# 1 Introduction

> *Legal rules are addressed to audiences. If the rules are vague, the audiences suffer. The audiences for the involuntary confession rule are police officers who interrogate and obtain confessions, lawyers who try criminal cases, and judges who decide them. Of these three audiences, the lawyers suffer least. They have the advantage of being advocates . . . The police and judges, on the other hand, are in a different situation. The police have to decide during the course of an interrogation what tactics to use and how far to go with them. Judges have to decide whether the police went too far. If the law governing these decision-making processes is vague, and it is, these processes will suffer.*
>
> (Herman, 1987)

From the moment a suspect is taken into custody,[1] police interrogation may begin. What happens once a suspect is detained may differ between suspects and jurisdictions, but there are several steps that are attendant to custody in the United States. Many of these steps, and what they involve, are not readily known to the general public: a problem that permeates most contexts mediated by the law and which often makes lay persons dependent on an attorney (Dunlap, 2014). Some of these steps include how long a person may be held in custody and when a person may be able to make a phone call. Unlike what is portrayed in popular culture, the "automatic phone call" is closer to a myth than to reality.

The lack of knowledge of what transpires in custodial settings contributes significantly to the asymmetry of knowledge between law enforcement and suspects. This extends to the Miranda warning, per *Miranda* v. *Arizona* (1966). The law states that suspects must be Mirandized and they must waive their rights prior to the start of custodial interrogation. The Miranda rights are a prophylactic measure aimed at curtailing undue coercion in custodial settings. An example of the Miranda warning is illustrated in Excerpt 1.1.

[1] An individual must be legally "in custody" to receive the benefits of Miranda. The Miranda warnings are only required for statements made during custodial interrogation. Of note, persons who are in custody may, or may not, be under arrest. Being lawfully detained is sufficient to meet the custody requirement of Miranda. Hence, herein the term suspect will be used to refer to someone in custody who has been read their Miranda rights prior to the start of custodial interrogation.



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**Excerpt 1.1**

1 Det. B. Toms: All right, you know this by heart, but I'm going to go ahead and read it to you anyway . . .. You have the right to remain silent. Anything you say can be used against you in court. You have the right to an attorney before and during questioning. If you cannot afford an attorney, one will be appointed for you, by the court, free of charge, before questioning. Do you understand the rights I've just explained to you?
2 Petitioner: Yes I do.

(*Woosley* v. *McEwen*, 2014)

During the reading of the Miranda rights, suspects are also often asked to initial (after each right) and sign a waiver form that acknowledges having been Mirandized.

Post-Miranda rulings reframed the invocation of rights stage of a custodial interrogation, by way of exceptions and/or added limitations to the invocation of rights. Exceptions to *Miranda* include: booking phase (*Rhode Island* v. *Innis*, 1980), jailhouse informant (*Illinois* v. *Perkins*, 1990), and public safety exceptions (*New York* v. *Quarles*, 1984). The booking phase, for example, is relevant to invocations for counsel that occur prior to (or in the process of) the reading of Miranda rights. During this stage, suspects may complete a pre-waiver invocation and depending on the legal interpretation, it may not prevent officers from conducting an interrogation, with the possible exception, for example, that the interrogation was imminent (see Skelton & Connell, 2004). In *Davis* v. *United States* (1994), the Court created a new standard requiring invocations for counsel to be unequivocal/unambiguous (albeit undefined) to cease an interrogation, as determined by law enforcement (see Chapter 2 for a comprehensive discussion). Adding to the limitations and exceptions noted above, the evidentiary uses of a confession may also be Miranda-exempt. The Supreme Court of the United States ruled in *Harris* v. *New York* (1971) that a confession obtained in violation of the Miranda standards may nonetheless be used for purposes of impeaching the defendant's testimony; that is, if the defendant takes the stand at trial and the prosecution wishes to introduce the defendant's statements to attack the defendant's credibility.

The variety of factors that may affect suspects invoking counsel or their invocation having legal standing are key to understanding the role of the law in police officers' investigation of a crime. In police interrogations, where the goal is often to obtain a suspect's statements, the law may facilitate this process. Hence, the book explores the legal moorings of the Miranda rights, focusing on the invocation for counsel stage of police interrogation. The analysis is rich,

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taking a legal, discursive, and strategic approach to the examination of exercising Miranda rights in a custodial setting in the United States. The discussions range from qualitative to statistical, to game theoretic. The corpus for the study is large and includes federal criminal court cases, ranging from 1966 to 2021, that run the gamut of the federal court system.

## 1.1 The Legal Foundation of the Corpus: The Federal Court System and *Miranda* Case Law

The book examines 301 criminal federal court cases, including case law and (some) unpublished[2] opinions, that have ruled on the legal standing of defendants/petitioners' Miranda invocations for counsel. The corpus provides a window into the rationale behind these federal court rulings, while not dismissing possible unknowns that may not be captured by the corpus, such as (the number of) cases addressing potential *Miranda* violations that do not make it to the appeals level. Although this may be a consideration, the focus of the analysis is on the connection between the courts' historical interpretation of the legal standing of a suspect's invocation for counsel and the strategies interrogators use to conduct an interrogation. Hence to contextualize the corpus, this section starts with a brief overview of the federal court system that reviewed the cases. This examination will provide insights into the inner workings of the federal courts and the role of the judges in the federal court system. The section also provides a brief overview of the common grounds for appeals in cases reviewing potential Miranda violations, as well as definitions for the terminology often referred to in the chapters. A comprehensive analysis of the variables that comprise the corpus, including the statistical treatment of the corpus, will be provided in Chapter 5.

### *1.1.1 The Federal Courts*

Federal courts are courts of limited jurisdiction, meaning they can only hear cases authorized by the United States Constitution or federal statutes. Federal Courts can decide any case that considers federal law, including constitutional law, federal crimes, some military law, and so on. Federal trial courts have also been established for a few subject-specific areas (e.g., bankruptcy, taxation, claims against the federal government, and international trade). The corpus includes federal courts at all levels of the federal court system and in a multitude of regions in the United States.

[2] Unpublished opinions, unlike published ones, are decisions of the court that are not available for citation as precedent. The court deems these types of opinions to have insufficient precedential value. For the purposes of the research, this distinction is irrelevant. Both types of opinions are adjudicated, appealable, and have a direct impact on a defendant's case.

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The federal district court is the starting point for any case arising under federal statutes, the Constitution, or treaties. The federal district courts are the trial courts in the federal court system. In these courts, there are district and magistrate court judges. District court judges are nominated by the President of the United States and confirmed by the United States Senate for a life term, per Article III of the Constitution. District courts handle both civil and criminal trials within the federal court system. Magistrate judges can oversee a variety of actions in both criminal and civil cases. In criminal cases, they can oversee certain motions, such as motions to suppress evidence. Unlike United States district judges, who are nominated by the President and confirmed by the United States Senate for lifetime tenure, magistrate judges are appointed for a specified period by a majority vote of the federal district judges of a particular district.

Once a case has been adjudicated at the federal district court level, the case can be appealed to a United States court of appeal. The ninety-four district courts are organized into twelve circuits, or regions. Each circuit has its own Court of Appeals that reviews cases decided in United States District Courts within the circuit. The United States Court of Appeals for the Federal Circuit raises the federal appellate courts to thirteen.[3] Each circuit court has multiple judges. Circuit court judges are appointed for life by the President of the United States and confirmed by the United States Senate. Any case may be appealed to the circuit court once the district court has finalized a decision (some issues can be appealed before a final decision by making an "interlocutory appeal"). Appeals to circuit courts are first heard by a panel, consisting of three circuit court judges. Parties file "briefs" to the court, arguing why the trial court's decision should be "affirmed" or "reversed." After the briefs are filed, the court may schedule "oral argument" in which the attorneys come before the court to make their arguments and answer the judges' questions. The entire circuit court may consider certain appeals in a process called an *en banc* hearing: a case heard before all the judges of a court. *En banc* opinions tend to carry more weight and are usually decided only after a panel has first heard the case. Once a panel has ruled on an issue and "published" the opinion, no future panel can overrule the previous decision. The panel can, however, suggest that the circuit take up the case *en banc* to reconsider the first panel's decision.

Outside the Federal Circuit, a few courts have been established to deal with appeals on specific subjects, including military matters (United States Court of Appeals for the Armed Forces). In military courts, judges are commissioned officers of the armed forces who are members of the bar of a Federal court, or a member of the bar of the highest court of a State, and who are certified to be

[3] See www.uscourts.gov/.

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qualified for duty under section 826 article 26 of the Uniform Code of Military Justice.

The book's corpus includes some cases heard by military courts, such as the United States Army Court of Military Review and the United States Air Force Court of Military Review. This part of the corpus is small, yet worth noting given the defendants were read their Miranda rights and subjected to interrogation. The United States Court of Appeals for the Armed Forces, which was previously named the Unites States Army Court of Military Review, is also part of the corpus. The United States Court of Appeals for the Armed Forces exercises worldwide appellate jurisdiction over members of the armed forces on active duty and other persons subject to the Uniform Code of Military Justice. The court is composed of five judges appointed by the President and confirmed by the Senate for fifteen-year terms. Cases on the court's docket address a broad range of legal issues, including constitutional law, criminal law, evidence, criminal procedure, ethics, administrative law, and national security law. Decisions by the court are subject to direct review by the Supreme Court of the United States.

The Supreme Court of the United States (herein the Court) is the highest court in the United States judicial system. Article III of the United States Constitution created the Court and authorized Congress to pass laws establishing a system of lower courts. The Court has the power to decide appeals on all cases brought in federal court or those brought in state court but dealing with federal law. The members of the Court are referred to as "justices" and they are appointed by the President and confirmed by the Senate for a life term. There are nine justices on the Court – eight associate justices and one chief justice. The chief justice acts as the administrator of the court and is chosen by the President and approved by Congress. Rulings at the Court level are done by vote and include, among others, majority opinion, dissenting opinion, concurring opinion, and *per curiam* (an opinion issued by the Court rather than by specific justices).

The corpus includes an array of opinions and rulings that provide insights into the judges' and justices' view of *Miranda* and its constitutional standing. The rationale of the judges' and justices' opinions, herein collectively judges, through time, also reveals the divide in the federal courts regarding *Miranda* and whether that divide has evolved in the course of over five decades and/or is mediated by factors, such as presidential appointment, case law post-*Miranda*, level and/or region of the court, among other factors. These will be explored further in Chapters 2 and 5.

### *1.1.2 Grounds for Criminal Appeals in Federal Courts*

In the United States, after a district court has convicted and sentenced a criminal defendant, the defendant may file an appeal to a higher court, asking it to review the lower court's decision for legal errors that may have affected the

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outcome of the case. The appellate[4] court may reverse the lower court's decision in whole or in part. If the appellate court denies the appeal, the lower court's decision stands.

Possible grounds for appeal in a criminal case include legal error, juror misconduct, and ineffective assistance of counsel. Legal errors may result from improperly admitted evidence, incorrect jury instructions, or lack of sufficient evidence to support a guilty verdict. They may also include an error in the judge's interpretation of constitutional law, such as a violation of Miranda. If the errors would not have changed the outcome, they are considered harmless, and the conviction will stand. Of note, an appeal is not a retrial or a new trial of the case. The appeals courts do not consider new witnesses or new evidence.[5] Appeals in either civil or criminal cases are usually based on arguments that there were errors in the trial procedure or errors in the judge's interpretation of the law.

In the corpus, numerous cases petitioned the court for a writ of *habeas corpus*. This is a writ of inquiry, issued to test the reasons or grounds for restraint and detention. The law of *habeas corpus* is deeply rooted in Anglo-American jurisprudence and adopted in the United States:

> In 1833 Justice Story noted that the "whole structure, of our present jurisprudence stands upon the original foundations of the common law." . . . More specifically, Chief Justice Marshall wrote that "for the meaning of the term habeas corpus, resort may unquestionably be had to the common law." . . . Habeas corpus, as an integral part of that common law tradition, occupied an important place in the developing legal system of the American nation. (McFeeley, 2016, p. 590)

The writ of *habeas corpus* stands as a safeguard against imprisonment of those held in violation of the law, by ordering the responsible enforcement authorities to provide valid reasons for the detention. The writ, hence, is designed to obtain immediate relief from unlawful imprisonment. It may be used as a post-conviction remedy for state, federal, and military prisoners who challenge the legality of their detention. The purpose of the writ is not to determine the guilt or innocence of a prisoner, but to test the legality of a prisoner's current detention.

There are many elements to *habeas corpus* cases with the book focusing on Miranda violations. Another element that is also part of the legal rulings that comprise the corpus is failure to move to suppress. In the United States, a motion to suppress is a request made by a criminal defendant in advance of a criminal trial asking the court to exclude certain evidence from the trial, such

[4] Federal appellate courts may also hear cases that originate in state courts and that involve claims that a state or local law/action violates rights guaranteed under the Constitution.

[5] www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-courts-appeals#:~:text=How%20Appellate%20Courts%20are%20Different,do%20not%20hear%20witnesses%20testify.

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as statements made during a custodial interrogation. Failure to read Miranda rights and suspects not voluntarily waiving rights, such as the right to counsel and/or the right to silence, are also grounds for statements to be suppressed.

Successful appeals, however, are not common. As noted previously, appellate courts give the trial court great latitude in conducting trials and often will only overturn verdicts that contain clear, serious errors of law. Hence, defendants/petitioners carry a heavy burden in proving that errors of law, such as admitting unlawfully obtained statements, were serious and not harmless. If an appellate court can find any reasonable argument that the error would not have changed the verdict, and hence was harmless, it will most probably not reverse the ruling. This outcome is observed often in the corpus with motions to suppress evidence. Even in cases in which the judge ruled that the defendant/petitioner invoked counsel unequivocally and the statements were obtained illegally, the introduction of such statements at trial was often considered harmless error. These cases, in particular, show the importance of addressing the shortcomings in the law, regarding what constitutes an unequivocal/unambiguous invocation for counsel and the role of law enforcement (and their training) in making this determination. Relying on the appeals process to reverse an error in the application of the law, as this book will show, will not resolve the legal quandary of invoking rights, specifically the right to counsel, and will fall short in addressing significant limitations in the protection of Miranda rights.

## 1.2 The Law and Police Interrogation in the United States

Questioning suspects provides officers with a unique opportunity to obtain what is generally held by the judicial system as one of the most important pieces of evidence in a criminal case: a first-person account of the events in question. As Heydon (2012) describes: "The investigative interview is a 'central and significant aspect of the investigative and criminal justice process … '. The significance of what is a relatively short interaction is matched by its singularity: opportunity, in the form of an evidentiary interview, rarely knocks twice" (pp. 101–102). Snook et al. (2010) further highlight the importance of police interviewing in an investigation by noting that: "Police interviewing is arguably the most fundamental aspect of any criminal investigation because it elicits the information from witnesses, victims, and suspects that is required to successfully resolve cases" (p. 204).

In the United States, custodial police-suspect exchanges occur in the context of an interrogation where often the main objective of the talk is to obtain a statement rather than gather information (Mason, 2020). Behavioral analysis approaches, such as the Reid technique (Inbau et al., 2005), have been widely used in United States policing since the 1960s. This technique places a

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premium on obtaining statements from suspects, albeit not through physical force but through psychological trickery, deception, and pressure. All of which, to an extent, are legally acceptable in the United States. Chapter 3 discusses this method, as well as other interviewing techniques, such as those highlighted in the High-Value Detainee Interrogation Group (HIG) report (2016), that are used by some law enforcement agencies (e.g., FBI) in the United States. These techniques, albeit they may differ in their approaches and goals, are all guided by what the law allows.

One of the main obstacles to obtaining a statement from suspects, irrespective of technique, is the Miranda rights. By law, police officers must recognize suspects' right to silence and right to counsel. Yet, during police interrogation the recognition of a valid invocation for counsel, such as an unequivocal/unambiguous one, often lies solely with the police interrogator, particularly since the *Davis* v. *United States* (1994) ruling (see Ainsworth, 1993, 2008, 2012, 2020; Leo, 2001; Mason, 2013, 2016, 2020; Mosteller, 2007; Weisselberg, 2008). As Chapter 2 discusses extensively, from the judges' perspective, when police officers have to decide whether a suspect "in fact wants a lawyer" (*Davis* v. *United States*, 1994) the decision either affects the important work of police investigators or places an undue burden on suspects who invoke their constitutional rights. The judiciary's historical interpretation of custodial suspects' invocation of rights, although often framed as a balancing act between protecting personal rights and police's ability to investigate crime, inevitably fails to satisfy these competing interests. Through time the "balance" seems to have tipped toward facilitating the custodial interrogation of suspects.

Of note, the right to silence and the right to counsel are part of the Miranda rights, yet this book will focus solely on the right to counsel. The choice to focus the analysis on invocations for counsel, excluding the other Miranda warning, is twofold. First, there are linguistic considerations. An invocation for counsel, unlike an invocation for silence, has a perlocutionary effect embedded in the invocation. That is, the suspect has an expectation that the addressee will recognize the speech act as a request for counsel or, at the least, as a desire to move the conversation forward. In contrast, invoking the right to silence often does not exhibit the varied linguistic functions or formulations observed in invocations for counsel.

Second, there are legal considerations. Once a person invokes counsel, at any point in the interrogation, all questioning must cease, unless the person waives counsel or initiates conversation with the police. A person's invocation for silence, however, does not automatically require the police to stop questioning under *Miranda*: "To invoke the right to remain silent, one must make a 'clear, consistent expression of a desire to remain silent'" (*United States* v. *Thompson*, 1989). The key statement in this portion of the ruling is "clear,

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consistent expression." That is, the person interrogated cannot invoke silence for some questions and answer others. The legal standard for this type of invocation, hence, requires a distinct analysis, which will be the object of future research.

## 1.3 The Strategic Linguistic Game of Police Interrogation: Invoking Counsel in Custodial Settings

The process of obtaining information from a suspect during police interrogation relies on strategic action. Chapter 4 will examine the discursive features of suspects' invocations for counsel during custodial interrogation, as well as the sequences of talk that follow the suspects' invocations. The research presented in this chapter challenges the law's current, and common, interpretation of indirect invocations as equivocal ones. The judiciary's view of language use, coupled with current police interrogation training, has provided a space in which police officers do not have to share a mutuality of understanding or common ground with suspects in order to move the conversation forward. In police interrogations, there only needs to be a semblance of understanding that keeps the conversation "going," but in actuality blocks one speaker (the suspect) from moving their discursive agenda (i.e., invoke counsel).

For this part of the analysis, Chapter 4 looks at how sequences of talk during the invocation of rights stage of custodial interrogation represent a type of invocation game (term coined and modeled by Mason & Mason, 2021), or hypergame (Bennett, 1980), where one player (suspect) is strategizing in a manner consistent with how speakers attempt to reach mutuality of understanding in conversation, whereas the other player (the interrogator) is simply responding, based on their training, in a manner that appears to address the other players' turns of talk while invalidating the common knowledge assumption (Varsos et al., 2021). This type of discursive strategy benefits from the application of game theory, specifically hypergame theory. In a hypergame of manipulation, if at least one player is aware of the inconsistency of beliefs of the opponent player's preferences, they can take advantage of this discrepancy of information and attempt to deceive their opponents into changing their preferences (Gharesifard & Cortés, 2010, 2012).

Modeling a high stakes discursive event, such as a police interrogation, as a type of game is a novel approach that has not been applied prior to this research to institutional discourse, or other types of discursive events, where one of the parties, unbeknownst to the other, is not observing common ground purposely to push a discursive agenda. In this strategic, discursive game suspects may invoke counsel in a manner that is ineffective in ending a police interrogation. This creates opportunities for police interrogators to play an invocation game based on manipulation (a type of discursive passive-aggression) aimed at altering the

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behavior and preferences of the suspect who is (rationally) not recognizing the game as formed. Hypergame theory will provide a model to examine the police interrogators' and suspects' linguistic moves.

Chapter 5 will part from the invocation game of police interrogation to examine the effect of multiple variables in the judicial rulings, including invocation for counsel (types), linguistic formulation of invocations for counsel, and the presidential appointments of the ruling judges, among other variables. The statistical analysis will provide further insights into the possible effect changes to the law, from *Miranda* to *Davis*, have had in the treatment of invocations for counsel in custodial interrogation, and by extension in the establishment of the invocation game played across police stations and other custodial settings in the United States.

## 1.4 Moving Forward: Tackling Police Interrogation and Legal Reforms in the United States

Addressing the connection between the law, interviewing techniques, and language use in custodial settings requires a next move – one that does not facilitate an invocation game, but rather facilitates the investigative functions of police interviewing while protecting constitutional rights. To accomplish this task, three areas need to be addressed: (1) police interrogation reform, (2) treatment of vulnerable populations, such as juveniles and nonnative (L2) speakers of English, and (3) changes to *Miranda* case law, in particular to the *Davis* ruling.

Chapter 6 discusses how countries in Europe, such as the United Kingdom and Norway, and other jurisdictions outside of Europe and the United States, such as Australia and Canada, have approached, with varying degrees of success, police interrogation reform. In the UK, for example, the Police and Criminal Evidence Act of 1984 (PACE) was introduced as a response to a growing perception that the public had lost confidence in the English criminal justice system, largely due to cases that highlighted unacceptable police behavior. PACE has been a pivotal point for police reform, and by extension police interrogation reform (e.g., PEACE method), in the United Kingdom and other countries who opted to adopt this model and adapt it to their legal systems.

The United States has also had its share of police scandals and calls for justice reform. These calls often have not taken enough traction, despite their popularity with the public. Of note, unlike the PACE legislation in the UK, none of these calls for justice reform in the United States have included or, more importantly, led to substantive, nationwide, reforms in the interviewing of custodial suspects, including juveniles and other vulnerable populations. Behavior Analysis techniques still appear to be commonly used in police stations across the United States (see Chapter 3). The treatment of L2 custodial

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suspects has also seen limited change. As Chapter 6 discusses, this is highly problematic since interrogators may assess without proper training a suspect's proficiency in the institutional language (e.g., English) and/or linguistically mediate a police interrogation (see Pavlenko, 2008).

In addition to changes in police interrogation techniques and treatment of vulnerable populations, Chapter 6 also examines the need for legal reforms. The *Davis* ruling changed the landscape of the law in the United States. *Miranda* did not define it, but *Davis* put the police in charge of making the determination of what constitutes an unequivocal invocation for counsel without considering the connection between the goal of police interrogation (i.e., obtain a custodial suspect's statements) and the law. Chapter 6 will examine some of the recommendations that have been presented in the literature, including (1) police requiring clarification of "equivocal" invocations for counsel, per the *Davis* concurring decision, (2) requiring the presence of counsel at the onset of a custodial interrogation, and (3) putting in place additional measures that test the voluntariness of a statement, such as a pretrial assessment of the reliability of confession evidence, and securing corroborating evidence for a confession.

Chapter 6 also discusses the Court revisiting the *Davis* ruling and/or the possible role of legislation aimed at protecting custodial suspects' rights from being violated, such as requiring the presence of counsel during police interrogation. These measures, in particular those initiated by the Court, seem unlikely in light of the recent Court ruling, *Vega* v. *Tekoh* (2022), which, albeit a civil case, highlights the justices' past and present disparate view of what constitutes a constitutional right. To provide some background, in *Tekoh*, the plaintiff (Tekoh) claimed that his constitutional rights were violated when the police interrogated him without reading him his Miranda rights and his statements were admitted against him at trial. Tekoh, who was found not guilty by a trial jury, proceeded to sue the police officer, Vega, and seek damages under 42 U.S. C. §1983 for alleged violations of his constitutional rights. Section 1983 "provides a cause of action against any person acting under color of state law who 'subjects' a person 'to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws'" (*Vega* v. *Tekoh*, 2022). Although the Ninth Circuit ruled that the use of an un-Mirandized statement against a defendant in a criminal proceeding violates the Fifth Amendment and may support a §1983 claim against the officer who obtained the statement, the Court disagreed. Justice Alito, who delivered the majority opinion for the Court, argued that: "Because a violation of Miranda is not itself a violation of the Fifth Amendment, and because we see no justification for expanding Miranda to confer a right to sue under §1983, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion."

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This view that a violation of Miranda is not in itself a violation of the Fifth Amendment raised questions among the dissenting justices. Justice Kagan, who delivered the dissenting opinion, argued at page 2108 that:

> The Court's decision in Miranda v. Arizona, … affords well-known protections to suspects who are interrogated by police while in custody. Those protections derive from the Constitution: Dickerson v. United States tells us in no uncertain terms that Miranda is a "constitutional rule," … And that rule grants a corresponding right: If police fail to provide the Miranda warnings to a suspect before interrogating him, then he is generally entitled to have any resulting confession excluded from his trial. . . . From those facts, only one conclusion can follow – that Miranda's protections are a "right []" "secured by the Constitution" under the federal civil rights statute. . . . Yet the Court today says otherwise. It holds that Miranda is not a constitutional right enforceable through a §1983 suit. And so it prevents individuals from obtaining any redress when police violate their rights under Miranda.

The case noted in *Tekoh*'s dissenting opinion, *Dickerson* v. *United States* (2000), is particularly insightful, since the Court held that "Miranda and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts."

The dissenting justices' perspective on the constitutionality of *Miranda*, coupled with concerns over the effectiveness of the suppression remedy raised by the majority in *Tekoh*, raises additional questions about a defendant's ability to "make right" a violation of Miranda procedures, as reflected in Justice Kagan's arguments:

> Today, the Court strips individuals of the ability to seek a remedy for violations of the right recognized in Miranda. The majority observes that defendants may still seek "the suppression at trial of statements obtained" in violation of Miranda's procedures . . . But sometimes, such a statement will not be suppressed. And sometimes, as a result, a defendant will be wrongly convicted and spend years in prison. He may succeed, on appeal or in habeas, in getting the conviction reversed. But then, what remedy does he have for all the harm he has suffered? (*Vega* v. *Tekoh*, 2022, p. 2111).

The recent ruling in *Tekoh*, at its core, is a reflection of the conflicting stance of the Court regarding the constitutionality of *Miranda*. This conflicting view gave us the dissenting opinion in *Miranda* and the majority opinion of post-*Miranda* rulings, such as *Davis*, that limited the invocation of the right to counsel and as such enabled the invocation game of police interrogation observed in the corpus. As the book argues, at present there is no legal incentive for law enforcement to honor a custodial suspect's invocation of the right to counsel, particularly one that is deemed equivocal/ambiguous. Furthermore, the current legal perspective on police interrogation in the United States seems inconsistent with the general sentiment of *Miranda* and by extension limits the possibility of enacting much needed police interrogation reforms in the United States. The latter will require the Court revisiting the *Davis* ruling and/or

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legislative reforms that lead to comprehensive police interrogation reform that addresses the needs of a variety of custodial suspects. This is yet to be accomplished, but this book aims to show a new perspective to undertake much needed changes to the law and subsequently to the manner in which suspects' invocations for counsel are treated in custodial settings in the United States.

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