Matters of Public Safety and the Current Quarrel over the Scope of the Quarles Exception to Miranda

Rorie A. Norton

Follow this and additional works at: https://ir.lawnet.fordham.edu/flr

Part of the Law Commons

Recommended Citation
Rorie A. Norton, Matters of Public Safety and the Current Quarrel over the Scope of the Quarles Exception to Miranda, 78 Fordham L. Rev. 1931 (2010). Available at: https://ir.lawnet.fordham.edu/flr/vol78/iss4/7
Matters of Public Safety and the Current Quarrel over the Scope of the Quarles Exception to Miranda

Cover Page Footnote
J.D. Candidate, 2011, Fordham University School of Law; B.A., 2007, University of Richmond. I would like to thank Professor Ian Weinstein for his sage advice, thoughtful conversations, and for pushing me to think about this topic in new and valuable ways. I would also like to thank my friends and family for providing me with the type of unwavering support that makes anything possible.
In October 1984, the Burger Court set forth an exception to the Miranda doctrine in New York v. Quarles permitting officers to intentionally abstain from administering Miranda warnings to suspects where a threat to the safety of the public or officers exists. However, latent ambiguity arising from the Quarles decision authored by Justice William Rehnquist has resulted in a split among the federal courts of appeals as to what constitutes a "public safety threat." Some courts broadly extend the Quarles exception to inherently dangerous situations, including the threat of an officer mishandling an undiscovered weapon. Other courts narrowly apply Quarles to exigent circumstances where there is actual evidence that a suspect or other third party could inflict immediate harm to officers or the public.

As the only exception permitting an intentional violation of Miranda, this circuit split concerning the scope of the Quarles exception poses a substantial threat to the ongoing role of Miranda in the criminal justice system. In light of this conflict and the possible repercussions, this Note endorses the narrow approach as the most consistent with the language and intent of Quarles. It further proposes a formal, three-prong test for applying the Quarles exception that requires officers to have actual knowledge of an immediate threat, with all pre-Miranda questioning of a suspect objectively evaluated to ensure that it is narrowly tailored to that threat. Finally, this Note concludes that the proposed three-prong test is the best method to ensure uniformity in the application of Quarles and to prevent the exception from threatening the integrity of the Miranda doctrine.
**TABLE OF CONTENTS**

**INTRODUCTION**

1932

I. *MIRANDA, QUARLES, AND THEIR ROLES IN SOCIETY* .......... 1935

A. Miranda v. Arizona: *Foundation of the Modern Fifth Amendment* ........ 1935

1. The Road to *Miranda* .............................................. 1935

2. *Miranda*: The Gospel According to the Warren Court ... 1937

B. New York v. Quarles: *The Exception to the Rule* .............. 1939

C. *Modern Miranda*: *Full of Sound and Fury, Signifying Nothing (?)* ............................................................ 1942

1. Post-*Miranda* Developments and the Thirty Years’ War of “Constitutional” Versus “Prophylactic” ...................... 1942

2. The Good, the Bad, and the Ugly: The Modern Social Impact of *Miranda* ...................................................... 1945

II. *CHAOS BY DESIGN: ANALYZING THE CIRCUIT SPLIT REGARDING WHAT CONSTITUTES A PUBLIC SAFETY THREAT* .......... 1947

A. The Broad Approach: *Inherently Dangerous Situations* ...... 1949

1. Eighth Circuit ....................................................... 1949

2. Ninth Circuit .......................................................... 1951

3. First Circuit ........................................................... 1953

B. The Narrow Approach: *Exigent Circumstances* ............... 1954

1. Sixth and Tenth Circuits ............................................ 1954

2. Fourth and Fifth Circuits .......................................... 1957

3. Second Circuit ........................................................ 1958

III. *WHY EXIGENCY IS BETTER FOR QUARLES, MIRANDA, AND SOCIETY* ................................................................. 1960

A. Where, Oh Where (and How?), Did the Broad Approach Go Wrong? ................................................................. 1961

B. *Proposing a Narrow Three-Part Test for Righting the Current Wrongs of the Quarles Exception* .................. 1963

**CONCLUSION** ...................................................................................................................... 1968

---

**INTRODUCTION**

Six officers, exercising a valid search warrant, used a flash-bang device¹ to storm the apartment of a suspected drug trafficker with a history of firearm possessions.² The officers conducted a quick sweep of the apartment to account for all individuals inside, discovering the suspect in

---

¹ A “flash-bang” device is “a light/sound diversionary device designed to emit a brilliant light and loud noise upon detonation. Its purpose is to stun, disorient, and temporarily blind its targets, creating a window of time in which police officers can safely enter and secure a potentially dangerous area.” Boyd v. Benton County, 374 F.3d 773, 776 (9th Cir. 2004).

² United States v. Williams, 181 F.3d 945, 947–48 (8th Cir. 1999).
the bedroom lying on the bed. The officers immediately handcuffed the suspect’s hands behind his back, placed him in an upright position, and explained their reason for being there. Then, without issuing a *Miranda* warning, the officers asked the suspect, “[I]s there anything we need to be aware of?” The suspect responded that a gun was located in the closet—leading the officers to recover a semiautomatic pistol, drug paraphernalia, and a container of ammunition therein.

The officers then escorted the suspect from the bedroom to the living room of the apartment and moved his handcuffed hands in front of him. In the meantime, the officers proceeded to uncover various amounts of illicit weapons, drugs, and money in a thorough search of the suspect’s apartment. As the suspect expressed concern about the disarray this caused to his apartment, one of the officers asked him if the officers “were going to find anything.” To this, the suspect responded that he would show them where the “stuff” was located—ultimately leading the officers to more cocaine and marijuana. After the second exchange, and well after the initial raid, the suspect finally had his *Miranda* warnings read to him by the officers.

In this fact pattern, officers executed two rounds of questioning of the suspect before issuing him a *Miranda* warning. Based on the U.S. Supreme Court’s landmark ruling in 1966 in *Miranda v. Arizona* requiring officers to inform the criminally accused of their Fifth Amendment right to remain silent, these two rounds of questioning could not be admitted as evidence in court against the defendant. However, the Burger Court created an exception to the *Miranda* doctrine in 1984 in *New York v. Quarles*, establishing that no violation of *Miranda* has occurred when officers question a suspect about a potential threat to public safety. This Note addresses the issue of what factual circumstances must exist for the *Quarles* exception to be properly invoked by officers to question suspects without complying with the *Miranda* warning-and-waiver requirement. In recent years a split in authority has emerged among a number of the federal courts of appeals due to the ambiguous language and lack of guidance in the *Quarles* opinion as to what constitutes a public safety threat.

---

3. *Id.* at 948.
4. *Id.*
5. *Id.* (internal quotation marks omitted).
6. *Id.*
7. *Id.*
8. *Id.* at 948–49.
9. *Id.* at 948 (internal quotation marks omitted).
10. *Id.* (internal quotation marks omitted).
11. *Id.* at 948–49.
14. *See infra* note 40 and accompanying text.
16. *Id.* at 655; *see infra* note 62 and accompanying text.
17. *See infra* note 83 and accompanying text.
This Note separates the courts of appeals into two camps advocating alternative approaches for the Quarles exception. The "broad approach" applies the public safety exception to inherently dangerous circumstances posing a material threat to officers or the public—regardless of the immediacy or any actual evidence of that threat. Courts at the other end of the spectrum advocate the "narrow approach"—requiring officers to have actual knowledge of an imminent threat to public safety before using the exception. The fact pattern at the outset of this Note provides an excellent example of how these two interpretations of the Quarles exception can lead to inconsistent results. Courts employing the broad approach would likely uphold both sets of questions insofar as they were related to the risk of officers mishandling known or not-yet recovered firearms. Conversely, courts using the narrow approach would not likely permit either set of questions by the officers where there was no immediate threat to officers from outside parties once the premises were secured and the suspect was handcuffed.

The disparity in the results rendered by these two approaches, each purporting to faithfully apply the public safety exception, signifies the importance of this Quarles circuit split with respect to the Miranda doctrine. The viability of Miranda had been a subject of concern among legal scholars until the Rehnquist Court reaffirmed Miranda as a constitutional rule in Dickerson v. United States. However, any future Supreme Court resolution of the current Quarles conflict is vitally important for determining the scope and role that Miranda will play in the criminal justice system in the coming years. If the Supreme Court adopts the narrow approach to Quarles, it would afford greater protection to the Miranda doctrine at the expense of the powers of law enforcement officers. Alternatively, a Supreme Court endorsement of the broad approach would greatly enhance the ability of officers to question suspects in contravention of Miranda—diminishing the doctrine's scope and effectively transforming it from the rule into the exception.

Against this backdrop, this Note examines the current circuit split of the Quarles public safety exception and its subsequent relationship to the Miranda doctrine. Part I provides background information on the nature of the Fifth Amendment rights of citizens against self-incrimination from the

---

18. See infra Part II.
19. See infra Part II.A.
20. See infra Part II.B.
21. See infra Part II.A.1, 3.
22. See infra Part II.B.
23. See infra note 95 and accompanying text.
24. 530 U.S. 428 (2000); see infra notes 104–06 and accompanying text.
mid-twentieth century through today. This breakdown includes a thorough consideration of the Supreme Court’s rulings in *Miranda* and *Quarles*, as well as a cursory examination of other pertinent *Miranda*-related decisions concerning the doctrine’s viability and scope.

Part II of this Note analyzes the current conflict among the U.S. courts of appeals in how the *Quarles* exception should be applied by dividing them into two groups: those favoring a broad approach, extending the exception to inherently dangerous situations, and those advocating a narrow approach limiting the exception to exigent circumstances. Part III proposes a formal three-prong test based on the narrow approach for applying the *Quarles* exception. This test requires that the officers have a reason to believe a threat exists, that the threat be immediately posed by nonofficers, and that any pre-*Miranda* questions be objectively evaluated to ensure that they are narrowly tailored to the threat. Finally, Part III concludes by offering several public policy and extrajudicial justifications for narrowly applying the *Quarles* exception in the manner proposed by this Note.

I. *Miranda, Quarles,* and Their Roles in Society

Part I details the inception of *Miranda* and *Quarles* as Fifth Amendment doctrines along with the basic frameworks for the rules they set forth. Part I.A focuses on the Fifth Amendment legal doctrines preceding *Miranda v. Arizona* and analyzes *Miranda* itself. Part I.B evaluates how the *Quarles* exception arose and the significance of the Burger Court’s decision. Finally, Part I.C discusses *Miranda*’s place in the criminal justice system today and post-*Miranda* decisions that have shaped its role in the criminal justice system.

A. *Miranda v. Arizona: Foundation of the Modern Fifth Amendment*

The plurality of considerations contributing to the Warren Court’s decision in *Miranda* factor prominently in modern police practices and any substantive analysis of the *Quarles* exception. With this in mind, it is necessary to understand the legal and social circumstances preceding the creation of the *Miranda* doctrine, as well as the central tenets and principles espoused in the Warren Court’s decision. Part I.A.1 evaluates the cases and legal principles pertaining to the self-incrimination rights of citizens that preceded the 1966 ruling in *Miranda*. Part I.B.2 analyzes the logic and reasoning underlying the Warren Court’s decision in *Miranda* and its creation of the seminal Fifth Amendment exclusionary rule.

1. The Road to *Miranda*

The Supreme Court’s decision in *Miranda* was the culmination of a series of legal decisions that had incrementally advanced the rights of the
FORDHAM LAW REVIEW

[Vol. 78

1936

criminally accused. Prior to *Miranda*, the Fifth Amendment's right against self-incrimination was largely limited to the sphere of the courtroom. Before *Miranda*, protection measures for suspects in police interrogations primarily came from a due process measure called the "voluntariness doctrine," which asked whether, in considering the totality of the circumstances, the defendant's power of resistance was overcome by an excessively coercive police interrogation. Multiple factors were considered to determine whether the voluntariness doctrine had been implicated, including the condition of the suspect, isolation of the suspect from others, the character of police conduct during the interrogation, and the length of the interrogation.

However, while the voluntariness doctrine addressed the most egregious instances of police misconduct, it ultimately had a limited range of matters it could address. In response, prior to its ruling in *Miranda*, the Warren Court attempted to bolster the protection of defendants in 1964 in *Escobedo v. Illinois* by finding that criminal suspects had a right to counsel during police interrogations under the Sixth Amendment. However, the requirements in *Escobedo* were so narrowly cast and interpreted by lower courts that *Escobedo* failed to have the broad reform intended at its inception. It was against the backdrop of these social and legal developments that the *Miranda* ruling was formulated.

26. The relevant Fifth Amendment language relied upon by the U.S. Supreme Court in setting forth *Miranda v. Arizona* and other affiliated rulings is as follows: "[n]o person...shall be compelled in any criminal case to be a witness against himself...without due process of law." U.S. CONST. amend. V; see *Miranda v. Arizona*, 384 U.S. 436, 442 (1966) (noting that the Court’s ruling is "but an explication of basic rights that are enshrined in our Constitution" in the Fifth Amendment).


29. McCrackin, *supra* note 28, at 1112; see also Kamisar, *supra* note 28, at 163 (noting the multiple factors taken into consideration under the voluntariness test).

30. See, e.g., McCrackin, *supra* note 28, at 1112 n.6 (detailing a number of circumstances where exceedingly aggressive interrogation efforts were deemed inadmissible using the voluntariness doctrine).

31. See id. at 1112; Standen, *supra* note 28, at 557-58 (noting how the highly individualized analysis of a suspect’s capacity for coercion and the specific acts of officers in question made the voluntariness test deficient for combating improperly compelled testimonies).


33. *Id.* at 492.

34. The opinion was constructed narrowly so as to apply only where, in police custody, the suspect is subject to “[1] interrogations that lend[ themselves] to eliciting incriminating statements, [2] the suspect has requested and [3] been denied an opportunity to consult with his lawyer, and [4] the police have not effectively warned him of his absolute constitutional right to remain silent.” *Id.* at 490–91. By only finding the Sixth Amendment rights of individuals implicated where each of these four requirements were met, the Court placed an
THE CURRENT QUARREL OVER QUARLES

legal conditions that the Warren Court controversially expanded the Fifth Amendment right against self-incrimination to police interrogations in *Miranda v. Arizona*.


In its scope and effect, Chief Justice Earl Warren's opinion in *Miranda* completely revamped the rights of the criminally accused through protections embodied in the Fifth Amendment. Most notably, *Miranda* set forth a doctrine excluding evidence of any statements rendered during a custodial interrogation when the requisite warnings were not first administered. Officers must, in some variation, warn a suspect in custody that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." Further, the Court explicitly required police officers to cease and desist their questioning if the defendant requested the presence of an attorney or did not wish to be interrogated.

These requirements are built on the back of the notion that, while a suspect is in custody, any questioning by police officers constitutes interrogation, the likes of which "contain[] inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." Once the suspect's *Miranda* rights have been properly administered, officers can only proceed with the interrogation where the suspect "knowingly and intelligently waive[s] these rights and agree[s] to answer questions or make a statement." Any answers rendered without these requirements can be properly suppressed at trial, should the prosecution attempt to admit them as evidence.

Further, to eliminate any potential confusion in the application of the rule, *Miranda* addressed the principle argument of its detractors: that

\[\text{\ldots}\]


37. Id. at 444–45.


occasionally society’s interest in an interrogation would outweigh the value of a suspect’s *Miranda* rights.\footnote{Miranda, 384 U.S. at 479.} Chief Justice Warren directly confronted this notion by stating that, with respect to the Fifth Amendment against self-incrimination, “[t]hat right cannot be abridged.”\footnote{Id.} The Court defended this approach by quoting earlier language of Justice Louis D. Brandeis, which emphasized that the government and its law enforcement officers must be held to the same law and standards as its citizens.\footnote{Id. at 479–80 (quoting Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting)).} Further, the Court went to great lengths to address the need and ability of officers to conduct their traditional investigatory functions without violating the rights of citizens.\footnote{Id. at 481.} By using these considerations to emphasize that the *Miranda* warnings would be an uncompromisable fixture that officers must comply with, the Warren Court further fortified the doctrine as a constitutional requirement of the Fifth Amendment.\footnote{Id. at 476 (“The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation.”).}

Through this sweeping reform, the *Miranda* Court set forth several objectives it hoped to achieve through the doctrine. The first was to create a bright-line rule of sufficient specificity that law enforcement officers could easily implement it on a daily basis.\footnote{Id. at 441–42; see Standen, supra note 28, at 558 (observing several ways that the format of the *Miranda* opinion suggests that the majority desired to have it effectuate a bright-line rule where it, “in form and content, resembles a statute”).} Second, the Court sought to enhance the integrity of policing by eliminating particularly harsh interrogation methods—which the Warren Court identified as “third degree” tactics—that were used to obtain confessions and solve crimes.\footnote{Miranda, 384 U.S. at 455–56; see William F. Jung, *Not Dead Yet: The Enduring Miranda Rule 25 Years After the Supreme Court’s October Term 1984*, 28 ST. LOUIS U. PUB. L. REV. 447, 448 (2009); Rybnicek, supra note 39, at 413–14. In *Miranda*, the Court devoted a substantial portion of the opinion recounting instances of psychological and physical brutality used by police officers to obtain confessions and solve crimes. *Miranda*, 384 U.S. at 445–55. These include factual accounts from cases brought in front of the Court, police training manuals, and other alternative mediums. *Id.*} Finally, it aimed to protect the dignity and free will of citizens in the face of subversive police practices.\footnote{See *Miranda*, 384 U.S. at 457 (identifying an “interrogation environment” as serving “no purpose other than to subjugate the individual to the will of his examiner[,]” the likes of which, as compared to physical intimidation, is “equally destructive of human dignity”).}

Therefore, in enhancing the Fifth Amendment rights of suspects through the creation of the *Miranda* exclusionary rule, the Warren Court sought to effectuate a wide scale transformation of the entire criminal justice system.
B. New York v. Quarles: The Exception to the Rule

In October 1984, almost twenty years after Miranda was decided, the Burger Court was confronted in New York v. Quarles with whether to create a public safety exception to the rule. This question came after a series of decisions by the Burger Court that had narrowly interpreted the types of factual circumstances in which the Miranda doctrine could be applied.\(^{49}\) However, Quarles would come to constitute a substantial departure from these previous approaches by creating the first exception permitting police officers to intentionally violate a suspect’s Miranda rights.\(^{50}\)

In Quarles, a young woman approached two officers on patrol in Queens, New York, at approximately 12:30 a.m. claiming that a black male in possession of a gun had just raped her.\(^{51}\) The young woman directed the officers to a local supermarket to which she believed that the suspect had fled.\(^{52}\) One of the officers entered the store and immediately spotted a man at the checkout counter, Benjamin Quarles, matching the suspect’s description.\(^{53}\) Panicked at the sight of the officer, Quarles ran towards the back of the store.\(^{54}\) While pursuing him with his gun drawn, the officer briefly lost sight of Quarles after he turned a corner.\(^{55}\)

Upon regaining sight of Quarles, the officer immediately seized and frisked him, discovering that he was wearing an empty shoulder holster.\(^{56}\) After handcuffing him, the officer asked Quarles about the location of the gun.\(^{57}\) Quarles responded by nodding his head toward some empty cartons, replying, “the gun is over there.”\(^{58}\) Only after this exchange, and after retrieving the gun, did the officers read Quarles his Miranda rights from a printed card.\(^{59}\)

The New York trial court and New York Court of Appeals convicted Quarles of criminal possession of a weapon but suppressed his statement about the location of the gun as a violation of his Miranda rights.\(^{60}\) Specifically, the New York Court of Appeals refused to recognize the existence of an exigency exception to Miranda, but also found “no

\(^{49}\) Drizin, supra note 25, at 692 (“Before Quarles, the Burger Court’s Miranda decisions had focused largely on the scope and application of Miranda, addressing issues such as what constitutes ‘custody’ and ‘interrogation’ under Miranda.”).

\(^{50}\) See id. at 692–93 (“Quarles attacks the core of Miranda . . . [as] the first time that the Court has allowed self-incriminating statements that were obtained without Miranda warnings to be used in the prosecution’s case-in-chief.”).


\(^{52}\) Id.

\(^{53}\) Id. at 652.

\(^{54}\) Id.

\(^{55}\) Id.

\(^{56}\) Id.

\(^{57}\) Id.

\(^{58}\) Id. (internal quotation marks omitted).

\(^{59}\) Id.

\(^{60}\) Id. at 652–53.
indication" that the officer asked the question with an eye to ensuring his own safety or that of the public.61

The Supreme Court, in a majority decision authored by Justice Rehnquist, reversed the lower court's suppression of Quarles's answers by recognizing "a 'public safety' exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence."62 In reaching this decision, the Court relied heavily upon the fact that "[s]o long as the gun was concealed somewhere in the supermarket, . . . it obviously posed more than one danger to the public safety."63 Specifically, the Court mentioned the possibility that an accomplice to Quarles could make use of the gun or that a customer or employee would later discover it.64

Additionally, the Court was concerned that in dangerous situations, Miranda forced officers to decide "in a matter of seconds" whether to first give the warnings, risking the possibility of losing valuable information, or to ask the questions and have any testimonial evidence rendered inadmissible.65 In balancing these costs in Quarles, the Court referenced the similar decision in Miranda to require the warnings as a protection of Fifth Amendment privileges at the expense of losing potential convictions.66 With this in mind, the Court justified the public safety exception by noting that without it, "the cost [could] have been something more than merely the failure to obtain evidence useful in convicting Quarles."67 Thus, Justice Rehnquist justified the creation of the public safety exception, in contradiction of the Warren Court's refusal to compromise the Miranda bright-line rule,68 by distinguishing the threat of harm or death in Quarles as more serious than the mere loss of evidentiary testimony at issue in Miranda.69

However, the Court did set forth several considerations for evaluating the conduct of officers. First, it held that the subjective motivation of officers is not to be considered in whether the Quarles exception is validly applied.70 In deciding this, the Court acknowledged that officers often act

62. Quarles, 467 U.S. at 655; see Alan Raphael, The Current Scope of the Public Safety Exception to Miranda Under New York v. Quarles, 2 N.Y. City L. Rev. 63, 67 (1998) ("Quarles holds that answers to questions posed while under custodial interrogation may be admitted into evidence when made without the benefit of Miranda warnings where there is a threat to the safety of a crime victim, the public, or the police.").
63. Quarles, 467 U.S. at 657.
64. Id.
65. Id. at 657–58; see Wayne R. LaFave et al., Criminal Procedure 384 (5th ed. 2009); Reiner, supra note 61, at 2384–85.
66. Quarles, 467 U.S. at 657; see LaFave et al., supra note 65, at 383–84; supra notes 41–45 and accompanying text.
67. Quarles, 467 U.S. at 657.
68. See supra notes 41–45 and accompanying text.
69. See LaFave et al., supra note 65, at 383–84; Michael J. Zydney Mannheimer, Coerced Confessions and the Fourth Amendment, 30 Hastings Const. L.Q. 57, 118 (2002).
70. Quarles, 467 U.S. at 656; see Raphael, supra note 62, at 66.
pursuant to a number of simultaneous motives, including “the desire to obtain incriminating evidence from the suspect.”\textsuperscript{71} But these subjective motives of officers are irrelevant as long as, based on an objective valuation of the circumstances, the “questions [could have been] reasonably prompted by a concern for the public safety.”\textsuperscript{72} The decision to deemphasize an officer’s subjective motive was rooted in the Court’s recognition that the public safety exception would arise in “kaleidoscopic” circumstances “where spontaneity rather than adherence to a police manual” would be pivotal.\textsuperscript{73} Accordingly, the \textit{Quarles} Court chose to vest its application with police officers who “can and will distinguish almost instinctively” when exigencies justify its use.\textsuperscript{74}

Second, the Court shed light on its intended scope of the public safety exception by applying it to the facts of one of its earlier cases, \textit{Orozco v. Texas}.

In \textit{Orozco}, police raided a suspect’s boardinghouse in the wee hours of the morning after a murder had been committed a mere four hours earlier.\textsuperscript{76} The officers vigorously interrogated the suspect about his role in the murder and whether he owned a gun, all without first reciting \textit{Miranda} warnings.\textsuperscript{77} In response, the suspect confessed to being at the scene of the murder and told officers where the gun was hidden.\textsuperscript{78} The Supreme Court upheld the suppression of these confessions as a “flat violation” of the defendant’s \textit{Miranda} rights.\textsuperscript{79}

Justice Rehnquist, writing for the majority in \textit{Quarles}, found that the Court’s holding in \textit{Orozco} was “in no sense inconsistent” with the newly created public safety exception.\textsuperscript{80} This is based on Justice Rehnquist’s finding that the \textit{Orozco} questioning was “clearly investigatory” and was in no way “relate[d] to an objectively reasonable need to protect the police or the public from any immediate danger.”\textsuperscript{81} Thus, \textit{Orozco} was distinguished as lacking both the relatively marginal objectivity requirement and the sufficient exigency for the public safety exception to have applied.\textsuperscript{82} Far from completely clearing up the ambiguity in how to apply the exception, these other considerations are still useful for obtaining a better sense as to how Justice Rehnquist envisioned it being applied. This is especially important in light of the Court’s failure to set forth a formal test for the

\textsuperscript{71} \textit{Quarles}, 467 U.S. at 656.
\textsuperscript{72} \textit{Id.}; see LAFAVE ET AL., \textit{supra} note 65, at 384; Raphael, \textit{supra} note 62, at 66.
\textsuperscript{73} \textit{Quarles}, 467 U.S. at 656.
\textsuperscript{74} \textit{Id.} at 658–59; see Reiner, \textit{supra} note 61, at 2385.
\textsuperscript{75} 394 U.S. 324 (1969); see \textit{Quarles}, 467 U.S. at 659 n.8.
\textsuperscript{76} \textit{Orozco}, 394 U.S. at 325.
\textsuperscript{77} \textit{Id.}
\textsuperscript{78} \textit{Id.}
\textsuperscript{79} \textit{Id.} at 326.
\textsuperscript{80} \textit{Quarles}, 467 U.S. at 659 n.8.
\textsuperscript{81} \textit{Id.}
\textsuperscript{82} \textit{Id.} In \textit{Berkemer v. McCarty}, 468 U.S. 420 (1984), another case from the 1984 term, the Court emphasized \textit{New York v. Quarles}’s exigency requirement by noting that it applied “when the police arrest a suspect under circumstances presenting an imminent danger to the public safety.” \textit{Id.} at 429 n.10.
public safety exception,\(^8\) in spite of Justice Rehnquist’s desire to ensure that Quarles would serve as a “narrow exception to the Miranda rule” and also “a workable rule” for officers in the field.\(^4\)

C. Modern Miranda: Full of Sound and Fury, Signifying Nothing(?)

In Parts I.A and I.B, this Note considered the doctrinal development of the Fifth Amendment rights of the criminally accused prior to, and as a result of, the Warren Court’s 1966 creation of the Miranda doctrine, as well as the development of those rights after Quarles was set forth in the mid-1980s. Part I.C.1 discusses the relevant post-Miranda decisions that have shaped its constitutional scope. Part I.C.2 considers Miranda’s current place in the criminal justice system and the extent to which it has lived up to, and fallen short of, the purposes for which it was created. Taken as a whole, these considerations provide a sense of the circumstances in which the Supreme Court would decide the Quarles circuit split.

1. Post-Miranda Developments and the Thirty Years’ War of “Constitutional” Versus “Prophylactic”

Due to the prominent and pervasive role Miranda has played in the criminal justice system, the Supreme Court has encountered a number of opportunities to address the scope and direction of the Fifth Amendment privilege it recognized. Most notably as it relates to this Note, the public safety exception created in Quarles qualifies as the first—and only—rule permitting police officers to intentionally violate the Miranda rights of citizens.\(^5\) As the Burger Court set forth the Quarles exception, it acknowledged that its creation vitiated Miranda as a bright-line rule protecting the Fifth Amendment rights of citizens.\(^6\)

So as to ensure that the Quarles exception to Miranda did not transgress the Fifth Amendment, Justice Rehnquist continued a steady retreat from recognizing Miranda as a constitutional rule that had first begun in Michigan v. Tucker.\(^7\) In Tucker, the Supreme Court reversed itself by characterizing Miranda privileges as a judicially created, “prophylactic”

---

83. Quarles, 467 U.S. at 658.
84. Id.
86. Quarles, 467 U.S. at 658 (“[W]e acknowledge that to some degree we lessen the desirable clarity of [the Miranda] rule.”).
87. 417 U.S. 433 (1974). The necessary result was to create an uncomfortable middle ground whereby “violations of Miranda can be overlooked so long as the requirements of the traditional due process voluntariness test are met.” McCrackin, supra note 28, at 1116.
THE CURRENT QUARREL OVER QUARLES

safeguard of the Fifth Amendment. The Quarles dicta further reinforced this notion, much as the Court has in numerous other instances, when it recognized Miranda as a "prophylactic rule" rather than a constitutional one. Recognizing the Miranda warnings as judicially created allowed the Court to then modify them as needed to introduce the Quarles exception without running afoul of the U.S. Constitution. Therefore, as the first exception permitting a purposeful violation of a formerly constitutional rule, Quarles served as a rather sizable affront to the previously unvarnished bright-line Miranda doctrine.

These restrictions and qualifications of the central Miranda holding by the Burger Court, and later by the Rehnquist Court, left the constitutional status of the Miranda doctrine in disarray. With this in mind, the Court reconsidered the viability of Miranda in 2000 in Dickerson v. United States, with mixed results. The challenge to Miranda posed by Dickerson actually began when Congress enacted the Omnibus Control and Safe Streets Act of 1968, also known as § 3501, in an attempt to overrule Tucker, 417 U.S. at 439; id. at 444 (asserting that the Miranda warnings are "not themselves rights protected by the Constitution but [are] instead measures to insure that the [Fifth Amendment] right against compulsory self-incrimination [is] protected.").

See Kamisar, supra note 28, at 199 (noting the Burger Court's heavy reliance upon the disparaging language about Miranda in the Michigan v. Tucker decision in setting forth its rulings in both Quarles and Oregon v. Elstad, 470 U.S. 298 (1985)).

For an excellent breakdown of the many instances where the Court has characterized Miranda as "prophylactic" or the like, see Richard H. W. Maloy, Can a Rule Be Prophylactic and Yet Constitutional?, 27 WM. MITCHELL L. REV. 2465, 2471-75 (2001).

Quarles, 467 U.S. at 657.

See Standen, supra note 28, at 563–64 (noting that if the Miranda doctrine were a constitutional rule, then a rule such as the Quarles exception permitting an intentional violation of Miranda would be unconstitutional as violating the Fifth Amendment); Jim Weller, Comment, The Legacy of Quarles: A Summary of the Public Safety Exception to Miranda in the Federal Courts, 49 BAYLOR L. REV. 1107, 1110 (1997).

See Jeffrey T. Shaw, Comment, New York v. Quarles: The Public Safety Exception to Miranda, 70 IOWA L. REV. 1075, 1076 (1985) (observing that Quarles provides the first substantive exception to Miranda, where previous Burger Court cases had merely narrowed the Miranda doctrine's applicability in society); see also supra notes 49–50 and accompanying text.

Quarles and Quarles are merely two of many Burger Court decisions greatly curbing the strength of the Miranda doctrine. Of those omitted, the Court's 1985 decision in Oregon v. Elstad may be the most notable in deeming a later Mirandaized statement to be admissible in spite of an earlier un-Mirandized confession. Elstad, 470 U.S. at 309. This finding built on the earlier designation in Tucker that Miranda was prophylactic, since Elstad permits the first Miranda violation by officers, which would otherwise be unconstitutional and inadmissible, to be corrected by a second validly obtained confession. The result was that the strength of Miranda as an exclusionary rule was greatly reduced and its ability to effectuate the change in police practices intended by the Warren Court was further called into question. See Jung, supra note 47, at 450–51; Kamisar, supra note 28, at 182–83; Pizzi & Hoffman, supra note 35, at 821.

Pizzi & Hoffman, supra note 35, at 822–23 (noting that the Burger Court's constant iterations regarding Miranda's prophylactic status left most scholars expecting the Court to eventually abandon the doctrine).


Miranda by making the voluntariness doctrine the sole option available in federal criminal cases.\textsuperscript{99} However, the Justice Department’s reluctance to support § 3501 as grounds for admitting a confession into evidence, rather than Miranda, caused the statute to lay dormant for several decades.\textsuperscript{101} Justice Scalia rekindled the potential use of § 3501 as grounds for attacking the constitutionality of Miranda in his 1994 concurring opinion in Davis v. United States.\textsuperscript{102} The U.S. Court of Appeals for the Fourth Circuit seized upon Justice Scalia’s suggestion in Davis by holding that § 3501 had overruled Miranda, creating a circuit split that forced the Supreme Court to consider the constitutionality of the Miranda doctrine in Dickerson.\textsuperscript{103}

In Dickerson, the Supreme Court, in yet another opinion by Chief Justice Rehnquist, reversed the Fourth Circuit’s characterization of Miranda as “prophylactic” and recognized Miranda as a “constitutional rule.”\textsuperscript{104} In doing so, the Dickerson ruling reaffirmed the constitutionality of the basic warning-and-waiver requirement of Miranda\textsuperscript{105} and also recognized that Miranda has become “part of our national culture.”\textsuperscript{106} However, in choosing to recognize Miranda as constitutionally grounded, Dickerson also threw into disarray the status and legality of Miranda’s progeny.\textsuperscript{107} This conundrum is best characterized as follows:

To find § 3501 unconstitutional, the Court had to hold that Miranda and its warnings were required by the Constitution. In order to hold that Miranda stated a constitutional rule, the Supreme Court had to hold that Miranda’s progeny also stated a constitutional rule. Ironically, the decisions that made up Miranda’s progeny were based on the fact that Miranda was merely a “prophylactic rule,” and not a constitutional mandate.\textsuperscript{108}

\textsuperscript{98} For an excellent account of the circumstances surrounding the congressional adoption of § 3501, see Yale Kamisar, Foreword: From Miranda to § 3501 to Dickerson to . . . , 99 Mich. L. Rev. 879, 881–82 (2001).

\textsuperscript{99} See supra notes 28–31 and accompanying text.

\textsuperscript{100} Pizzi & Hoffman, supra note 35, at 823.

\textsuperscript{101} Davis v. United States, 512 U.S. 452, 463–64 (1994) (Scalia, J., concurring).

\textsuperscript{102} Id. at 462–65.

\textsuperscript{103} Anthony X. McDermott & H. Mitchell Caldwell, Did He or Didn’t He? The Effect of Dickerson on the Post-waiver Invocation Equation, 69 U. Cin. L. Rev. 863, 921–22 (2001).

\textsuperscript{104} Dickerson v. United States, 530 U.S. 428, 437–38, 444 (2000).

\textsuperscript{105} Id. at 444.

\textsuperscript{106} Id. at 443; see Standen, supra note 28, at 564 (noting that stare decisis served as one of the primary reasons offered by the Dickerson v. United States Court in preserving the constitutionality of Miranda).

\textsuperscript{107} See Standen, supra note 28, at 563–64 (“If Miranda warnings are required by the Fifth Amendment, then presumably a violation of Miranda violates the Fifth, thus rendering much of Miranda’s progeny unstable, at the least.”); Conor G. Bateman, Case Note, Dickerson v. United States: Miranda Is Deemed a Constitutional Rule, but Does It Really Matter?, 55 Ark. L. Rev. 177, 178 (2002); Joseph W. Yockey, Note, The Case for a Sixth Amendment Public-Safety Exception After Dickerson, 2004 U. Ill. L. Rev. 501, 533 (questioning the constitutionality of the public safety exception if Miranda is characterized as a constitutional rule).

\textsuperscript{108} Bateman, supra note 107, at 178.
Therefore, the ruling essentially welcomed the same problem that the Quarles Court had so deftly avoided earlier. Chief Justice Rehnquist attempted to rectify these concerns by noting that because “no constitutional rule is immutable,” modifications such as the Miranda exceptions are necessary due to the unforeseeable ways that constitutional rules are applied in practice. While this justification may have been sufficient for the Court, it has left multiple scholars questioning the constitutionality of several of the exceptions to Miranda, including Quarles.

2. The Good, the Bad, and the Ugly: The Modern Social Impact of Miranda

When considering the positive aspects of Miranda, it is almost impossible to overlook the extent to which, in less than a half century, it has become a fixture in our U.S. culture. The Miranda warning and a suspect’s “right to remain silent,” as it has been conveyed through countless network television shows such as Law & Order, is almost instantly recognizable to countless Americans. Beyond merely serving as a fixture in popular culture, Miranda has also played a substantial role in enhancing the awareness of many Americans of their rights to remain silent and to an attorney. Having spread like wildfire through society, Miranda has surely improved, to some degree, citizens’ knowledge of their Fifth Amendment rights.

Contrary to the predictions by Justice John M. Harlan II in his Miranda dissent and many police officials when it was first enacted, Miranda has achieved this social prominence with minimal discernible impact on police crime-fighting efforts. This is reflected in the first generation of

109. See supra notes 87–92 and accompanying text. The problem was so significant that Chief Justice Rehnquist acknowledged that the language and qualifications of the Miranda progeny, including Quarles, were troublesome enough to support a finding that Miranda was nonconstitutional. Dickerson, 530 U.S. at 437–38; see Yockey, supra note 107, at 529–30.

110. Dickerson, 530 U.S. at 441.

111. See supra note 107 and accompanying text.

112. See supra note 106 and accompanying text.


114. See id. at 1012 (noting that in a 1991 poll, “80% knew they had a right to remain silent” (citing Samuel Walker, Taming the System: The Control of Discretion in Criminal Justice, 1950–1990, at 51 (1993))).

115. Miranda v. Arizona, 384 U.S. 436, 517 (1966) (Harlan, J., dissenting) (lamenting the inevitably harsh repercussions Miranda would have on crime control and asserting that “[t]he social costs of crime are too great to call the new rules anything but a hazardous experimentation”); id. at 516 (“There can be little doubt that the Court’s new code would markedly decrease the number of confessions.”).

116. See David Simon, Homicide: A Year on the Killing Streets, in THE MIRANDA DEBATE: LAW, JUSTICE, AND POLICING, supra note 27, at 49, 56 (“In answer to Miranda, the nation’s police officials responded with a veritable jeremiad, wailing in unison that the required warnings would virtually assure that confessions would be impossible to obtain and conviction rates would plummet.”).
Miranda studies, conducted approximately ten years after the opinion was rendered, which showed "that Miranda [had] failed to adversely affect the ability of police to control crime."117 Additionally, in his empirical examination of the impact of Miranda on crime in the past twenty years, Stephen Schulhofer has similarly found that the "net damage to law enforcement [has been] zero."118 This is reflected in the multiple studies that have been conducted on Miranda warnings, which have consistently found "that custodial suspects waive their [Miranda] rights approximately 80% of the time."119

However, these large numbers of waivers mask a discouraging underside, which scholars generally attribute to a couple of undesirable factors. First, the mass proliferation of seemingly meaningless Miranda situations by the media has desensitized the public as to the significance of these rights.120 George C. Thomas III put it well when he noted that "the typical TV viewer has heard Miranda warnings given hundreds of times, with no discernible effect on the 'good guys' getting the confession from the guilty suspects."121 Therefore, though the public is generally familiar with the fact that they are supposed to receive Miranda warnings upon arrest, they likely also believe them to be a largely trivial speed bump in the interrogation process.122

Second, and most significantly, although detectives comply with Miranda as a legal requirement, they do not necessarily adhere to the spirit

---

117. Leo, supra note 113, at 1005.
119. Saul M. Kassin et al., Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs, 31 LAW & HUM. BEHAV. 381, 383 (2007) (citing Paul G. Cassell & Bret S. Hayman, Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda, 43 UCLA L. REV. 839, 859 (1996)); see also Leo, supra note 113, at 1012 (noting that an "overwhelming majority of suspects (some 78% to 96%) waive their [Miranda] rights" (citing Richard A. Leo, Miranda and the Problem of False Confessions, in The Miranda Debate: Law, Justice, and Policing, supra note 27, at 271, 275)). However, it is worth mentioning that Justice Harlan's fears were not completely baseless, as repeat offenders who are familiar with the criminal justice system are less likely to waive their Miranda rights. See Simon, supra note 116, at 55 (noting that in his one year observing the Baltimore Police Department, professional criminals were the most likely to thwart investigative efforts by exercising their Miranda right to silence).
121. Id.
122. See Standen, supra note 28, at 566 ("It is not clear that the national culture has so adjusted to Miranda, or that the general public is even aware of how Miranda actually operates. The warnings repeated on law-and-order television shows do not educate viewers about the Miranda system.").
and intent of the doctrine in their daily practices. To circumvent the barriers created by Miranda, detectives frequently rely “on psychological techniques and appeals involving manipulation, persuasion, and deception” to obtain Miranda waivers. This includes delivering the Miranda warnings in a manner to minimize their importance, such as packaging them as a mere formality of the questioning process that is to be disregarded. Additionally, experienced detectives will often use the Miranda warnings to “sound chords of fairness and sympathy at the outset of the interrogation” in an attempt to acquire the suspect’s trust and, ultimately, their waiver.

Overall, as more stories of underhanded police tactics to subvert Miranda are exposed, it calls into question the viability of the doctrine in achieving the reforms the Warren Court had intended. While Miranda has certainly helped eradicate the brutal “third degree” tactics of early police interrogators, it has had questionable success in seizing the Fifth Amendment rights of Americans from the hands of overzealous officers. For the many reasons noted above, both good and bad, it is difficult to conclusively state that Miranda is an unqualified success (or failure) in protecting arrestees from aggressive police interrogations.

II. CHAOS BY DESIGN: ANALYZING THE CIRCUIT SPLIT REGARDING WHAT CONSTITUTES A PUBLIC SAFETY THREAT

The incongruent approaches taken by the appellate courts originate from, and are perpetuated by, the intentional ambiguity of Justice Rehnquist’s opinion in Quarles as to how and when the public safety exception should be applied. First, the application of the public safety exception in the field by officers was blurred by the Quarles Court’s insistence that officers would “distinguish almost instinctively” when the circumstances warranted its use. Second, by eschewing a formal test in favor of a case-by-case review of the facts, the Quarles Court created doubt throughout the criminal justice system as to when and how this potentially dangerous exception to Miranda should be applied.

123. See Simon, supra note 116, at 57.
125. See Leo, supra note 113, at 1018–19 (noting that interrogators often deliver them “in a bureaucratic manner” or by “explicitly telling the suspect that the warnings are unimportant”); Simon, supra note 116, at 59 (recounting how detectives in the Baltimore Police Department would use a written form of the Miranda rights so as to make it seem like just another piece of paperwork).
126. Patrick A. Malone, “You Have the Right To Remain Silent”: Miranda After Twenty Years, in The Miranda Debate: Law, Justice, and Policing, supra note 27, at 75, 79. For an evocative transcript of an interrogation where officers employed these tactics, see id. at 80–81.
127. See supra note 83 and accompanying text.
However, the U.S. Supreme Court has not, as of yet, taken up the challenge of clarifying the *Quarles* exception.\(^{129}\) This inaction is not due to a lack of friction among the courts of appeals\(^{130}\) as they have grappled with these difficulties, with predictably disparate results, since *Quarles* was handed down more than twenty-five years ago. Currently, the U.S. Courts of Appeals for the First, Eighth, and Ninth Circuits broadly apply the *Quarles* exception to inherently dangerous circumstances devoid of immediacy or actual evidence of a threat.\(^{131}\) The U.S. Courts of Appeals for the Second, Fourth, Fifth, Sixth, and Tenth Circuits have held that the public safety exception is only warranted where officers have actual knowledge of an imminent threat to public safety.\(^{132}\) Meanwhile, the U.S. Courts of Appeals for the Third,\(^{133}\) Seventh,\(^{134}\) Eleventh,\(^{135}\) and D.C. Circuits\(^{136}\) have either failed to properly address the issue or have inconsistently applied the *Quarles* exception.

This overall tension in how officers and courts should employ the public safety exception to *Miranda* forms the basis of the current split among
appellate courts. Part II.A examines one approach taken by the appellate courts: broadly applying the exception in inherently dangerous circumstances where there was no prior evidence of a weapon or an immediate emergency threat. Part II.B addresses the alternate approach: narrowly applying the exception to exigent situations where there is actual evidence of a weapon that poses an immediate threat to officers or the public.

A. The Broad Approach: Inherently Dangerous Situations

The first approach to Quarles broadly applies the public safety exception to inherently dangerous situations. Such situations are best characterized as circumstances posing any reasonable threat to the public or officers, with limited consideration of the officer's actual knowledge of the threat prior to questioning, its imminence, or the source of the threat. While the First, Eighth, and Ninth Circuits have been grouped together under this approach, it is not because they each apply the Quarles exception in exactly the same way. Rather, all three circuits share similar stances to the extent that they all eschew any consideration of an officer's actual knowledge or the immediacy of a threat in applying the Quarles exception.

1. Eighth Circuit

In United States v. Liddell,\(^\text{137}\) police arrested the defendant, who was alone, at 12:45 a.m. following a routine traffic stop.\(^\text{138}\) Officers arrested the suspect after discovering that he was barred from driving in the state.\(^\text{139}\) A pat-down search performed immediately thereafter led to the discovery of a bag of marijuana on the suspect's person, after which the officers placed him in the back of the patrol car.\(^\text{140}\) The police then conducted a search of the vehicle that unearthed, among other things, an unloaded .38 caliber revolver from under the front seat.\(^\text{141}\) They then proceeded to remove the defendant from the patrol car and asked, "Is there anything else in [the car] we need to know about?"\(^\text{142}\) The defendant responded that he was aware the gun was in the car, that it was not his, and that there were no other weapons.\(^\text{143}\) There is no indication that the defendant was ever properly issued a Miranda warning.\(^\text{144}\)

The Eighth Circuit ruled that the circumstances fit within the Quarles exception.\(^\text{145}\) In setting forth its ruling, the court largely relied on Justice Rehnquist's emphasis in Quarles that "public safety" also includes the

\(^{137}\) 517 F.3d 1007 (8th Cir.), cert. denied, 129 S. Ct. 627 (2008).
\(^{138}\) Id. at 1008.
\(^{139}\) Id.
\(^{140}\) Id.
\(^{141}\) Id.
\(^{142}\) Id. (internal quotation marks omitted).
\(^{143}\) Id.
\(^{144}\) Id. at 1008–09.
\(^{145}\) Id. at 1009–10.
protection of police officers. The court found that the Quarles exception applied here, much as it had in earlier Eighth Circuit cases, insofar as it prevented "the risk of police officers being injured by the mishandling of unknown firearms." The court also readily acknowledged that the threat posed was not from the defendant himself, but rather from a search of the vehicle incident to the arrest.

This approach in Liddell, broadly applying the Quarles exception to situations where officers could potentially discover and mishandle a weapon, is similar to that taken by the Eighth Circuit in other cases. In United States v. Williams, the court used a similar rationale to uphold the postarrest questioning of a suspected drug dealer following a raid upon his residence. Also, in United States v. Luker, the defendant, who the arresting officer incorrectly believed had a history of methamphetamine use, was taken into custody for drunk driving. Postarrest, but before receiving his Miranda warning, the defendant was questioned as to whether he had "anything that could stick or poke" the officer in a pat-down, as well as if there was anything in the vehicle that should not be there. Without considering these questions separately, the court held that, just as in Williams and Liddell, the public safety exception applied. Therefore, taken as a whole, the Eighth Circuit focused on the existence of an inherently dangerous threat—officers coming upon undiscovered firearms or drug paraphernalia—with little regard to its imminence or source.

In his Liddell concurrence, Judge Raymond Gruender took issue with the majority’s neglect of the Quarles Court’s exigency requirement in applying the public safety exception, but ultimately sided with their decision out of deference to the court’s earlier precedents. Judge Gruender noted that if the Quarles Court had intended for the public safety exception to extend to the mishandling of weapons, they would not have had the grounds to explicitly denounce its application in Orozco v. Texas. He went on to

146. Id. at 1009; see also New York v. Quarles, 467 U.S. 649, 659 (1984) (noting that the public safety exception allows police officers "to secure their own safety or the safety of the public").
147. Liddell, 517 F.3d at 1009.
148. Id. at 1010.
149. 181 F.3d 945 (8th Cir. 1999).
150. Id. at 947–48, 954; see supra notes 2–11 and accompanying text.
151. 395 F.3d 830 (8th Cir. 2005).
152. Id. at 834–35 (Heaney, J., dissenting).
153. Id. at 832.
154. Id.
155. Id. at 833–34.
157. See id. at 1013 (conceding that the public safety exception to Miranda applied in the facts of the case because it was consistent with the Eighth Circuit’s interpretation in earlier cases).
158. Id. at 1011 (citing Orozco v. Texas, 394 U.S. 324 (1969)) ("[T]he Quarles Court did not indicate that the inherent danger of a trained police officer discovering a weapon by itself
posit that, based on his reading of Quarles, the exception was only meant to apply when "(1) an immediate danger to the police officers or the public exists, or (2) when the public may later come upon a weapon and thereby create an immediately dangerous situation."\(^{159}\)

Similarly, in his Luker dissent, Judge Gerald Heaney also questioned the application of the public safety exception where officers had no actual knowledge of the threat in question.\(^{160}\) Seizing upon the admission of the arresting officer that there was "no outward indication" of any drugs or weapons on the defendant, Judge Heaney did not find a sufficient threat to the officers' safety to warrant the exception.\(^{161}\) Overall, the separate concerns of Judges Gruender and Heaney serve to highlight the minimal weight the Eighth Circuit has afforded exigency and actual knowledge in applying the Quarles exception.

2. Ninth Circuit

Like the Eighth Circuit,\(^{162}\) the Ninth Circuit in United States v. Brutzman\(^{163}\) and United States v. Brady\(^{164}\) eschewed the need for officers to have actual knowledge of a threat as a prerequisite to employing the Quarles exception. In Brutzman, ten police officers and U.S. Postal Service inspectors executed a search warrant related to suspected mail and wire fraud from the defendant's telemarketing business.\(^{165}\) Before executing the raid, the officers were made aware of the defendant's prior felony conviction and his being prohibited from possessing any weapons.\(^{166}\) Within minutes of entering, the officers proceeded to ask the defendant whether any weapons were on the premises.\(^{167}\) The defendant then admitted that a shotgun was in the closet.\(^{168}\)

In setting forth its standard for applying the Quarles exception, the Brutzman court exclusively relied on an objective evaluation of the officer's motivations—whether the questions "arose from his concern with public safety" or instead his desire "‘to obtain evidence of a crime.’"\(^{169}\) The Brutzman court relied on the brevity and scope of the officer's questioning was sufficient to justify the application of the exception.")}; see infra notes 256–59 and accompanying text.

159. Liddell, 517 F.3d at 1011–12 (Gruender, J., concurring).
160. Luker, 395 F.3d at 834 (Heaney, J., dissenting) (asserting that the only basis for the officers' concerns about unearthing needles or hazardous materials in a vehicle search was his unsupported assumptions about the suspect).
161. Id. at 834–35 (noting that aside from "‘hanging out’ with methamphetamine users," the defendant had no drug-related arrests on his record and officers detected no odors or chemicals in his vehicle).
162. See supra Part II.A.1.
164. 819 F.2d 884 (9th Cir. 1987).
166. Id. at *2.
167. Id. at *1.
168. Id.
169. Id. at *2 (quoting Brady, 819 F.2d at 888).
in discerning these motives, placing particular emphasis on the fact that the questioning occurred early in the raid while police were still gauging the circumstances.\textsuperscript{170} In finding that \textit{Quarles} applied, the Ninth Circuit reasoned that the officer's questions could only have been related to public safety since the presence of a weapon was completely unrelated to mail and wire fraud, the purpose of the search warrant.\textsuperscript{171} At no point did the court consider whether the officers had any reasonable factual basis for believing a shotgun was present or for perceiving a threat to their well-being.

\textit{Brutzman} came on the heels of \textit{Brady}, a 1987 case in which the Ninth Circuit admitted the defendant's affirmative response to an officer's question as to whether there was a gun in his vehicle.\textsuperscript{172} The question arose from the officer's concern about a crowd, including a suspected gang member carrying a knife, gathering around the scene.\textsuperscript{173} In rendering its decision, the court compared the facts to those in \textit{Quarles}, noting numerous discrepancies—including that there was no basis for believing that the defendant possessed a weapon or placed one unguarded in a public place.\textsuperscript{174}

The \textit{Brady} court overcame these differences by comparing the character of the officer's questioning to the overtly investigatory circumstances in \textit{Orozco} that the \textit{Quarles} Court had specifically denounced.\textsuperscript{175} Effectively, this allowed the \textit{Brady} court to establish the impermissibly subjective motives of the \textit{Orozco} officers as the threshold against which to evaluate how the \textit{Quarles} exception should be applied. Using the broad leeway afforded by this approach, the \textit{Brady} court upheld the application of the \textit{Quarles} exception by finding that the question arose from the officer's desire to control the gathering crowd, and not from the subjective interest in \textit{Orozco} of acquiring testimonial evidence.\textsuperscript{176} However, this ruling was reached without addressing whether the officer knew, or had reason to know, that the defendant actually possessed a weapon posing a direct threat—separate from any secondary threat posed by the crowd.

With respect to immediacy, the Ninth Circuit's approach is best exhibited by the court's language in \textit{United States v. Carrillo}.\textsuperscript{177} After arresting the defendant, a suspected drug dealer, an officer asked "if he had any drugs or needles on his person" before searching him.\textsuperscript{178} In addressing whether immediacy existed to warrant the question, the \textit{Carrillo} court asserted that "a pressing need for haste is not essential" in considering whether the \textit{Quarles} exception applies.\textsuperscript{179} The Ninth Circuit then proceeded to find that the defendant's response was properly admitted, in part due to the

\begin{itemize}
\item \textsuperscript{170} \textit{Id.}
\item \textsuperscript{171} \textit{Id.}
\item \textsuperscript{172} \textit{Brady}, 819 F.2d at 888.
\item \textsuperscript{173} \textit{Id.} at 885.
\item \textsuperscript{174} \textit{Id.} at 888.
\item \textsuperscript{175} \textit{Id.} (citing \textit{Orozco v. Texas}, 394 U.S. 324 (1969)).
\item \textsuperscript{176} \textit{Id.}
\item \textsuperscript{177} 16 F.3d 1046 (9th Cir. 1994).
\item \textsuperscript{178} \textit{Id.} at 1049.
\item \textsuperscript{179} \textit{Id.}
\end{itemize}
noninvestigatory character of the officer’s questions. On the whole, the Ninth Circuit has adopted a similar approach to the Eighth Circuit by disregarding an officer’s actual knowledge and the immediacy of a threat as necessary requirements of the public safety exception. However, despite these similarities, the Ninth Circuit’s emphasis on the motives of officers, as compared with the Eighth Circuit’s focus on potential threats to officers, demonstrates that the two circuits have not adopted identical doctrines with regard to Quarles.

3. First Circuit

Finally, in a relatively small number of decisions, the First Circuit has adopted a broad approach similar to that of the Eighth Circuit in extending the public safety exception to the mishandling of weapons by officers. Unlike the Eighth and Ninth Circuits, the First Circuit in United States v. Fox appeared to give greater weight to the actual knowledge of officers in employing the exception. However, the Fox court still failed to consider the immediacy of the threat in considering whether to admit the defendant’s postarrest, pre-Miranda responses to police questioning.

In Fox, the defendant was pulled over during a routine traffic stop, at which the officer noticed “a large bulge” in his coat pocket and recognized him from an earlier arrest that had included brass knuckles and a concealed firearm. On these grounds, the officer quickly frisked Fox—discovering brass knuckles in his front pocket. After arresting Fox, the officer continued the frisk and discovered an unused shotgun shell in his coat pocket. The officer then asked if there was a gun in the vehicle, to which Fox responded there was not. After completing the pat-down search, the officer placed the suspect in the police cruiser and asked him for a second time whether there were any weapons in the vehicle. Fox responded affirmatively, and, as a result, the officer recovered a knife and dilapidated shotgun from the vehicle—the latter of which the officer asked Fox to help

180. Id. at 1049–50.
181. See also United States v. DeSantis, 870 F.2d 536, 539 (9th Cir. 1989) (“The fact that [officers] had no reason to believe that [the suspect] was armed and dangerous . . . is of no consequence.”).
182. See supra Part II.A.1.
183. 393 F.3d 52 (1st Cir. 2004).
184. Id. at 60 (emphasizing the officer’s observation of the suspect’s “irregular ducking motion,” his previous arrest of the suspect, and the bulge he noticed in the suspect’s pocket).
185. Id. at 56–57, 60 (deciding to apply the Quarles exception to the officer’s questioning even though the suspect was confined in the police cruiser and the scene was otherwise secured).
186. Id. at 56.
187. Id.
188. Id.
189. Id. at 57.
190. Id.
It was only after this questioning, during the drive to the police station, that Fox was read his Miranda rights.

The discovery of the brass knuckles and shotgun shells during the frisk of the defendant made it unnecessary for the Fox court to substantively discuss the officer’s actual knowledge of a threat. However, the court found that the officer had “ample reason to fear for his own safety” in asking about the weapon, even though the defendant had been thoroughly searched and placed in the patrol car. This fear referenced by the Fox court appears to have been rooted in the officer’s actual knowledge of a potential threat to the officer from his previous arrest of Fox for possession of a firearm. Therefore, the First Circuit’s rationale in applying the Quarles exception—that the mere threat of an officer mishandling a weapon was inherently dangerous enough to warrant the exception—is extremely similar to the justification employed by the Eighth Circuit.

B. The Narrow Approach: Exigent Circumstances

This approach is more restrictive than its counterpart insofar as it generally requires officers to prove they had actual knowledge of a potentially imminent threat sufficient to justify the employment of the public safety exception. The courts of appeals grouped under this section all similarly emphasize immediacy in applying the exception. However, beyond this dominant unifying trait, each of the subgroups has different methods by which it applies the Quarles exception.

1. Sixth and Tenth Circuits

The Sixth Circuit is unique among the appellate courts in that it is the only one to create a formal test for applying the public safety exception, in direct contravention of Justice Rehnquist’s preference in Quarles for a case-by-case factual review. As it was initially set forth by the Sixth Circuit in United States v. Williams, and recently adopted by the Tenth

191. Id.
192. Id.
193. Id. at 60.
194. Id.
195. See supra notes 146–47 and accompanying text. It is worth noting that the U.S. Court of Appeals for the First Circuit’s 2008 ruling in United States v. Jackson, 544 F.3d 351 (1st Cir. 2008), may indicate a retreat from the position in United States v. Fox outlined above. In Jackson, the court held that the Quarles exception did not apply due to the mere existence of a gun stashed in a cereal box in the refrigerator, since it was completely out of the defendant’s reach. Id. at 360 n.9. This ruling exhibits a potentially heightened consideration by the First Circuit of an officer’s actual knowledge and a threat’s exigency in applying the Quarles exception. However, the cursory discussion of the public safety exception by the Fox court, limited to a single footnote, makes it difficult to definitively ascertain a change in the First Circuit’s approach.
196. See supra notes 83–84 and accompanying text.
197. 483 F.3d 425 (6th Cir. 2007).
Circuit, the Quarles exception only applies when an officer has a "reason to believe (1) that the defendant might have (or recently have had) a weapon, and (2) that someone other than police might gain access to that weapon and inflict harm with it." To better understand the standards needed to satisfy both of these prongs, it is best to consider them each individually.

The first prong of the Sixth Circuit test considers an officer's actual knowledge of whether a weapon exists. This standard is quite different from the Eighth and Ninth Circuit approaches, in spite of their reliance upon the same language in Quarles. Justice Rehnquist, in his Quarles opinion, insisted that the public safety exception apply where there was an "objectively reasonable need to protect the police or the public" from a danger. The Ninth Circuit reached a de facto presumption that an officer's actions were objectively reasonable and related to a credible threat if there was no evidence that they subjectively intended for the questioning to be investigatory—without ever analyzing the actual facts for evidence of a threat. Conversely, the Sixth Circuit directly addresses the reasonableness of a threat by determining if it is objectively grounded in the "articulable fact[s] at [the officer's] disposal" at the time.

After setting forth this first prong, Williams cited a number of factual circumstances that would satisfy the prong, including if the suspect: had a history of violence, was a drug user or dealer, physically exhibited evidence of a weapon, or recently had been seen with a weapon by either

---

198. United States v. DeJear, 552 F.3d 1196, 1201–02 (10th Cir. 2009) ("We agree with the Sixth Circuit’s formulation and apply it here.").
199. Williams, 483 F.3d at 428.
200. See supra notes 160–61, 171.
202. See supra notes 175–76 and accompanying text.
203. United States v. Talley, 275 F.3d 560, 564 (6th Cir. 2001). Though the U.S. Court of Appeals for the Sixth Circuit has not yet articulated this as the basis for its decision, it is also likely that the actual knowledge requirement is culled from the facts of Quarles—where the officers had an actual basis for knowing a gun was present. See supra notes 56–57 and accompanying text.
204. See Williams, 483 F.3d at 428–29.
205. See United States v. Estrada, 430 F.3d 606, 613 (2d Cir. 2005) (finding the officer's suspicion of a weapon to be reasonable based on the suspect's prior assault convictions); United States v. DeSumma, 272 F.3d 176, 181 (3d Cir. 2001) (refusing to apply the exception where officers had no knowledge of the suspect being "any more dangerous or violent than a person accused of a typical Ponzi scheme"); United States v. Reilly, 224 F.3d 986, 992–93 (9th Cir. 2000) (admitting statements into evidence where officers acted with knowledge of a suspect's involvement in a violent carjacking and several armed bank robberies); United States v. Williams, 181 F.3d 945, 954 n.14 (8th Cir. 1999) (satisfying the first prong where the suspect had previously been arrested on a weapons possession charge).
206. See Estrada, 430 F.3d at 613 (applying Quarles due, in part, to the officer's belief that the suspect might have a gun based on evidence that he dealt drugs from his apartment); Williams, 181 F.3d at 954 n.14 (noting that officers acted with information that suspect "was dealing drugs out of his apartment").
207. See Reilly, 224 F.3d at 992 (noting officer's concern when the suspect moved his hands to his waistband prior to being handcuffed).
officers or a third-party informant.\textsuperscript{208} The Sixth Circuit, in applying the first prong, concluded that the facts satisfied the prong in \textit{Williams} "based solely on the violent crimes that [the suspect] allegedly had committed."\textsuperscript{209} Additionally, in \textit{United States v. Kellogg},\textsuperscript{210} the court found this first prong satisfied where the defendant was suspected of a recent bank robbery at gunpoint.\textsuperscript{211} Given the numerous ways that officers can satisfy this first prong of the Sixth Circuit test, including assumptions based on the prior conduct of suspects, it does not appear to pose an unduly burdensome standard for officers to overcome.

The second prong of the Sixth Circuit test is far more exacting as it requires an imminent threat of the harm materializing. Contrary to the Eighth and First Circuit approaches, the Sixth Circuit in \textit{Williams} emphasized that the threat of harm necessary for applying the \textit{Quarles} exception must come from "someone other than police"—precluding the mishandling of a weapon by an officer as suitable grounds.\textsuperscript{212} This limitation reduces the number of factual circumstances in which immediacy can be found to exist, simultaneously narrowing the application of the \textit{Quarles} exception as a whole.

In applying this second "immediacy" prong to the two disparate factual possibilities in \textit{Williams}, the Sixth Circuit provided valuable insight into the scope it intended for this prong to have.\textsuperscript{213} On the one hand, the court found that the public safety exception would potentially apply if the defendant were questioned about a weapon while unrestrained and heading back towards his bedroom (where a gun could be).\textsuperscript{214} However, if the defendant were handcuffed and seated outside the bedroom when questioned about a weapon, the court suggested that the \textit{Quarles} exception would not apply since officers "plainly could not have had an objectively reasonable fear for their safety."\textsuperscript{215} As the Sixth Circuit requires both prongs—actual knowledge and immediacy—to be satisfied for the \textit{Quarles} exception to apply, it represents a much more exacting standard than those of the Eighth, Ninth, and First Circuits.

\textsuperscript{208} See \textit{United States v. Johnson}, 95 F. App'x 448, 449, 452 (3d Cir. 2004) (finding the suspicion of a weapon reasonable where officers were responding to a 'road rage' incident involving a gun).
\textsuperscript{209} \textit{Williams}, 483 F.3d at 429.
\textsuperscript{210} 306 F. App'x 916 (6th Cir. 2009).
\textsuperscript{211} \textit{Id.} at 924.
\textsuperscript{212} \textit{Williams}, 483 F.3d at 429.
\textsuperscript{213} In deciding \textit{United States v. Williams}, the court was forced to grapple with the disparate testimonial accounts of the officers and defendant in what had factually occurred. \textit{Id.} at 427. Ultimately, the Sixth Circuit remanded the case to the district court for further factual findings. \textit{Id.} at 431.
\textsuperscript{214} \textit{Id.} at 429.
\textsuperscript{215} \textit{Id.}
2. Fourth and Fifth Circuits

Without employing a formal test, the Fourth and Fifth Circuits promote a narrow application of the Quarles exception similar to that of the Sixth and Tenth Circuits.\(^{216}\) Aside from their failure to adopt a formal test, the Fourth and Fifth Circuits are grouped together in this Note because they almost exclusively consider the immediacy of a threat when applying the Quarles exception. The Fifth Circuit’s analysis in United States v. Raborn\(^{217}\) highlights this approach and provides a stark contrast to the stances of the Eighth, Ninth, and First Circuits.

In Raborn, the defendant was pulled over in his pickup truck as he left a farmhouse where police officers suspected that illegal drugs were produced.\(^{218}\) When officers approached the truck with guns drawn and opened the driver’s side door, the defendant stepped out wearing a holstered pistol on his left hip.\(^ {219}\) As the defendant exited the truck, another officer saw him remove the pistol and reach back inside the truck before eventually submitting to officers.\(^ {220}\) After the officers arrested the defendant, along with his passenger, and forced them both to lie on the ground, they proceeded to search the cab of the truck for the discarded weapon.\(^ {221}\) Because they were unable to find the gun, the officers proceeded to ask the defendant where he had placed it—eliciting a response that it was under the seat cover.\(^ {222}\) It was only after this exchange that officers recited Miranda warnings to the defendant.\(^ {223}\)

The Fifth Circuit’s discussion of the public safety exception in Raborn was brief and exclusively limited to the immediacy of the threat, most likely because there was no doubt about the officer’s actual knowledge of the presence of a weapon.\(^ {224}\) The court found that the questioning did not fit within the Quarles exception because the police had seized the truck that housed the hidden gun, restricting any access by, or threat to, the public.\(^ {225}\) Therefore, the gun posed no immediate threat of falling in the hands of either the defendant or the public so as to warrant the application of the Quarles exception. More than a decade after Raborn was decided, the Fifth Circuit further refined its position on immediacy by noting that “[w]hen the

\(^{216}\) United States v. Mobley, 40 F.3d 688, 693 n.2 (4th Cir. 1994) (“[E]ach case must be examined on its own facts to determine whether the deviation from the [Miranda] rule is justified by the totality of the circumstances in which the questioning takes place.”).

\(^{217}\) 872 F.2d 589 (5th Cir. 1989).

\(^{218}\) Id. at 591–92.

\(^{219}\) Id. at 592.

\(^{220}\) Id.

\(^{221}\) Id.

\(^{222}\) Id.

\(^{223}\) Id.

\(^{224}\) See id. at 595.

\(^{225}\) Id. The U.S. Court of Appeals for the Fourth Circuit posited a similar approach in United States v. Mobley, 40 F.3d 688 (4th Cir. 1994), refusing to apply the Quarles exception due to the lack of a demonstrated “immediate need” where the defendant was questioned after being arrested and having his residence swept by officers. Id. at 693.
danger inherent in a confrontation has passed, so has the basis for the [public safety] exception.” 226 Therefore, while the Fourth and Fifth Circuits minimally address the matter of an officer’s actual knowledge, they consistently consider immediacy as the primary factor for whether the Quarles exception applies. 227

While the Raborn court’s discussion of the Quarles exception was limited, its simple approach becomes rather illuminating when contrasted with the factual applications by the Eighth, Ninth, and First Circuits. It is reasonable to suspect that the Eighth and First Circuits would have upheld the application of the Quarles exception to the Raborn facts based on the potential mishandling of the pistol by officers—particularly where they had knowledge that a gun was there in the first place. 228 Additionally, the Ninth Circuit likely would have found the limited scope of the Raborn questioning and its obvious relation to a nearby weapon to be noninvestigatory and permissible under the Quarles exception. 229 Therefore, the decision of the Fifth Circuit not to admit the testimonial evidence in Raborn speaks to how narrowly the court applies the Quarles exception relative to its Eighth, Ninth, and First Circuit brethren.

3. Second Circuit

As compared to the two types of narrow approaches noted above, the Second Circuit arguably conducts the most varied and comprehensive evaluation of facts in determining whether to apply the Quarles exception. While it conducts a case-by-case analysis and requires a threat to be imminent much like the Fourth and Fifth Circuits, the Second Circuit goes further by also considering the actual knowledge and motives of officers. 230

226. United States v. Brathwaite, 458 F.3d 376, 382 n.8 (5th Cir. 2006) (quoting Fleming v. Collins, 954 F.2d 1109, 1114 (5th Cir. 1992) (en banc)); see also United States v. Melvin, Nos. 05-4997, 05-4998, 05-4999, 05-5000, 2007 WL 2046735, at *11 (4th Cir. July 13, 2007) (implying that just as the immediacy of a threat can expire, it can also be rekindled where new facts unfold—such as a seized vehicle with a weapon inside being towed to a police impound lot where it could be accessed by the public). It is worth noting that in Berkemer v. McCarty, the Burger Court supported a variation of this view by observing that “[n]once such information [needed to defuse the public safety threat under Quarles] has been obtained, the suspect must be given the standard warnings.” 468 U.S. 420, 429 n.10 (1984).

227. This is not to imply that the U.S. Courts of Appeals for the Fourth and Fifth Circuits do not address an officer’s actual knowledge in applying the Quarles exception. Rather, it likely blurs into their analyses insofar as it is only actionable as a public safety threat when coupled with immediacy—the latter being a much more difficult and fact intensive issue to parse. See Mobley, 40 F.3d at 693 (finding the absence of “extraordinary circumstances prompting” a pre-Miranda question means the court could have considered both actual knowledge—the defendant was arrested and the scene swept by officers—and immediacy). But see Brathwaite, 458 F.3d at 382 n.8 (failing to raise the issue of whether officers had actual knowledge of a gun when asking a defendant whether one was present in relation to his arrest in a nonviolent counterfeiting operation).

228. See supra notes 146–55, 186–95 and accompanying text.

229. See supra notes 175–76 and accompanying text.

230. See United States v. Estrada, 430 F.3d 606, 612 (2d Cir. 2005) (finding that the Quarles exception is “‘a function of the facts of cases so various that no template is likely to
The result, as can be seen in United States v. Estrada, is a thorough consideration of numerous factors, the likes of which compel the Second Circuit to narrowly apply the public safety exception.

In Estrada, a Fugitive Task Force team comprised of five members executed an arrest warrant for the defendant. Prior to executing the warrant, the officers were made aware of the defendant’s criminal record (which included two assault convictions), his status as a drug dealer, and the fact that a woman also resided in the apartment. Upon entering the apartment, the officers found the suspect already lying face-down on the floor. One officer proceeded to handcuff the suspect while another questioned him, without issuing a Miranda warning, as to the location of any weapons. In response, the defendant admitted that there was a gun in the pocket of his nearby jacket—which officers retrieved, along with some heroin, after the arrest.

The Estrada court found that the defendant’s response regarding the location of the gun was admissible under Quarles. In reaching this conclusion, the court first considered whether the officers had an objectively reasonable fear for their safety—which, effectively, became a two-part consideration of their actual knowledge of the threat and its immediacy. As to the former, the court used the defendant’s criminal history as proof that he “was capable of violence” and his status as a drug dealer to draw a reasonable inference that weapons, constituting a threat to officers, were present in the apartment. While not explicitly set forth by the Estrada court as an evaluation of the officer’s actual knowledge, this approach indicates that such information is necessary for a threat to be considered objectively reasonable and thereby to warrant the Quarles exception by the Second Circuit.

Regarding the immediacy of a threat, the Second Circuit explicitly noted that the public safety exception only applies “where there are sufficient indicia supporting an objectively reasonable need to protect the police or the public from immediate harm.” In Estrada, this immediacy was found produce sounder results than examining the totality of the circumstances in a given case.” (quoting United States v. Reyes, 353 F.3d 148, 152 (2d Cir. 2003))).

231. 430 F.3d 606.
232. Id. at 608.
233. Id. at 608, 613.
234. Id.
235. Id. at 608–09.
236. Id. at 608.
237. Id. at 613.
238. Id.
239. Id.
240. See id.; see also United States v. Newton, 369 F.3d 659, 663, 678 (2d Cir. 2004) (finding a threat objectively reasonable where a mother had informed officers that her son possessed a firearm in the residence and had threatened to kill her); United States v. Reyes, 353 F.3d 148, 153–54 (2d Cir. 2003) (noting that “officers had a solid basis for the belief that [the defendant] was armed” where he was a known narcotics dealer and where they had information that he routinely carried a gun).
241. Estrada, 430 F.3d at 614 (emphasis added).
to exist where officers knew of the presence of an additional person, the
female coresident, in the apartment at the time of the arrest. Similar
immediacy was found by the Second Circuit in United States v. Newton, where three persons were in the apartment with an
unfound firearm, and United States v. Reyes, in which the
question was asked in the prearrest apprehension of the defendant midday at a public bodega across the street from a school. On the basis of this sample, the Second Circuit's application of Quarles is consistent with the applications of the Fourth, Fifth, Sixth, and Tenth Circuits insofar as they all require the threat to be imminent.

Finally, the Second Circuit is unique in that it actively considers the character of the questions posed by officers—specifically, whether they were investigatory in nature. Much like the Ninth Circuit, the Estrada court strongly relied on the language in Quarles in requiring that the questioning have at least some grounding in safety concerns—even if it "is broad enough to elicit other information." The principal factors at play are the duration of the questioning and its scope relative to the threat at hand; the more limited both are, the more likely they will satisfy the Second Circuit's standard. Ironically, when the Ninth Circuit applies this same test, the result is a broader factual application of the Quarles exception than that of the Second Circuit. This disparity is rooted in the Second Circuit's additional consideration of the officer's actual knowledge of a potential threat and the immediacy of the harm. These dilute the relative weight given to the character of the questioning while also subjecting the circumstances to a much more stringent standard.

III. WHY EXIGENCY IS BETTER FOR QUARLES, MIRANDA, AND SOCIETY

Part II of this Note described at length the conflict among the courts of appeals as to the appropriate scope of the Quarles exception. The relevant courts involved in the dispute were divided into two factions. Part II.A presented the broad application of the Quarles exception, extending it to inherently dangerous circumstances without requiring immediacy or actual evidence of a threat. Part II.B explored the narrow application that imposed a higher burden on officers by requiring that they have actual knowledge of an imminent threat to public safety before employing the exception.

Against this backdrop, Part III analyzes the conflict in Part II and proposes a solution that accounts for a broad range of pertinent legal and
social factors. Part III.A argues that the criteria exclusively relied upon by
the broad approach in finding a "public safety threat" are inconsistent with
the intent and scope of the exception set forth by Justice Rehnquist in
Quarles. Part III.B defends the narrow approach as the best solution to the
circuit split, while simultaneously proposing a formal three-part test based
on this approach. This Note's test requires a finding that officers have
actual knowledge of a threat, that it be imminently posed by a nonofficer,
and that the officer's questions be objectively evaluated to ensure they are
narrowly tailored to the threat. Part III.B concludes by justifying the
adoption of this three-part test in light of multiple underlying public policy
considerations.

A. Where, Oh Where (and How?), Did the Broad Approach Go Wrong?

Among the courts of appeals utilizing the broad approach to the Quarles
exception, two distinct justifications dominate: the threat of an officer
mishandling a weapon, as recognized by the Eighth and First Circuits, and
the character of the questioning, as applied by the Ninth Circuit.\footnote{251}
Fundamentally, both of these rationales originate, in some form, in the
language of the Quarles opinion. However, these courts err in distorting
these considerations beyond the original scope set forth in Quarles and
applying them to the exclusion of other important factors. These
underlying shortcomings, coupled with the striking refusal of these courts to
consider the immediacy and actual evidence of threats, render the broad
approach inappropriate for applying the public safety exception.

The approach of the Eighth and First Circuits is rooted in language in
Quarles expressly intending that the public safety exception apply to threats
against both the public and police officers.\footnote{252} The Eighth and First Circuits
evenhandedly apply the exception to both groups—the public and
officers—whenever they are faced with the threat of mishandling a weapon.
However, Justice Rehnquist's opinion emphasized that the danger posed in
Quarles derived from the fear that a member of the public would come
upon an unattended weapon—not police officers, themselves.\footnote{253}
Therefore, the logical flaw of the First and Eighth Circuits is in extending to officers
the same breadth of safety concerns and protections as are normally
afforded solely to the general public.

This application by the Eighth and First Circuits ignores that in their
highly trained capacity, police officers are regularly exposed to inherently
dangerous situations, which are characteristic of their profession.\footnote{254} The
types of scenarios posing a direct threat to officers and triggering Quarles

\footnote{251. See supra notes 147–48, 190–92 and accompanying text.}
\footnote{252. See supra notes 169–71 and accompanying text.}
\footnote{253. See supra note 146 and accompanying text.}
\footnote{254. See supra notes 63–64 and accompanying text.}
\footnote{255. See New York v. Quarles, 467 U.S. 649, 655 (1984) (noting that though the gun was
still unaccounted for, the officers ceased to be concerned for their own safety where the
scene was secured once questioning began); supra note 158 and accompanying text.}
should be more limited than for the public. Thus, where premises are secured from all suspects and outside parties, the direct threat to officers should be considered expired and any pre-Miranda questioning directed at preserving their safety should fall outside of Quarles.

Judge Gruender of the Eighth Circuit astutely reinforces this point in his Liddell dissent where he used the Quarles references to Orozco to emphasize why the mishandling of weapons by officers does not fit within the exception. Where the suspect in Orozco was suspected of shooting a man to death, officers could have reasonably assumed the weapon was in the house at the time of the questioning. But because officers had secured the scene in Orozco prior to their aggressive questioning of the suspect, Justice Rehnquist found that “there was no exigency requiring immediate action by the officers.” Had the Quarles Court intended for the public safety exception to be applied in the manner espoused by the First and Eighth Circuits, it would not have distinguished Orozco since officers could have stumbled upon and mishandled the gun that was eventually found in the washroom. Therefore, the Quarles dicta strongly suggests that Justice Rehnquist did not intend for the public safety exception to be applied broadly to the mishandling of weapons by officers.

Additionally, with respect to the scope of the Quarles exception, this mishandling argument also fails to recognize the possibility that a heightened threat of harm can ultimately expire upon the passing of certain circumstances. Extending the exception to the mishandling of weapons allows it to stay open ad infinitum until the “threat” has been neutralized—potentially hours after the initial confrontation began. This creates a huge window of time where, acting under the guise of the Quarles exception, officers could intentionally transgress the Miranda rights of suspects by asking them pointed questions about a weapon. This was the case in Liddell where the suspect was questioned at length about the location and use of a weapon well after he had been handcuffed and placed in the back of the patrol car. Such circumstances show why the approaches of the First and Eighth Circuits stray far from ensuring that Quarles is a narrow exception to Miranda, as Justice Rehnquist had intended.

As to the second approach, the Ninth Circuit’s singular reliance on the character of the officer’s questioning is misguided for reasons similarly noted in the approaches of the Eighth and First Circuits. The Ninth Circuit’s approach is rooted in the Quarles language requiring that any question conducted under the veil of the public safety exception not be exclusively investigatory. However, where the questioning is related to

256. See supra note 158 and accompanying text.
258. Id. (quoting Quarles, 467 U.S. at 659 n.8).
259. Id.
260. See supra note 226 and accompanying text.
261. See supra notes 138–42 and accompanying text.
262. See supra note 169 and accompanying text.
an objectively reasonable desire to mitigate a threat to the public or officers, the Quarles Court stated that any additional subjective motivations of the officers should be disregarded. The Ninth Circuit purports to rely on this language in exclusively evaluating the brevity and scope of questioning to determine whether the public safety exception applies.

The Ninth Circuit errs by assuming that as long as the officer’s questioning was not principally investigatory, then it must have been addressing circumstances posing an objectively reasonable threat that would satisfy the Quarles exception. The problem is that beyond exercising a modicum of deference to the instincts of officers as Justice Rehnquist had intended, this approach makes officers the final arbiters as to any factual analyses—effectively eliminating a judicial review of whether the Quarles exception was appropriate for the circumstances at hand. While the Ninth Circuit is absolutely correct that a thorough discussion of the brevity and scope of an officer’s questioning is necessary for evaluating how the Quarles exception was applied, it is not appropriate for also determining when it should be employed in the first place. Therefore, the Ninth Circuit’s failure is in taking an appropriate examination of the investigatory character of an officer’s questioning and overextending it to determine whether that questioning, and the Quarles exception itself, was correctly triggered by a valid public safety threat. Beyond this distortion, the Ninth Circuit fails, much like the Eighth and First Circuits, by ignoring two central tenets of the narrow approach: the immediacy of the threat and the actual knowledge of officers as to its existence. The importance of both will be considered at greater length in Part III.B.

B. Proposing a Narrow Three-Part Test for Righting the Current Wrongs of the Quarles Exception

Because of its overall emphasis on officers having objectively reasonable knowledge of an immediate threat consistent with the language and intent of Quarles, the narrow approach is the correct one to follow in applying the public safety exception. However, a mere endorsement of the narrow approach hardly resolves the conflict insofar as, for the purpose of this Note, it is a compilation of the applications of three groupings of courts of appeals, which each have fundamental similarities and subtle differences. In response, this Note proposes a formal three-part test for applying the Quarles exception, requiring that (1) officers have a reason to believe the defendant has, or recently had, a weapon, (2) someone other than the police might gain access to the weapon and inflict harm with it, and (3) officers’
questions are objectively evaluated to ensure that they are narrowly tailored to the threat at hand.\textsuperscript{267}

The first prong of this Note’s proposed \textit{Quarles} test is directly based on the Sixth Circuit’s approach, which requires a finding of whether officers had a “reason to believe (1) that the defendant might have (or recently have had) a weapon.”\textsuperscript{268} In analyzing this prong, courts should determine whether the officer’s knowledge was based on “articulable fact[s]” available at the time—not merely groundless speculations.\textsuperscript{269} These inappropriate considerations can include justifying the threat by the presence of secondary factors, such as the tangential actions of unrelated third parties.\textsuperscript{270} The broad array of factual instances detailed by the Sixth Circuit in \textit{Williams} that satisfy this prong shows that its formal codification in this Note’s test belies the relative ease with which it can be met.\textsuperscript{271}

The language in \textit{Quarles} simply allows police questioning in contravention of \textit{Miranda} when “reasonably prompted by a concern for the public safety.”\textsuperscript{272} In applying the \textit{Quarles} exception, the courts of appeals using the broad approach often implicitly assumed that some form of actual knowledge must exist to serve as the basis for the exception.\textsuperscript{273} However, unlike their sister courts using the narrow approach, they have uniformly failed to create an explicit substantive knowledge requirement—leading to some factually questionable circumstances receiving the \textit{Quarles} exception.\textsuperscript{274} The mere possibility of officers conducting investigatory questioning under the auspice of addressing a “threat” pursuant to the \textit{Quarles} exception exhibits why requiring proof of actual knowledge of a real and immediate threat is necessary.\textsuperscript{275} Therefore, the first prong of this Note’s proposed test for the \textit{Quarles} exception will curb these

\textsuperscript{267} This test is a hybridized version of those previously explored, combining the Sixth and Tenth Circuit’s formal two-part test with the Second Circuit’s consideration of the character of the questioning.

\textsuperscript{268} United States v. Williams, 483 F.3d 425, 428 (6th Cir. 2007); \textit{see supra} note 199 and accompanying text.

\textsuperscript{269} United States v. Talley, 275 F.3d 560, 564 (6th Cir. 2001); \textit{see supra} note 203 and accompanying text.

\textsuperscript{270} An excellent example of this occurred in \textit{United States v. Brady}, 819 F.2d 884 (9th Cir. 1987), where the U.S. Court of Appeals for the Ninth Circuit upheld an officer’s questioning under the \textit{Quarles} exception despite there being no actual evidence that the suspect ever possessed a weapon. \textit{Id.} at 888. Instead, the \textit{Brady} court merely analyzed the character of the questioning and based the “threat” warranting \textit{Quarles} on the weapons possessed by bystanders in the crowd gathering around the incident. \textit{Id.}; \textit{see supra} notes 172–74 and accompanying text.

\textsuperscript{271} \textit{See supra} notes 204–11 and accompanying text.


\textsuperscript{273} \textit{See supra} note 184 and accompanying text.

\textsuperscript{274} \textit{See supra} notes 172–74 and accompanying text.

\textsuperscript{275} This arguably was exhibited in \textit{United States v. Luker}, 395 F.3d 830 (8th Cir. 2005), where the officer assumed the suspect was a methamphetamine user, without any actual evidence. \textit{Id.} at 834 (Heaney, J., dissenting). The officer proceeded to conduct pre-\textit{Miranda} questioning that the U.S. Court of Appeals for the Eighth Circuit upheld under its broad approach to the \textit{Quarles} exception. \textit{Id.} at 833–84; \textit{see supra} notes 153, 160–61 and accompanying text.
misapplications by enhancing police accountability and requiring that they note the specific facts that led them to perceive a threat to public safety.276

The second prong of this test, serving as the imminence component as per the Sixth Circuit, requires officers to have a reason to believe "(2) that someone other than police might gain access to that weapon and inflict harm with it."277 This prong, much like the first, requires that the officer’s beliefs be judged against the actual facts in existence at the time. Further, there is a finite window of immediacy where the threat posed to officers or the public warrants the Quarles exception. When this immediacy has dissipated, usually upon apprehending any suspects and securing the general location of the weapon, so has the officer’s right to use the public safety exception to question suspects in contravention of Miranda.278

The inclusion of an immediacy prong into the Quarles exception is arguably the greatest point of contention between the two groups of courts of appeals forming the current circuit split.279 Its proper inclusion is based on the singular instance in Quarles explaining when officers should apply the newly created public safety exception. In this instance, Justice Rehnquist asserted that the application of the public safety exception "will not be difficult for police officers . . . because in each case it will be circumscribed by the exigency which justifies it."280 In breaking down this language, "circumscribed" means "limited, confined, restricted: . . . having clearly defined limits"281 and "exigency" means "[a] state of urgency; a situation requiring immediate action."282 Therefore, based on these definitions, the application of the Quarles exception as per Justice Rehnquist should be limited by the threat (in lieu of the “situation”) requiring immediate action.

This understanding is consistent with Justice Rehnquist’s repeated emphases throughout Quarles that the urgency of the threat was a necessary component for the exception to be triggered. This is particularly evident in the cost-balancing analysis used by the Quarles Court in justifying the creation of the exception.283 The Court was concerned that without the

276. See Drizin, supra note 25, at 711–12 (noting that in its current form, “the Quarles decision retreats from Miranda by giving arresting officers near absolute discretion to determine when to invoke the public safety exception”).
277. United States v. Williams, 483 F.3d 425, 428 (6th Cir. 2007).
278. See supra note 226 and accompanying text.
279. This is based largely on the fact that, for the most part, all the courts of appeals have some form of an actual knowledge requirement—either by their explicit or implicit evaluation of the facts of a case. Additionally, there seems to be general agreement among the courts that the subjective motives of officers cannot be used in determining whether questions were investigatory. However, along the fault lines of the grouping of courts of appeals in Part II of this Note, there is a distinct disconnect as to whether immediacy is required.
282. BLACK’S LAW DICTIONARY 655 (9th ed. 2009).
283. See supra notes 65–68 and accompanying text.
exception, officers would be forced to decide "in a matter of seconds" whether to comply with *Miranda* and risk the possibility of losing valuable information, or to ask the questions and have any testimonial evidence rendered inadmissible. However, once the premises have been secured from the threat posed by all nonofficers, it eliminates the haste that forces officers to conduct this ad hoc balancing test. Thereafter, where there is no immediate threat, officers can proceed to issue the *Miranda* warning and conduct a routine examination of the secured premises for any weapons—or to disarm any already identified.

Because the first prong of this Note's test identifies the existence of a threat and the second prong determines its immediacy—together they establish whether facts fall within the limited circumstances when the *Quarles* exception applies. If both of these prongs are satisfied, it is then necessary to turn to the third prong to analyze if the officer narrowly applied the *Quarles* exception based on an objective consideration of their questions. Though *Quarles* specifically forbade an evaluation of the subjective motives of officers, it still requires a consideration of whether the officer's questioning was investigatory.

As the third prong of this Note's test, courts are required to conduct an objective analysis of the questioning to ensure it was narrowly tailored to the elimination of the public safety threat evinced by the first two prongs of the test. In determining whether questioning is narrowly tailored, factors to be considered by the courts include the scope, duration, frequency, and timing of the questioning of the suspect relative to the threat at hand. If upon considering these factors each question is found to be objectively reasonable and related to the threat at hand, then any ancillary subjective motivations of officers will be disregarded. It is important to bear in mind that the appropriate standard to be met here, as per *Quarles*, with respect to the wording of the questions is one of reasonableness and not perfection. This reduced standard is based on the deference in *Quarles* to the instincts and judgments of officers in attempting to frame the questions in the heat of the moment.

More than the first two prongs of this Note's proposed test, this third prong is the least likely to garner any opposition among the courts of appeals. Fewer disputes exist in this area where, in his *Quarles* opinion, Justice Rehnquist was emphatic and particular about the type of consideration that should be given to the actual questioning conducted by officers. Further, in distinguishing *Orozco* as a fact pattern falling

---

284. *Quarles*, 467 U.S. at 657–58; see *supra* note 65 and accompanying text.
285. See *supra* notes 70–72 and accompanying text.
286. See *supra* note 247 and accompanying text.
287. See *supra* note 249 and accompanying text.
288. See *supra* note 72 and accompanying text.
289. See *supra* note 73 and accompanying text.
290. See *supra* notes 70–74 and accompanying text. This is particularly evidenced by the fact that, in spite of falling within the broad approach to the *Quarles* exception, the Ninth
outside of the Quarles exception, Justice Rehnquist showed that a principled consideration of questioning was necessary and, if not met, could be preclusive.291

Taken as a whole, the three-prong test set forth by this Note is the most appropriate for applying the Quarles exception—particularly in preserving it as "a narrow exception to the Miranda rule" as intended by Justice Rehnquist.292 Principally, the development of the current split among the courts of appeals also proves why a formal test, rather than a case-by-case review of facts, is necessary for applying Quarles. In setting forth the public safety exception, the Quarles Court took for granted the extent to which their limited guidance as to the application of the exception would befuddle the lower courts.293 However, in the twenty-five years since Quarles, the courts of appeals have been exposed to a broad array of factual circumstances where the public safety exception has been invoked. This provides a varied enough sample of facts from which to generate a formal test to accurately reflect the purpose of the Quarles exception and to properly guide the lower courts.

Beyond its fidelity to the opinion in Quarles set forth by Justice Rehnquist, there are also secondary considerations worth addressing in choosing to adopt the narrow three-prong test for the public safety exception. First, contrary to the view first espoused by Justice Harlan in his Miranda dissent,294 enhancing the scope of Miranda at the expense of narrowing the Quarles exception would not likely inhibit police efforts to solve crimes. This is largely based on the somewhat startling ability of officers to overcome Miranda by garnering waivers nearly eighty percent of the time, allowing them to proceed with their questioning.295 With this kind of success rate, it appears that officers do not need an expansion of their abilities via a broad approach to Quarles in order to do their jobs effectively. Thus, the adoption of this Note's narrow three-prong test would serve to enhance the scope of Miranda and of citizens' rights under the Fifth Amendment, while having a de minimis impact on police enforcement efforts.

Second, because the public safety exception is the only one that permits officers to intentionally violate Miranda, the narrow approach succeeds in preventing Quarles from becoming too unwieldy—preserving the Miranda rule as it was endorsed by the Supreme Court in Dickerson.296 In that 2000 case, the Rehnquist Court reinforced Miranda as a "constitutional rule" that

Circuit exclusively considers the objective motivations of an officer's questions when applying the public safety exception. See supra Part II.A.2.
291. See supra notes 75–82 and accompanying text.
293. See Drizin, supra note 25, at 711 ("Unfortunately, the Quarles Court's public safety exception replaces Miranda's per se rule with a rule providing little guidance to lower courts and law enforcement agencies.").
294. See supra note 115 and accompanying text.
295. See supra notes 117–19 and accompanying text.
296. See supra notes 104–06 and accompanying text.
had become “part of our national culture”—putting to rest many doubts of its continued place in society.  

However, while Dickerson ensured that the Miranda doctrine would continue to exist into the twenty-first century, it failed to resolve what Miranda’s resulting scope and strength would be.

Much of this problem is rooted in that Dickerson also ensured that Miranda’s progeny would also survive, rather than being found unconstitutional, when it held that “no constitutional rule is immutable.”

Because much of the uncertainty regarding the state of Miranda was due to the decisions in Tucker, Quarles, and Oregon v. Elstad, serious questions persist as to whether Miranda survives today as a toothless doctrine of little force. But assuming that Dickerson did not merely reaffirm Miranda solely for symbolic purposes, it is reasonable to believe that the Rehnquist Court intended it to remain a doctrine to be reckoned with. As such, by restricting the types of extraneous circumstances to which the Quarles exception could be applied, this Note’s narrow three-part test preserves much of the scope, and potency, of Miranda.

CONCLUSION

From the time of Miranda’s inception by the Warren Court, there has been a contentious relationship between the scope of the powers of law enforcement officers and the Fifth Amendment civil rights of citizens. These conflicts have been waged on many judicial battlefields, including Justice Harlan’s vigorous dissent to the Miranda decision, the multiple exceptions to Miranda created by the Burger Court, and the reaffirmation of the doctrine by the Dickerson Court at the turn of the century. In many ways, it seemed like the war was won when Dickerson ensured the continued existence of the Miranda doctrine by recognizing it as a “constitutional rule” and as ingrained as “part of our national culture.”

But with Dickerson quieting questions about Miranda’s viability, the battle has shifted to the forthcoming scope of this landmark doctrine. As the only rule permitting officers to intentionally violate Miranda, the public safety exception in Quarles has long stood as a threat to the scope of the Miranda doctrine. This threat has been recently amplified by the split among the circuits as to what constitutes a public safety threat for the


298. See Stephen J. Schulhofer, Miranda, Dickerson, and the Puzzling Persistence of Fifth Amendment Exceptionalism, 99 Mich. L. Rev. 941, 943 (2001) (noting that the problem with the Court keeping Miranda mostly the same in its Dickerson ruling is that, with its many exceptions, “the Miranda system is too weak”).

299. Dickerson, 530 U.S. at 441; see supra note 110 and accompanying text.


301. Dickerson, 530 U.S. at 444; see supra note 104 and accompanying text.

302. Dickerson, 530 U.S. at 443; see supra note 106 and accompanying text.
purposes of the Quarles exception. The courts of appeals advocating a broad approach to Quarles would greatly defer to, and empower, law enforcement officers by extending the public safety exception to inherently dangerous situations. Conversely, those circuits favoring the narrow approach recognize immediacy and actual evidence as hallmarks of Quarles, ensuring that Miranda is strengthened and that the exception remains “narrow” as Justice Rehnquist had intended. 303

As the ultimate arbiter of this dispute, the Supreme Court’s eventual resolution of this Quarles circuit split will have lasting repercussions on Miranda and the criminal justice system. When this time comes, the Supreme Court should heed the language in Quarles, the affirmation of Miranda in Dickerson, and public policy considerations in siding with the narrow approach to this split. By adopting this Note’s narrow three-part Quarles test, the Supreme Court would better ensure future compliance and uniformity among the lower courts. This approach in resolving the Quarles circuit split would sound another twenty-first century victory. Together with Dickerson, it stands for the preservation of the Fifth Amendment rights of citizens and signals the Supreme Court’s continued affirmation of the Miranda doctrine.

Notes & Observations