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Constitutional Law-in-Home Interrogation in a Police-Dominated Atmosphere Ruled Custodial Requiring Miranda Warnings-United States v. Craighead, 539 F.3D 1073 (9th Cir. 2008)

Steven Vallarelli

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**CONSTITUTIONAL LAW–IN-HOME
INTERROGATION IN A POLICE-DOMINATED
ATMOSPHERE RULED CUSTODIAL REQUIRING
MIRANDA WARNINGS–UNITED STATES V.
CRAIGHEAD, 539 F.3D 1073 (9TH CIR. 2008)**

The United States Constitution protects suspects of criminal investigations against coerced self-incrimination.¹ The United States Supreme Court has ruled that law enforcement officers must notify suspects of these constitutional rights prior to any custodial interrogation.² A suspect is considered “in custody” if he is either officially taken into police custody or significantly deprived of his freedom of movement.³ In *United States v. Craighead*,⁴ the United States Court of Appeals for the Ninth Circuit was faced with the question of whether an in-home interrogation of a suspect in a police-dominated environment was “custodial” and required a reading of a suspect’s rights as guaranteed by *Miranda v. Arizona*.⁵ The court ruled that where a suspect’s home has become a police-dominated environment, the subsequent interrogation is custodial and *Miranda* warnings are required.⁶

¹ See U.S. CONST. amend. V. “No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law” *Id.*

² See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). In *Miranda*, the Court considered four separate cases in which police placed individuals in custody, subjected them to prolonged incommunicado interrogations, and ultimately extracted confessions. *Id.* at 456-58. The Court ruled that such statements are inadmissible at trial unless the government proves the defendant was informed that: (1) he has the right to remain silent; (2) any statements may be used against him; and (3) he has the right to an attorney. *Id.* at 478-79; see also *Dickerson v. United States*, 530 U.S. 428, 440 (2000) (ruling safeguards required by *Miranda* Court are constitutional in nature); 2 WAYNE R. LAFAVE, CRIMINAL PROCEDURE § 6.6(e) (3d ed. 2007) (discussing reasoning and application of *Miranda* in criminal justice system).

³ See *Miranda*, 384 U.S. at 444 (defining custodial interrogation). In *Miranda*, the Court was particularly concerned with law enforcement officials interrogating suspects in isolated environments. *Id.* at 445. The Court considered isolation one of the “salient features” of the coercive tactics it was attempting to address. *Id.*

⁴ 539 F.3d 1073 (9th Cir. 2008).

⁵ See *id.* at 1077 (describing issue presented to court). This was an issue of first impression for the Ninth Circuit. *Id.* According to the *Craighead* court, the question was “whether a reasonable person in [the defendant]’s position would have felt deprived of his freedom of action in any significant way, such that he would not have felt free to terminate the interrogation.” *Id.* at 1082.

⁶ See *id.* at 1077 (suppressing *Craighead*’s self-incriminating statements).

On July 13, 2004, Special Agent Robin Andrews (“SA Andrews”) of the Federal Bureau of Investigation (“FBI”) conducted undercover surveillance of a peer-to-peer file-sharing network in an attempt to uncover online distribution of child pornography.⁷ SA Andrews successfully downloaded two images of “prepubescent females in sexually explicit positions” from an individual user with a specific IP address by using search terms associated with child pornography.⁸ SA Andrews subsequently traced the IP address to Ernest Craighead’s (“Craighead”) residence on Davis-Monthan Air Force Base in Tucson, Arizona, and obtained a warrant to search the home on July 26, 2004.⁹

SA Andrews executed the search warrant at 8:40 A.M. on July 27, 2004, accompanied by seven other law enforcement officers from three different agencies.¹⁰ Upon entering the home, she introduced herself to Craighead and informed him that: (1) he was not under arrest; (2) he was free to leave; and (3) any statements he made were voluntary.¹¹ SA Andrews and Detective Jeff Englander then brought Craighead to a storage shed behind the house, escorted him inside, locked the door, and proceeded to question him for twenty to thirty minutes.¹² Craighead was never read his *Miranda* rights and he eventually admitted to downloading and storing child pornography.¹³

Craighead was indicted three months later in district court for: (1)

⁷ See *id.* at 1077-78 (reiterating facts surrounding Craighead’s indictment). SA Andrews searched the LimeWire network using terms associated with child pornography. *Id.*

⁸ See *id.* at 1077-78 (describing clandestine search for illegal files). SA Andrews also attempted to download a third sexually explicit image from the IP address but was unsuccessful due to the high demand for the file. *Id.*

⁹ See *Craighead*, 539 F.3d at 1078. The address of the residence was obtained through a subpoena of Cox Communications, owner of the IP address. *Id.* Craighead was an “electronic warfare technician” for the U.S. Air Force. *Id.* at 1077.

¹⁰ See *id.* at 1078. The force executing the search warrant was comprised of “five FBI agents, a detective from the Pima County Sheriff’s Department, and two members of the [Air Force Office of Special Investigations].” *Id.* Air Force Sergeant Mike Ramsey, Craighead’s associate, also accompanied the officers to provide “emotional support” for Craighead. *Id.* All law enforcement officers carried firearms (some unholstered), and some wore bulletproof vests. *Id.*

¹¹ See *id.* at 1078 (describing facts surrounding search and interrogation). Craighead later testified that he did not feel free to leave the house because he was uncertain as to whether SA Andrews had authority over the various officers from the different agencies. *Id.* at 1079.

¹² See *id.* at 1078. SA Andrews later described the questioning as voluntary. *Id.* at 1078. However, no one else was permitted inside the shed, and Detective Englander, wearing a flack jacket and firearm, stood with his back to the shed’s only exit. *Id.*

¹³ *Id.* at 1079. SA Andrews later testified that, prior to questioning, she typically reiterated to suspects their right to stop the interrogation at any time, though she could not recall doing so with Craighead. *Id.* at 1078-79. FBI agents found nineteen movies and fifteen images depicting child pornography on Craighead’s computer hard drive and loose storage media. *Id.* at 1079.

transportation and shipping of child pornography; and (2) possession of child pornography.¹⁴ In February 2006, Craighead filed a motion to suppress evidence illegally seized pursuant to *Franks v. Delaware*,¹⁵ and a motion to suppress statements taken in violation of *Miranda*.¹⁶ The district

¹⁴ See *United States v. Craighead*, 539 F.3d 1073, 1079 (9th Cir. 2008) (stating nature of charges brought against Craighead in November 2004 indictment); see also 18 U.S.C. §§ 2252(a)(1), (b)(1) (2006) (shipping child pornography); 18 U.S.C. §§ 2252A(a)(5)(B), (b)(2) (2006) (possessing child pornography).

Section 2252(a)(1) states:

Any person who knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction [of sexual exploitation of a minor], shall be punished as provided in subsection (b) of this section.

18 U.S.C. § 2252(a)(1) (2006). Section 2252(b)(1) provides:

Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

18 U.S.C. § 2252(b)(1) (2006). Section 2252A(a)(5)(B) punishes anyone who:

[K]nowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer.

18 U.S.C. § 2252A(a)(5)(B) (2006). Section 2252A(b)(2) provides:

Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

18 U.S.C. § 2252A(b)(2) (2006).

¹⁵ 438 U.S. 154 (1978).

¹⁶ See *United States v. Craighead*, 539 F.3d 1073, 1079-80 (9th Cir. 2008). Craighead argued in

court denied both motions and Craighead entered a conditional guilty plea to both counts that preserved his right to appeal the district court's denial of his *Franks* and *Miranda* motions on August 7, 2006.¹⁷ He was sentenced to 78 months of imprisonment followed by supervised release for life.¹⁸ On appeal, the Ninth Circuit affirmed the district court's denial of Craighead's *Franks* motion but reversed the district court's denial of the *Miranda* motion.¹⁹

The rights against self-incrimination enshrined in the Fifth Amendment of the U.S. Constitution are a fundamental part of the American criminal justice system.²⁰ However, prior to *Miranda*, law enforcement officers often intruded on or completely disregarded suspects' constitutional protections against self-incrimination.²¹ Officers routinely used physical and psychological abuse during incommunicado interrogations to extract confessions that were later used in court to prosecute defendants.²²

his motion to suppress illegally seized evidence that he was entitled to an evidentiary hearing under the holding of *Franks* to determine whether SA Andrews' search warrant affidavit contained false information. *Id.* Craighead's argument was based on the fact that SA Andrews cited specific illegal files in her affidavit for a search warrant that were never found on Craighead's computer. *Id.* Craighead's *Miranda* motion was based on the fact that he was never read his rights prior to questioning. *Id.* at 1080.

¹⁷ See *id.* at 1080 (describing lower court's disposition). The district court denied this motion on the basis that such information "would be relevant to Craighead's guilt or innocence of the criminal charges, not to the truthfulness of SA Andrews' affidavit." *Id.* The court also denied Craighead's *Miranda* motion, ruling that the interrogation was not custodial and therefore no *Miranda* warnings were required. *Id.*

¹⁸ See *id.*

¹⁹ See *id.* at 1077 (stating reasoning behind Ninth Circuit's rulings on appeal). The court affirmed the denial of the *Franks* motion because Craighead did not meet his burden of proof that SA Andrews' affidavit was false or misleading. *Id.* The court reversed the denial of the *Miranda* motion, finding the interrogation was custodial and thus required *Miranda* warnings. *Id.*

²⁰ See *Cohens v. Virginia*, 19 U.S. 264, 388 (1821) (concluding constitutional protections stand the test of time). In *Cohens*, Chief Justice Marshall stated that constitutional rights, such as those protecting against unjust interrogations, were to endure "for ages to come, and is designed to approach immortality as nearly as human institutions can approach it." *Id.* at 387; see also *Brown v. Walker*, 161 U.S. 591, 596-97 (1896) (explaining historical context giving rise to constitutional protections against self-incrimination).

²¹ See *Miranda v. Arizona*, 384 U.S. 436, 445-46 (1966) (discussing unjust tactics used by law enforcement during interrogations); see also THE NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT REPORT ON LAWLESSNESS IN LAW ENFORCEMENT, WICKERSHAM REPORT (1931) [hereinafter WICKERSHAM REPORT] (detailing use of physical and emotional abuse by law enforcement to extract confessions from suspects). The Wickersham Report concluded, "[n]ot only does the use of the third degree involve a flagrant violation of law by the officers of the law, but it involves also the dangers of false confessions, and it tends to make police and prosecutors less zealous in the search for objective evidence." *Id.*

²² See, e.g., *People v. Matlock*, 336 P.2d 505, 512 (Cal. 1959) (holding confession produced by delayed detention inadmissible); *People v. Wakat*, 114 N.E.2d 706, 710 (Ill. 1953) (affirming post-conviction court's order for new trial based on evidence of coerced confession); *People v.*

The United States Supreme Court finally addressed the use of such illegal tactics in *Miranda* by requiring law enforcement to follow specific procedural measures to ensure every suspect understands his constitutional rights prior to questioning.²³ The Court found that most instances of Fifth Amendment violations shared similar characteristics – namely, isolated interrogation in a police dominated atmosphere.²⁴ Therefore, a suspect who was advised of his rights to remain silent and to stop the interrogation would be less likely to crack under pressure and confess.²⁵ These protective measures are required when a suspect is either officially in police custody, or “otherwise deprived of his freedom of action in any significant way.”²⁶

Portelli, 205 N.E.2d 857, 858 (N.Y. 1965) (stating defendant’s coerced out-of-court confession not admissible at trial).

²³ See *Miranda*, 384 U.S. at 444-46 (requiring procedural safeguards to protect against self-incrimination); see also Roscoe C. Howard, Jr. & Lisa A. Rich, *A History of Miranda and Why It Remains Vital Today*, 40 VAL. U. L. REV. 685, 690-95 (2006) (discussing facts and holding of *Miranda*); Morgan M. Long, Case Comment, *Commonwealth v. Gonsalves: Erroneously Expanding the Concept of Police Interrogation Set Forth in Crawford v. Washington to Include Investigatory Police Interrogations*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 171, 194 (2007) (reiterating *Miranda* Court’s definition of “custodial interrogation”).

²⁴ See *Miranda*, 384 U.S. at 444-46 (requiring constitutional warnings prior to incommunicado custodial interrogations). The *Miranda* Court was keenly aware that most interrogations took place behind closed doors, with the suspect at the mercy of the interrogators, and therefore tailored its ruling to those situations. *Id.* at 445. Compare *United States v. Revels*, 510 F.3d 1269, 1275 (10th Cir. 2007) (concluding separation of suspect from family during questioning demonstrates complete police control), and *United States v. Griffin*, 922 F.2d 1343, 1352 (8th Cir. 1990) (discussing circumstances evidencing police domination including control of who may be present at questioning) (citing *United States v. Jones*, 630 F.2d 613, 616 (8th Cir. 1980)), with *Sprosty v. Bucheler*, 79 F.3d 635, 641 (7th Cir. 1996) (holding suspect not isolated when detained in presence of mother).

²⁵ See *Miranda*, 384 U.S. at 467-69; see also *id.* at 449 n.9 (citing INBAU & REID, CRIMINAL INTERROGATION AND CONFESSIONS (1962)) (outlining official police tactics for coercing confessions from suspects). The *Miranda* Court entered into the record official police manuals advising officers on how to best extract confessions from suspects:

If at all practicable, the interrogation should take place in the investigator’s office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. *He is more keenly aware of his rights* and more reluctant to tell of his indiscretions of criminal behavior within the walls of his home. Moreover his family and other friends are nearby, their presence lending moral support. In his office, the investigator possesses all the advantages.

Id. at 449-50 (quoting O’Hara, FUNDAMENTALS OF CRIMINAL INVESTIGATION 99 (1956)) (emphasis added); Barry C. Feld, *Juveniles’ Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26, 49 (2006) (describing police interrogation tactics at the time of *Miranda*); Howard and Rich, *supra* note 23, at 704-06 (discussing coercive nature of custodial interrogations addressed by *Miranda*).

²⁶ *Miranda*, 384 U.S. at 444; see also ADMISSIONS, DECLARATIONS, AND CONFESSIONS BY

An in-home interrogation of a suspect by law enforcement does not automatically require *Miranda* warnings because it is not per se custodial.²⁷ In fact, courts are generally less inclined to find in-home interrogations custodial because there is less concern over compulsion when the suspect is questioned in familiar surroundings.²⁸ Most courts, however, have looked to whether the environment was “police-dominated” to determine the nature of the in-home interrogation because such an environment could likely lead to the type of coerced self-incrimination *Miranda* sought to prevent.²⁹

In *United States v. Craighead*, the United States Court of Appeals for the Ninth Circuit faced the issue of whether a suspect, interrogated by law-enforcement officers in his own home, was in custody and, therefore,

THE ACCUSED IN GENERAL, 23 C.J.S. Criminal Law § 1239 (2008) (defining custodial interrogation under *Miranda*):

Custody, for *Miranda* purposes, is determined by inquiring into the circumstances surrounding the interrogation, and, given those circumstances, determining whether a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave. The relevant inquiry is how a reasonable person in the accused’s position would have understood the situation, and whether a reasonable person would believe himself or herself deprived of freedom to the degree associated with a formal arrest.

Id.; Timothy P. O’Neill, Essay, *Rethinking Miranda: Custodial Interrogation as a Fourth Amendment Search and Seizure*, 37 U.C. DAVIS L. REV. 1109, 1115 (2004) (describing appropriate times for custodial interrogation).

²⁷ See *Beckwith v. United States*, 425 U.S. 341, 358 (1976) (finding interrogation non-custodial without showing of overbearing police behavior). The *Beckwith* Court stated that, when applying *Miranda* to in-home interrogations, the inquiry turned on the presence of the “compulsive aspect of custodial interrogation.” *Id.* at 346-47 (quoting *United States v. Caiello*, 420 F.2d 471, 473 (2nd Cir. 1969)).

²⁸ See *Orozco v. Texas*, 394 U.S. 324, 330-31 (1969) (White, J., dissenting) (arguing extension of *Miranda* to in-home interrogations a “dilution of the custody requirements”); see also *United States v. Richie*, 35 F.3d 1477, 1485 (10th Cir. 1994) (concluding in-home interrogation not custodial without showing of police threats or coercion); LAFAYE, *supra* note 2, at 2 (discussing factual elements tending to prove in-home interrogations non-custodial).

²⁹ See *United States v. Griffin*, 7 F.3d 1512, 1518 (10th Cir. 1993) (reasoning nature of custodial interrogations must be determined through examination of totality of circumstances). Compare *United States v. Crawford*, 372 F.3d 1048, 1060 (9th Cir. 2004) (finding suspect’s awareness of his freedom to leave indicative of non-custody), and *Berkemer v. McCarty*, 468 U.S. 420, 441 (1984) (concluding suspect not in custody during traffic stop), with *United States v. Revels*, 510 F.3d 1269, 1270 (10th Cir. 2007) (determining suspect in custody following detainment and restraint with handcuffs), *United States v. Mittel-Carey*, 493 F.3d 36, 40 (1st Cir. 2007) (ruling complete physical control of suspect’s person amounted to custody), *Sprosty v. Buchler*, 79 F.3d 635, 646 (7th Cir. 1996) (finding persistent questioning of suspect under armed guard was custodial), *Griffin*, 922 F.2d at 1355 (concluding physical control and isolation of suspect during in-home interrogation amounted to custody), and *United States v. Lee*, 699 F.2d 466, 467-68 (9th Cir. 1982) (holding interrogation custodial in spite of the fact suspect was informed questioning was voluntary).

entitled to a reading of his *Miranda* warnings.³⁰ The court looked to the spirit of *Miranda* for guidance, and concluded that the inquiry should focus on the extent to which Craighead's once comfortable home had become a "police-dominated environment."³¹ The Ninth Circuit recognized the difficulty of establishing a bright line rule for such fact intensive cases; therefore, it identified four factors relevant in determining the nature of an in-home interrogation: (1) the number of law enforcement personnel; (2) restraint of the suspect through physical or psychological means; (3) isolation of the suspect; and (4) whether the suspect was informed he was free to leave and/or questioning was voluntary.³²

With regard to the number of law enforcement officers, the court found that a reasonable person in Craighead's position would have felt his home had become a police-dominated environment due to the presence of eight officers from three different agencies, some with their weapons drawn and wearing flack jackets.³³ The Ninth Circuit noted that Craighead was never handcuffed; however, the court concluded an objective, reasonable person in Craighead's situation would have felt his freedom of movement was significantly restrained.³⁴ Addressing the issue of isolation, the court

³⁰ See *United States v. Craighead*, 539 F.3d 1073, 1077 (9th Cir. 2008) (discussing issue before court).

³¹ See *id.* at 1083 (declaring focus of analysis was "police-dominated atmosphere" benchmark). The court noted that the *Miranda* Court specifically sought to address situations where law enforcement officers had deprived a suspect of his freedom in such a significant way as to essentially render him under arrest, though he had not yet been placed in official custody. *Id.* (citing *Miranda v. Arizona*, 384 U.S. 436, 447 (1966)).

³² See *Craighead*, 539 F.3d at 1084 (setting out relevant factors for analysis of nature of an in-home interrogation). First, the court reasoned that the presence of a large number of visibly armed law enforcement officers likely converts a suspect's home into a police-dominated environment. *Id.* Second, the court considered restraint of a suspect's movements through physical or verbal threats and intimidation to be signs of a custodial interrogation. *Id.* at 1085. Third, the court stated that *the* crucial factor that would render such questioning custodial was whether the suspect was questioned incommunicado and cut off from support, such as family and friends. *Id.* at 1086-87. The court, however, also noted that if a suspect is informed that questioning is voluntary and that he is free to leave, it is less likely he will reasonably believe he is in custody, though such statements should be viewed in the context of the situation. *Id.* at 1088.

³³ See *id.* at 1084 (concluding large number of law enforcement agents converts home to police-dominated environment). The court was once again mindful of the spirit of *Miranda* when analyzing this issue, emphasizing that when a suspect's home is filled with law enforcement officers, there is no place for the suspect to seek refuge. *Id.* at 1084-85; see also *id.* at 1078 (describing search of Craighead's home).

³⁴ See *id.* at 1085 (reasoning physical restraint increases likelihood of coerced self-incrimination). The court made this determination based on the isolated nature of Craighead's interrogation, which took place in a locked storage room. *Id.* The court also gave great weight to Craighead's testimony that he felt he could not leave the storage room because he "would have either had to have moved the police detective or asked him to move." *Id.* at 1086 (quoting Craighead); see also *id.* at 1084 (explaining connection between physical restraint and custodial

found the secluded nature of Craighead's interrogation amounted to custody, reasoning that a suspect is more likely to be compelled to confess when cut off from the support of family and friends.³⁵ Regarding the final factor, the court recognized that a suspect is less likely to reasonably believe he is in custody where officers inform him that he is not, though these statements must be viewed in the context of the situation.³⁶ The Ninth Circuit found a reasonable person in Craighead's position could have believed he was not free to leave despite statements by law enforcement to the contrary.³⁷ Although SA Andrews had advised Craighead he was free to leave, the court credited Craighead's testimony that the presence of agents from three different agencies made him doubt whether SA Andrews had authority to let him go.³⁸ After analyzing the four factors of its benchmark test, the Ninth Circuit concluded that, while SA Andrews' advisement to Craighead could be evidence of non-custody, the number of law enforcement agents present, coupled with the restrained and isolated nature of the interrogation, turned Craighead's home into a police-dominated environment requiring *Miranda* warnings.³⁹

The United States Court of Appeals for the Ninth Circuit correctly applied *Miranda* to the case at bar by recognizing that a suspect's Fifth Amendment right against self-incrimination is as vulnerable during an in-home interrogation as in any other police-dominated setting.⁴⁰ The court

interrogation). The court dismissed the government's assertion that Craighead could not have reasonably felt restrained because he was physically larger and taller than both SA Andrews and Detective Englander. *Id.* at 1086. The court reached this conclusion based largely on the fact that Englander was armed and Craighead was not. *Id.*

³⁵ See *id.* at 1086-87 (noting *Miranda* Court's view of isolation as a characteristic of compelled self-incrimination). The court followed the guidance of *Miranda* in its analysis of isolation as the crucial factor in determining the nature of interrogations. *Id.* The court gave great weight to the fact that Sgt. Ramsey was not permitted to accompany Craighead into the shed during the interrogation, noting that, had Craighead truly been free to leave, he would have also been free to have Sgt. Ramsey present for moral support. *Id.* at 1078. Therefore, the court concluded SA Andrews and Detective Englander were in complete control of the environment. *Id.*

³⁶ See *id.* at 1083-85 (analyzing the final factor of the "police-dominated" test). The court noted that SA Andrews informed Craighead prior to interrogation: (1) he was not under arrest; (2) all statements were voluntary; and (3) he was free to leave at any time, a fact that "weighs against a finding of custody." *Id.* at 1087.

³⁷ See *Craighead*, 539 F.3d at 1088-89 (noting "mere recitation" of such advisement does not render interrogation per se non-custodial).

³⁸ See *id.* (emphasizing context of interrogation). The court stressed the context of the interrogation in analyzing SA Andrews' notice to Craighead, concluding that Craighead could have reasonably believed he was not free to go because he would have first had to confront Detective Englander (who was blocking the shed door) and then the six other law enforcement officers searching his home. *Id.*

³⁹ See *id.* at 1077 (holding Craighead's interrogation in violation of *Miranda*).

⁴⁰ See *Miranda v. Arizona*, 384 U.S. 436, 444-46 (1966); see also Howard and Rich, *supra*

was keenly aware of the unscrupulous police tactics that led to the *Miranda* decision and, through its analysis of the four relevant factors, effectively addressed the Supreme Court's general concerns regarding coerced self-incrimination in the specific setting of a suspect's home.⁴¹ The Ninth Circuit wisely noted the unique nature of an interrogation conducted in the typically comfortable setting of a suspect's home and considered each of the four factors, including advising a suspect that he is free to go, within the context of that particular environment.⁴²

The court recognized that questions of custody with respect to in-home interrogations are intensely fact-driven; therefore, its four-factor focus on how a reasonable person in the suspect's position would perceive his environment serves as an effective guide for future cases.⁴³ The Supreme Court's overriding concern in *Miranda* was "incommunicado

note 23, at 690-95 (discussing facts and holding of *Miranda*); Long, *supra* note 23, at 194 (reiterating *Miranda* Court's definition of custodial interrogation).

⁴¹ See *Miranda*, 384 U.S. at 445-46 (discussing unjust tactics used by law enforcement during interrogations); WICKERSHAM REPORT, *supra* note 21 (detailing use of physical and emotional abuse by law enforcement to extract confessions from suspects); see also *Craighead*, 539 F.3d at 1084 (concluding large number of law enforcement agents converts home to police-dominated environment); O'Neill, *supra* note 26, at 1115 (describing appropriate times for custodial interrogation).

⁴² See *Craighead*, 539 F.3d at 1083 (considering the unique setting of an in-home interrogation). The court stated:

If a reasonable person is interrogated inside his own home and is told he is 'free to leave,' where will he go? The library? The police station? He is already in the most constitutionally protected place on earth. To be 'free' to leave is a hollow right if the one place the suspect cannot go is his own home.

Id. Compare *Thompson v. Keohane*, 516 U.S. 99, 120-21 (1995) (O' Connor, J., dissenting) (arguing suspect not in custody when repeatedly told questioning was voluntary), *United States v. Crawford*, 372 F.3d 1048, 1060 (9th Cir. 2004) (finding suspect's awareness of his freedom to leave indicative of non-custody), and *United States v. Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990) (concluding advising by law enforcement of voluntary nature of interrogation was obvious sign of non-custody), with *United States v. Lee*, 699 F.2d 466, 467-68 (9th Cir. 1982) (holding interrogation custodial even though suspect was informed questioning was voluntary). In *Lee*, the Ninth Circuit found that the interrogation was custodial because the defendant had been questioned by two FBI agents in a closed car for more than an hour and eventually confessed, even though the defendant had been informed by FBI agents that he was free to leave and could stop the interrogation at any time. *Lee*, 699 F.2d at 467-68.

⁴³ See *Craighead*, 539 F.3d at 1084 (concluding nature of in-home interrogation "necessarily fact intensive"); see also *Thompson*, 516 U.S. at 116 (stating inquiry into nature of interrogations "distinctly factual"); *United States v. Revels*, 510 F.3d 1269, 1270 (10th Cir. 2007) (determining suspect in custody following detainment and restraint with handcuffs); *United States v. Mittel-Carey*, 493 F.3d 36, 40 (1st Cir. 2007) (ruling complete physical control of suspect's person amounted to custody); *Sprosty v. Buchler*, 79 F.3d 635, 646 (7th Cir. 1996) (finding persistent questioning of suspect under armed guard was custodial); *Griffin*, 7 F.3d at 1518 (reasoning nature of custodial interrogation is determined through examination of the totality of the circumstances).

interrogation of individuals in a police-dominated atmosphere,” a concern the Ninth Circuit echoed by directing its inquiry at the extent to which Craighead’s home had become police-dominated.⁴⁴ The *Craighead* court developed a clear and rational approach to resolving questions of custody in what are often ambiguous circumstances by enumerating specific elements that are “useful in testing the atmosphere of [an interrogation].”⁴⁵

Law enforcement officers and prosecutors have long argued that protective measures, such as those required by *Miranda*, hinder criminal investigations and ultimately harm society at-large by allowing admittedly guilty suspects to walk away on the basis of a procedural technicality.⁴⁶ However, in addition to the *Miranda* Court’s grave concern over coerced self-incrimination, such procedural safeguards promote justice by lessening the chance of false confessions and “contribut[ing] directly to a more effective, efficient and professional level of law enforcement.”⁴⁷ The Ninth

⁴⁴ See *Craighead*, 539 F.3d at 1084 (quoting *Miranda*) (setting out relevant factors for analysis of nature of an in-home interrogation). While the Ninth Circuit noted a suspect could be less susceptible to coerced self-incrimination in the familiar surroundings of his own home, it balanced that inclination by recognizing the effect police domination can have in that unique environment. *Id.* at 1077; see also *Miranda*, 384 U.S. at 445-46 (discussing unjust tactics used by law enforcement during interrogations); WICKERSHAM REPORT, *supra* note 21 (detailing use of physical and emotional abuse by law enforcement to extract confessions from suspects).

⁴⁵ See *Griffin*, 7 F.3d at 1518 (describing importance of interrogation atmosphere); see also *Craighead*, 539 F.3d at 1084 (elucidating four relevant factors of custodial inquiry). The persuasiveness of the court’s police-dominated benchmark test is further strengthened by its adoption in sister circuits; *id.* at 1083-84 (reviewing circuit decisions involving custodial interrogations).

⁴⁶ See *Miranda*, 384 U.S. at 440-41 (reiterating concerns over scope and ramifications of prophylactic measures). The Court stated:

If the police are required . . . to . . . establish that the defendant was apprised of his constitutional guarantees of silence and legal counsel prior to the uttering of any admission or confession, and that he intelligently waived these guarantees . . . a whole Pandora’s box is opened as to under what circumstances . . . can a defendant intelligently waive these rights Allegations that modern criminal investigation can compensate for the lack of a confession of admission in every criminal case is [sic] totally absurd!

Id. at 442 n.3 (quoting LOS ANGELES TIMES, Oct. 2, 1965, at 1).

⁴⁷ *Id.* (providing observations of Los Angeles District Attorney Younger); see also Howard & Rich, *supra* note 23, at 706. Howard and Rich state:

The *Miranda* rule has become an important and accepted element of the criminal justice system. Ultimately, *Miranda* did not result in a lack of confessions. The law enforcement community has not crumbled under its weight. Law enforcement retains the ability under *Miranda* and its progeny to conduct investigations, question potential suspects, and even to get them to confess. *Miranda* simply ensures that when an individual is deprived of her liberty in any way or taken into custody for questioning, certain safeguards are in place so that when a confession is obtained, that confession is admissible.

Circuit's ruling in *Craighead* furthers this goal by stating to law enforcement officers in clear, unequivocal terms that, where a suspect's home has become a police-dominated environment, the suspect is considered in custody for purposes of *Miranda* and therefore must be given his rights prior to questioning.⁴⁸

Our society's concern over coerced self-incrimination is apparent not only by the safeguards enumerated in the Fifth Amendment, but also by the subsequent expansion of those safeguards to unforeseen areas of American life. The Supreme Court's decision in *Miranda* recognized the danger faced by a lone citizen in the hands of determined, unrestrained law enforcement officers. The Court therefore went to great lengths to ensure constitutional protections afforded to that citizen shall not be violated. The holding of *Miranda* and its interpretation in *United States v. Craighead* will not hinder law enforcement in their criminal investigations; rather, it will ensure that all parties conduct themselves in a fair and professional manner. The clear guidance laid out in *Craighead* will force officers to err on the side of caution and read *Miranda* warnings when questioning a suspect in his own home. This will ultimately result in a more credible, substantive investigation while lessening the chance of suppression issues in subsequent prosecution. Through its decision in *Craighead*, the Ninth Circuit struck an effective balance between the need for thorough, vigorous criminal investigations and a suspect's fundamental protection against coerced self-incrimination.

Steven Vallarelli

Id. (citations omitted).

⁴⁸ See *Craighead*, 539 F.3d at 1089 (concluding *Craighead*'s home had become "police-dominated" and his interrogation unconstitutional).