pense with the warnings and run the risk that resulting evidence will be excluded at trial. While acknowledging that the exception itself will "lessen the desirable clarity of the rule," the Court predicted that confusion would be slight: "[w]e think that police officers can and will distinguish almost instinctively between questions necessary to secure their own safety or the safety of the public and questions designed solely to elicit testimonial evidence from a suspect." [398] No such compelling justification was offered for a *Miranda* exception for lesser offenses, however, and protecting the rule's "simplicity and clarity" counseled against creating one.[399] "[A] person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in *Miranda*, regardless of the nature or severity of the offense of which he is suspected or for which he was arrested." [400]

The Operation of the Exclusionary Rule

Supreme Court Review.—The Court's review of the question of admissibility of confessions or other incriminating statements is designed to prevent the foreclosure of the very question to be decided by it, the issue of voluntariness under the due process standard, the issue of the giving of the requisite warnings and the subsequent waiver, if there is one, under the *Miranda* rule. Recurring to Justice Frankfurter's description of the inquiry as a "three-phased process" in due process cases at least,[401] it can be seen that the Court's self-imposed rules of restraint on review of lower-court factfinding greatly influenced the process. The finding of facts surrounding the issue of coercion—the length of detention, circumstances of interrogation, use of violence or of tricks and ruses, et cetera—is the proper function of the trial court which had the advantage of having the witnesses before it. "This means that all testimonial conflict is settled by the judgment of the state courts. Where they have made explicit findings of fact, those findings conclude us and form the basis of our review—with the one *caveat*, necessarily, that we are not to be bound by findings wholly lacking support in evidence." [402]

However, the conclusions of the lower courts as to how the accused reacted to the circumstances of his interrogation, and as to

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[398] 467 U.S. at 658–59.

[399] Berkemer v. McCarty, 468 U.S. 420, 432 (1984).

[400] 468 U.S. at 434.

[401] Culombe v. Connecticut, 367 U.S. 568, 603–06 (1961).

[402] 367 U.S. at 603. *See* Ashcraft v. Tennessee, 322 U.S. 143, 152–53 (1944); Lyons v. Oklahoma, 322 U.S. 596, 602–03 (1944); Watts v. Indiana, 338 U.S. 49, 50–52 (1949); Gallegos v. Nebraska, 342 U.S. 55, 60–62 (1951); Stein v. New York, 346 U.S. 156, 180–82 (1953); Payne v. Arkansas, 356 U.S. 560, 561–62 (1958).