

# Perceptions of Custody: Similarities and Disparities Among Police, Judges, Social Psychologists, and Laypeople

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**Objective:** Custody is a legal state that requires police to Mirandize suspects and, in some jurisdictions, to record their interrogation. The present study compared the custody perceptions of police, judges, social psychologists, and laypeople. **Hypotheses:** We predicted that (a) high-custody vignettes would elicit less perceived freedom than low-custody vignettes; (b) police and judges would see these situations as less custodial relative to social psychologists and laypeople; (c) these differences would arise mostly in ambiguous vignettes; and (d) participants in general would perceive suspects as objectively having more freedom to leave than they subjectively feel they have. **Method:** Police officers ( $n = 223$ ), trial judges ( $n = 219$ ), social psychologists ( $n = 228$ ), and laypeople ( $n = 205$ ) read a vignette of a police-suspect encounter that presented high-, ambiguous, or low-levels of custody and indicated their perceptions of the suspect's freedom to leave. **Results:** Participants perceived the most freedom in the low-custody vignettes, followed by ambiguous and high-custody vignettes, and all groups differed significantly from each other ( $\eta_p^2 = .39$ ). Police and judges overestimated how free they thought the suspect would feel compared to social psychologists and laypeople, who did not differ from each other ( $\eta_p^2 = .085$ ). Participants in general saw the suspect as objectively freer than they thought he felt, and themselves as feeling freer than they believed the suspect did ( $\eta_p^2 = .35$ ). Police defined a "reasonable person" as someone who is mentally stable, whereas judges were more likely to cite a person of average intelligence. **Conclusion:** Despite the assumption that custody can be defined by the effects of objective circumstances on the reasonable person, results revealed substantial variation of perceptions between police and judges on the one hand, and social psychologists and laypeople on the other. As a result, legal safeguards triggered by custodial interrogation may be inconsistently applied to real suspects.

## Public Significance Statement

Police and judges on the one hand, and social psychologists and laypeople on the other, often disagree about whether a suspect is in custody or free to leave an encounter with police. As these disparities can have serious consequences for real suspects, such as increased risk for coerced or false confessions, researchers and legal professionals must work together to establish an empirical definition of what it means to be in custody.

**Keywords:** custody, interrogation, police, judge, Miranda

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In *Miranda v. Arizona* (1966), the U.S. Supreme Court ruled that police should apprise suspects in custodial interrogation of their rights to silence and to counsel and obtain a waiver of those rights before taking a statement. Over the years, however, research psychologists and legal scholars have questioned the effectiveness of *Miranda* warnings and waivers to protect suspects in this situation (for overviews, see Kassir et al., 2020; Leo & Thomas, 1998; Weisselberg, 2008). Hence, many reform efforts have focused on an additional safeguard against coerced confessions: the requirement that all interrogations be video recorded in their entirety (Kassir et al., 2010; Kassir & Thompson, 2019; Kassir et al., 2019; for an historical overview, see Drizin & Reich, 2004).

At present, 27 states, the District of Columbia, and all federal agencies, require the recording of all or most suspect interrogations (Bang et al., 2018; Sullivan, 2019). As with *Miranda*, the mandate to record is not activated until a suspect is in police custody. But

what does it mean to be “in custody,” which is both a legal and a psychological construct, and hence not free to leave? Under what conditions is this all-important state triggered, and how can it be identified? Drawing on previous research, the present study examined whether professionals who make real-time custody judgments of consequence (i.e., police officers and trial judges), and social psychologists, experts on situational influences on behavior, are in sync in their perceptions with lay adult observers.

### Custody: Parameters and Analysis

Custodial interrogation is defined as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way” (*Miranda v. Arizona*, 1966, p. 445). In light of the “inherently compelling pressures” of custodial interrogation (p. 467), the U.S. Supreme Court sought to create an objective test to help police and judges determine when suspects are in custody and, therefore, entitled to their rights to silence and counsel. First and foremost, it is clear that formal arrest triggers custody and hence the required protections (*Orozco v. Texas*, 1969). In more ambiguous cases in which police question suspects who are not under arrest, however, the court must evaluate the situation by examining the totality of the circumstances. The resultant custody test involves a two-pronged consideration of (a) the *objective circumstances* of the encounter, and (b) as evaluated from the perspective of a “reasonable person.”

#### Objective Circumstances

Since *Miranda*, the courts have delineated as relevant a number of factors that suggest whether or not a suspect was free to leave. In *U.S. v. Griffin* (1990), for example, the Eighth Circuit cited the following factors: (a) whether police told the suspect that they were free to go; (b) whether police restricted the suspect’s freedom of movement, for example, through handcuffs, an escort to the bathroom, or by seizing the suspect’s shoes, wallet, car keys, cell phone, or other personal belongings; (c) whether the encounter was initiated by the suspect or police; (d) whether police employed coercive interrogation tactics that demonstrated their dominance during the questioning; (e) whether the situation was under police control—for example questioning the suspect in a private room at the police station; and (g) whether the suspect was formally arrested after the questioning (see also *U.S. v. Brown*, 1993).

As the totality of the circumstances test prevails over any single factor, the presence of the same condition in different scenarios will not always yield the same conclusion. Instead, custodial and noncustodial factors are weighed against each other and evaluated in terms of their interactive and compounding effects. In addition, not all factors are weighted equally. Even with a totality of circumstances inquiry, for example, the presence of a free-to-leave warning almost always takes precedence over other situational variables (e.g., *Howes v. Fields*, 2012).

#### Reasonable Person Standard

Just as the courts have identified factors relevant to a custody inquiry, they have also described conditions that are not relevant. Factors that would require police officers to formulate a subjective opinion—for example, by considering a suspect’s unique personal

characteristics—should not be required. In *Stansbury v. California* (1994), the U.S. Supreme Court ruled that custody depends on “the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned” (p. 323). Rather than consider an individual’s unique perceptions, the Court asked whether a *reasonable person* in the situation would have felt a significant restriction of his or her freedom of action.

What is a reasonable person? Writing on the common law of negligence torts, Justice Oliver Wendell Holmes (1881) famously asserted that the standard of care should be set by the “ideal average prudent man” (p. 108). Today, this standard in criminal law assumes that taking the perspective of a reasonable person constitutes an objective and unbiased test, and thus is preferable to having detectives evaluate each case from the idiosyncratic perspective of an individual suspect (*J. D. B. v. North Carolina*, 2011). Yet the courts have not identified discernible characteristics of the reasonable person or the fact that individuals interpret events differently as a function of biological, cultural, and developmental experiences. As Byrd (2005) stated, “The common law is obsessed with reasonable people. These people are pinnacles of virtue—courteous, placid, gentle, timely, careful, perceptive—in short, complete figments of our imagination” (p. 571). One goal of the present study was to explore how relevant groups define this ill-defined but ubiquitous standard.

#### Police Questioning

In criminal investigations, legal actors typically distinguish between the processes of interviewing and interrogation. Architects of the Reid Technique distinguish between these two types of questioning (Inbau & Reid, 1962; see Inbau et al., 2013). Interviews consist of nonaccusatory, open-ended questions aimed at gathering information and determining whether the suspect is telling the truth or lying. In contrast, interrogation is a highly confrontational process in which the investigator isolates the suspect and deploys tactics aimed at eliciting an admission of guilt followed by a full narrative confession. Toward this end, the interrogator confronts the suspect with an accusation, stated with certainty; presents incriminating evidence, real or fabricated; rejects denials and objections; and cultivates minimization themes that excuse, justify, or trivialize the moral seriousness of the crime. Once a suspect capitulates, interrogators seek to convert the admission into a full narrative confession (for a critique, see Kassin et al., 2010).

Although interviews and interrogations are not necessarily distinct in practice, these processes serve as a proxy for noncustodial and custodial questioning, respectively. Yet despite the pivotal importance of custody for *Miranda* and video recording requirements, little empirical research has examined the courts’ assumptions, namely: (a) that the objective circumstances surrounding a police-suspect encounter guide perceptions of custody regardless of an observer’s perspective, and (b) that the reasonable person standard provides an appropriate way to determine custody. Drawing on a classic social psychology literature on attributions of causality and freedom, the present research explored people’s perceptions of police custody.

#### Attributions of Causality and Freedom

The express purpose of the objective circumstances test and reasonable person standard is to relieve investigators of “the burden of

anticipating the frailties or idiosyncrasies of every person whom they question" (*People v. Rodney P.*, 1967, p. 10). Yet divining another person's state of mind is a difficult task. In *The Psychology of Interpersonal Relations*, Heider (1958) proposed that as social perceivers we try to understand other people by observing, analyzing, and making attributions for their behavior. Following Heider, attribution theorists proceeded to study the kinds of information we use to determine if a behavior is intentional and hence informative about the actor (Jones & Davis, 1965); whether it should be causally attributed to personal or situational factors (Kelley, 1967); and whether explanations for one's own success and failure have motivational consequences (Weiner, 1986). Together, these models comprise what is known as attribution theory (for a retrospective, see Weiner, 2018).

### Actor-Observer Differences

Attribution research shows that individuals often have different interpretations of the same behavior as a function of their visual, cognitive, and motivational perspective. This work is directly relevant to perceptions of custody. For example, research shows that people commit the *fundamental attribution error* (Ross et al., 1977) or *correspondence bias* (Gilbert & Malone, 1995), a tendency to underestimate the power of situational forces on behavior and focus instead on the actor's dispositions (Jones, 1990; for a retrospective overview, see Ross, 2018). In contrast, studies of *self*-perception indicate that actors focus outward, on environmental factors that impinge on their behavior, leading them to make situational attributions (Jones & Nisbett, 1972; Watson, 1982). Research has shown that whereas actors tend to attribute their own behavior to the situation, observers tend to make personal attributions to the actor (Nisbett et al., 1973; Saulnier & Perlman, 1981; for a meta-analysis indicating the limits of this phenomenon, see Malle, 2006).

### Perceptions of Custody and Freedom

To test perceptions of custody in the laboratory, Alceste et al. (2018) designed two experiments from the perspectives of both actors and observers. Using a novel paradigm, they examined whether actors randomly assigned to be interviewed or interrogated held different perceptions of their own freedom compared with observers of their sessions. Student participants were led to believe that the theft of a wallet had taken place during their time in the lab. With the stakes perceived to be real, they were briefly interviewed or interrogated by a security guard who arrived to investigate. Interviews and interrogations embodied specific factors considered noncustodial or custodial, respectively. Observers later watched videos of these sessions. Both actors and observers rated the extent to which the laboratory participant was free to leave.

In keeping with the courts' assumptions, only 26% of suspects who were interrogated in the situation considered custodial saw themselves as free to leave; similarly, only 35% of observers saw these same actors as free to leave. This synchrony between the two sets of participants broke down, however, in the interview situation considered noncustodial. Consistent with the courts' assumptions, 62% of observers saw the suspects as free to leave in this condition. Yet only 38% of suspects themselves agreed. The interview may appear noncustodial to observers—but not to suspects in that situation. In a second experiment, Alceste et al. (2018) tested the "free-to-leave" advisement that the courts have deemed a critical component

of the custody examination. Compared with the no-advisement control group, and compared with observers, advised participants indicated they were free to leave as an objective matter—but they did not *feel* free to do so.

In both studies, observers were also asked to imagine themselves in the suspect's position and indicate whether they would feel free to leave. Consistent with studies on perspective-taking (Davis et al., 1996; Galinsky & Moskowitz, 2000; Regan & Totten, 1975), the actor-observer divergence vanished when observers imagined themselves from the actor's perspective. Compared with when they judged the freedom of the actor, observers reported less subjective freedom when they imagined that they themselves were being questioned. This result showed that the lay observer's perspective can also influence perceptions of custody. In the present study, we also considered the perspectives of relevant professional groups.

### Perspectives of Relevant Observers

In light of the high stakes attached to judgments of custody, we sought to answer three questions by comparing four groups of observers, each with a unique and relevant perspective. First, we examined how legal professionals who make custody judgments for a living perceive these situations. In particular, we examined two sets of legal actors: police investigators, who must make *real time* determinations of custody, and trial judges who make *post hoc* judgments of custody at pretrial hearings in which Miranda and video recording issues are raised.

By virtue of their investigative responsibilities, police enter an interview or interrogation with tasks to accomplish—to determine if a person of interest should become a suspect, and then to interrogate that suspect to elicit a confession. Whether they view the situation as custodial should thus determine whether they Mirandize the suspect and commence video recording in jurisdictions that require it. Often motivated to press forward in an investigation, numerous cases have arisen in which defendants claimed that police failed to appreciate the custodial nature of the situation. Over the years, the U.S. Supreme Court has expressed conflicting opinions on this matter (e.g., *Yarborough v. Alvarado*, 2004)—sometimes showing confidence in the custody judgments made by law enforcement officers; at other times, conceding that it is difficult to decide this murky question (e.g., *Berkemer v. McCarty*, 1984; *Oregon v. Elstad*, 1985).

Judges are differently oriented and motivated. When a suspect recants a confession and pleads not guilty, defense counsel often seeks to suppress that statement at trial. As the gatekeepers of confession evidence, judges must rule at a pretrial hearing on whether a suspect was in custody and afforded the necessary protections, and thus whether the statement taken was voluntary. In contrast to police investigators motivated to solve cases, judges—using the same criteria and with the benefit of hindsight—are tasked to make decisions that are impartial, consistent with precedent, and legally correct (*Guide to Judiciary Policy*, 2014). Setting aside differences in motivation regarding specific cases, we also sought the participation of judges to examine their views on custody.

Second, we sought the opinions of social psychologists, independent experts in the scientific study of how situations influence people's thoughts, feelings, and behaviors. Conducting research in laboratory and field settings, social psychologists use experimenters, confederates, carefully worded cover stories, and instructions to



vary situational factors while measuring self-reports and behaviors (e.g., see Carlsmith et al., 1976). This research has shown that people are highly responsive to changes in the situation, which can alter self- and other-perceptions and elicit acts of conformity, compliance, obedience, and the tendency to help or hurt others. As embodied in Zimbardo's (2007) *The Lucifer Effect: Understanding How Good People Turn Evil*, classic studies by Sherif, Asch, Festinger, Milgram, Darley and Latané, and others have thus demonstrated the sometimes-subtle power of the situation. Specializing in the scientific study of situations and lacking a professional investment in making judgments of custody and freedom, social psychologists present an interestingly objective (no forensic skin in the game) comparison sample of outside experts.

Third, we examined the extent to which determinations of custody made by legal professionals and outside experts align with the perceptions of laypeople who may find themselves in the crosshairs of an investigation as witnesses, suspects, or persons of interest. Research shows that lay people tend to underappreciate the influence of situational factors on human behavior (Ross, 2018) and make different attributions of freedom depending on whether they are actors or observers in a potentially custodial situation (Alceste et al., 2018). How do laypeople compare to the professionals? To the extent that the "reasonable person" is presumed to be average or ordinary, assessing lay perceptions should enable us to gauge how effectively these others can divine the psychological state of a reasonable layperson.

## The Present Research

Despite the Court's attempts to operationalize and objectify the custody inquiry, the potential for ambiguity remains. Without arrest as a custodial bright-line, objective circumstances can be interpreted differently when viewed by different individuals and from different perspectives. To examine people's perceptions, we tested and compared police officers and judges, two legally relevant populations; social psychologists, scientific experts on situational influences; and a sample of laypeople, a population of prospective suspects and "reasonable persons."

Across samples, we randomly assigned participants to read a high-, low-, and ambiguous-custody vignette. We varied these vignettes by inserting the kinds of objective circumstances that the courts have cited (e.g., a "free to leave" advisement in the low-custody vignette, a direct accusation in the high-custody vignette, and a mix of both types of factors in the ambiguous vignette; see Appendix). By presenting participants with one of three levels of custody, we aimed to determine if the legal delineation between custodial and noncustodial elicited differing perceptions. In all conditions, we asked participants to distinguish between *objective custody* (how free the suspect was, legally) and *subjective feelings of freedom* (how free the suspect felt).

To examine the generalizability of these results, we also independently varied crime severity. Some participants read about the police-suspect encounter in the context of a murder investigation; others read that it was a nonviolent burglary. We designed this variation to assess the possibility that legal professionals are less likely to see situations as custodial when the stakes are high (i.e., where "custody" would require police to Mirandize the homicide suspect and judges to rule the resulting confession involuntary, in violation of Miranda).

Although this study was exploratory, we predicted the following: (a) High-custody vignettes would elicit lower perceptions of freedom than low custody vignettes, with ambiguous vignettes eliciting moderate and more variable judgments; (b) police, and judges to a lesser extent, would perceive the situations as less custodial relative to laypeople, whereas social psychologists, sensitive to situational influences, would not exhibit this tendency; (c) this latter main effect would be more pronounced for ambiguous vignettes than for high- and low-custody vignettes; and (d) across the board, participants would perceive suspects as actually having more freedom to leave than they feel that they would have, subjectively speaking.

## Method

### Participants

In total, 875 participants completed this study (223 police officers, 219 trial judges, 228 social psychologists, 205 laypeople).

### Police

We recruited police in collaboration with Wicklander-Zulawski & Associates, Inc. (WZ), a firm that offers interrogation consulting and training in the private and public sectors. WZ recruited participants for this study via a listserv of 48,000 public law enforcement officers who have undergone training or attended a conference by WZ. A random sample of 5,100 law enforcement officers received an email with the study description and link followed by a reminder email 3 days after the initial inquiry. In total, 257 completed the study (5% response rate). We excluded 32 participants from analyses for failing manipulation checks (see Table 1), as well as two others who reported in a textbox that they were not police officers.

The final law enforcement sample consisted of 223 police officers. One-hundred and 83 officers (82.06%) worked for local law enforcement, 13 (5.83%) were from a state agency, three (1.34%) were campus police at a university, two (.89%) were county police, and the remainder did not identify their agency. After removing four outliers (i.e., a participant whose response fell more than three standard deviations from the mean) who reported having conducted 5,000 interviews each and one who reported 10,000 interviews, the sample of respondents estimated that they had conducted an average of 583.65 suspect interviews ( $SD = 657.73$ ,  $median = 300.0$ ,  $min = 0$ ,  $max = 3,500$ ) and had been employed in law enforcement for an average of 23.22 years ( $SD = 8.52$ ,  $median = 23.0$ ,  $min = 3.0$ ,  $max = 50.0$ ). Police were not compensated for their participation.

### Judges

We recruited judges via a subscription to the *American Bench*, a directory containing the biographical and contact information of more than 20,000 federal and state judges across the U.S., including the email addresses of 5,709 members. We used an email marketing service to send a recruitment request to a random sample of 4,698 judges (80% plus approximately 2% to account for bounced emails). This email contained a description of the study and a link to participate; this was followed by a reminder email 1 week later. Overall, we sent the original email and reminder to 4,321 judges. Three-hundred and 22

**Table 1**  
*Demographic and Exclusion Information for Each Sample*

Demographic information	Police	Judges	Social psychologists	Laypeople
Total <i>N</i>	223	219	228	205
Age				
<i>M</i> ( <i>SD</i> )	48.73 (8.84)	59.17 (7.71)	38.25 (12.08)	38.23 (13.89)
<i>Mdn</i>	48	60	34	37
Gender (%)				
Male	82.96	69.40	33.00	35.12
Female	9.42	23.29	65.00	64.39
Other	1.79	1.37	1.30	—
Missing	5.83	5.94	0.40	0.49
Race (%)				
White	82.96	80.82	82.00	70.73
Black	2.24	5.02	2.60	8.29
Hispanic	3.14	3.65	1.30	10.73
Asian	1.34	1.83	4.00	5.85
Other	3.14	1.83	11.00	3.90
Missing	7.18	6.85	—	0.49
Highest education completed (%)				
High school	6.28	—	—	50.73
Some college or bachelor's	65.02	1.89	—	38.05
Master's	20.63	0.91	26.00	8.78
Professional degree or PhD	1.79	90.88	74.00	1.96
Missing	6.28	6.39	0.40	0.49
Excluded for failing checks ( <i>n</i> )				
Incorrectly identified crime	19	23	—	28
Did not identify at least one stolen item	3	5	10	—
Incorrectly identified questioning length	10	18	9	11
Attention check	—	—	11	56

opened the link to the experiment and read the informed consent page; 265 completed the study in its entirety (6% response rate); 46 failed at least one manipulation check and were excluded from analyses. The final sample thus consisted of 219 judges (see Table 1 for demographic and exclusion information on all samples).

We asked judges to estimate the number of criminal trials they had presided over in their career and how many years they had served on the bench. After removing five outliers who reported presiding over 4,000 to 10,000 trials, respondents had presided over an estimated average of 171.75 criminal trials ( $SD = 284.44$ ;  $median = 100$ ;  $min = 0$ ,  $max = 2,000$ ) and had served on the bench for an average of 13.65 years ( $SD = 7.84$ ;  $median = 13.00$ ;  $min = .25$ ,  $max = 39.00$ ). We did not compensate judges for their participation.

### Social Psychologists

We defined “social psychologist” as a person with an advanced degree in psychology who had an active membership to the Society for Personality and Social Psychology (SPSP), the largest academic organization of personality social psychologists in the world (founded in 1974; SPSP is also Division 8 of the American Psychological Association). We recruited a total of 309 social psychologists by posting a message to the SPSP open forum (connect.spsp.org). The post contained a short description of custody and the experiment, as well as a link to participate. The message was posted three times, each 2 weeks apart. At the time of this writing, approximately 7,500 members of SPSP had access to the open forum.

In addition to those who failed attention or manipulation checks (see Table 1), 21 respondents did not finish the study and 30 were excluded for not having at least a Master's degree. One person did

not respond to the education question (see Table 1, missing = .43%), but was included in analyses because they indicated in a comment that they received a PhD in 2018. Participants with a PhD reported earning their degree between 1970 and 2019. The final sample consisted of 228 SPSP members. They were not compensated for their participation.

### Laypeople

A total of 232 adults were recruited and paid \$.20 through Amazon MTurk (the median completion time for this study was 4.80 min). To increase the demographic representativeness of this sample, an additional 68 undergraduates were recruited from a public university. These student participants completed the study in exchange for course credit. After exclusions, this sample included 32 participants (15.61% of the total). Altogether, the final layperson sample included 205 adults (see Table 1 for demographics and exclusion information).

### Design

Each participant read a description of one of three suspects being questioned in the context of a crime. The design followed a 4 (participant type: police, judges social psychologists, laypeople)  $\times$  3 (vignette: low-, ambiguous-, high-custody)  $\times$  2 (crime severity: high vs. low) between-subjects factorial design. No significant main effects or interactions involving crime severity were obtained in any of the analyses (these analyses are available on OSF, <https://osf.io/48ymz/>). Hence for the purposes of concise reporting, and enabling us to conclude that the results are applicable across varying levels of crime severity, we present results collapsed across this

variable. Due to the exclusivity and limited availability of our samples, we conducted a sensitivity analysis, which showed that our total  $N$  of 875 observers was sufficient to detect a Cohen's  $f$  of .14 (a small effect) with 80% power ( $\alpha = .05$ , numerator  $df = 12$ , number of groups = 36).

## Materials

We created stimulus vignettes using factors that the courts have previously used to determine what constitutes custody. To ensure that vignettes represented low, ambiguous, and high levels of custody, we pilot tested vignettes with 512 laypeople from MTurk (additional information about pilot testing is available on OSF, <https://osf.io/48ymz/>). In addition to four rounds of pilot testing, a law professor and author of textbooks on evidence and criminal procedure independently categorized each vignette as low, ambiguous, and high in custody, reinforcing our classifications of the vignettes.

## Procedure

Participants provided informed consent. By random assignment, we then presented each participant with a description of one of two crimes (a home burglary that did or did not result in a murder) and one of the three types of police interrogations involving a person of interest (low custody, ambiguous, or high custody). Each vignette was between 184 and 189 words in length (see [Appendix](#)).

After reading the crime description and vignette, participants answered a three-part series of dichotomous and continuous questions. First, they made a binary yes/no judgment to the following question: "In this situation, was [suspect's name] free to leave?" (yes or no). Next, they gave a continuous rating from 1 (*not free at all*) to 10 (*totally free*) to the question, "In your opinion, how free was he to leave?" Second, participants were asked "In this situation, did [suspect's name] *feel* free to leave?" and "In your opinion, how free to leave did he feel?" Third, participants were asked, "If you were in this person's position, would *you* have felt free to leave?" and "In your opinion, how free to leave would you have felt?" They answered these questions using the same response options. The legal term "custody" was not used or defined. We refer to these questions as the objective, subjective, and perspective-taking measures, respectively.

All participants next answered manipulation check questions regarding the nature of the crime, which items were stolen from the home, and the length of each questioning session. Specifically, participants read "What crime(s) took place in this story? Please check all that apply." They were then presented with the following options: money laundering, burglary, murder, hit and run, and narcotics (the correct response was burglary or burglary and murder, depending on the crime severity condition). Next they were asked, "What was taken from the home? Please check all that apply." The options were rare coins, jewelry, a TV, and furniture (the correct answer was always a TV and jewelry). Third, participants were asked, "How long did the questioning last?" The response options were 45 min, 2 hr, 5 hr, and 8 hr (the correct response varied depending on the vignette condition). Those who failed to correctly identify the crime committed, at least one of the two items stolen from the home, and/or the duration of the questioning were excluded from analyses.

For exploratory purposes, we asked police and judges (but not social psychologists or laypeople) to define the reasonable person standard. Verbatim, this open-ended question read: "The courts have defined custody as a situation in which a reasonable person would feel that he or she is not free to leave. How would you define 'reasonable person' for the purpose of this definition?" After reading through the numerous definitions, we determined that most reasons fell into one or more of four categories: *intelligence* (the reasonable person is intelligent or educated); *average* (the reasonable person possesses average ordinary characteristics or common sense); *sound mind* (the reasonable person is one who is mentally stable and not under the influence of mind-altering substances); and *legal knowledge/experience* (the reasonable person either has or does not have knowledge or experience with the legal system). Two blind independent coders then rated 100% of all responses for the presence or absence of each category. Cohen's kappa was used to assess interrater reliability, and all categories received a kappa of at least .79. Disagreements were resolved through discussion between coders and, in some cases, the first author.

At the close of the questionnaire, all participants answered demographic questions regarding age, gender, ethnicity, and education level. Police estimated how many suspect interviews and interrogations they had conducted. Judges estimated how many criminal trials they had presided over. Additionally, to ensure the quality of the data, all participants completed an Oppenheimer instructional manipulation check (IMC; [Oppenheimer et al., 2009](#)). Nonlegal participants who failed this check were a priori excluded from analyses. Legal participants were not similarly excluded because of the exclusivity of their samples. We ran analyses with and without the 68 legal participants who failed the IMC, and none of the results changed in significance. These results are available on OSF (<https://osf.io/48ymz/>). The last question of the study asked for any additional comments or questions in an open text box. All procedures were approved by the John Jay College of Criminal Justice IRB (file number: 2017-1398).

## Results

First we present the overall percentages of participants who responded "yes" to the dichotomous questions regarding whether the suspect in the vignette was free to leave. We present these results for all four observer groups, all three vignette conditions, and all three question types. Next, for each type of custody inquiry—objective, subjective, and perspective-taking—we analyzed the main effects of type of vignette (high, low, ambiguous) and participant type (police, judges, social psychologists, laypeople) as well as their interactions. From one custody inquiry to the next, we tested our hypotheses using logistic regressions to analyze dichotomous judgments and two-way analyses of variance for the parallel continuous measures. For the logistic regressions, we compared models with main effects only to models that included two-way interactions. We retained and interpreted models that better fit the data. For ease of interpretation, we report a narrative summary of results—see [Tables 2 and 3](#) for the descriptive and logistic regression statistics on dichotomous measures; see [Tables 4 and 5](#) for the descriptive and ANOVA statistics for continuous measures; see [Table 6](#) for all post hoc statistics for the ANOVA interactions. Finally, to examine our

**Table 2**

*Percentage of Participants Who Responded "Yes" to the Dichotomous Objective, Subjective, and Perspective-Taking Questions by Vignette Type, Participant Type, and Question Type*

Custody	Police	Judges	Social psychologists	Laypeople	Total
<b>Objective</b>					
High	18.92	13.51	41.25	33.33	26.75
Ambiguous	64.29	66.67	77.33	81.16	75.36
Low	100	94.52	98.63	95.52	97.17
Total	61.07	58.23	72.40	70.00	
<b>Subjective</b>					
High	1.35	0	0	2.9	1.06
Ambiguous	11.43	6.94	0	1.47	4.96
Low	79.75	67.12	24.66	28.36	49.97
Total	30.84	24.69	8.22	10.91	
<b>Perspective-taking</b>					
High	9.46	16.22	3.75	11.59	10.26
Ambiguous	32.86	41.62	9.33	18.84	25.66
Low	88.61	93.06	49.32	34.33	66.33
Total	43.64	50.30	20.80	21.59	

hypothesis regarding question type, we ran a repeated measures ANOVA with question type as the within-subjects variable.

**Overall Custody Perceptions**

Across conditions and measures, police and judges reported more "yes" responses (45.18% and 44.41%, respectively) than did social psychologists and laypeople (33.81% and 34.17%, respectively). As predicted, low-custody vignettes elicited the highest percentage of "yes" responses (71.16%), and high-custody vignettes elicited the lowest percentage (12.69%); ambiguous vignettes fell between these extremes (35.33%). In addition to vignette and type

of sample, the question asked yielded different results: Participants thought the suspect was objectively freer to leave than he felt (66.43% vs. 18.66%, respectively)—and that they themselves would feel freer than he did (34.08%). Table 2 shows the percentages of participants in each cell who responded "yes" to the three dichotomous questions.

**Objective Inquiry: Was the Suspect Free to Leave?**

First, we tested participants' dichotomous responses regarding the suspect's freedom using a logistic regression. We retained the main effects model for this analysis, as the model with two-way

**Table 3**

*Test Statistics, Odds Ratios, z-, and p-Values for Logistic Regression by Question Type*

Coefficients	b	95% CI	OR	z	p
<b>Objective question</b>					
Police	0.64	[0.13, 1.16]	1.90	2.44	.001
Judge	0.86	[0.34, 1.38]	2.36	3.25	<.001
Social psychologist	-0.19	[-0.72, 0.35]	0.83	-0.69	.49
Low custody vignette	-2.67	[-3.43, -1.91]	0.07	-6.89	<.001
High custody vignette	2.05	[1.67, 2.43]	7.76	10.63	<.001
<b>Subjective question</b>					
Police	-2.34	[-3.08, -1.60]	0.10	-6.21	<.001
Judge	-1.63	[-2.33, -0.92]	0.20	-4.54	<.001
Social psychologist	0.36	[-0.38, 1.09]	1.43	0.95	.34
Low custody vignette	-3.57	[-4.22, -2.92]	0.03	-10.76	<.001
High custody vignette	1.67	[0.39, 2.95]	5.31	2.56	.01
<b>Perspective-taking</b>					
Police	-0.73	[-1.51, 0.06]	0.48	-1.82	.069
Judge	-1.11	[-1.87, -0.34]	0.33	-2.83	.005
Social psychologist	0.83	[-0.15, 1.82]	2.30	1.65	.098
Low custody vignette	-0.79	[-1.58, -0.01]	0.45	-1.98	.048
High custody vignette	0.59	[-0.36, 1.54]	1.80	1.21	.23
Police × Low Custody	-1.97	[-3.13, -0.81]	0.14	-3.33	<.001
Judge × Low Custody	-2.14	[-3.43, -0.85]	0.12	-3.25	.001
Social Psychologist Low	-1.45	[-2.65, -0.25]	0.23	-2.38	.017
Police × High Custody	0.96	[-0.37, 2.28]	2.60	1.41	.16
Judge × High Custody	0.72	[-0.51, 1.95]	2.05	1.14	.25
Social Psychologist × High	0.36	[-1.33, 2.04]	1.43	0.41	.68

Note. OR = odds ratio. Comparison group for participant type is laypeople. Comparison group for vignette is ambiguous vignette.

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**Table 4**

Cell Means (*SD*; *n*) for Continuous Objective, Subjective, and Perspective-Taking Custody Measures by Vignette and Participant Type

Question and vignette type	Police	Judges	Social psychologists	Laypeople
Objective				
High	2.47 (2.96, 74)	2.30 (2.49, 74)	4.23 (2.70, 80)	3.84 (3.42, 67)
Ambiguous	6.06 (3.68, 70)	6.13 (3.39, 71)	5.91 (2.89, 75)	6.62 (3.14, 69)
Low	9.54 (1.08, 79)	8.96 (1.89, 73)	7.75 (2.13, 73)	7.84 (2.50, 67)
Subjective				
High	1.31 (1.18, 74)	1.31 (0.76, 74)	1.36 (0.70, 80)	1.69 (1.16, 68)
Ambiguous	2.70 (2.32, 70)	2.79 (2.06, 71)	1.83 (0.94, 75)	2.26 (1.82, 69)
Low	7.84 (2.41, 75)	6.11 (2.61, 70)	4.30 (1.94, 73)	4.54 (2.80, 67)
Perspective-taking				
High	1.81 (2.36, 74)	2.32 (2.34, 74)	2.26 (1.84, 80)	2.51 (2.47, 69)
Ambiguous	4.39 (3.44, 70)	5.38 (3.69, 72)	2.87 (2.02, 75)	3.09 (2.70, 68)
Low	8.67 (2.23, 79)	8.88 (2.06, 72)	5.03 (2.47, 73)	4.78 (3.41, 67)

Note. Scale ranged from 1 (*not free at all*) to 10 (*totally free*).

interactions did not provide a better fit to the data,  $\chi^2(863) = 11.28, p = .80$ . The main effects logistic regression model was significant,  $\chi^2(869) = 396.22, p < .001$ , and explained 50.20% of the variance (Nagelkerke  $R^2$ ). Both factors (participant type and vignette type) were significant predictors of objective custody judgments.

#### Main Effects of Participant Type on Objective Responses

Counter to our hypothesis that legal participants in general would perceive more freedom than nonlegal participants, the logistic regression showed that across vignettes, police and judges were both significantly less likely than nonlegal participants to see the suspect as objectively free to leave for the dichotomous question. The two nonlegal groups did not differ from each other significantly in their judgments. Interestingly, the ANOVA for the continuous question yielded a nonsignificant effect, such that none of the four types of participants differed significantly from any other, all  $p_{\text{Tukey}} > .67$  (see OSF for specific  $p$ -values and other statistics for all six post hoc comparisons, <https://osf.io/48ymz/>).

#### Main Effects of Vignette Type on Objective Responses

Consistent with our first hypothesis, high-custody vignettes elicited lower perceptions of freedom (more “no” responses) than low-custody vignettes. Controlling for participant type, those who read the low-custody vignette were significantly more likely than those who read the ambiguous vignette to see the suspect as free to

leave; those who read the high-custody vignette were less likely to see the suspect as free to leave.

A main effect of vignette type in the ANOVA on continuous ratings showed the same pattern. The high ( $M = 3.22, SD = 3.01$ ) and low ( $M = 8.56, SD = 2.08$ ) custody vignettes differed significantly from each other (Cohen’s  $d = 2.05, 95\% \text{ CI } [1.86, 2.28]$ ) and both differed significantly from the ambiguous vignette ( $M = 6.17, SD = 3.27$ ; Cohen’s  $d$  for difference between high and ambiguous = .95  $95\% \text{ CI } [.69, 1.20]$ ; Cohen’s  $d$  for difference between ambiguous and low = .86,  $95\% \text{ CI } [.65, 1.10]$ , all  $p_{\text{Tukey}} < .001$ ).

#### Participant $\times$ Vignette Interactions on Objective Responses

We observed a significant Participant  $\times$  Vignette interaction on the continuous measure (see Figure 1). We predicted that the greatest disparity among participants would be in the ambiguous-custody vignette. In contrast, simple effects tests showed that there were significant participant type differences in the low-custody,  $F(3, 862) = 7.46, p < .001$ , and high-custody,  $F(3, 862) = 9.25, p < .001$ , vignettes, but not in the ambiguous vignette,  $F(3, 862) = .89, p = .45$ .

In the low-custody condition, police officers perceived significantly more objective freedom than social psychologists and laypeople (see cell means in Table 4 and all post hoc statistics in Table 6). Judges’ perceptions did not differ significantly from those of police, social psychologists, or laypeople. Social psychologists’ perceptions did not differ significantly from laypeople.

**Table 5**

The 4 (Participant Type: Police, Judges, Social Psychologists, Laypeople)  $\times$  3 (Vignette Type: High, Ambiguous, Low Custody) Between Subjects ANOVA Test Statistics, Effect Size Estimates, and 90% CI for Effect Sizes by Question Type

Dependent measure	Cases	$F$	$df$	$p$	$\eta_p^2$	90% CI
Objective question	Participant type	0.48	3, 862	.70	.002	[.00, .01]
	Vignette type	273.17	2, 862	<.001	.39	[.35, .42]
	Participant $\times$ Vignette	8.53	6, 862	<.001	.056	[.03, .08]
Subjective question	Participant type	26.51	3, 854	<.001	.085	[.056, .11]
	Vignette type	423.44	2, 854	<.001	.50	[.46, .53]
	Participant $\times$ Vignette	17.99	6, 854	<.001	.11	[.076, .14]
Perspective-taking	Participant type	36.46	3, 861	<.001	.11	[.08, .14]
	Vignette type	229.80	2, 861	<.001	.35	[.31, .39]
	Participant $\times$ Vignette	15.91	6, 861	<.001	.10	[.07, .13]

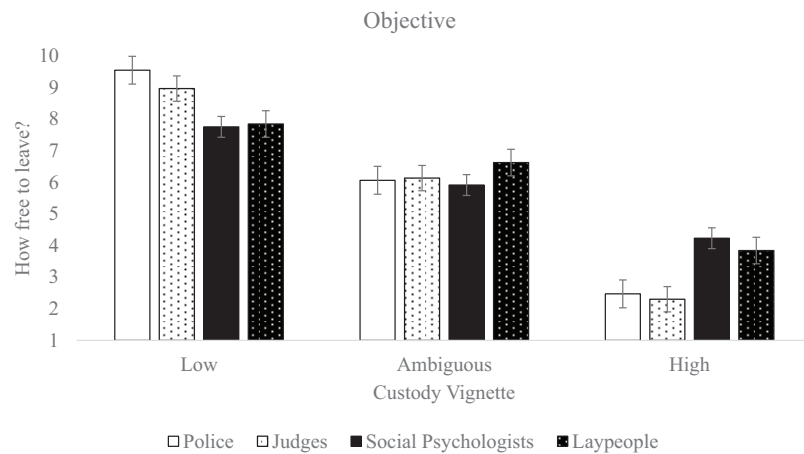


**Table 6**  
*Post Hoc Statistics for All Participant × Vignette Interactions for All Three Dependent Variables*

Relevant comparison		<i>t</i>	<i>p</i> <sub>Tukey</sub>	Cohen's <i>d</i>	95% CI	
					Lower bound	Upper bound
<b>Objective</b>						
<b>Low</b>						
Lay	Judge	-2.40	.41	-0.41	-0.74	-0.07
Lay	Police	-3.73	.01	-0.63	-0.97	-0.29
Lay	Social psychologist	0.18	>.99	0.03	-0.30	0.36
Police	Judge	-1.31	.98	-0.22	-0.54	0.11
Police	Social psychologist	3.99	.004	0.66	0.32	0.99
Judge	Social psychologist	2.64	.26	0.44	0.11	0.77
<b>Ambiguous</b>						
Lay	Judge	1.06	>.99	0.18	-0.16	0.51
Lay	Police	1.21	.99	0.20	-0.13	0.54
Lay	Social psychologist	1.56	.92	0.26	-0.07	0.59
Police	Judge	0.15	>.99	0.03	-0.31	0.36
Police	Social psychologist	0.33	>.99	0.05	-0.27	0.38
Judge	Social psychologist	0.48	>.99	0.08	-0.25	0.41
<b>High</b>						
Lay	Judge	3.34	.04	0.56	0.22	0.90
Lay	Police	2.96	.12	0.50	0.16	0.83
Lay	Social psychologist	-0.85	>.99	-0.14	-0.46	0.19
Police	Judge	-0.39	>.99	-0.06	-0.39	0.26
Police	Social psychologist	-3.93	.005	-0.63	-0.96	-0.31
Judge	Social psychologist	-4.33	.001	-0.70	-1.03	-0.37
<b>Subjective</b>						
<b>Low</b>						
Lay	Judge	-4.99	<.001	-0.85	-1.21	-0.50
Lay	Police	-10.63	<.001	-1.79	-2.18	-1.39
Lay	Social psychologist	0.75	>.99	0.13	-0.21	0.46
Police	Judge	-5.62	<.001	-0.93	-1.28	-0.59
Police	Social psychologist	11.64	<.001	1.91	1.52	2.31
Judge	Social psychologist	5.86	<.001	0.98	0.63	1.33
<b>Ambiguous</b>						
Lay	Judge	-1.69	.87	-0.29	-0.62	0.05
Lay	Police	-1.40	.96	-0.24	-0.57	0.10
Lay	Social psychologist	1.41	.96	0.23	-0.10	0.57
Police	Judge	0.29	>.99	0.05	-0.29	0.38
Police	Social psychologist	2.84	.16	0.47	0.14	0.81
Judge	Social psychologist	3.14	.07	0.52	0.19	0.85
<b>High</b>						
Lay	Judge	1.23	.99	0.21	-0.13	0.54
Lay	Police	1.23	.99	0.21	-0.13	0.54
Lay	Social psychologist	1.08	>.99	0.18	-0.15	0.50
Police	Judge	<.001	>.99	0.00	-0.32	0.32
Police	Social psychologist	-0.17	>.99	-0.03	-0.35	0.29
Judge	Social psychologist	-0.17	>.99	-0.03	-0.35	0.29
<b>Perspective-taking</b>						
<b>Low</b>						
Lay	Judge	-9.18	<.001	-1.56	-1.94	-1.18
Lay	Police	-8.92	<.001	-1.48	-1.85	-1.11
Lay	Social psychologist	-0.57	>.99	-0.10	-0.43	0.24
Police	Judge	0.48	>.99	0.08	-0.24	0.40
Police	Social psychologist	8.53	<.001	1.39	1.03	1.74
Judge	Social psychologist	8.81	<.001	1.46	1.09	1.83
<b>Ambiguous</b>						
Lay	Judge	-5.14	<.001	-0.87	-1.22	-0.52
Lay	Police	-2.90	.14	-0.49	-0.84	-0.15
Lay	Social psychologist	0.50	>.99	0.08	-0.25	0.42
Police	Judge	2.24	.52	0.38	0.04	0.71
Police	Social psychologist	3.48	.03	0.58	0.24	0.91
Judge	Social psychologist	5.78	<.001	0.95	0.61	1.30
<b>High</b>						
Lay	Judge	0.42	>.99	0.07	-0.26	0.40
Lay	Police	1.58	.92	0.26	-0.07	0.60
Lay	Social psychologist	0.57	>.99	0.09	-0.23	0.42
Police	Judge	1.19	.99	0.20	-0.13	0.52
Police	Social psychologist	-1.07	>.99	-0.17	-0.49	0.15
Judge	Social psychologist	0.15	>.99	0.02	-0.30	0.34

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**Figure 1**  
Two-Way Interaction Between Vignette Type and Participant Type for the Continuous Objective Custody Question



Note. Bars represent standard errors.

In the high-custody condition, the pattern of results was reversed. Police and judges did not differ significantly in their perceptions. Both police and judges perceived less freedom than did social psychologists. Laypeople perceived more freedom than judges, but not police or social psychologists.

### Subjective Inquiry: Did the Suspect Feel Free to Leave?

Next, we asked participants whether and to what extent the person in the vignette *felt* free to leave. The main effect regression model predicting responses to the subjective question was also significant and accounted for 59.10% of the variance (Nagelkerke  $R^2$ ),  $\chi^2(855) = 396.92$ ,  $p < .001$ . We retained this model in favor of the two-way interactions model because including interactions did not significantly improve the model's fit to the data,  $\chi^2(855) = 10.80$ ,  $p = .095$ . Again, participant type and vignette type were both significant predictors of whether participants believed the suspect felt free to leave.

### Main Effects of Participant Type on Subjective Responses

For the dichotomous subjective question, logistic regression results showed that across vignettes, police and judges were more likely than social psychologists and laypeople to believe the suspect felt free to leave. These results contrast with the results of the objective question but are consistent with our hypothesis that legal participants would perceive more subjective freedom than nonlegal participants would. Social psychologists and laypeople did not differ significantly from each other (see Table 3).

The ANOVA results for continuous ratings were consistent with the regression for the dichotomous question. We observed a main effect for participant type (see Table 5); post hoc comparisons showed that legal and nonlegal participants differed significantly from one another in the predicted direction. Across vignettes, police ( $M = 3.99$ ,  $SD = 3.50$ ;  $p_{tukey} < .001$ , Cohen's  $d = .55$ , 95% CI [.30, .81]) and judges ( $M = 3.36$ ,  $SD = 2.80$ ;  $p_{tukey} < .001$ , Cohen's  $d = .39$ , 95% CI [.17, .61]) believed that the suspect felt freer to leave than did social psychologists ( $M = 2.46$ ,  $SD =$

1.82). Police ( $p_{tukey} < .001$ , Cohen's  $d = .39$ , 95% CI [.11, .68]) and judges ( $p_{tukey} = .008$ , Cohen's  $d = .21$ , 95% CI [-.38, .46]) also perceived greater subjective freedom than did laypeople ( $M = 2.82$ ,  $SD = 2.37$ ). Interestingly, significant differences between legal samples indicated that police believed that the suspect felt significantly freer than judges did ( $p_{tukey} = .012$ , Cohen's  $d = .20$ , 95% CI [-.99, .50]). Social psychologists and laypeople did not differ from each other ( $p_{tukey} = .24$ , Cohen's  $d = .17$ , 95% CI [.02, .37]).

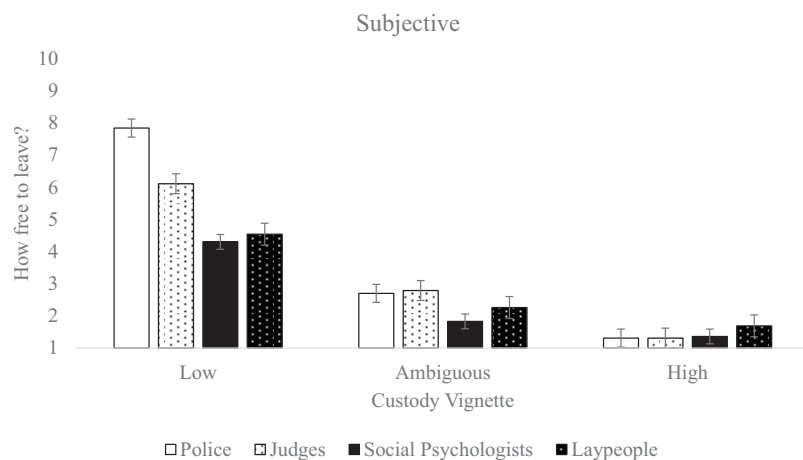
### Main Effects of Vignette Type on Subjective Responses

Logistic regression results showed that those who read low-custody versus ambiguous vignettes were more likely believe that the suspect felt free to leave; those who read high-custody versus ambiguous vignettes were less likely to believe that the suspect felt free to leave. We also obtained a main effect for vignette type on the continuous measure. As in the regression, and consistent with results from the objective question, the low-custody condition ( $M = 5.73$ ,  $SD = 2.83$ ) yielded higher perceptions of subjective freedom than both the ambiguous ( $M = 2.39$ ,  $SD = 1.88$ ;  $p_{tukey} < .001$ , Cohen's  $d = 1.40$ , 95% CI [1.20, 1.59]) and high-custody ( $M = 1.41$ ,  $SD = .97$ ;  $p_{tukey} < .001$ , Cohen's  $d = 2.06$ , 95% CI [1.89, 2.23]) conditions. Those who read the ambiguous vignette also perceived significantly more freedom than those in the high-custody condition ( $p_{tukey} < .001$ , Cohen's  $d = .66$ , 95% CI [.54, .78]). Again, these results are consistent with our hypothesis about vignette type.

### Participant $\times$ Vignette Interactions on Subjective Responses

As with the objective inquiry, a significant participant  $\times$  vignette interaction was obtained on the continuous question (see Figure 2). Interestingly, participants disagreed in their perceptions of subjective freedom most in the low-custody vignette,  $F(3, 854) = 57.41$ ,  $p < .001$ . As before, legal and lay participants differed from each other. Police and judges both perceived significantly more freedom in the low-custody vignette than did social psychologists and laypeople. A difference between legal participants groups emerged, as police believed the suspect felt freer than

**Figure 2**  
Two-Way Interaction Between Vignette Type and Participant Type for the Continuous Subjective Custody Question



Note. Bars represent standard errors.

judges did. We found no significant differences in the low-custody vignette between social psychologists and laypeople.

As predicted, the ambiguous vignette yielded significant disagreement among the different types of participants,  $F(3, 854) = 4.19$ ,  $p = .006$ . However, perhaps due to unequal cell variances, the post hoc tests showed no significant differences between any of the four participant groups. No significant participant type differences were found in the high-custody vignette,  $F(3, 854) = .68$ ,  $p = .56$ .

### Perspective-Taking Inquiry: Would You Feel Free to Leave?

Finally, we asked participants how they themselves would feel if they were in the suspect's position. The model for the dichotomous perspective-taking question was significant,  $\chi^2(859) = 354.51$ ,  $p < .001$ , and accounted for 46.20% of the variance (Nagelkerke  $R^2$ ). In contrast to the analyses above, the model with two-way interactions fit the data significantly better than the model with only main effects,  $\chi^2(859) = 27.26$ ,  $p < .001$ .

### Main Effects of Participant Type on Perspective-Taking Responses

The logistic regression showed that judges were more likely to project that they would feel free, compared with laypeople. A main effect on these continuous ratings also showed differences between legal and nonlegal participants. Specifically, police ( $M = 5.05$ ,  $SD = 3.95$ ;  $p_{tukey} < .001$ , Cohen's  $d = .48$ , 95% CI [.22, .82]) and judges ( $M = 5.50$ ,  $SD = 3.86$ ;  $p_{tukey} < .001$ , Cohen's  $d = .67$ , 95% CI [.38, .97]) projected that they would feel freer to leave compared with social psychologists ( $M = 3.35$ ,  $SD = 2.42$ ). Police ( $p_{tukey} < .001$ , Cohen's  $d = .45$ , 95% CI [.12, .79]) and judges ( $p_{tukey} < .001$ , Cohen's  $d = .59$ , 95% CI [.26, .92]) also thought they would feel freer to leave compared to laypeople ( $M = 3.45$ ,  $SD = 3.03$ ). Police and judges did not differ significantly from each other ( $p_{tukey} = .51$ , Cohen's  $d = .11$ , 95% CI [-.48, .25]);

social psychologists and laypeople also did not differ from each other ( $p_{tukey} = .99$ , Cohen's  $d = .04$ , 95% CI [-.22, .29]).

### Main Effects of Vignette Type on Perspective-Taking Responses

For the dichotomous question, participants who read the low-custody vignette were more likely to say that they would feel free to leave, compared with those who read the ambiguous vignette. This same main effect of vignette type was found on continuous ratings. Specifically, those who read the low-custody ( $M = 6.91$ ,  $SD = 3.21$ ) vignette said that they would feel freer than those who read the ambiguous ( $M = 3.93$ ,  $SD = 3.18$ ;  $p_{tukey} < .001$ , Cohen's  $d = .93$ , 95% CI [.67, 1.20]) or high-custody vignettes ( $M = 2.22$ ,  $SD = 2.26$ ;  $p_{tukey} < .001$ , Cohen's  $d = 1.70$ , 95% CI [1.47, 1.92]). Those who read the ambiguous vignette likewise said that they would feel freer than did those in the high-custody vignette condition,  $p_{tukey} < .001$ , Cohen's  $d = .62$ , 95% CI [.40, .85].

### Participant $\times$ Vignette Interactions on Perspective-Taking Responses

For dichotomous responses, three two-way interactions indicated that police, judges, and social psychologists projected a greater subjective freedom to leave the low-custody situation than the ambiguous-custody situation. Among laypeople, this difference was less pronounced. Both police and judges exhibited a greater difference in their perspective-taking responses between the low-custody versus ambiguous vignettes than did laypeople. As shown in Table 2, these legal professionals were more likely than nonlegal participants to project that they would feel free to leave in the low-custody condition. Although their projected subjective freedom decreased in the ambiguous vignette, their overall percentage of "yes" responses was still higher than that of nonlegal participants.

This is the first analysis in which social psychologists and laypeople exhibited a significant difference. Like the legal professionals, social psychologists imagined themselves to be freer to leave

the low-custody situation. Compared with laypeople, this self-perception of freedom decreased significantly more from the low to ambiguous vignettes. There was no significant difference on this measure between those who read the ambiguous and high-custody vignettes.

There was also a Participant  $\times$  Vignette interaction for the continuous perspective-taking measure (see Figure 3). A simple effects test indicated a significant difference among participants in the low-custody vignette condition,  $F(3, 861) = 52.36, p < .001$ . Consistent with previous results, legal and nonlegal participants differed significantly from each other. Police and judges both reported that they would feel freer to leave than social psychologists in the low custody vignette condition. Both types of legal participants also reported that they would feel freer than laypeople in the same condition. The legal participants did not differ significantly from each other; neither did the nonlegal participants.

In addition to these participant effects in the low-custody vignette, differences were also found in the ambiguous vignette,  $F(3, 861) = 14.35, p < .001$ . Specifically, judges projected that they would feel freer to leave than did social psychologists and laypeople. Police projected that they would also feel freer than social psychologists, but not laypeople. Police and judges did not differ significantly from each other and neither did social psychologists and laypeople. There was no difference among the groups in the high-custody vignette,  $F(3, 861) = .92, p = .43$ .

### Effects of Question Type

We ran a repeated measures ANOVA to examine the hypothesis that across participant type and vignette type, participants would perceive the suspect as having more objective than subjective freedom. In support of our hypothesis, a significant effect of question type was obtained,  $F(1.88, 1620.35) = 459.47, p < .001, \eta_p^2 = .35$ . Post hoc comparisons showed that across the board, participants saw the suspect as having more objective freedom ( $M = 5.97, SD = 3.58$ ) than they thought he felt ( $M = 3.16, SD = 2.75$ ),  $p_{holm} < .001$ , Cohen's  $d = .95$ , 95% CI [.73, 1.03]. Consistent with

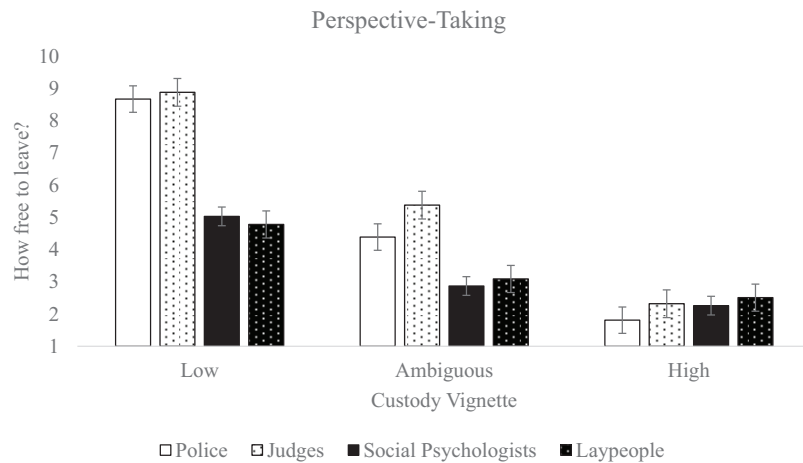
previous research (Alceste et al., 2018), participants also reported that the suspect was objectively freer than they themselves would feel ( $M = 4.34, SD = 3.50$ ),  $p_{holm} < .001$ , Cohen's  $d = .58$ , 95% CI [.29, .63]. We also observed a significant difference between subjective and perspective-taking perceptions of custody: participants in general indicated they would feel freer to leave than they believed the suspect did,  $p_{holm} < .001$ , Cohen's  $d = .49$ , 95% CI [.23, .53].

### Defining "Reasonable Person"

After answering all questions, police and judges were asked to define the "reasonable person." The average definition consisted of 12.75 words in length ( $SD = 10.16, median = 10, min = 1, max = 110$ ). Word count did not differ significantly between the two groups,  $t(395) = 1.41, p = .26$ . As shown in Table 7, our legal professionals were most likely to define "reasonable person," in order, as average or ordinary (64.74%; e.g., "average typical person," "an ordinary citizen"), mentally stable, or of sound mind (55.67%; e.g., "... a person of sound mind and ability to make rational decisions," "a person without diminished capacity"), intelligent (36.27%; e.g., "lay person of normal intellect"), and as having or not having legal experience (16.37%; e.g., "someone without extensive knowledge of legal processes").

Table 7 also shows that the two groups differed in how they conceptualized the reasonable person. Police were more likely to cite a person's mental stability (65.17% vs. 45.92%, respectively),  $\chi^2(1, N = 397) = 14.91, p < .001$ . Judges were more likely to cite intelligence as a defining characteristic (43.37% vs. 29.35%, respectively),  $\chi^2(1, N = 397) = 8.43, p = .004$ . Judges were also more likely to describe the reasonable person as someone who is average or has typical characteristics (69.90% vs. 59.70%, respectively),  $\chi^2(1, N = 397) = 4.52, p = .034$ . In total, 16.37% of participants cited legal experience, or lack thereof, though no between-group differences were found for this characteristic,  $\chi^2(1, N = 397) = 3.51, p = .061$ .

**Figure 3**  
Two-Way Interaction Between Vignette Type and Participant Type for the Continuous Perspective-Taking Custody Question



Note. Bars represent standard errors.



**Table 7**  
*Presence of Four Major Categories Cited in Legal Participants' Open-Ended Definitions of the "Reasonable Person"*

Category	Participant type	Percentage	$\chi^2$ , <i>df</i>	<i>p</i> -value
Intelligent	Police	29.35	8.43, 1	.004
	Judges	43.37		
	Total	36.27		
Average	Police	59.70	4.52, 1	.034
	Judges	69.90		
	Total	64.74		
Sound mind	Police	65.17	14.91, 1	<.001
	Judges	45.92		
	Total	55.67		
Legal experience	Police	12.94	3.51, 1	.061
	Judges	19.90		
	Total	16.37		

## Discussion

*I think we all know that no one ever feels completely comfortable to walk away from the police no matter what the circumstances. However, we have to have some line between what is acceptable police conduct and what is not, and that is what I think the definition of custody is aimed at delineating.* – Anonymous judge, participant

The state of police custody activates two important legal safeguards: Miranda warnings nationwide and the video recording of interrogations in jurisdictions that require it. Yet until recently, custody—both a legal and a psychological construct—had not been subject to empirical examination. In the current study, we assessed the views of police officers, trial judges, social psychologists, and laypeople, all of whom responded to the same custody questions for the same case scenarios.

### Perceptions of Objective Circumstances

Four key results are worthy of notice. First, compared with social psychologists and laypeople, police—and judges to a lesser extent—attributed more freedom to the suspect in the low-custody vignette. Consistent with Alceste et al. (2018), nonlegal participants exposed to an “objectively” noncustodial encounter perceived significant restriction—more than legal professionals assumed they would. Legal professionals also overrated how free the suspect would feel in the low-custody condition compared with the standard set by laypeople. Counterintuitively, a police encounter that seems harmlessly noncustodial to professionals may in fact prove perilous to suspects who perceive a restriction on their freedom to leave. These results bring to mind the U.S. Supreme Court’s opinion in *Oregon v. Elstad* (1985) that police may be “ill-equipped” to judge perceptions of custody in seemingly noncustodial settings (p. 316).

With regard to this divergence of perceptions, it is worth noting that lay adult participants had an ally in social psychologists, who similarly appraised the low-custody situation as more restrictive than did police and judges. By recruiting members of SPSP—the largest academic organization of personality and social psychologists in the world—we sought the perspective of basic scientists who manipulate and control situational variables for a living and then observe the effects on people’s perceptions, thoughts, feelings, and behaviors. In our view, this group of nonforensic experts, lacking an investment in making custody judgments, serves as an

interesting arbiter of disagreements between legal professionals and laypeople.

Second, we found a surprising opposite pattern of results in the high-custody vignette condition. Although everyone’s responses fell below the midpoint on our freedom-to-leave scale, social psychologists and laypeople surprisingly overestimated the amount of freedom a suspect would *objectively* have in an encounter that legal participants viewed as unambiguously custodial. Perhaps legal professionals recognized the objectively custodial circumstances in this vignette established in case law. In contrast, many nonlegal participants, uninformed as to the law, mistakenly believed that the suspect was objectively free to leave until arrested. Indeed, judgments of subjective freedom dropped considerably among these latter participants when asked how this suspect felt.

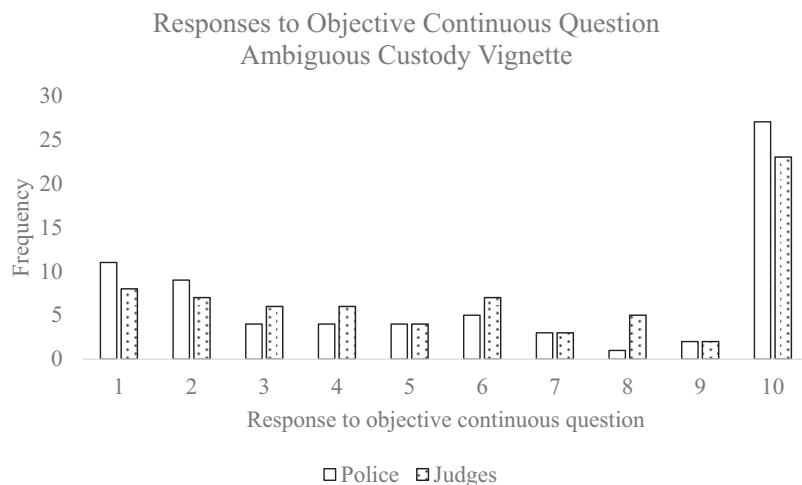
Third, while the low-custody vignette elicited significantly greater perceptions of freedom than the high-custody vignette for all participants, the ambiguous vignette predictably fell between these extremes. By design, this middle condition contained the simultaneous presence of both custodial and noncustodial factors derived from case law. Hence, it yielded the greatest degree of variation in continuous 10-point custody measures—including for police and judges, the two groups familiar with the objective guidelines. Illustrating their distribution of responses, Figure 4 reveals some astonishing variability. Among police, for example, 28 participants rated the suspect’s actual freedom in this condition a 1, 2, 3, or 4; yet 27 rated the suspect’s freedom a 10 in the same situation. Among judges, 27 participants rated the suspect’s objective freedom in the 1–4 range; yet 23 assigned a 10 rating—again, in the same situation. These disparities suggest that a totality of the circumstances analysis does not yield consistent, interrater-reliable custody judgments among legal professionals. Indeed, several police participants and judges spontaneously acknowledged in open-ended remarks that custody is complex (e.g., “*It can be difficult to decide when custodial interrogation begins*”).

A fourth finding worthy of notice concerns an invisible nonresult. In light of research on motivated reasoning (Kunda, 1990), we varied crime severity to test the hypothesis that when the stakes are high, as in a homicide investigation, police and possibly judges, but not social psychologists or laypeople, would set a higher bar for what constitutes custody in order solve the more serious crime. Interestingly, no support was obtained for this notion of a double-standard as crime severity had no significant effects. Across two different crimes with different sentencing implications—a nonviolent burglary and murder—legal professionals exhibited the same patterns in their custody judgments. Although it may also seem reasonable for higher stakes crimes to induce greater feelings of restriction versus freedom in a suspect, to our knowledge there is nothing in case law to suggest that severity of offense should be factored into perceptions of custody. Although we did not conduct equivalence tests, this null effect suggests that the results are generalizable across types of crimes. More research is needed to confirm this hypothesis in settings that mimic decision-making of consequence.

### Framing the Custody Question

Though we collected both dichotomous and continuous responses, the practical question of whether a suspect is in custodial interrogation is a binary one that can determine whether that person is Mirandized, whether an interrogation is recorded, and whether a

**Figure 4**  
*Frequency Distributions for Police and Judge Responses to the Objective Continuous Custody Question in the Ambiguous Vignette*



confession if taken is later admitted or suppressed. Averaging across vignettes, nonlegal participants were more likely than police and judges to indicate that suspects were objectively free to leave. When asked the more intuitive subjective question, however, the results flipped. Across vignette type, nonlegal participants were significantly less likely than police and judges to believe that the suspect felt free to leave. Hence, while framing the custody inquiry as an objective matter was designed to minimize subjective considerations, it may not appropriately capture the complexity of the issue.

With regard to the objective, subjective, and perspective-taking custody questions, all groups of participants inferred that the suspect was objectively freer than they believed he felt. On the perspective-taking question, however, police and judges imagined themselves to feel significantly freer than did nonlegal participants. This result makes sense considering that legal professionals are well-versed in their rights and have substantial familiarity with the criminal justice system. As one police officer put it, "... we know we do not have to answer any questions, if I were asked. But the common public does not know this and falls into that 'trap.'"

Research shows that people fall prey to the false consensus effect, a tendency to project one's own characteristics onto others, thereby inflating estimates of how normative these characteristics are in the population (Krueger & Clement, 1994; Ross et al., 1977). In the realm of custody judgments, this tendency suggests the possibility that police and judges overestimate a suspect's subjective freedom on the basis of their own knowledge and experience. As such, perhaps legal decision makers should be instructed to imagine themselves in the *suspect's* position, not their own, while evaluating custody. Of course, if they cannot set aside their privileged status when imagining themselves in the suspect's position, the perspective-taking question will not prove to be an effective way to determine custody.

### Interjudge Disparities

Because the courts have written extensively about the need for objective standards, the subjective question we used would likely be

met with resistance. The assumption is that an objective test is preferable to making individualized per-suspect judgments. In the present study, the objective question yielded mostly similar responses from police and judges in both the high and low-custody vignettes. But real cases with disputed confessions are seldom so clear-cut.

Our ambiguous vignette is especially relevant because it contained a mixture of custodial and noncustodial factors often coexistent in real interrogations. As noted earlier, the frequency distributions of judges reveal notable discrepancies in their *objective* custody ratings in this scenario (see Figure 4). With judicial disparities of this magnitude, one has to question the wisdom of the so-called objective test. How can an objective question yield such variation? Grano (1979) suggested that observers may weigh the impact of objective circumstances differently. Another possibility is that the way judges determine custody depends on their personal definition of the "reasonable person," for which there is no formal legal definition.

On an historically noteworthy topic of relevance, efforts at sentencing reform have long been inspired by cases and analyses that have exposed interjudge disparities in sentencing. The problem is that similarly situated defendants receive sometimes drastically different sentences depending on characteristics of the defendant and the background, political ideology, and biases of the judge assigned to the case. The disparities observed in this study raise similar questions about what factors drive these differences and what can be done to ensure that determinations of custody are more uniform from one judge to the next.

### Defining the "Reasonable Person"

For exploratory purposes, we asked the legal professionals in our sample to define a reasonable person. The reasonable person standard has a long history. But what does it mean? In a recent experiment, Tobia (2018) asked one group of laypeople to estimate the *reasonable* number of different things (e.g., calories to consume each day, books read in a year, romantic involvements in a lifetime). For those same things, a second group was asked to estimate the *average* number; a third group estimated the *ideal*

number. Across items, a consistent pattern emerged: "Reasonable" amounts were greater than average but less than ideal. These results suggest that "reasonableness" represents something of a hybrid construct, informed by what is normative and what is good. In the context of determining custody, what characteristics does a reasonable person have?

We found considerable disagreement among police and judges in terms of what constitutes a reasonable person for a custody inquiry. Judges were more likely to cite intelligence as a relevant factor and to indicate that a reasonable person is someone with average, common, ordinary, or normal characteristics. In contrast, police officers were more likely to reference the reasonable person's psychological state, either in terms of mental and emotional health, or sobriety. Although some police officers and judges mentioned a person's lack of knowledge or experience in law or contact with law enforcement as criteria for reasonableness, these characteristics were not cited at high rates. The relative lack of focus on this aspect of a suspect's past is consistent with *Yarborough v. Alvarado* (2004), wherein the Supreme Court held that a suspect's prior experience with law enforcement should *not* be considered when judging custody.

Taken together, the nearly 400 definitions we collected demonstrate a fundamental difference in conceptualizations of the reasonable person standard. This difference could mean that custodial protections are offered to suspects at different rates, depending on who makes the judgment. This is potentially problematic because innocent suspects interrogated without the necessary protections could be induced into false confessions that are later difficult to identify. The malleability of custody judgments across decision-makers also increases the risk that so-called objective judgments can be biased by a defendant's race, ethnic background, and other stereotypes.

### Limitations

Overall, the legal professionals in our study exhibited a high level of engagement, as seen in their open-ended responses to the reasonable person definition and invitation for additional comments. In both instances, they expanded on the objective factors they found most relevant in the vignettes, described what additional information they would have found useful, drew attention to the free-to-leave advisement, and expressed an interest in learning of our results. Some judges emailed to express dissatisfaction with the materials, solicit more information, indicate a desire to discuss the study with colleagues, or suggest improvements to future research.

Two sets of limitations follow from the paradigm we used. First, the materials we created, pilot tested, and used were formulated for readability, conciseness, and ease of interpretation in order to increase the rate of responses and not present an overly burdensome task. With this goal in mind, information was not included about the suspect's personal characteristics or prior history with law enforcement, evidence gathered by police during the investigation, or how the individual came to become a suspect. This may limit the ecological validity of the vignettes we used. Though no nonlegal participant commented on this, several police officers and judges noted the relative lack of information provided. Most frequently, they asked whether the suspect was taken "deep in the bowels of the police department" through multiple secured doors controlled by law enforcement personnel. Though the details we

provided were powerful enough to compel a decision about custody, some legal participants wanted to know more.

For our legal participants, not samples that we can assume to be representative of police and judges, a second limitation pertains to the hypothetical online nature of the task. During the heat of an investigation, detectives are motivated to gather information from suspects, and perhaps even elicit a confession. The tacit determination they make as to whether a situation is custodial has ramifications for whether they must Mirandize a suspect and, in many states, begin to record the session. Likewise, in the context of adjudication, judges at a pretrial hearing of a defendant who had not been Mirandized, or whose interrogation had not been recorded, would have to suppress any statements taken if they determine that the defendant was in custody. Whether these groups responded in ways that mimic the judgments of consequence they must make remains an unanswered empirical question.

One additional point concerns our dependent measures. We asked whether the suspect was objectively free, whether he felt free, and whether the respondent would have felt free. But we did not include a question about a reasonable person in the suspect's position. In light of U.S. Supreme Court opinions like *Stansbury v. California* (1994), this last question is pertinent; future research should measure freedom to leave from the perspective of the reasonable person.

### Future Directions

In light of comments by legal participants who sought more information, future research might include a larger, more detailed case file. Perhaps this would reduce the variability of perceptions, especially among legal professionals; perhaps it could have the opposite effect. It would be especially interesting to adapt such materials from notable custody cases in the literature to assess the extent to which police officers and judges draw the same conclusions as the courts did. For example, one might present participants with the objective circumstances as presented in *Stansbury v. California* (1994) and compare their custody judgments to those made by the Supreme Court.

Instead of asking legal participants to define the reasonable person standard after they make custody evaluations, future research might also systematically vary a priori the definition of "reasonable person" and examine its effects on custody perceptions. Perhaps defining a reasonable person as an average, ordinary, or typical member of society yields significantly different custody judgments than instructing participants to use the perspective of a single person, as some legal participants reported doing (e.g., "I always use my spouse as the reasonable person;" "I often say, what would Grandma think or do?"). Perhaps such a line of inquiry would enable an empirically-based standard definition that elicits greater consensus, and less variability, on the issue of custody.

### Conclusion

Inspired by research and commentary on the efficacy of *Miranda* as well as the curative effects of video recording of interrogations, many legal scholars have aimed to understand the conditions that trigger—or fail to trigger—these safeguards. Over the years, they have speculated about current custody standards and possible defects. The current study challenges both the "totality of the



circumstances” and “reasonable person” standards in a transformative way by demonstrating that legal and nonlegal observers apply these putatively “objective” definitions differently.

Despite the assumption that custody can be defined in ways that enable consistency of application, results revealed substantial variation of perceptions between police and judges on the one hand, and social psychologists and laypeople on the other. Hence, legal safeguards triggered by custodial interrogation may be inconsistently applied to real suspects. With regard to legal professionals in particular, our results suggest the possibility of two concerning tangible consequences. First, when police contemporaneously, and judges later in court, determine that a suspect was free to leave, a tendency we observed in low-custody and ambiguous situations, that suspect may as a result be denied the two most important legal safeguards aimed at mitigating the risk of a coerced confession—Miranda advisement and video recording. Second, the finding that individual legal professionals can perceive the same potentially custodial situations so differently raises questions about the equal administration of justice. In light of ongoing evidence of racial disparities throughout the system, in domains ranging from routine police stops to long-term incarceration (see Hetey & Eberhardt, 2018), the individual variability we observed raises questions concerning the risk that these judgments are biased by a defendant’s racial and ethnic background. It is our hope that this study helps to generate additional research on these matters that informs the courts, policy, and practice with regard to this critical construct.

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(Appendix follows)

## Appendix

### Crime Descriptions

#### Low Crime Severity

On a summer night, in a midsized city in the northeast of the U.S., police received a 911 call from a woman who reported hearing a commotion and then seeing an intruder run from the home next door. When two officers arrived, they found that the home had been broken into and burglarized. A TV and jewelry were missing from the master bedroom. The owner, Ms. Jeanine Sukaro, was not home.

Detective Mark Comstock led the investigation. His team dusted for prints, scoured the scene for trace evidence, and determined that a front window served as the point of entry. He also interviewed neighbors about what they heard and took a description of the individual seen running out the front door.

Based on a month-long investigation, Detective Comstock identified a person of interest to be questioned. What follows is a description of how this individual was questioned.

#### High Crime Severity

On a summer night, in a midsized city in the northeast of the U.S., police received a 911 call from a woman who reported hearing a commotion and then seeing an intruder run from the home next door. When two officers arrived, they found that the home had been broken into and burglarized. A TV and jewelry were missing from the master bedroom. The bloodied body of the owner, Jeanine Sukaro, was found in a closet. Defensive wounds indicated that she fought with her intruder before being shot in the head and killed.

Detective Mark Comstock led the investigation. His team dusted for prints, scoured the scene for trace evidence, and determined that a front window served as the point of entry. He also interviewed neighbors about what they heard and took a description of the individual seen running out the front door.

Based on a month-long investigation, Detective Comstock identified a person of interest to be questioned. What follows is a description of how this individual was questioned.

### Vignettes

#### Low Custody

Person-of-interest David Hansen: After failing to reach Mr. Hansen by phone, Detective Comstock sent Officers Lamar Smith and Ryan Bell to his apartment. When they arrived, they asked if he would be willing to answer questions. They set a meeting time at the local police station. When Hansen arrived, Detective Comstock, who was waiting for him near the front entrance, introduced himself and offered Hansen a coffee. The two men sat in chairs at the reception area of the station.

The interview lasted for 45 min. During that time, Detective Comstock indicated that he was investigating a crime. After reminding Hansen that he is free to leave at any time, Detective Comstock asked Hansen to recall everything he could about his whereabouts on the day and time in question. When Hansen

wavered and could not provide a solid alibi for the [murder] burglary, Comstock challenged him and pressed him to think harder. He asked, "You're sure you were not in the neighborhood that day?" Then he asked if there was anyone else in the area that Hansen might suspect, anyone that police should speak to next. Hansen had no one to name.

#### Ambiguous

Person-of-interest Ed Benning: Officers Lamar Smith and Ryan Bell phoned Mr. Benning and asked him to drive to the police station after he left his work at 7:00 p.m. Once he arrived at the station, the two officers escorted him to the interview room, where Detective Comstock was waiting to ask Benning some questions about the incident at Jeanine Sukaro's house. Comstock said, "Thank you for coming to the station to help us out. We'd appreciate it if you would submit your cell phone and shoes for forensic testing." Benning handed these items to Comstock, who sealed them in evidence bags. He did not tell Benning when the items would be returned.

Detective Comstock also asked Benning to take a polygraph exam. During that exam, he accused Benning of breaking into Ms. Sukaro's home [and killing her]. Although the results of the polygraph were inconclusive, Comstock told Benning that the exam indicated deception in his denials. He said that if he kept lying about his involvement, police would get a warrant to search his car. Twice during the two-hour questioning, Benning told Comstock that he did not want to talk any more.

#### High Custody

Person-of-interest Carl Dixon: Detective Comstock sent uniformed Officers Lamar Smith and Ryan Bell to pick up Mr. Dixon at his home. When they arrived at 9:00 p.m., they told Dixon that he needed to come with them to answer questions about a crime. Dixon asked if he could change out of his sweats and t-shirt. But Smith said no and gestured Dixon to get into the back of the squad car.

Once they arrived at the station, the officers escorted Dixon to a small, bare, windowless room with three chairs. They locked the door behind them. Detective Comstock joined in, stood in front of Dixon, and accused him: "We know for a fact that you broke into Jeanine Sukaro's home [and shot her in the head]. You're better off cooperating than lying to me." Detective Comstock told Dixon that he was identified by an eyewitness and caught on a surveillance camera outside. Both claims were untrue. The questioning lasted for nearly 8 hr, into the early morning. Twice Dixon asked for a bathroom break. Each time he was escorted by an officer and returned to the interview room.

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