zero, and conservative justices as less than zero so the more negative a justice is the more conservative he is, where mine a more conservative justice would be highly positive. Both the scores presented here and the Rice, et al. scores are unconstrained, however the Segal-Cover scores are scored between one and zero, with one being the most liberal and zero the most conservative. Additionally due to the constrained nature of the Segal-Cover scores justice’s share the distinction of the most conservative or most liberal on the court, with multiple scoring a one or zero.

5.1.1 The Liberal and the Conservative

The theta scores are presented in the table (Table 1) below from the most liberal to the most conservative. The justice’s are labeled by their U.S. Supreme Court Database codes in order to easily compare them to other measures. Along with Table 1, I include Figure 1 which plots the theta residuals.
Figure 1—Theta Scores of Supreme Court Justice’s
An important validity marker to my score was that Justice Douglas scored as the most liberal justice on the court at (theta = -5.129). This finding offers an important measure of face validity because Douglas is consistently the most liberal justice in other Bayesian models of the Supreme Court. In the measure’s across ideological scores by Rice, et. al as well as the dynamic ideal point estimation by Martin and Quinn Douglas was also found to be significantly more liberal than other justice’s, which coincides with the findings in my model. While the Segal-Cover scores do not have Douglas as the most liberal justice, these scores are developed by editorials written prior to nomination and do not reflect actual voting outcomes on the Supreme Court. So while Justice Douglas may not have been the most liberal justice prior to his nomination it would seem that once

<table>
<thead>
<tr>
<th>Name</th>
<th>Theta</th>
</tr>
</thead>
<tbody>
<tr>
<td>WODouglas</td>
<td>-5.129119159</td>
</tr>
<tr>
<td>TMarshall</td>
<td>-3.107424038</td>
</tr>
<tr>
<td>WJBrennan</td>
<td>-2.398281488</td>
</tr>
<tr>
<td>SGBreyer</td>
<td>-1.585503503</td>
</tr>
<tr>
<td>HLBlack</td>
<td>-1.512690742</td>
</tr>
<tr>
<td>JPStevens</td>
<td>-1.423182349</td>
</tr>
<tr>
<td>Ewarren</td>
<td>-1.117394077</td>
</tr>
<tr>
<td>RBGinsburg</td>
<td>-1.107479563</td>
</tr>
<tr>
<td>AFortas</td>
<td>-1.057941043</td>
</tr>
<tr>
<td>SSotomayor</td>
<td>-0.905021719</td>
</tr>
<tr>
<td>DHSouter</td>
<td>-0.659351171</td>
</tr>
<tr>
<td>EKagan</td>
<td>-0.177772433</td>
</tr>
<tr>
<td>HABlackmun</td>
<td>0.400012653</td>
</tr>
<tr>
<td>TCCLark</td>
<td>0.661486748</td>
</tr>
<tr>
<td>JHarlan2</td>
<td>0.894274512</td>
</tr>
<tr>
<td>AMKennedy</td>
<td>1.018819237</td>
</tr>
<tr>
<td>Pstewart</td>
<td>1.031707152</td>
</tr>
<tr>
<td>BRWhite</td>
<td>1.351073852</td>
</tr>
<tr>
<td>JGRoberts</td>
<td>1.388391511</td>
</tr>
<tr>
<td>SAAlito</td>
<td>1.38962062</td>
</tr>
<tr>
<td>WEBurger</td>
<td>1.448032319</td>
</tr>
<tr>
<td>LFPowell</td>
<td>1.456295726</td>
</tr>
<tr>
<td>SDOConnor</td>
<td>1.901565877</td>
</tr>
<tr>
<td>CThomas</td>
<td>2.157318586</td>
</tr>
<tr>
<td>AScalia</td>
<td>2.187111297</td>
</tr>
<tr>
<td>WHRehnquist</td>
<td>3.730573487</td>
</tr>
</tbody>
</table>
nominated, he has been consistently found to be the leftist leaning justice.

The most conservative justice within the *Miranda* doctrine is William Rehnquist, which is qualitatively supported as he spent much of his time on the bench fighting *Miranda*, stopping short of repealing it only in order to respect stare decisis. While the other measures of judicial ideology do not rank Rehnquist as the most conservative, they also do not produce consistent results as to who the furthest right justice is. The Rice et. al, scores have Clarence Thomas as well as the Martin-Quinn scores, although at times their most conservative justice changes as their measure moves across time. In the Rice et al, Rehnquist was the second most conservative justice, while in Martin-Quinn he was at times the most conservative but has the 2nd-most conservative median and mean. The Segal-Cover scores on the other hand have Scalia as the most conservative justice, followed once again by Rehnquist, while Thomas is the fourth most right-leaning justice.

All of this to say that my ranking of Rehnquist does not invalidate the theta measure especially given the lack of consensus on who is the furthest right to serve. The measures of conservative ideology are much more tightly clustered than compared to how much more liberal Douglas is than any other justice, making it completely plausible for Rehnquist to be the most conservative on a single issue area. Rehnquist is followed by Scalia and Thomas as the next two furthest right. These three always ranked as some of the most conservative justices on the court, once again adding validity to my measure despite the relatively small data size.

### 5.1.2 Comparing θ and Rice through Residuals

Along with comparing the absolute rankings of justices to other scores, the difference between the scores, for a single justice reveal a lot about their overall behavior compared to how their preferences when faced with a *Miranda* case. Specifically I exam the difference (residual) for a given justice between the scores developed here within the doctrine, and the scores developed by Rice, et al which are scored across multiple issue areas. These residuals can indicate how different or similar a
justice’s overall ideology compared to how they behave when faced with a question about *Miranda*. Once again, these quantitative observations allow a qualitative discussion on judicial behavior.

Also included is figure two which plots the Rice, et al. scores against the Bayes scored developed as a result of this research. The pertinent justice’s discussed are highlighted and label, as well as providing a regression of the two scores, to see how they coincide on almost a one to one ratio. Along with figure two, table two is presented which shows justice’s theta scores, Rice et. al, residual between the two, and their Segal-Cover scores.

The largest residual between the ideological scores presented here and the Rice et. al score belongs to Thomas, as well as Scalia having another notably large residual. These two justice’s are consistently considered two of the most conservative justices, both qualitatively and quantitatively, on the court. These residuals should be large however, given the doctrinal history of *Miranda* and a consistent pattern that emerges of conservatives staunchly opposing *Miranda* after the initial decision. The case created a sweeping and broad liberal doctrine that over time right-leaning justice’s have whittled away at to create a much more narrow, much more conservative interpretation of the Fifth Amendment. So, the large residuals for uber-conservative justice’s such as Thomas and Scalia reflect that they are much similar to other conservatives on the issue of Miranda compared to most issues where they fall much further right than the average conservative.

Differences in the Rice, et al. scores compared to the *Miranda* ideology scores for a number of liberal justices also reveal a great deal about their behavior when presented with questions relating to the doctrine. Notably, Justice Breyer has a large residual in the negative direction (-2.636) indicating that he is much more liberal when it comes to *Miranda* compared to a case in any given issue area. In fact, Rice, et al. assigned him a score of 0.6, meaning that across issue areas he is almost perfectly moderate, only leaning slightly liberal. However, when it comes to *Miranda*, Breyer moves further left compared to his usual ideology when faced
with case questions regarding *Miranda* than any other justice, with no other liberal justice moving further left than one standard deviation. This would indicate that Justice Breyer is the liberal stalwart on the court, and is supported by the fact that Breyer voted liberally on every *Miranda* progeny he presided over with the exception of the unanimous conservative decision in *Maryland v. Shatzer*.

While Breyer moves significantly more liberal in light of *Miranda*, other traditionally liberal justices move much further right, notably Chief Justice Warren (who authored *Miranda*) and Justice Black who also voted with the majority in *Miranda v. Arizona*. Compared to their respective scores on other issue areas, these two justice’s are significantly more conservative with Chief Justice Warren having a residual of 2.655 and Justice Black with a residual of 2.366. In the Rice et. al scores Black is the third most liberal justice, while Warren is the fourth most liberal, compared to the *Miranda* ideology scores where Warren is not even in the top five. Additionally the preferences of Warren and Black are much closer to the preferences of other liberal justice’s where across issue areas they are much further left than the typical liberal justice.

The timing of when Warren and Black were on the court may have played an important factor in how their preferences are expressed. Both of these justice’s were part of a majority that passed sweeping liberal legislation on the Fifth Amendment, however this broad interpretation left many undefined terms and open ended questions. Immediately following *Miranda* it was up to the court to bring clarity to the doctrine, define these terms such as ‘custody’ or ‘interrogation’ and answer the questions brought before the court by petitioners. It is completely possible that the criminally accused were attempting an overly broad reading of what was meant in Warren’s opinion for *Miranda* and therefore he and Black had to answer questions conservatively. Additionally both of these justice’s only sat on the court for a short-time after Miranda, with neither hearing more than twelve cases.

The comparisons above to Rice, et al’s cross-issue score’s and an examina-
tion of the residuals allows us to glean insights into how behavior within *Miranda* differs from a justice’s typical behavior. Whether the justice’s behave how they typically do, with residuals that approach zero such as is the case with Burger or Marshall, or if large residuals exist and atypical behavior persists, these quantitative observations and subsequent qualitative analysis continue to shed light on to judicial ideology and behavior.

Figure 2—Rice-Bayes Regression Plot

![Rice-Bayes Regression Plot](image)
<table>
<thead>
<tr>
<th>Name</th>
<th>Theta</th>
<th>Rice et al</th>
<th>Residual</th>
<th>Seagal-Cover Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>HLBlack</td>
<td>-1.512690742</td>
<td>5</td>
<td>2.366309332</td>
<td>0.875</td>
</tr>
<tr>
<td>WODouglas</td>
<td>-5.129119159</td>
<td>6.49</td>
<td>-1.791189348</td>
<td>0.73</td>
</tr>
<tr>
<td>TCCLark</td>
<td>0.661486748</td>
<td>1.175</td>
<td>1.970981163</td>
<td>0.5</td>
</tr>
<tr>
<td>Ewarren</td>
<td>-1.117394077</td>
<td>4.68</td>
<td>2.655376477</td>
<td>0.75</td>
</tr>
<tr>
<td>JHarlan2</td>
<td>0.894274512</td>
<td>-1.98</td>
<td>-0.862963539</td>
<td>0.875</td>
</tr>
<tr>
<td>WJBrennan</td>
<td>-2.398281488</td>
<td>4.63</td>
<td>0.630822747</td>
<td>1</td>
</tr>
<tr>
<td>Pstewart</td>
<td>1.031707152</td>
<td>0.46</td>
<td>1.813295371</td>
<td>0.75</td>
</tr>
<tr>
<td>BRWhite</td>
<td>1.351073852</td>
<td>0.53</td>
<td>2.395581519</td>
<td>0.5</td>
</tr>
<tr>
<td>AFortas</td>
<td>-1.057941043</td>
<td>4.12</td>
<td>2.206566425</td>
<td>1</td>
</tr>
<tr>
<td>TMarshall</td>
<td>-3.107424038</td>
<td>5.25</td>
<td>0.146719853</td>
<td>1</td>
</tr>
<tr>
<td>WEBurger</td>
<td>1.448032319</td>
<td>-1.89</td>
<td>0.124741462</td>
<td>0.115</td>
</tr>
<tr>
<td>HABlackmun</td>
<td>0.400012653</td>
<td>1.13</td>
<td>1.515402054</td>
<td>0.115</td>
</tr>
<tr>
<td>LFPowell</td>
<td>1.456295726</td>
<td>-0.78</td>
<td>1.271334854</td>
<td>0.165</td>
</tr>
<tr>
<td>WHRehnquist</td>
<td>3.730573487</td>
<td>-4.26</td>
<td>1.347637625</td>
<td>0.045</td>
</tr>
<tr>
<td>JPStevens</td>
<td>-1.423182349</td>
<td>2.19</td>
<td>-0.278704053</td>
<td>0.25</td>
</tr>
<tr>
<td>SDOConnor</td>
<td>1.901565877</td>
<td>-2.17</td>
<td>0.579080235</td>
<td>0.415</td>
</tr>
<tr>
<td>AScalia</td>
<td>2.187111297</td>
<td>-5</td>
<td>-1.808662086</td>
<td>0</td>
</tr>
<tr>
<td>AMKennedy</td>
<td>1.018819237</td>
<td>-2.62</td>
<td>-1.239306664</td>
<td>0.365</td>
</tr>
<tr>
<td>DHSouter</td>
<td>-0.659351171</td>
<td>0.378</td>
<td>-0.836726057</td>
<td>0.325</td>
</tr>
<tr>
<td>CThomas</td>
<td>2.157318586</td>
<td>-6.53</td>
<td>-3.350702896</td>
<td>0.16</td>
</tr>
<tr>
<td>RBGinsburg</td>
<td>-1.107479563</td>
<td>1.15</td>
<td>-0.833604615</td>
<td>0.68</td>
</tr>
<tr>
<td>SGBreyer</td>
<td>-1.585503503</td>
<td>0.06</td>
<td>-2.636205368</td>
<td>0.475</td>
</tr>
<tr>
<td>JGRoberts</td>
<td>1.388391511</td>
<td>-3.85</td>
<td>-1.897904508</td>
<td>0.12</td>
</tr>
<tr>
<td>SAAlito</td>
<td>1.38962062</td>
<td>-4.7</td>
<td>-2.747428248</td>
<td>0.1</td>
</tr>
<tr>
<td>SSotomayor</td>
<td>-0.905021719</td>
<td>1.2</td>
<td>-0.454917619</td>
<td>0.78</td>
</tr>
<tr>
<td>EKagan</td>
<td>-0.177772433</td>
<td>0.19</td>
<td>-0.285334717</td>
<td>0.73</td>
</tr>
</tbody>
</table>
5.2 A Discussion on the Alpha Term

The case-level (importance) variable allowed me to identify how influential a given case was on the overall ideological scores given to the justices. Presented in the table below are the fifteen most and least important cases in determining judicial ideology from the *Miranda* doctrine (figure 1). An important question to ask is what features makes some cases important (or unimportant). Intuitively, there are many potential answers to this question such as a case that is decided five to four rather than nine to zero would be more influential. However, this is not always necessarily as five to four votes do not always split the justices in order of ideology. Some of these important and unimportant ideologically cases are now discussed below with insights into why this might be. The proceeding tables (Table 3 and Table 4) displays the fifteen lowest alpha scores from lowest to highest and the fifteen highest alpha scores from lowest to highest.

The most important case in determining judicial ideology from the *Miranda* doctrine was *Mary Berghuis, Warden v. Thompkins*. This is a relatively modern case in the doctrine’s history as it was heard by the Robert’s court in 2010. The case-question revolved around if the doctrine was improperly expanded by the Sixth Circuit Court of Appeals when it ruled that Thompkins Fifth Amendment rights had been violated because he had been questioned after he had been informed of his rights but refused to sign an acknowledgement that he was informed of said rights. The opinion in this five to four decision does fall along ideological lines with the five most conservative (least liberal) justices siding against the four least conservative (most liberal) justices on the court at the time. This proper and perfect ordering of justices created an environment that allowed such a high alpha (alpha = 4.487). The case, *Berghuis v. Thompkins* is not considered a landmark case in *Miranda*’s doctrinal history. In fact the ruling, and subsequent opinion authored by Justice Anthony Kennedy, in this case added almost nothing original to *Miranda*. The case, more than anything, reiterated previous positions taken by the court. specifically the ruling in *Davis*, that the invocation of rights must
be unambiguous. This opinion by Kennedy, while substantively unremarkable, is interesting nonetheless because Kennedy is the median voter on the natural court as well as the median justice of the *Miranda* doctrine on the court at this time. The median justice is addressed at length later in this section, as theta scores in the doctrine are compared to other measures developed across all doctrines.

Although the highest weighted (most important) case on the ideological score was not important in *Miranda*’s doctrinal history, one case that has a large influence on the ideological score as well as plays an important role in the doctrine is *Rhode Island v. Innis*. The votes on this case were six to three also split along ideological with the three most liberal justices constituting a the minority, and the six most conservative justices voting together. In the opinion authored by Potter Stewart the court defined what constituted interrogation for the purposes of the *Miranda* rule and was written into law in this decision. The court severely narrowed *Miranda* in this case, writing that express questioning was required to trigger the *Miranda* warnings and constitute an interrogation.

The weight given at alpha = 4.060 to this case is especially interesting because of the important position that this case occupies by defining interrogation. When the *Miranda* ruling came out it was very broad and undefined, and over time it has been narrowed and continually clarified. *Rhode Island v. Innis* is one of the cases that both narrowed and gave definition to uncertain terms, like interrogation, that is found in the *Miranda* doctrine. In fact this case is so important to criminal law that it occupies its own section in Understanding Criminal Procedure by Joshua Dressler. None of this is coded into my dataset, the only input is a logit model of zero’s and one’s that reflect judicial votes. The case, *Rhode Island v. Innis*, is not only functionally and historically important to the *Miranda* rules but also given a great deal of weight in determining theta values in my model. Although this is not necessarily a way to validate my model, as votes are used to discriminate between judicial ideologies rather than anything to do with establishing a strong legal doctrine, it is interesting to say the least that cases influencing *Miranda*
also had a heavy influence on judicial ideologies within the doctrine. Standing in contrast with the most highly weighted progeny case as well as *Rhode Island v. Innis*, the least important case in determining doctrinal ideology was *Dunaway v. New York*.

This case was a six to two ideological decision with a liberal outcome; Justice Powell did not participate in the discussion or decision of the case. *Dunaway* was predominately a Fourth Amendment case, however the question arose that following an illegal arrest is testimony admissible given that the suspect was properly mirandized. Predicting solely off whether a justice's theta score as either liberal or conservative on *Miranda*, we would have expected a five to three decision in favor of New York, that is a conservative ruling. While interesting that such an unimportant case in the history of *Miranda*, where the Fifth Amendment takes a back seat to other issues facing the court, is interesting to be weighted so lowly. More importantly the alpha measure stands up as this case misrepresented the justice's typical preferences, essentially mis-ordering their votes and therefore caused the low alpha score of (alpha=0.368).

This misordering of justice's average preferences on *Miranda* cases to votes in on actual cases continue to appear. *Sims v. Georgia*, the third *Miranda* progeny case heard following the decision in 1965, featured an eight to one liberal vote on a case that involved judicial procedure as it related to *Miranda*. The majority opinion on the case held that must make a preliminary finding on whether or not an admission of guilt was voluntary, even if he does not make a formal ruling or author an opinion on the matter. This eight to one decision was split so that the most liberal and conservative justices all voted together, and the lone conservative vote was Justice Black. This is quite remarkable because he is the third most liberal justice on the court with a theta score of 2.366. This misordering of judicial preferences is once again why the the alpha term is so low and the model deemed the case as unimportant to overall ideological scores on the *Miranda* doctrine.

This finding by the model appears to be correct as Justice Black's dissent is in
reference to one feature of the majority opinion, which was the holding used in the Fifth Amendment case *Jackson v. Denno*. This once again shows that the alpha term is working and weighting cases correctly, as it weighed a case whose votes had less to do with *Miranda* and more to do with another constitutional issue extremely low at (alpha=0.482). While the case itself certainly has to do with judicial procedure in light of *Miranda* what is actually happening is the justice’s are voting their attitudes on another case, with separate doctrinal issues in *Jackson v. Denno*. Furthermore, the appearance of judicial procedure and conduct rather than a pure Bill of Rights issue changes the preference of the court. Given all of this, *Sims v. Georgia* should not heavily influence and does not heavily influence the overall scores, which again brings validity to my measure and coding.

To juxtapose *Warden v. Thompkins* with another influential case *United States v. Doe* (1984) in which two questions were asked of the court. However only the unanimous 9-0 liberal decision to the question of whether or not a grant of immunity was required when the individual was compelled to produce the subpoenaed business records related to the Fifth Amendment. The court ruled that in order to compel the production of these records a grant of immunity must be issued, a clear decision in favor of the criminally accused despite some of the court’s most conservative justices presiding over the case. This would indicate that even the petitioner’s position, this case the United States, was either wrong in their interpretation of the Fifth Amendment or so far right that even the most conservative justice in Rhenquist sided with the liberals on the court, as he signed on to an opinion that Justice Powell authored.

The final case I would like to highlight is again from the Burger Court in *New Jersey v. Portash*. This case was again one of the least important cases in which the court ruled that compulsory self-incrimination before a grand jury and under a grant of immunity could not later be used against him in a criminal trial, with the exception of perjury. This seven to two liberal decision without a doubt protected the criminally accused, and as the majority opinion concluded
was necessary in preventing perjury. What is remarkable though is that Rehnquist, the most conservative justice on the court, signed on to the liberal majority opinion, which happened in less than 15% of the non-unanimous cases (n=56) he heard on *Miranda*. This alone should make it an unimportant as it almost represents an aberration from his usual doctrine than anything resembling his ideology. Furthermore the two justices that voted together, Burger and Blackmun, are the third-most and sixth-most conservative justices respectively. While the measure predicts that since Rehnquist sided with the liberal decision the other outcome was much too far conservative to be considered. Once again the misordering of judicial votes, as they move away from their typical preferences on the issue area they become unimportant in the model.

The cases highlighted show the strengths of my alpha term in the equation, with qualitatively important cases being deemed important, while unimportant cases are properly weighed as well. More importantly, this discussion reveals that the alpha term is working properly because the cases it discounted are the one’s that are misrepresentative of a justice’s ideology overall as it relates to this single doctrine issue area, and therefore should be weighed less heavily than cases that perfectly match judicial preferences.
Table 3: Table 3: Lowest $\alpha$ Scores

<table>
<thead>
<tr>
<th>Alpha Weight</th>
<th>Case ID</th>
</tr>
</thead>
<tbody>
<tr>
<td>32</td>
<td>0.367813803297282</td>
</tr>
<tr>
<td>26</td>
<td>0.441388277352714</td>
</tr>
<tr>
<td>29</td>
<td>0.44905408367104</td>
</tr>
<tr>
<td>3</td>
<td>0.482126727397403</td>
</tr>
<tr>
<td>30</td>
<td>0.487065521112391</td>
</tr>
<tr>
<td>58</td>
<td>0.519560045620678</td>
</tr>
<tr>
<td>65</td>
<td>0.594334488091797</td>
</tr>
<tr>
<td>64</td>
<td>0.601366380633413</td>
</tr>
<tr>
<td>59</td>
<td>0.71432112558172</td>
</tr>
<tr>
<td>6</td>
<td>0.78552677407967</td>
</tr>
<tr>
<td>67</td>
<td>0.962830564836344</td>
</tr>
<tr>
<td>2</td>
<td>0.973874616625478</td>
</tr>
<tr>
<td>7</td>
<td>0.974287167541955</td>
</tr>
<tr>
<td>68</td>
<td>0.979003605484131</td>
</tr>
<tr>
<td>57</td>
<td>1.00414555056181</td>
</tr>
</tbody>
</table>

Table 4: Table 4: Highest $\alpha$ Scores

<table>
<thead>
<tr>
<th>Alpha Weight</th>
<th>Case ID</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>3.90968804707028</td>
</tr>
<tr>
<td>43</td>
<td>3.91047852173004</td>
</tr>
<tr>
<td>50</td>
<td>3.95813970160751</td>
</tr>
<tr>
<td>12</td>
<td>3.95831140135689</td>
</tr>
<tr>
<td>49</td>
<td>3.9887559417398</td>
</tr>
<tr>
<td>45</td>
<td>3.99279845412349</td>
</tr>
<tr>
<td>13</td>
<td>3.99598757150552</td>
</tr>
<tr>
<td>34</td>
<td>4.0152925279714</td>
</tr>
<tr>
<td>44</td>
<td>4.03099883352539</td>
</tr>
<tr>
<td>37</td>
<td>4.0597260672265</td>
</tr>
<tr>
<td>78</td>
<td>4.18807167577098</td>
</tr>
<tr>
<td>69</td>
<td>4.20051268039954</td>
</tr>
<tr>
<td>70</td>
<td>4.22955262096949</td>
</tr>
<tr>
<td>72</td>
<td>4.24628411424519</td>
</tr>
<tr>
<td>75</td>
<td>4.48740692177983</td>
</tr>
</tbody>
</table>
6 Median Justice

A final feature of the data that is worth discussing in this analysis is the median justice on a natural court. The median justice builds off of the median voter theorem where the court’s expressed policy preference will be that of the justice’s views who are ideologically centered compared to the rest of the court. While past studies on this have examined who the median voter is across issues, the analysis within *Miranda* allows the median justice to be identified for this single issue. When contrasting these two results there are some interesting differences that are worth discussion.

The accepted median justice on the court for the 1980’s (following the appoint of O’Connor) is Justice White, who served from 1962 until 1993. This is supported by his middling score of 0.5 in the Segal-Cover Scores, as well as Justice White being the median justice when arranged by the scores from Rice, et. al. Furthermore, Martin-Quinn’s analysis supports these findings. Along with White as the median voter across issues, in this analysis he falls as the median voter from the appointment of O’Connor in 1981 until the appointment of Kennedy in 1988. After the appointment of Justice Kennedy, the median justice for Miranda issues moves from White to Kennedy, although White remains the median voter across issues in the alternative analyses mentioned before until the appointment of Justice Souter.

Following the appointment of Justice Souter in 1990, Kennedy becomes the swing vote on Miranda cases, while Souter is the swing vote overall; these median justice’s only last a year however as the appointment of Thomas returns the median vote to Kennedy within the doctrine as well as the median voter overall. After the retirement of White, and the subsequent appoint of Justice Ginsburg, the median voter is commonly accepted as O’Connor. While this may be true across all doctrine’s, once again the median voter on *Miranda* is Kennedy, and he remains so throughout the rest of the court’s iterations. Kennedy as the median justice on the Miranda issues foreshadows the position he occupied as the median justice
since the retirement of Justice O'Connor. Also of importance is that can be gleaned from this data is that one voter most likely does not exist across all issue areas, and the swing vote will differ depending on what is being asked of the court.

7 Conclusion

The study of judicial behavior has been a constant question, and one with the goal of understanding how and why the Supreme Court comes to make decisions. A plethora of research has attempted to answer these questions through the attitudinal model and measurements of ideology. Studies by Segal and Cover centered ideology independent of judicial votes, using editorials prior to confirmation to determine a justice’s ideology. More recent studies like those by Martin-Quinn, and Rice, et al. examine judicial votes while on the bench to determine a justice’s ideological preferences - a much more direct measure of how the justice’s behave on the bench while looking across issues they actually address. While all of these measures have a good degree of validity, the work here is unique in its own right as it examines ideology at the question level within a single-doctrine.

The work here is the first of its kind, with none other being focused on how justice’s have answered questions regarding a doctrine and from those votes develop a single-issue ideology using ideal-point estimation. While this work does not develop comprehensive scores for the justice’s the strength of these preferences is revealed in how small a sample size was needed to produce extremely valid results. The sample size used here is smaller than typical for an ideal point estimation with some justice’s only having a handful of votes however, the model correctly orders the justice’s and matches the results quantitatively of cross-issue studies, and qualitatively of what we see occurring on the court at the time regarding Miranda and the Supreme Court at the time.

The scores here and methods used also allow for a great deal of further research. The data and models developed here are far from flushed out as plenty
of patterns are left to explore and the votes can be manipulated to reveal much more about the Court and how it treats *Miranda*. One application is how the justice’s joining the court move from liberal or conservative over time. With these nominations and confirmations reflecting the presidential politics at the time, as a liberal justice is added by a liberal president, the political preferences are mirrored in the Supreme Court. Additionally, if the justice and the president are opposed on an issue it could reveal that an issue is not important to the nominating president. Another, more obvious application is applying the methods here to other single doctrine issue areas. The replication or lack there of would have validity to the methods used here, and reveal preferences in other issue areas such as *Roe v. Wade*. Ultimately, the possibilities are nearly infinite of what to do with the data developed from this study, as well as applying these methods to other issue areas and scoring the judicial votes at the question-level.
Works Cited


Poole, Keith T. 1998. “Recovering a Basic Space From a Set of Issue Scales.” *American

