In Whose Custody?
Miranda, Emergency Medical Care, & Criminal Defendants

"While authorities are not required to relieve the accused of his poverty, they have the obligation not to take advantage of indigence in the administration of justice."[1]

Executive Summary

"Respect for the rule of law in all its dimensions is critical to the fair administration of justice, public order, and protection of fundamental freedoms."[2] The rule of law surrounding the Fifth Amendment right against self-incrimination will not be respected by the police or public at large until major loopholes which allow the police "to take advantage of indigence in the administration of justice"[3] are closed. The major loophole this Article tackles is the "in custody" requirement for *Miranda* which allows officers to question suspects without providing them with a *Miranda* warning. Specifically, this Article focuses on the damage such a loophole causes in the context of emergency medical care.[4] It considers scenarios where the power dynamics are so severe that the suspect involuntarily confesses to a crime.[5]

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[1] Miranda v. Arizona, 384 U.S. 436, 472 (1966).
[2] Elizabeth Andersen & Ted Piccone, *The Meaning, Measuring, and Mattering of the Rule of Law*, 67 DOJ J. FED. L. & PRAC. 103, 103 (2019); *see also* Joseph Raz, *The Rule of Law and Its Virtue*, *in* THE AUTHORITY OF THE LAW 210 (1979) ("F.A. Hayek has provided one of the clearest and most powerful formulations of the ideal of the rule of law: 'stripped of all technicalities this means that government in all its actions is bound by rules fixed and announced before hand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge.'").
[3] *Miranda*, 384 U.S. at 472; *see* Thomas M. Riordan, *Copping an Attitude: Rule of Law Lessons from the Rodney King Incident*, 27 LOY. L.A. L. REV. 675, 676 (1994) ("[D]espite apparent adherence to the rule of law values, the current system has serious flaws that, if left unaddressed, may lead to a breakdown of the legal order.").
[4] Mary Gerisch, *Health Care As A Human Right*, *in* THE STATE OF HEALTHCARE IN THE UNITED STATES, ABA HUMAN RIGHTS MAGAZINE, Vol. 43. No. 3 ("[O]ur country has long deluded us into believing insurance, not health, is our right."); *see also* Jeffrey Kahntroff & Rochelle Watson, *Refusal of Emergency Care and Patient Dumping,* A.M.A. J. ETHICS (Jan. 2009) ("EMTALA's inability to curb denial of treatment has been attributed to the ambiguity of the statutory provisions, poor enforcement mechanisms, and divergent judicial interpretations of the statutory provisions.").
[5] *See Miranda*, 384 U.S. at 455 (recognizing how despicable police tactics in the United States had become as police trade on a "suspects insecurity about himself or surroundings" and "then persuade, trick, or cajole him out of exercising his constitutional rights"); *see e.g.*, Wilson v. Coon, 808 F.2d 688, 689 (8th Cir. 1987) ("The Court of Appeals . . . held that ambulance attendant's physical restraint of defendant, in order to examine him for injuries received in automobile collision, at time police officer was questioning defendant did not constitute inherently coercive environment which required *Miranda* warnings be given.").

To close this specific loophole, courts must expand what is considered "custodial" to represent the actual judicial intent behind *Miranda*: protecting the disadvantaged from state coercion and abuse.[6] As the rule of law can be subverted by the actions of the courts, attorneys, and the police, to uphold it courts must look to the purpose under which each law was established.[7] The very purpose of *Miranda* was, and is, to ensure that police officers "afford appropriate safeguards at the outset of the interrogation to ensure that the statements are truly the product of free choice."[8]

This conclusion is also supported by the judicial ideology that is used in the other Criminal Constitutional Revolution cases, which all sought to protect against police tendency to take advantage of indigence.[9] This Article is not seeking to expand the rights of the accused. Rather it is focused on closing a loophole in an existing right.[10] The reality is, although it is tempting to think of *Miranda* as a closed issue, its interpretation has had to evolve to keep up with police tactics.[11]

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[6] *Miranda*, 384 U.S. at 467 ("Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves.").
[7] Raz, *supra* note 2, at 218 ("The discretion of the crime-preventing agencies should not be allowed to pervert the law. Not only the courts but also the actions of the police and the prosecuting authorities can subvert the law.").
[8] *Miranda*, 384 U.S. at 457.
[9] *See* Corinna Barrett Lain, *Countermajoritarian Hero or Zero? Rethinking the Warren Court's Role in the Criminal Procedure Revolution*, 152 U. PA. L. REV. 1361, 1363–64 (2004) ("Together, these cases produced what is widely known as the 'criminal procedure revolution,' so vast were the protections afforded to unpopular and politically powerless criminal defendants."). These infamous incorporation cases include but are not limited to*, Mapp v. Ohio*, 367 U.S. 643 (1961), *Gideon v. Wainwright*, 372 U.S. 335 (1963), *Malloy v. Hogan*, 378 U.S. 1 (1964*), Pointer v. Texas*, 380 U.S. 400 (1965), *Miranda v. Arizona*, 384 U.S. 436 (1966), *Washington v. Texas*, 388 U.S. 14 (1967*).*
[10] Courts, although rarely, have in fact ruled on the side of equity in the past. *See e.g.*, State v. Lowe, 81 A.3d 360, 366 (ME 2013) (affirming suppression of evidence where defendant was hospitalized and questioned in her hospital room without *Miranda* even though she was considered a suspect in a criminal case); United States v. Trejo-Islas, 248 F. Supp. 2d 1072, 1078 (D. Utah 2002) (suppressing alien defendant's statements which were made to an INS officer because she interrogated without *Miranda* while he was in a hospital bed and unable to leave as he just underwent an accident in which his vehicle rolled over several times).
[11] Hilarie Bass, *Promoting the Rule of Law at Home and Abroad: The Role of the ABA*, 90 N.Y. ST. B.J. 12, 13 (Jan. 2018) ("[T]he Rule of Law is a system of checks and balances that needs constant and perpetual testing, nurturing and strengthening."); *see e.g.*, Missouri v. Seibert, 542 U.S. 600 (2004).

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ABSTRACT:

"Respect for the rule of law in all its dimensions is critical to the fair administration of justice, public order, and protection of fundamental freedoms."[4] *The rule of law surrounding the Fifth Amendment right against self-incrimination will not be respected by the police or public at large until major loopholes which allow the police "to take advantage of indigence in the administration of justice"*[5] *are closed. The major loophole this Article tackles is the "in custody" requirement for Miranda which allows officers to question suspects without providing them with a Miranda warning. Specifically, this Article focuses on the damage such a loophole causes in the context of emergency medical care. It considers scenarios where the power dynamics are so severe that the suspect involuntarily confesses to a crime. To close this specific loophole, courts must expand what is considered "custodial" to represent the actual judicial intent behind Miranda: protecting the disadvantaged from state coercion and abuse. This conclusion is also supported by the judicial ideology that is used in the other Criminal Constitutional Revolution cases, which all sought to protect against police tendency to take advantage of indigence. This Article is not seeking to expand the rights of the accused. Rather it is focused on closing a loophole in an existing right.*

[3] *Miranda*, 384 U.S. at 472.

[4] Elizabeth Andersen & Ted Piccone, *The Meaning, Measuring, and Mattering of the Rule of Law*, 67 DOJ J. FED. L. & PRAC. 103, 103 (2019); *see also* Joseph Raz, *The Rule of Law and Its Virtue*, *in* THE AUTHORITY OF THE LAW 210 (1979) ("F.A. Hayek has provided one of the clearest and most powerful formulations of the ideal of the rule of law: 'stripped of all technicalities this means that government in all its actions is bound by rules fixed and announced before hand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge.'").

[5] *Miranda*, 384 U.S. at 472; *see* Thomas M. Riordan, *Copping an Attitude: Rule of Law Lessons from the Rodney King Incident*, 27 LOY. L.A. L. REV. 675, 676 (1994) ("[D]espite apparent adherence to the rule of law values, the current system has serious flaws that, if left unaddressed, may lead to a breakdown of the legal order.").

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I. INTRODUCTION

"[O]ur contemplation cannot be only of what has been, but of what may be."[6]

The Criminal Constitutional Revolution was a major victory for the rule of law. During this era, the Warren Court changed the criminal justice system through a sequence of rulings designed to ensure that the de jure rights in the U.S. Constitution would be enjoyed in practice. *Miranda v. Arizona* was such a ruling, minimizing the chance that ignorance could deprive someone of the right to remain silent.

This Article seeks to address a peculiarity in the subsequent interpretation of the requirements of *Miranda* warnings. Specifically, *Miranda* warnings are only necessary when a suspect is questioned while being held in police custody, because this is where the potential for police abuse and coercion is highest and because this is when the uninformed are most vulnerable to confusion as to the right to remain silent.[7] But interrogating a suspect who is receiving emergency medical treatment poses a similar threat of abuse, coercion, and confusion, yet it requires no *Miranda* warning.[8] This Article argues that a warning is necessary in such a situation.

This Article proceeds in six parts. Section II lays out the type of scenario this Article seeks to prevent by utilizing *State v. Clappes* as a case study.[9] Section II identifies problematic questions the *Clappes* case raises in light of the Warren Court's decision in *Miranda v. Arizona*. Section III discusses the judicial intent behind the Warren Court's transformation of criminal procedure while paying particular attention to why *Miranda* warnings were created by the Warren Court. Section IV makes the case for closing loopholes in *Miranda* by analogy to the two-step interrogation

[6] *Miranda*, 384 U.S. at 443.
[7] *Id.* at 457–60.
[8] *See e.g.*, Wilson v. Coon, 808 F.2d 688, 689 (8th Cir. 1987) (finding *Miranda* not required in emergency medical care interrogation).
[9] State v. Clappes, 344 N.W.2d 142, 142 (1984).

procedure, another means of eliciting incriminating testimony, which was found to contravene the intent of *Miranda* in *Seibert v. Missouri.*[10]

Section V establishes background on the right to emergency medical care and Section VI considers social contexts in which that right might not be well understood or trusted, creating scope for coercion and abuse.

Section VII outlines a threefold solution that calls upon courts, attorneys, and lawmakers to take actions that will protect the rights of individuals who are receiving emergency medical care and are suspected of having committed a crime. Section VIII concludes.

II. THE SCENARIO: POLICE, EMERGENCY MEDICAL CARE, & SUSPICION

"[W]hatever the background of the person interrogated, a warning at the time of interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time."[11]

On May 20, 1980 at around 11:30 p.m. a deadly car accident occurred on Highway E in Waupaca County, Wisconsin.[12] When the car crashed, three people were inside; one died while still in the vehicle, and one died after being thrown from the vehicle.[13] The last person, Douglas Clappes, was thrown from the vehicle and suffered "lacerations, a ruptured bladder, a dislocated elbow, a fractured femur, a fractured pelvis, and shock."[14] Despite Clappes's clearly fragile condition, and the presence of several medical care professionals:

> While he was on the emergency room table and in shock, two police officers questioned Clappes about the accident. They suspected Clappes was the driver but did not advise him of his *Miranda* rights. One of the officers [even] questioned Clappes in a loud voice. During the questioning, Clappes identified the victims and admitted he was the driver of the car. Clappes was charged with . . . two counts of homicide.[15]

[10] Missouri v. Seibert, 542 U.S. 600 (2004).
[11] Miranda v. Arizona, 384 U.S. 436, 468–69 (1966).
[12] State v. Clappes, 401 N.W.2d 759, 761 (1987).
[13] *Id.*
[14] *Id.*
[15] State v. Clappes, 82-565-CR., 1983 WL 162143 at *1 (Wis. Ct. App. Feb. 10, 1983).

To be clear, the officers questioned Clappes because they learned he was not a licensed and "suspected [he] was the driver."[16] This is evident as the officers asked Clappes "And you were driving; is that right?" twice while standing over him and speaking in a loud voice.[17] Then, unsurprisingly, "[i]mmediately following this questioning, the defendant was arrested and issued a citation charging him with operating a motor vehicle while under the influence of an intoxicant."[18]

The *Clappes* case raises several questions because the police officer's clearly suspected Clappes committed a crime (which they ultimately suspected caused the accident), questioned him about it, and obtained incriminating statements, but did not provide him with a *Miranda* warning.

First, why was this man not read his *Miranda* rights?[19] Police are required to give *Miranda* warnings any time a suspect is in custody, suspected to have committed a crime, and interrogated.[20] An interrogation consists of "words or actions on the part of police offers" that they should know are reasonably likely to elicit an incriminating response.[21] "And "for Fifth Amendment purposes, 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."[22] For example, in *People v. Bejasa*, the "defendant was asked questions such as, '[w]hat have you been drinking?' and [h]ow much?' These questions contrast strongly against general questions such as, '[w]ere you in the accident."[23] In the *Clappes* case, the defendant

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[16] *Id.*; State v. Clappes, 344 N.W.2d 142, 142 (1984).
[17] *Clappes*, 344 N.W.2d at 143.
[18] *Id.*
[19] *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966) ("Prior to any questioning, the person must be warned 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.").
[20] Berkemer v. McCarty, 468 U.S. 420, 434 (1984).
[21] Rhode Island v. Innis, 446 U.S. 291, 302 (1980).
[22] Davis v. Washington 547 U.S. 813, 829 (2006).
[23] 205 Cal.App.4th 26, 38, 40 (2012) ("Unlike the questions in Milham, the questions posed to defendant were such that the police should have known they would elicit an incriminating response.") (citing People v. Milham, 159 Cal.App.3d 487, 494 (1984)).

was on an emergency room table when questioned about whether he had been driving and drinking. The police did not need to ask those questions to secure their own safety or the safety of the public. They were asking them to elicit incriminating statements. "By the time [the police] contacted [the] defendant, [they] had moved past investigation and into the realm of inculpation."[24]

A suspect is in custody if a reasonable person, in the same situation, would not feel free to terminate the interrogation and leave.[25] However, courts have held that "the bare fact of physical restraint does not itself invoke the *Miranda* protections."[26] This distinction between being in custody and being physically restrained is especially troublesome here because it creates an often hard-to-see distinction between the freedom to leave and the ability to leave. In the ordinary course of a non-custodial interrogation, a suspect who wishes to end an interrogation may ask, "Am I free to leave?" after which they can physically leave. If they do not physically leave, a diligent investigator may continue pursuing a line of questioning. Yet, when a suspect is actively receiving medical treatment, they cannot leave. Therefore, when such a person wishes to end an interview, they ought to have some verbal means to do so.[27] They need to know that they may refuse to speak with police and still receive the best possible medical care. Without such a protection, a zealous

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[24] Cal.App.4th at 40.
[25] Thomas v. Keohane, 516 U.S. 99, 100 (1995); Kimberly J. Winbush, Annotation, *What Constitutes "Custodial Interrogation" at Hospital by Police Officer Within Rule of Miranda v. Arizona Requiring that Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation*, 30 A.L.R.6th 103, §2 (Originally published in 2008) ("The determination of whether a suspect was in custody at the time of an interrogation requires consideration of the circumstances surrounding the interrogation, and, given those circumstances, whether a reasonable person would have felt he or she was at liberty to terminate the questioning interrogation and leave.").
[26] Wilson v. Coon, 808 F.2d 688, 689 (8th Cir. 1987) ("The Court of Appeals . . . held that ambulance attendant's physical restraint of defendant, in order to examine him for injuries received in automobile collision, at time police officer was questioning defendant did not constitute inherently coercive environment which required *Miranda* warnings be given."); *see also* People v. Mosley, 73 Cal. App. 4th 1081, 1090–91 (1999) ("Our review of the facts of the instant case leads us to the conclusion that defendant was not in custody within the meaning of *Miranda* when he was being treated by paramedics in the ambulance prior to being transported to the hospital. Any restraint of defendant's freedom of action was caused by the need to treat his gunshot wound, which was still bleeding and was actively being treated during the interview."); Brown v. Yates, 753 F. Supp. 2d 1069, 1071 (C.D. Cal. 2010) (ruling no *Miranda* warning was required where Petitioner, who was screaming in pain when dragged out of overturn vehicle by an officer, was questioned by the officer at scene of crime while he waited for emergency medical care to arrive).
[27] *See* Miranda v. Arizona, 384 U.S. 436, 477 (1966) ("The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any significant way.").

police officer's questioning might interfere with the suspect's ability to understand their medical condition and treatment options, and even distract the healthcare workers. Even in cases where continued, unwanted interrogation does not destructively interfere with medical treatment, a reasonable person could have reason to fear that such interrogation could interfere, and therefore the interrogation would be coercive.[28]

Miranda warnings are supposed to be provided to all suspects, regardless of their identity because it is virtually impossible for police to know which suspects do and do not know their rights.[29] The harsh reality is that although many people know their legal rights and that they have a right to emergency medical care, the intent behind *Miranda* was to protect the most vulnerable in our society, many of whom do not know these rights. Even harsher is the reality that some of the most vulnerable in our society reasonably do not trust medical care providers and believe that the right to emergency care is illusory.[30] In the emergency medical care context, the most vulnerable may be those who are undocumented, lack health insurance, or are unsophisticated regarding public institutions (e.g. police v. EMT). In order to protect the rights of these particularly vulnerable individuals under these circumstances, we need to protect the rights of everyone under these circumstances. When the police approach someone they suspect of committing a crime and question them to elicit incriminating statements, they often have no way of knowing whether that suspect is undocumented, uninsured, or unsophisticated regarding public institutions. Therefore, they should approach everyone as though they are undocumented, uninsured, or unsophisticated in these settings.

[28] *Id.* at 465 ("The abdication of the constitutional privilege—the choice on his part to speak to the police—was not made knowingly or competently because of the failure to apprise him of his rights; the compelling atmosphere of the [arguably] in-custody interrogation, and not an independent decision on his part, caused the defendant to speak.").
[29] *Id.* at 468–69.
[30] *See* Sana Loue, *Access to Health Care and the Undocumented Alien*, 13 J. LEGAL MED. 271, 281 (1992) ("[D]enials of even emergency care may not be infrequent. In addition to the difficulty inherent in defining and applying the 'emergency' standard, some private hospitals also have refused to treat undocumented persons who lack sufficient cash, regardless of their medical condition.").

Another question raised by this case is why the justice system should care about protecting the rights of individuals like this man? As a country that believes in the rule of law, the courts should worry about loopholes which cause a law to have a discriminatory impact on our most vulnerable communities.[31] Regardless of whether courts care about the particular defendant in a given scenario, they should care that police practices are not violating individual rights.

Moreover, the fact these types of police tactics are commonly used on suspects while those suspects are receiving emergency medical care constitutes a Fifth Amendment violation that tramples on the right against self-incrimination.[32] It disregards that the United States of America must value individual liberty in order to remain "the land of the free and home of the brave."[33]

In response to these problems, we need to look for ways we can better protect Fifth Amendment rights in these types of circumstances. "*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture."[34] The police can and should wait to question suspects until after they are deemed stable by medical care professionals and released from the hospital. Alternatively, the police could provide these types of suspects with the traditional *Miranda* warning they are supposed to supply all suspects before attempting to elicit incriminating statements. Or, the police or first responders could inform such suspects that their refusal to speak with the police will in no way impact the quality of the care that they receive. Any

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[31] *See Miranda*, 384 U.S. at 457–58 ("The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself."); Colin Miller, *Cloning Miranda Why Medical Miranda Supports the Pre-Assertion of Criminal Miranda Rights*, 2015 WIS. L. REV. 863, 888 (2015) ("The purpose, then, of the *Miranda* warning is to ensure that the statements that a suspect makes in response to custodial interrogation are the result of a free and rational waiver of his constitutional rights.").

[32] *See e.g.*, Bretton William Hake Kreifel, *Paging Constitutional Protections: Interrogating Vulnerable Suspects In Hospitals [People v. Sampson, 404 P.3d 273 (Colo. 2017)]*, WASHBURN L. J. ONLINE 25, 25 (2018) ("In People v. Sampson, the Colorado Supreme Court held that a police interrogation of a suspect while he was receiving medical treatment for a stab wound in a hospital did not violate the suspect's rights. In doing so, the Colorado Supreme Court allowed police to continue to use arguably coercive interrogation techniques. This appears to run counter to one of the goals of *Miranda* warnings, which is to ensure that statements made during an interrogation are voluntary.").

[33] Francis Scott Key, U.S. National Anthem, *The Star-Spangled Banner*, Garden City, N.Y.: Doubleday, Doran & Company (1942); *see also Miranda*, 384 U.S. at 460 ("[T]he privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values.").

[34] Dickerson v. United States, 530 U.S. 428, 430 (2000).

of these options would give a suspect the chance to remain silent and preserve their Fifth Amendment right against self-incrimination.

III. JUDICIAL INTENT

"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."[35]

Because the rule of law can be subverted by the actions of the courts, attorneys, and the police, courts must look to the purpose under which each law was established.[36] Thus, the key reason why what happened to Douglas Clappes weakens the rule of law enshrined in the Fifth Amendment is that it tolerates a practice—pressuring an ignorant, disadvantage person into self-incrimination—that the United States Supreme Court specifically intended to prevent.[37]

During the Criminal Constitutional Revolution, the Warren Court sought to protect the *have-nots*[38] and began to incorporate rights set forth in the Bill of Rights into the 14th Amendment's Due Process Clause.[39] This was a major triumph for the Court in creating public policy. For instance, with *Mapp v. Ohio*, in 1961, the exclusionary rule of the 4th Amendment was incorporated to the states and ruled that illegally obtained evidence was inadmissible in a court of law.[40] Then, in 1963, *Gideon v. Wainwright* incorporated the 6th Amendment right to counsel in

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[35] *Miranda*, 384 U.S. at 476.
[36] Raz, *supra* note 4, at 218 ("The discretion of the crime-preventing agencies should not be allowed to pervert the law. Not only the courts but also the actions of the police and the prosecuting authorities can subvert the law.").
[37] *Miranda*, 384 U.S. at 455 (recognizing how despicable police tactics in the United States had become as police trade on a "suspects insecurity about himself or surroundings" and "then persuade, trick, or cajole him out of exercising his constitutional rights").
[38] *See* Marc Galanter, *Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change* 9 LAW & SOC'Y REV. 95, 104 (1974) (understanding that not everyone is familiar with the legal system, Galanter questions whether a "legal system [which is] formally neutral as between 'haves' and 'have-nots' may perpetuate and augment the advantages of the former").
[39] *See* Corinna Barrett Lain, *Countermajoritarian Hero or Zero? Rethinking the Warren Court's Role in the Criminal Procedure Revolution*, 152 U. PA. L. REV. 1361, 1363–64 (2004) ("Together, these cases produced what is widely known as the 'criminal procedure revolution,' so vast were the protections afforded to unpopular and politically powerless criminal defendants."). These infamous incorporation cases include but are not limited to, *Mapp v. Ohio*, 367 U.S. 643 (1961), *Gideon v. Wainwright*, 372 U.S. 335 (1963), *Malloy v. Hogan*, 378 U.S. 1 (1964), *Pointer v. Texas*, 380 U.S. 400 (1965), *Miranda v. Arizona*, 384 U.S. 436 (1966), *Washington v. Texas*, 388 U.S. 14 (1967).
[40] 367 U.S. 643 (1961).

criminal trials for those unable to afford an attorney.[41] But then, taking it one step further, in order to protect the public policy they had already created, the Warren Court made its decision in *Miranda v. Arizona* and created a public policy absent constitutional precedent.[42] People now not only had the rights afforded to them with the Criminal Constitutional Revolution, but the police were to inform them of all of these rights prior to conducting an interrogation. The police were effectively turned into publicity machines.[43] Thus, the Warren Court effectively passed legislation to protect the rights of criminal defendants and then reinforced those protections in *Miranda* by using the police as their enforcement mechanism.

The very purpose of *Miranda* was, and is, to ensure that police officers "afford appropriate safeguards at the outset of the interrogation to ensure that the statements are truly the product of free choice."[44] *Miranda* is presumed and deemed necessary regardless of the identity of the suspect any time a suspect is in custody, accused of a crime, and interrogated.[45] To determine whether a suspect is in custody the courts must consider the totality of the circumstances.[46] However, it is important to remember that "[t]he purpose of *Miranda* guides the meaning of the word 'custody,' which refers to circumstances 'that are thought generally to present a serious danger of coercion.'"[47] The logic behind *Miranda* was not that every suspect is *actually* ignorant of their rights, but that because some suspects are ignorant, because the potential for abuse is so high, and because this abuse is so repugnant, police should treat every suspect *as though* they are ignorant

[41] 372 U.S. 335 (1963).
[42] *Miranda*, 384 U.S. at 443 ("[O]ur contemplation cannot be only of what has been, but of what may be.").
[43] R. Ben Brown, Professor of Legal Studies at University of California, Berkeley (Feb. 23, 2018) ("*Miranda*, of all the decisions that the Warren Court made, was actually one of the most effective in the sense that it publicized these rights.").
[44] *Miranda*, 384 U.S. at 457.
[45] Berkemer v. McCarty, 568 U.S. 420, 434 (1984).
[46] People v. Boyer, 48 Cal.3d 247, 272 (1989); *see also* People v. Aguilera, 51 Cal.App.4th 1151, 1162 (1996) (instructing courts to "look at the interplay and combined effect of all the circumstances to determine whether on balance they created a coercive atmosphere such that a reasonable person would have experienced a restraint tantamount to an arrest.").
[47] People v. Caro, 442 P.3d 316, 342 (Cal. 2019) (quoting Howes v. Fields, 565 U.S. 499, 508–09, (2012)).

of their rights.[48] Similarly, not every suspect in need of immediate medical care will believe that the police might prevent that care, but because some suspects are ignorant, because the potential for abuse is so high, and because this abuse is so repugnant, police ought to be required to treat every suspect *as though* they might have this confusion.

IV. FIXING LOOPHOLES IN *MIRANDA*

> ***"The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime."***[49]

It is tempting to think of *Miranda* as a closed issue, but its interpretation has evolved to keep up with police tactics.[50] A clear example of this evolution is the prohibition of the two-step interrogation procedure which occurred approximately thirty-eight years after the *Miranda* decision.[51] Such an interrogation occurs whenever police begin asking questions without a *Miranda* warning, learn something incriminating, then issue a *Miranda* warning and ask the suspect to repeat whatever they said before the warning.[52] While such a situation might arise innocently, it might also arise as the result of a strategic police tactic to elicit incriminating testimony that they could not obtain if they were to initially *Mirandize* the subject. This was precisely the case in *Missouri v. Seibert*, where officer "Hanrahan testified that he made a *conscious* decision to withhold Miranda warnings, question first, then give the warnings, and then repeat the question until he got the answer previously given."[53]

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[48] *Miranda*, 384 U.S. at 469 (arguing that, unlike such a subjective inquiry, because "a warning is a clearcut fact" it must be given at the time of interrogation no matter the background of the person being interrogated).
[49] *Id.* at 439.
[50] Hilarie Bass, *Promoting the Rule of Law at Home and Abroad: The Role of the ABA*, 90 N.Y. ST. B.J. 12, 13 (Jan. 2018) ("[T]he Rule of Law is a system of checks and balances that needs constant and perpetual testing, nurturing and strengthening."); *see e.g.*, Missouri v. Seibert, 542 U.S. 600 (2004).
[51] *See Seibert*, 542 U.S. at 600.
[52] United States v. Narvaez-Gomez, 489 F.3d 970, 973–74 (9th Cir. 2007); *Seibert*, 542 U.S. at 613 ("[T]he sensible underlying assumption is that with one confession in hand before the warnings, the interrogator can count on getting its duplicate, with trifling additional trouble.").
[53] *Seibert*, 542 U.S. at 600 (emphasis added).

With the *Seibert* plurality decision, the U.S. Supreme Court condemned the use of two-step interrogations as a strategic practice because, far from promoting rule of law, it relies on the ignorance of the suspect in order to trick them into self-incrimination.[54] This clearly violates the intent of *Miranda*, which the court recognized in *Seibert*.[55] Interrogating a suspect who is receiving emergency medical care is entirely analogous. In the case of two-step interrogation, a suspect is technically given a *Miranda* warning before repeating incriminating testimony, but in practice the suspect is likely to be confused about whether they are really protected because they have already made incriminating statements.[56] Likewise, in the case of an interrogation at the site of a medical emergency, the suspect is technically not under arrest and under legal custody of the police, but in practice the suspect is likely to be confused about the consequences of non-cooperation. In both cases, the risk of police coercion and threats of harm, so fundamental to the Fifth Amendment and once thought to have been eliminated by *Miranda*, resurfaces.[57]

V. THE RIGHT TO EMERGENCY MEDICAL CARE

"Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves."[58]

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[54] *Id.* (concluding that "because the midstream recitation of warnings after interrogation and unwarned confession in this case could not comply with *Miranda*'s constitutional warning requirement, Seibert's postwarning statements are inadmissible.").

[55] *Id.* at 605–06 (finding that the officer's actions not only challenged the comprehensibility but also the efficacy of the *Miranda* warnings to the point that a reasonable person in the subject's position could not have understood them to convey that they retained a choice about continuing to talk).

[56] *Id.* at 601 ("The manifest purpose of question-first is to get a confession the suspect would not make if he understood his rights at the outset.").

[57] Miranda v. Arizona, 384 U.S. 436, 460 (1966) ("[T]he constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a 'fair state-individual balance,' to require the government 'to shoulder the entire load,' to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth.").

[58] *Miranda*, 384 U.S. at 467.

Although not every suspect in need of immediate medical care will believe that the police might prevent that care, because some suspects are ignorant, because the potential for abuse is so high, and because this abuse is so repugnant, police ought to be required to treat every suspect *as though* they might have this confusion. Emergency medical personnel are supposedly trained to treat all individuals in need of care, regardless of identity.[59] This is enshrined by professional standards and statute. One such statute is the Emergency Medical Treatment and Labor Act (EMTALA), which "is a federal law that requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status, or ability to pay."[60] Focusing on the interaction between law enforcement and emergency medical care providers, professional standards have further committed to protecting patients' rights. The medical community confirmed their commitment to this in The Code of Medical Ethics Opinion 9.7.4 which holds that: "Treatment must never be conditional on a patient's participation in an interrogation."[61] Furthermore, according to the American College of Emergency Physicians, "[l]aw enforcement activities should not interfere with patient care."[62]

Yet, "[d]espite these statutes and penalties, hospitals have continued turning patients away."[63] The reality is that not everyone is aware of their right to emergency medical care and some of those

[59] Alicia Puglionesi, *Americans Once avoided the Hospital at All Costs—Until ERs Changed That*, HISTORY.COM (Aug. 22, 2018), https://www.history.com/news/americans-once-avoided-the-hospital-at-all-costs-until-ers-changed-that ("The emergency room is the only type of medical facility in the U.S. where patients have a right to receive care, regardless of whether they carry insurance or not."); Mary Gerisch, *Health Care As A Human Right*, *in* The State of Healthcare in the United States, ABA Human Rights Magazine, Vol. 43. No. 3 ("[O]ur country has long deluded us into believing insurance, not health, is our right.").

[60] *EMTALA Fact Sheet*, AM. COLL. EMERGENCY PHYSICIANS, https://www.acep.org/life-as-a-physician/ethics--legal/emtala/emtala-fact-sheet/.

[61] Code of Medical Ethics Opinion 9.7.4, Physician Participation in Interrogation (AMA 2017), https://www.ama-assn.org/delivering-care/ethics/physician-participation-interrogation.

[62] Law Enforcement Information Gathering in the Emergency Department, 56 ANNAL EMERGENCY MED. Vol. 56, No.1 at 80 (July 2010), https://www.sciencedirect.com/science/article/pii/S0196064410003872?via%3Dihub.

[63] Jeffrey Kahntroff & Rochelle Watson, *Refusal of Emergency Care and Patient Dumping,* A.M.A. J. ETHICS (Jan. 2009) ("EMTALA's inability to curb denial of treatment has been attributed to the ambiguity of the statutory provisions, poor enforcement mechanisms, and divergent judicial interpretations of the statutory provisions.").

who are aware of their right understand that it is risky to pursue.[64] They know that "emergency" care is not well defined and they may be turned away due to the subjective decision of a EMT, doctor, or nurse.[65] Also, even if they are wrongfully denied care, most vulnerable people (undocumented, uninsured, unsophisticated, etc.) do not have the resources to bring a lawsuit.[66] Not to mention bringing a lawsuit may lead to immigration consequences.[67] Recent immigration crackdowns have raised the fears surrounding emergency healthcare for undocumented individuals and their families.[68]

This becomes problematic as:

> [t]raumatic injuries, such as gunshot wounds or motor vehicle crash injuries, are conditions that attract both health care and law enforcement responses. In these circumstances, clinicians and police share a mandate to protect injured people and public safety. However, the police mission to initiate an investigation and solve crimes may compete with the urgency of emergency health care, which is built on protocol-driven systems for rapid diagnosis, medical stabilization, and triage.[69]

Moreover, the police officer's apparent authority over the scene of a crime or investigation, may lead an injured suspect to believe they have no choice but to comply and incriminate themselves by answering an officer's questions.[70] A reasonable person observing the police officer's uniform, badge, (hopefully) holstered gun, and command of individuals at the scene of

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[64] *See* Loue, *supra* note 30, at 297 ("An alien denied on that basis would be forced to seek care elsewhere and then to litigate the issue of coverage by the relevant statute. Most undocumented aliens would not pursue such litigation due to a fear of detection by the INS during the course of the proceedings."); Mary Gerisch, *Health Care As A Human Right*, *in* The State of Healthcare in the United States, ABA Human Rights Magazine, Vol. 43. No. 3 ("[O]ur country has long deluded us into believing insurance, not health, is our right.").

[65] Kahntroff, *supra* note 63 ("The EMTALA requirement that emergency personnel provide appropriate medical screening within the capability of the emergency department, for example, can be interpreted under an objectively reasonable standard, subjective standard, or burden-shifting standard.").

[66] Loue, *supra* note 30.

[67] *Id.*

[68] Rebecca Adams, *Immigration Crackdown Raises Fears of Seeking Health Care*, ROLL CALL (Jan. 25, 2018), https://www.rollcall.com/2018/01/25/immigration-crackdown-raises-fears-of-seeking-health-care/.

[69] Sara F. Jacoby, et al., *When Health Care and Law Enforcement Intersect in Trauma Care, What Rules Apply?*, Health Affairs Blog (Oct. 1, 2019), https://www.healthaffairs.org/do/10.1377/hblog20180926.69826/full/.

[70] See Caleb Foote, *The Fourth Amendment: Obstacle or Necessity in the Law of Arrest*, 51 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 402, 403 (1960–61) (recognizing that what may appear "on their face [as] merely words of request take on color from the officer's uniform, badge, gun, and demeanor"); *see also* Charles A. Reich, *Police Questioning of Law Abiding Citizens*, 75 YALE L.J. 1161, 1162 (1966) ("There is authority in the approach of the police, and command in their tone. I can ignore the ordinary person, but can I ignore the police?").

the accident or in the emergency room could conclude that the officer has some measure of authority over medical personnel. Any doubt in such a matter must cut in favor of the defendant, who depends on undelayed, uninterrupted, and unrestricted medical care to treat pain, prevent complication, and save life. This issue was acknowledged by Justice Abrahamson in her dissent in *State v. Clappes*, where she argued that "[t]he mere presence of police, their appearance of authority, and perilous surrounding circumstances which threaten the life of a helpless individual—all of these in conjunction may pressure the individual and force a statement. The police may not apply the pressure; but in appearance they may still control the means of its release."[71]

VI. WHOSE REASONABLE PERSON STANDARD? THE SOCIAL IMPLICATIONS OF A 'COLORBLIND'[72] RULE OF LAW.

"The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clearcut fact."[73]

In the current jurisprudence on this topic, courts have continually dismissed defendants' complaints that the incriminating statements they made while they were receiving emergency medical care, without being given *Miranda*, were unconstitutional and thus inadmissible in a court of law.[74] In doing this, the courts overwhelmingly argue that no *Miranda* warning is required in

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[71] 401 N.W.2d 759, 771 (1987) (Abrahamson, J., dissenting).
[72] Erik Lillquist & Charles A. Sullivan, *The Law and Genetics of Racial Profiling in Medicine*, 39 HARV. C.R.-C.L. L. REV. 391, 392–94 (2004) (admitting that medical professionals are not colorblind and that "modern medicine has embraced the use of race" because failure to do so is a mistake as these professionals "no doubt will be influenced by the unconscious biases that plague American society").
[73] Miranda v. Arizona, 384 U.S. 436, 468–69 (1966).
[74] *See e.g.* Wilson v. Coon, 808 F.2d 688, 690 (8th Cir. 1987) ("A reasonable person would perceive this detention as imposed only for purposes of a medical examination, not a police interrogation. Detention for a medical examination is not a situation that a reasonable person would find inherently coercive in the sense required by Miranda."); People v. Carbonaro, 134 A.D.3d 1543, 1547 (N.Y. App. Div. 2015) ("[D]efendant was not in custody when he was questioned by the same deputy in the hospital trauma bay."); State v. Esser, 480 N.W.2d 541, 542 (Wis. Ct. App. 1992) (determining that despite the fact that the defendant's "injuries certainly limited his mobility and caused him

such situations, because the interrogations are not in fact custodial; the suspects are not in custody at the time of questioning.[75] However, the determination of whether a defendant is in-custody at the time of their interrogation is based on totality of circumstances.[76] It asks whether or not a reasonable person in the defendant's position would feel free to terminate the conversation and leave.[77] If the answer is no, the interrogation is in fact custodial in nature.

The reality in these emergency medical care cases is that identity of the defendant matters because not everyone in the U.S. believes that a medical care professional has a duty to the patient to provide care.[78] Medical care is taken for granted by dominant groups in the U.S. Meanwhile, other groups do not have such a luxury.[79] This is especially true for minority patients who become suspects as "[r]ace and ethnicity are constantly linked with different and poorer patterns of health access and treatment."[80] The reality, something a court should not pretend to be ignorant of, is that

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distress," because "these conditions were not the result of police conduct" the questioning was not custodial and thus the motion to suppress was properly denied).

[75] *See e.g.* United States v. Jamison, 509 F.3d 623,633 (4th Cir. 2007) ("The police posed questions to [the defendant] and restricted his freedom of action, but only to the degree necessary to investigate the crime. Their activities did not transform [his] hospital interview into a custodial interrogation. As [his] statements were not made under custodial interrogation, *Miranda* warnings were not required, and the statements should not have been suppressed.").

[76] Thomas v. Keohane, 516 U.S. 99, 100 (1995).

[77] *Id.*

[78] Monique Tello, *Racism and discrimination in health care: Providers and patients*, HARV. HEALTH BLOG (Jan. 16, 2017), https://www.health.harvard.edu/blog/racism-discrimination-health-care-providers-patients-2017011611015. ("Doctors take an oath to treat all patients equally, and yet not all patients are treated equally well."); *see also* Austin Frakt, *Race and Medicine: The Harm That Comes From Mistrust*, NY TIMES (Jan. 13, 2020), https://www.nytimes.com/2020/01/13/upshot/race-and-medicine-the-harm-that-comes-from-mistrust.html ("Put simply, people of color receive less care — and often worse care — than white Americans. Reasons includes lower rates of health coverage; communication barriers; and racial stereotyping based on false beliefs."); Aaron E. Carroll, *Doctors and Racial Bias: Still a Long Way to Go*, NY TIMES (Feb. 25, 2019), https://www.nytimes.com/2019/02/25/upshot/doctors-and-racial-bias-still-a-long-way-to-go.html ("Of course, there's the issue of mistrust on the patient side. African-American patients have good reason to mistrust the health care system; the infamous Tuskegee Study is just one example.").

[79] Khiara M. Bridges, *Implicit Bias and Racial Disparities in Health Care*, *in* THE STATE OF HEALTHCARE IN THE UNITED STATES, ABA HUMAN RIGHTS MAG. Vol. 43. No. 3 at 19–20, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/racial-disparities-in-health-care/ ("Black people simply are not receiving the same quality of health care that their white counterparts receive, and this second-rate health care is shortening their lives."); Robert Pearl, *Why Health Care Is Different If You're Black, Latino Or Poor*, FORBES (Mar. 5, 2015), https://www.forbes.com/sites/robertpearl/2015/03/05/healthcare-black-latino-poor/#58f982467869 ("African-Americans, Latinos and the economically disadvantaged experience poorer health care access and lower quality of care than white Americans. And in most measures, that gap is growing").

[80] Sidney D. Watson, *Race, Ethnicity and Quality of Care: Inequalities and Incentives*, 27 AM. J.L. & MED. 203, 205 (2001).

a reasonable person may be unsure as to whether the medical professionals will treat them with the same quality of care if they refuse to answer an officer's questions. Therefore, as *Miranda* was created to protect the most vulnerable in our society,[81] A reasonable person interacting with a law enforcement officer while receiving emergency medical care may not feel free to terminate the conversation and leave. Meaning the interrogation should be deemed custodial. Thus, at the very least a *Miranda* warning should be provided to the suspect.

VII. PROPOSED SOLUTION

"The defendant who does not ask for counsel is the very defendant who most needs counsel."[82]

To work on closing this loophole, society must mobilize not only the courts, but also attorneys, and lawmakers. Thus, the solution I am proposing is three-fold.

A. Role of The Courts

There is no doubt that the courts harness substantial power in working to close this loophole. The courts should expand what is considered "custodial" to represent the actual judicial intent behind *Miranda* and to also create a version of *Miranda* that requires officers to explain to suspects that their unwillingness to speak with police will in no way effect their medical treatment. Courts have ruled on the side of equity in the past, only to be overruled by higher courts which fear the implications of such equity. For example, in *State v. Clappes*, the Wisconsin Supreme Court struck down the appeal court's decision that the defendant's interrogation while receiving medical care was custodial, for fear that it had "the effect of creating a per se rule prohibiting police questioning of individuals while they are undergoing medical treatment for injuries sustained while engaging in potentially criminal activity."[83]

[81] Miranda v. Arizona, 384 U.S. 436, 472 (1966).
[82] *Id.*
[83] 401 N.W.2d at 761.

Despite the reversal by the Wisconsin Supreme Court, courts should continue to make these decisions in favor of equity and risk being overturned by higher courts. If lower courts stop fighting for equity, the change will never come. Meanwhile, intermediate and higher courts must consider what overturning a lower court decision, as the court did in *State v. Clappes*, means for the rule of law. If the law is being abused to coerce vulnerable suspects to make incriminating statements, will it ever truly be respected? Will U.S. criminal justice institutions be regarded as just and fair, especially by marginalized groups, who are being judged by a standard of reasonableness that does not fit their identity? To ensure fairness, courts must require that either a *Miranda* warning needs to be delivered every time police question someone undergoing emergency medical care, or some other instruction needs to be delivered indicating that their refusal to speak with police will not impede the quality of such care. Without such an instruction incriminating testimony must be made inadmissible in a court of law.

B. Role of Attorneys

In addition to the courts, attorneys play an important role in closing this loophole as "[m]embers of the Bar are guardians of the Rule of Law."[84] If attorneys do not continue to fight for their clients and make these arguments, the necessary changes will never happen. Even if courts in a particular jurisdiction have not yet barred statements obtained from medical emergency interrogations absent *Miranda*, such interrogations violate the spirit of the Fifth Amendment and *Miranda*. Further, defense attorneys have a duty to zealously defend their clients by moving to

[84] Michael W. McKay, *Defending and Upholding the Rule of Law*, 52 LA. B.J. 90, 90 (2004) ("While others seek to tear down or limit the Rule of Law, our goal must be to strengthen and maintain it. While others seek to act and profit while avoiding or limiting their responsibilities, we seek to maintain and broaden access to our courts.").

exclude evidence obtained in this way.[85] If attorneys keep bringing the fight to the courts over and over again, it will eventually work (it actually already has in rare instances).[86]

C. Role of Lawmakers

Legislatures also have an interest in protecting their communities' rights against self-incrimination under the Fifth Amendment and their State Constitutions. Although interpreting the law is primarily the responsibility of the judiciary, the rule of law is strengthened when legislatures pass clarifying legislation that closes loopholes.[87] Lawmakers should work to ensure defendants know their right to care is not dependent on their willingness to speak with the police because "[i]njured people, themselves, are rarely in a position to advocate for their own medical and legal needs during emergency care."[88]

VIII. CONCLUSION

"The privilege against self-incrimination secured by the Constitution applies to all individuals."[89]

The rule of law only holds power if it is respected. In the case of interrogations during emergency medical care with no *Miranda* warning, the rule of law is being circumvented by over-zealous police officers. When courts admit testimony obtained this way by equivocating over the

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[85] MODEL CODE OF PROF'L CONDUCT r. 1.3 cmt. 1 (AM. BAR ASS'N 2020) ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's clause or endeavor.").

[86] *See e.g.*, State v. Lowe, 81 A.3d 360, 366 (ME 2013) (affirming suppression of evidence where defendant was hospitalized and questioned in her hospital room without *Miranda* even though she was considered a suspect in a criminal case); United States v. Trejo-Islas, 248 F. Supp. 2d 1072, 1078 (D. Utah 2002) (suppressing alien defendant's statements which were made to an INS officer because she interrogated without *Miranda* while he was in a hospital bed and unable to leave as he just underwent an accident in which his vehicle rolled over several times).

[87] The history of voting rights since the Fifteenth Amendment provides a clear example. Although the Fifteenth Amendment itself prohibits the denial of suffrage based on race or color, a number of jurisdictions had implemented voting requirements, such as literacy tests, that tended to primarily affect African Americans. U.S. CONST. AMEND. XV. In *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959), the U.S. Supreme Court upheld literacy tests as constitutional, provided they were not used for discriminatory purposes. This focus on intent left broad discretionary power in the hands of local officials, making it nearly impossible to enforce the rule of law. The tests were then prohibited by Congress in the Voting Rights Act of 1965, which also strengthened the rule of law by subjecting changes in local voting requirements to court review for discriminatory effects. Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.

[88] Jacoby, *supra* note 69.

[89] Miranda v. Arizona, 384 U.S. 436, 472 (1966).

word "custody," they trivialize the rule of law by allowing decisions about life and liberty to rest on an imperceptible difference between the ability to leave and the freedom to leave. Accordingly, belief in the right against self-incrimination and a broader belief in the rule of law cannot gain traction in marginalized communities until major loopholes which allow the police "to take advantage of indigence in the administration of justice" are closed.[90] Therefore, the courts must expand what is considered "custodial" to represent the actual judicial intent behind *Miranda*. This does not require the courts to expand the rights of the accused, it requires them to close a loophole in an existing right.

[90] *Id*.