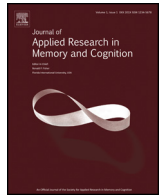




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Holding Yourself Captive: Perceptions of Custody During Interviews and Interrogations

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Police custody activates important legal safeguards. To determine custody, courts examine objective conditions and ask whether a “reasonable person” would feel free to leave while being questioned. In Study 1, student participants were either interviewed or interrogated about a staged theft they believed to be real. Interviews and interrogations embodied specific factors considered noncustodial or custodial, respectively. Observers then watched videos of these sessions. Participants in interviews did not feel significantly freer to leave than those in interrogations, though observers did make this distinction. In Study 2, some participants were explicitly pre-advised of their freedom to leave. The advisement induced participants to report they were free to leave as an objective matter but did not significantly affect their subjective feelings of freedom. In both studies, the actor–observer divergence vanished when observers imagined themselves from the actor’s perspective. These results challenge legal assumptions about custody and suggest lines of future research.

General Audience Summary

When police interrogate someone about a crime in an effort to get a confession, they must inform that person of his or her *Miranda* rights to remain silent and have a lawyer present. But this right comes into play only when the person being questioned is “in custody.” But what it means to be in custody, and not feel free to leave, has never been empirically examined. In this article, we report the results of two experiments in which Phase 1 laboratory participants were interviewed as witnesses or interrogated as suspects about an alleged theft that occurred in their presence; Phase 2 neutral observers then watched videotapes of these prior sessions. Overall, results showed that most Phase 1 participants—even those questioned in a non-accusatory manner, as witnesses—felt as if they were in custody and were not free to leave. In contrast, Phase 2 observers differentiated between the two types of sessions, perceiving participants as free to leave while being interviewed but not when interrogated as suspects. Interestingly, however, when observers were asked to imagine *themselves* in the participant’s situation, the majority reported that they would not have felt free to leave—even from the “noncustodial” interview. Also interesting is that an explicit “You are free to leave at any time” advisement did not significantly increase subjective perceptions of freedom, as assumed by law. These studies thus contradict assumptions made by U.S. courts about custody and, therefore, the protections that are supposed to be activated.

Keywords: Police custody, Interview, Interrogation, Perception of freedom

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In the landmark case of *Miranda v. Arizona* (1966), the U.S. Supreme Court ruled for the first time that police must inform all suspects in custody of their constitutional rights to silence and to counsel—and that any statement taken without a knowing, intelligent, and voluntary waiver would not be admissible at trial. Over the years, a number of researchers have questioned the protective effectiveness of *Miranda* (for an overview, see Smalarz, Scherr, & Kassin, 2016). In light of numerous DNA exonerations, many of which involved false confessions, recent reform efforts have focused on the requirement that all interrogations be video recorded in their entirety (e.g., see Kassin et al., 2010). At last count, approximately half of all states now mandate on a statewide basis the video recording of interrogations (Sullivan, 2016).

Both *Miranda* and video recording have in common that the procedural requirement is triggered by “custody.” But what conditions define custody in operational terms? What dispositional and situational factors lead individuals questioned by police to perceive themselves as free, or not free, to leave? Over the years, U.S. courts have struggled to define this all-important construct. In *Miranda*, the Court defined a custodial interrogation 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” (p. 445). Elsewhere in that opinion, the Court cited several indicia of a custodial interrogation such as intimidation, trickery, a restriction of personal liberty, an unfamiliar environment, and hostility from law enforcement.

Over the years, the courts have sought to create an objective test by which judges would determine custody. It is clear that formal arrest triggers custody and all subsequent protections (Orozco v. Texas, 1969). Often, however, police question individuals who have not been arrested. In these more ambiguous cases, the situation may be considered custodial if police restrict an individual’s freedom of action in a significant way. Hence, 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). Although no comprehensive list of factors exists, the courts have variously cited as relevant whether police informed the suspect that he or she was free to leave, whether the suspect’s freedom of movement was restrained (e.g., was the suspect at home, in public, or in a police station; was he or she in handcuffs and held in an open or locked room; were his or her shoes, clothing, cell phone, or car keys taken?), and whether coercive interrogation techniques were used (e.g., who initiated contact; how many police officers were present; were friends or family members present; how long did the session last; did police make accusations and threaten physical force?).

In considering these questions, it is interesting that the Court staked out a behaviorist stimulus-response position by which a state of freedom or custody—and the decision to leave or stay—are determined by strictly objective parameters, not by the individual’s cognitive representation of the situation and anticipated consequences of a particular response (D. Reisberg, personal communication, August 2, 2017). Indeed, the Court asserted that it will not defer to an individual suspect’s or police

officer’s reported perceptions. Instead it advocated a “reasonable person standard,” the central question being whether the situation would lead a reasonable person to feel a significant restriction on his or her freedom of action (*Stansbury v. California*, 1994; for historical origins of the “reasonable person” standard, dating back to Adolphe Quetelet’s nineteenth century writings, see Beirne, 1987). Put another way, “Would a reasonable person. . . have felt free simply to get up and walk out of the. . . room. . . at will?” (*Yarborough v. Alvarado*, 2005, p. 670).

Among the objective criteria that a “reasonable person” would consider, the context and manner in which police question a suspect looms large. During a criminal investigation, police conduct interviews and interrogations. Within the framework of the Reid Technique, first published by Inbau and Reid (1962), cited by the *Miranda* court, and now in its fifth edition (Inbau, Reid, Buckley, & Jayne, 2013), an interview is a non-accusatory form of questioning designed to gather information and determine if the individual is being truthful or deceptive. If the latter judgment is made, that individual is identified as a suspect and subjected to interrogation—an accusatory, guilt-presumptive process of influence in which trickery and deception are used to elicit a confession. Although these processes may overlap, the distinction serves as a proxy for the factors that constitute custodial and noncustodial questioning.

Despite the pivotal nature of this psychological construct, no empirical research has examined people’s perceptions of custody. Of direct relevance to this inquiry, however, are classic studies of actor–observer differences in attribution, particularly with regard to attributions of freedom. Beginning with Heider’s (1958) Gestalt-inspired hypothesis that “behavior. . . has such salient properties that it tends to engulf the field” (p. 54), attribution theorists have found that observers tend to focus on the actor and overlook contextual factors. As a result of this attentional bias, people routinely commit the fundamental attribution error, or correspondence bias, making dispositional attributions for others’ behavior while underestimating the role of situational factors (Gilbert & Malone, 1995; Jones, 1990; Ross, 1977). In contrast, studies of self-perception indicated that actors focus outward, on aspects of the environment that impinge on their behavior, which leads them to make situational attributions. This divergence in perceptions is known as the actor–observer effect (Jones & Nisbett, 1972; Watson, 1982).

Harvey, Harris, and Barnes (1975) examined the actor–observer effect with specific regard to perceptions of freedom. Their study utilized a “Milgramesque” teacher–learner shock paradigm to test how participants in different roles attribute responsibility and freedom for actions that produce consequences of varying severity. In each session, two participants were randomly assigned to the teacher or observer role, while a confederate, ostensibly in an adjacent room, played the learner. By random assignment, the learner exhibited either moderate or severe distress. At the end of each session, the teacher and observer answered questions about the experience. Results showed that when the learner exhibited more distress, observers attributed more freedom and responsibility to the teacher who, in turn, attributed less freedom and responsibility to themselves.

The Present Studies

Two experiments were designed to assess what it means to be “in custody” from the perspective of both an actor and an observer. Specifically, we sought to test two assumptions: that the reasonable-person standard serves as a valid proxy for a suspect’s perceptions of freedom and custody, and that instructing a suspect that he or she is free to leave is sufficient to eliminate the perception of custody. In Study 1, we developed a novel paradigm involving a staged theft to test the hypothesis that people feel free to terminate questioning while being interviewed as a witness (an information-gathering session that mimics a noncustodial situation) but not while being interrogated as a suspect (an accusatory session that mimics a custodial situation). All sessions were video recorded, after which we tested whether actors and later observers perceived the custody inquiry as the courts would predict according to condition—and whether they agreed or diverged in their perceptions. In Study 2, we replicated the non-accusatory interview paradigm to test the Supreme Court’s hypothesis that participant actors randomly assigned to receive an explicit “free to leave at any time” pre-instruction would feel freer to terminate than those not similarly instructed.

Study 1

As a result of extensive pilot testing involving 40 sessions, Study 1 was conducted in two distinct phases. Phase 1 consisted of a live laboratory experiment involving interactions between an experimenter, confederate, research assistant, security guard, and participant. Our objective was to determine whether participants in live questioning sessions, led to believe that a theft was committed and that the stakes were real, felt free to leave while being interviewed versus being interrogated by the guard. Phase 2 consisted of an online study in which observers watched and responded to videotaped sessions from Phase 1. Each observer watched a single session after which he or she was asked the same questions put to the actors concerning their freedom to terminate questioning and leave.

Phase 1 Method

Participants. Sixty undergraduate psychology students volunteered to participate as part of their course requirement. Within this sample, 61.7% were female; all were between the ages of 18 and 35 ($M=20$ years, $SD=2.71$). In terms of demographic makeup, 45% self-identified as Hispanic; others were Asian (20%), Black (15%), White (11.7%), and other ethnicities (6.7%).

Students who volunteered were led to believe that the purpose was to examine perceptions of autonomy. To screen for those who might have an adverse reaction to our inherently stressful procedure, we asked all prospective participants, prior to arrival, to indicate whether they had ever been diagnosed with an anxiety disorder (options: *Yes*, *No*, *Prefer not to respond*) and to complete the Beck Anxiety Inventory (BAI), which asks respondents to self-report recent experiences of various symptoms (Beck, Ward, Mendelson, Mock, & Erbaugh, 1961). Fifteen students

who answered “Yes” or “Prefer not to respond” to the anxiety disorder question or who scored above the high-anxiety threshold of the BAI (>36 points) were excluded.

Stage 1: the missing wallet. Upon their arrival, students were seated in a small waiting area with a rectangular table and two chairs. The front door was open to the adjacent hallway, where students assembled between classes. A female experimenter explained that sessions were running behind schedule and the prior participant was still working on a final questionnaire. This prior participant was actually a confederate, soon to play the role of theft victim. The participant sat in the waiting area until the confederate was finished. The experimenter then asked to see a college identification card to verify his or her sign-up name; this was included to bolster the credibility of the procedure that would follow.

The participant read and signed the informed consent, after which the experimenter re-joined the confederate in the experimental room, leaving the participant alone in the waiting area alongside the confederate’s purse and an open door. After 2 or 3 min, the experimenter and confederate came out. The confederate, gathering her belongings to leave, stated that her wallet—where she had kept the college I.D. card she had earlier used—was missing from her purse. After searching frantically, the confederate stated that she had to leave for a scheduled appointment. The experimenter advised her to report the missing wallet to Public Safety, which she said she would do before leaving.

Stage 2: the cover story. After the confederate left, a female research assistant entered the waiting area. The experimenter explained that this research assistant was a fellow graduate student who was conducting another experiment. The experimenter asked the participant if he or she was willing to take a few minutes to help her out before starting the original study. The experimenter noted that it was not possible to receive credit for this favor. Still, all participants acceded to the request.

This “detour” was built into the protocol to instill in participants an incentive to hasten their upcoming sessions with the security guard so they can move on to the study for which they had registered. The added time pressure was designed to motivate participants to exercise their freedom to escape the situation. Hence, we anticipated that some number would attempt to terminate their interviews or interrogations because of their responsibility to the experimenter and desire to earn credits. The research assistant and participant then entered the experiment room, which was modeled after an interrogation room: small, barely furnished, windowless, and furnished with a rectangular table with three chairs. At that point, the participant was handed cover-story questionnaires about perceptions of autonomy.

Stage 3: the questioning session. After 5 min, a male research assistant knocked on the experiment room door. Prohibited by law from impersonating a police officer, this confederate, dressed in civilian clothing, entered the room with an air of authority and equipped with a radio and key ring visibly attached to his belt. He introduced himself as a security guard and said that he was investigating a missing wallet report. He said he wanted to question the participant.

Prior to each session, participants were randomly assigned to an interview or interrogation condition. In the interview, the guard questioned the participant with the door open and the research assistant present. In the interrogation, he asked the research assistant to step outside and shut the door. Although these interactive sessions could not be scripted verbatim, the questioning followed the training and manual guidelines for interviews or interrogations, respectively, as recommended by Inbau et al. (2013). Indeed, the protocols were designed by the first author, who had completed training and is certified in the Reid Technique. A hidden surveillance camera mounted in the corner of the ceiling captured an equal-focus view of the participant and guard. This camera started to record as soon as the guard entered the room. Participants were neither physically restrained nor told that they could not leave.

Interviews. In this condition, the guard adhered to the guidelines in the Reid Technique by asking non-accusatory questions modeled after the Behavioral Analysis Interview. All interviews were conducted with the research assistant in the room and the door wide open. This interview consisted of open-ended questions (e.g., “Can you tell me what happened here?”) and direct questions (e.g., “Let me ask you straight out: did you take this girl’s wallet?”), as well as specific behavior-provoking questions recommended in the Reid Technique (e.g., “What do you think should happen to the person who took the wallet?”). The guard terminated the interview by thanking the participant and asking the research assistant if he could speak to her outside.

Interrogations. In this condition, participants underwent a modified version of the Reid Technique of interrogation. Before the session, the guard asked the research assistant to step outside to talk. Moments later, he re-entered alone and shut the door. Each session began with a short interview to set the context. The interrogation itself then opened with a direct accusation (“Based on what I’ve seen and heard, I know you took this girl’s wallet. That much is clear. What I’m trying to figure out is why”), at which point the guard introduced standard minimizing themes and the notion that the theft was a spur-of-the-moment act (e.g., “I don’t believe you planned to take this girl’s wallet”). All participant objections and denials were interrupted. After several minutes, the guard terminated the session and left, he said, to call his superior.

Questionnaire and debriefing. After each session, the experimenter returned and partially debriefed the participant by noting that the purpose of the experiment was not to study perceptions of autonomy, as previously stated, and that she would explain further in a few moments. Participants were then administered a perceptions of custody questionnaire in which they indicated (a) whether they *were free* to leave the room while being questioned, and (b) *how free they felt* they were to leave (they were also then asked to indicate whether and how often they thought about leaving, how motivated to leave they were, how motivated to stay they were, whether they had asked permission to leave, whether they physically tried to leave, and why they stayed in the room).

Serving as a manipulation check on the effectiveness of the interview versus interrogation manipulation, we asked participants to indicate whether, in their view, they were questioned as

a *witness* to the theft or as a *suspect*, whether the guard believed they were *guilty* or *innocent*, and their degree of confidence in this latter belief. Participants were also asked to indicate if they knew what it means, in legal terms, to be “in custody,” and to rate the extent to which they felt like they were in custody while being questioned. All ratings were made on a 1–10 point scale. Finally, participants answered open-ended questions about why they chose to stay in the room during questioning and what they thought of the experiment. Once this was completed, the experimenter fully debriefed the participant.

Phase 2 Method

Phase 2 aimed to assess observers’ perceptions of freedom overall and between the two questioning conditions. This part of the study was conducted as a Qualtrics survey and distributed via Amazon’s Mechanical Turk, an online platform that enables the rapid and inexpensive collection of high-quality data (see Buhrmester, Kwang, & Gosling, 2011).

Participants. Phase 2 involved 303 participants from the U.S., 50 of whom were automatically excluded for failing to comply with instructions (i.e., they took notes, searched the internet or completed other tasks during the study, asked others for help, refreshed the webpage, or extended their participation into a second session). The final sample thus consisted of 253 participants, each paid \$0.50 for their time. Overall, 58% of our sample was female and 42% was male; 48.5% had at least a Bachelor’s degree, 40% had completed some college, and 11.5% had a high school education. A majority of the sample was White (73.5%), followed by Black (9.1%), Hispanic/Latino (9.1%), Asian (6.3%), and other (2%). The mean age was 38.6 years old ($SD = 13.02$).

Materials and procedure. After providing online informed consent, MTurk workers were given contextualizing information about the videos from Phase 1. They were told that a study was conducted at a city university, that a wallet went missing, and that a Public Safety officer questioned a participant as part of his investigation. Each MTurk worker then watched one of 57 videos from Phase 1 (two Phase 1 participants declined consent to use their videotape; one session failed to record due to technical difficulties).

Of the 253 observers, 142 watched an interview and 111 watched an interrogation. They were then asked about their perceptions of the person’s guilt, whether that person was a witness or suspect, whether he or she *was* free to leave, whether he or she *felt* free to leave, and why—in an open-ended question—the person stayed during questioning. Phase 2 observers were then asked to imagine themselves in the situation and indicate whether they would personally feel free to leave.

Coding. In both phases, two independent raters—blind as to the purpose of the study and hypotheses—coded Phase 1 and Phase 2 participants’ open-ended responses to their respective questions, “Please describe why you stayed in the room” and “Why do you think the person stayed in the room?” Based on the authors’ preliminary assessments, raters were given a priori categories and instructed to record the presence or absence of

all category instances per question. The raters each coded a random sample of 20% of all open-ended responses for each phase. After achieving an acceptable level of inter-rater reliability (all $\kappa_s > .67$), each coder rated half of all questions.

Phase 1 Results

Phase 1 interviews and interrogations were designed to distinguish between two important types of questioning—non-custodial and custodial. A total of 60 sessions were conducted (29 interviews and 31 interrogations). We refer to participants questioned in Phase 1 as “actors” and MTurk workers who saw the videotapes in Phase 2 as “observers.”

Manipulation checks. Three variables served as manipulation checks to ensure that the interviews and interrogations were distinguishable: session length, participants’ beliefs that they were treated as a witness or a suspect, and their beliefs that the guard perceived them to be innocent or guilty. A comparison of conditions indicated that interviews were significantly shorter than interrogations ($M = 443.71$ s, $SD = 80.37$ vs. $M = 591.06$, $SD = 118.79$), $t(57) = 5.52$, $p < .001$, $d = 1.44$, 95% CI [0.87, 2.01]. Participants were asked to indicate whether, in their view, they were questioned as a witness to the theft or as a suspect. In the interrogation condition, 30 of 31 actors (97%) reported feeling like a suspect. In the interview condition, only 12 of 28 actors who answered the question (43%) felt like a suspect. Confirming that the interrogation was experienced as more guilt-presumptive than the interview, this difference was highly significant, $\chi^2(1, N = 59) = 20.85$, $p < .001$. Participants were also asked whether they thought the guard believed them to be innocent or guilty. Again confirming the manipulation, actors—all of whom were factually innocent—were more likely to believe that the guard saw them as guilty in the interrogation than in the interview condition (100%, $n = 31$ vs. 41%, $n = 29$, respectively), $\chi^2(1, N = 60) = 25.36$, $p < .001$. Across conditions, these beliefs were held with high levels of confidence ($M = 7.67$, $SD = 2.71$).

Finally, participants were asked, “Do you know what it means, in legal terms, to be in custody?” Overall, 49 (83%) responded in the affirmative. Next they rated the extent to which they felt like they were in custody during questioning. On a 1–10 point scale, the overall mean was at the midpoint ($M = 4.85$, $SD = 3.42$). Importantly, those who were interrogated believed that they were in custody more than those who were interviewed ($M = 5.84$, $SD = 3.49$ vs. $M = 3.79$, $SD = 3.06$, respectively), $t(58) = 2.41$, $p = .019$, $d = 0.62$, 95% CI [0.10, 1.14].

Main dependent measures. After each session, actors answered two main questions concerning their experience. First, we asked them to indicate if they were objectively free to leave during the questioning (“Were you free to leave the room while the security guard was questioning you?”—yes or no). Overall, only 19 participants (31.7%) said that they were free to leave. Interestingly, the perception of non-freedom was the norm not only in the accusatory interrogation condition but also in the more neutral interview (26% and 38%, respectively), $\chi^2(1, N = 60) = 1.02$, $p = .31$. Next we asked a more subjective question, “How free to leave did you feel?” On a scale from 1 (*did not*

feel free at all) to 10 (*felt totally free*), the mean rating across conditions was well below the midpoint at 3.67 ($SD = 3.13$). As with the binary judgments, these ratings were not significantly higher in response to neutral interviews than accusatory interrogations ($M = 4.17$, $SD = 3.35$ vs. $M = 3.19$, $SD = 2.88$; respectively), $t(58) = 1.22$, $p = .23$, $d = 0.31$, 95% CI [−0.20, 0.82].

On the question of whether they had *considered leaving* the room during questioning, only 4 of 59 actors said they thought about leaving; there were no differences as a function of condition, $\chi^2(1, N = 59) = .87$, $p = .35$. When asked how often they had thought about leaving on a 10-point scale, the difference between interview and interrogation conditions was not significant ($M = 1.25$, $SD = .64$ vs. $M = 2.2$, $SD = 2.61$, respectively), $t(21.27) = 1.58$, $p = .128$, $d = 0.5$, 95% CI [−0.13, 1.13]. On the question of how much they *wanted to leave* the room, the overall mean was quite low ($M = 1.77$, $SD = 1.96$), though actors in the interrogation condition reported a significantly greater motivation than those who were interviewed ($M = 2.36$, $SD = 2.63$ vs. $M = 1.18$, $SD = 0.48$, respectively), $t(28.77) = 2.34$, $p = .027$, $d = 0.62$, 95% CI [0.09, 1.16]. On the converse question of how much they wanted to *stay*, overall ratings were high ($M = 8.45$, $SD = 2.12$); there were no significant differences between conditions, $t(58) = .25$, $p = .81$, $d = 0.06$, 95% CI [−0.44, 0.57].

Finally, as described earlier, we coded open-ended responses to the prompt “Please describe why you stayed in the room.” Overall, the most prevalent explanations participants cited were that they were innocent and had nothing to hide (“I knew that I did not take anything, so I was perfectly fine”; “I had nothing to hide, so I wanted to stay and clarify everything”), that leaving would appear suspicious (e.g., “If I had left, that could land me in more trouble”), and that they wanted to help in the investigation (e.g., “to provide helpful insight to the person who lost their wallet”). Miscellaneous low-frequency responses included needing to stay to earn class credit; wanting to be respectful, not rude; and believing it was the guard’s prerogative to investigate. Interestingly, participants cited their actual innocence more often in the interrogation condition (48.4% vs. 20.7%), $\chi^2(1, N = 60) = 5.05$, $p = .025$; they cited wanting to help more often in the interview condition (37.9% vs. 16%), $\chi^2(1, N = 60) = 3.64$, $p = .056$.

Phase 2 Results

Manipulation checks. Paralleling Phase 1 manipulation checks, we asked observers to estimate the length of the session, indicate whether the suspect was questioned as a witness or a suspect, and indicate whether they saw the actor as guilty or innocent of the theft.

Regarding the length of questioning, observers who watched interrogations accurately estimated the session as significantly longer than those who watched interviews ($M = 618.6$ s, $SD = 311.5$ vs. $M = 434.3$ s, $SD = 250.1$ respectively), $t(251) = 5.22$, $p < .001$, $d = 0.66$, 95% CI [0.41, 0.92]. On the question of how the Phase 1 actor was treated, 176 observers (70%) viewed their Phase 1 participant as a suspect—more so among those who watched an interrogation than an interview (86.5% vs. 56.3%, respectively), $\chi^2(1, N = 253) = 26.75$,

$p < .001$. Next, observers were asked about the actor's guilt or innocence. Across conditions, 31% ($n = 78$) saw the innocent actor as guilty. These perceptions did not differ significantly between conditions, $\chi^2(1, N = 252) = .083, p = .77$. On a 10-point scale, however, those who watched an interrogation were significantly more confident in their judgments than those who watched an interview ($M = 6.41, SD = 2.08$ vs. $M = 5.81, SD = 2.16$, respectively), $t(250) = 2.22, p = .027, d = 0.28$. 95% CI [0.03, 0.53].

Main dependent measures. On the key binary question of whether the actor was free to leave the room, responses were evenly divided at 50% across conditions ($N = 126$). Unlike the actors, observers differed significantly on this judgment as a function of condition: although only 35% ($n = 39$) believed that the actor was free to leave the interrogation, that number increased significantly to 62% ($n = 87$) in the interview, $\chi^2(1, N = 252) = 17.53, p < .001$. On the 10-point rating of how free to leave the actor felt, observers continued to distinguish between conditions. Specifically, they saw the actors as significantly freer to leave during interviews ($M = 3.89, SD = 2.55$) than interrogations ($M = 2.79, SD = 1.93$), $t(251) = 3.78, p < .001, d = 0.48$, 95% CI [0.23, 0.73].

Finally, we asked observers to imagine themselves in the actor's position and to indicate whether they personally would have felt free to leave. Overall, only 33% ($n = 83$) of all observers said that they would feel free to leave in the situation they saw. Mirroring the results obtained from the actors themselves, strikingly, this imagined sense of captivity was found not only in the interrogation condition (30%, $n = 33$) but also in the interview condition (35%, $n = 50$), $\chi^2(1, N = 252) = .762, p = .38$.

To sum up, in a personally consequential situation, Phase 1 participants clearly distinguished between the interview and interrogation, the latter lasting longer in duration, making them feel like suspects, and making them feel they were presumed guilty. Those who were interrogated believed that they were "in custody" to a greater extent than those who were interviewed. While judging most participants as innocent, Phase 2 observers discerned these differences as well.

With our key manipulation in place, three important sets of results were obtained (see Table 1). First, most Phase 1 actors reported that they were not, objectively speaking, free to leave; they also did not feel free to leave. This pattern was found not only in the interrogation condition but surprisingly in the

interview condition as well. Second, Phase 2 observers not only distinguished between interviews and interrogations; they also perceived the psychological implications of custody, indicating that the actors were freer to leave, and felt freer to leave, during interviews. Third, however, while observers saw Phase 1 actors as free to leave the interview, they did not imagine themselves as feeling free in that same situation when they took the actor's perspective.

Study 2

Within the interview condition, which variously elicited perceptions of both freedom and custody, we used the same two-phased paradigm to examine a bedrock Supreme Court assumption: that explicitly advising suspects that they are free to leave and not under arrest is sufficient to obviate perceptions of custody (California v. Beheler, 1983; Howes v. Fields, 2012; Oregon v. Mathiason, 1977). While this seems a logical inference, Study 2 presents the first known empirical test of this assumption. We predicted that if Phase 1 actors were instructed that they were free to leave before an interview, they would acknowledge this on both objective and subjective measures. We further expected Phase 2 observers to be influenced in a similar manner.

Phase 1 Method

Participants. Thirty-six students participated in Phase 1 in exchange for \$12. Of the 36 interviews conducted, 18 opened with an explicit advisement to the participant that he or she is free to leave during questioning; 18 interviews did not contain this advisement. All participants were between the ages of 18 and 35 ($M = 22.33, SD = 4.31$); 77.8% were female. Almost half of this sample self-identified as Hispanic (47.2%), followed by White (16.7%), Black (8.3%), Asian (13.9%), and other (13.9%).

Procedure. All participants were subjected to non-accusatory interviews. We also simplified the elaborate cover story previously used involving a research assistant seeking help for an additional survey (despite this detour, Study 1 participants reported low motivation to leave). Each session, therefore, involved an experimenter, confederate, and security guard. As before, each session opened with the discovery of a missing wallet, after which participants were taken to a small, sparsely furnished room to complete a series of questionnaires.

Table 1
Participants' Reactions to Interviews Versus Interrogations in Study 1

Measures	Interview	Interrogation	<i>p</i> -value	Effect size	95% CI for effect size
Actors					
Were you free? (yes/no)	38%	26%	.31	$\varphi = 0.13$	[-0.25, 0.77]
Observers					
Was actor free? (yes/no)	62%	35%	<.001	$\varphi = 0.26$	[0.28, 0.79]
Would you feel free? (yes/no)	35%	30%	.38	$\varphi = 0.055$	[-0.14, 0.36]
Actors					
How free did you feel? (1–10)	4.17	3.19	.23	$d = 0.31$	[-0.20, 0.82]
Observers					
How free did he/she feel? (1–10)	3.89	2.79	<.001	$d = 0.48$	[0.23, 0.73]

Before each session, participants were randomly assigned to receive or not receive an advisement from the security guard that they were free to leave (“*Just so you know, you’re free to leave. I’m not holding you here. If you don’t want to talk to me or need to leave for any reason, you’re free to do that*”). This constituted the only difference between conditions. Five minutes into the cover-story questionnaires, the security guard knocked and entered the room. He introduced himself as a Public Safety officer investigating a missing wallet and seated himself between the experimenter and participant. All sessions were conducted with the door open and the experimenter present. As before, interviews consisted of open-ended and direct non-accusatory questions. After 5 min, the guard terminated the session by asking the experimenter to step outside. Before leaving, the experimenter handed participants the final questionnaire on which they indicated whether they *were free* to leave during questioning, how free they *felt* to leave, whether they *thought about leaving*, to what extent they *wanted* to leave, whether they *asked permission* to leave, and whether they *physically* tried to leave. We also asked participants to explain in their own words why they stayed and what they thought about the experiment. They also answered the same manipulation check questions used in Study 1. Afterward, participants were fully debriefed, paid, and thanked for their time.

Phase 2 Method

Phase 2 was conducted as a Qualtrics survey and distributed via Amazon’s Mechanical Turk. Each observer watched one video from Phase 1 and indicated their perceptions of custody.

Participants. A total of 302 participants from the United States completed this study; 52 who failed to comply with instructions were excluded from analyses. In the final sample of 250 participants, 40% were male, 60% were female; 53.6% had at least a Bachelor’s degree, 35.6% had some college experience, and 11% had a high school degree. Most participants were White (75.2%), followed by Black (9.6%), Hispanic/Latino (6%), Asian (5.2%), and other (4%). The mean age was 40.27 years ($SD = 12.74$).

Materials and procedure. After giving informed consent, MTurk participants read a brief description to provide context for the video. They were told that a wallet had gone missing during a psychology experiment and that they would watch a university Public Safety officer questioning a participant. Each observer watched one of the 36 videos from Phase 1—128 observers watched a video containing the explicit reminder of freedom; 122 watched a video without this advisement.

Afterward, observers indicated their perceptions of the actor’s experience. As in Study 1, they judged whether the actor was free to leave, to what extent the actor felt free to leave, whether they would feel free to leave if they were in the actor’s position, whether they thought the actor was innocent or guilty, and whether the actor was questioned as a witness or a suspect. We also asked observers to speculate as to why the actor stayed in the room. Two independent raters, blind to condition and hypotheses, coded these open-ended responses. They individually coded a randomly selected 20% of the sample of responses.

After achieving an acceptable level of IRR (all $x_s > .67$), each rater each coded half of the sample.

Phase 1 Results

The overall average duration of the interviews was 6 min and 15 s ($M = 375.6$ s, $SD = 65.08$ s). The No Advisement interviews ($M = 405.7$, $SD = 62.85$) were 1-min longer than the Advisement interviews ($M = 345.4$, $SD = 53.37$), $t(34) = 3.10$, $p = .004$, $d = 1.034$, 95% CI [0.34, 1.73]. Participants who were pre-instructed that they were free to leave reported feeling like witnesses significantly more often than those not advised (78%, $n = 14$ vs. 33%, $n = 6$, respectively), $\chi^2(1, N = 36) = 7.20$, $p = .007$. Both groups were evenly split as to whether the guard thought they were guilty (44.4% vs. 50% in the advisement and non-advisement conditions, respectively), $\chi^2(1, N = 36) = .11$, $p = .738$.

As in Study 1, participants indicated whether they were free to leave. As predicted, those who received the advisement were significantly more likely to say yes than those who did not (100%, $n = 18$ vs. 50%, $n = 9$), $\chi^2(1, N = 36) = 12.0$, $p < .001$. On the subjective rating of how free they *felt* they were, participants explicitly advised exhibited a slight but non-significant tendency to *feel* freer than those who were not advised ($M = 6.17$, $SD = 3.60$ vs. $M = 4.67$, $SD = 3.05$, respectively), $t(34) = 1.35$, $p = .186$, $d = 0.45$, 95% CI [−0.21, 1.11]. Next participants rated the extent to which they *thought about* and *wanted* to leave the room during questioning. Overall ratings on both questions were quite low ($M = 1.81$, $SD = 1.95$ and $M = 1.94$, $SD = 2.04$, respectively). There were no significant differences between advisement and control conditions on either measure, $t(25.22) = 1.11$, $p = .276$, $d = 0.37$, 95% CI [−0.28, 1.03]; $t(34) = .322$, $p = .749$, $d = 0.11$, 95% CI [−0.55, 0.76], respectively. As in Study 1, not a single participant asked permission or physically attempted to leave. When asked why they remained in the room during questioning, the majority of participants reported wanting to help.

Phase 2 Results

Each Phase 2 participant watched one of the 36 interviews ($n = 128$ free-to-leave advisement; $n = 122$ control). As in the first study, most observers judged the actor to be innocent, perceptions that did not differ as a function of condition (78% in the advisement group vs. 72% in the control group), $\chi^2(1, N = 248) = 1.21$, $p = .271$. There were also no differences in their confidence in these judgments ($M = 6.84$, $SD = 2.22$ in the advisement condition vs. $M = 6.34$, $SD = 2.17$ in the control group), $t(248) = 1.77$, $p = .078$, $d = 0.22$, 95% CI [−0.02, 0.47]. Finally, although all Phase 1 participants were subjected to a non-accusatory interview, 60% of observers saw their actor as a suspect. This perception did not vary according to condition, $\chi^2(1, N = 250) = .11$, $p = .74$.

On the key question of whether the actor was free to terminate, 80% ($n = 201$) of observers said yes. On this measure, the two groups differed significantly (89% vs. 71.3% in the advisement and control groups, respectively), $\chi^2(1, N = 250) = 12.49$, $p < .001$. This difference mirrors the result found for Phase 1

actors answering the same question. On the subjective rating of the extent to which the actor *felt* free to leave, overall means were at the midpoint ($M=5.12$, $SD=2.79$). Unlike the actors themselves, observers were highly responsive to the advisement. Those who watched an advisement interview assumed that the actors *felt* significantly freer to leave than those who watched a control group interview ($M=5.80$, $SD=2.80$ vs. $M=4.54$, $SD=2.63$, respectively), $t(247)=3.65$, $p<.001$, $d=0.46$, 95% CI [0.21, 0.72]. Next observers were asked to imagine themselves in the actor's position and indicate whether *they* would feel free to leave. Overall, only 49% ($n=122$) of all observers said yes. This tendency was *not* significantly higher in the advisement group than in the control group—54% vs. 44%, respectively, $\chi^2(1, N=249)=2.54$, $p=.11$.

To sum up, Study 2 informed some suspects but not others that they were free to leave, an advisement that the courts deem sufficient to obviate perceptions of custody. This instruction did not have the presumed effect. Actors in the advisement condition took the information into account when asked if they were free to leave. Yet these same actors did not *feel* freer than those not informed. In contrast, observers who heard the advisement believed that participants *were* free to leave (and also that they *felt* free) relative to those in the no-advisement control group. Yet, as in Study 1, many observers did not attribute subjective freedom themselves even in the advisement condition when asked to imagine themselves in the same situation. These results are summarized in Table 2.

Discussion

The present studies tested three assumptions, namely that: (1) certain objective conditions will elicit differing perceptions of custody versus freedom; (2) the custody inquiry can be evaluated objectively using a “reasonable person” standard; and (3) non-custodial freedom can be ensured by explicitly advising suspects that they are free to leave.

None of these assumptions was substantiated. Most participants in live sessions did not feel free to leave, regardless of the tone or duration of the questioning—even when it was a brief interview (not an interrogation) conducted by a civilian guard (not a detective) on a university campus (not in a police station) with another person present and with the door left open, all of which made the participant feel more like an innocent witness

than a guilty suspect. Perhaps most striking in this regard was the lack of psychological effect that explicit advisement had on subjective feelings of freedom. Although more research is needed, Study 2 further suggests that advising a suspect of his or her freedom may not provide the resounding signal of safety that courts believe.

At this point one can only speculate about why Phase 1 participants felt so constrained. Given the quasi-legal situation they were in, participants reported that they stayed to assist in the investigation, to prove their innocence, and to appear forthcoming rather than suspicious. On a more general level, they may also have reacted in compliance with a simple behavioral script, a conceptual representation of a stereotyped event sequence (Abelson, 1981) such as Grice's (1989) cooperative principle of conversational implicature that “other things being equal, a transaction should continue in appropriate style unless both parties are agreeable that it should terminate” (p. 29).

Whatever the underlying mechanism, the results suggest that the U.S. Supreme Court should revisit the “objective” factors it has identified for the custody–noncustody inquiry. Just because a person in a criminal investigation is not physically restrained or otherwise obstructed does not mean that he or she reasonably feels free to terminate questioning and to leave.

Across two studies, results also uncovered an actor–observer effect that calls into question the invariance of the “reasonable person” standard. Questioned about a purported theft, most Phase 1 participants in both studies did not feel free to leave—even when treated like witnesses and not under suspicion. However, uninvolved observers of the latter sessions, who watched the questioning online, believed that these same actors were objectively and subjectively free to leave. This actor–observer difference casts serious doubt on the ability of observers—police, judges, juries, and appeals courts—to correctly judge the state of mind of suspects who are in custody when estimating their subjective freedom.

The one unanticipated exception to this divergence in perceptions of freedom occurred when observers in both Studies 1 and 2 imagined themselves in the actor's predicament. While attributing subjective freedom to the actors in the interview condition—a perception that the actors did not share—observers consistently reported that they themselves, like the actors, would *not* feel free to leave. On a measure that asked them to adopt the actor's perspective, the difference

Table 2
Participants' Reactions After Interviews With Versus Without Advisement in Study 2

Measures	No advisement	Advisement	<i>p</i> -value	Effect size	95% CI for effect size
Actors					
Were you free?	50%	100%	<.001	$\phi=0.58$	[0.62, 2.23]
Observers					
Was actor free?	71%	89%	<.001	$\phi=0.22$	[0.20, 0.71]
Would <i>you</i> feel free?	35%	30%	.38	$\phi=0.10$	[−0.05, 0.45]
Actors					
How free did you feel?	4.67	6.17	.19	$d=0.45$	[−0.21, 1.11]
Observers					
How free did he/she feel?	4.54	5.80	<.001	$d=0.46$	[0.21, 0.72]

in perceptions of freedom vanished. This provocative finding suggests that perhaps decision makers tasked with evaluating custody should be urged to adopt the suspect's perspective.

Paradigm Strengths and Limitations

At the outset, it is important to comment on three possible limitations to generalizability. The first limitation concerns the length of our interviews and interrogations. Relative to Phase 1 participants, who reported no urgent need to escape, suspects in real interrogations are likely to experience a greater compulsion to leave—yet less freedom to do so. In the U.S., most suspects are questioned for 30 min to an hour (Feld, 2013; Kassir et al., 2007; Leo, 1996; witness interviews are not included in these samples). Bound by ethics guidelines, we could not expose participants to undue stress of this duration. One might expect that longer sessions would increase decision-making conflict by both increasing the motivation to terminate and exacerbating one's subjective sense of custody. For now, however, the effect of interrogation time remains an empirical question that can only be tested within a far less stressful paradigm.

The second limitation concerns the absence of a guilty condition. We created a paradigm in which participants were questioned not about a mock crime role-played as part of a study, but rather about an apparent real theft bearing real potential consequences. We chose this approach to mimic as best we could the stakes of a criminal investigation conducted not by a psychology experimenter but by a person of authority. For obvious ethics reasons, we did not seek to induce randomly assigned participants into actually stealing a wallet, a real crime—the guilty equivalent of the condition we had devised. Using other approaches, additional research is therefore needed to examine whether our results for innocent persons speak to subjective custody in actual offenders.

A third limitation concerns our participants. In both studies, participants were college students at an urban university who were, therefore, more educated than the average citizen. A majority were women and were Hispanic. Moreover, because of the inherently stressful nature of the task, all were pre-screened for trait anxiety and a history of anxiety disorders. Within our sample, participants were randomly assigned to the interview or interrogation condition. Still, additional research is needed to replicate our overall pattern of results within the broader population.¹

¹ Demographic differences were found between actors and observers, raising the question of whether these differences influenced the results. To assess this possibility, we ran a series of ANOVAs with observer ethnicity and interrogation/interview condition as independent variables, to test for effects on the continuous and dichotomous free-to-leave measures for both studies. We tested ethnicity coded as a 5-level factor (Asian, Black, Hispanic, White, and "other") and also as Hispanic versus non-Hispanic. We found no evidence that observer ethnicity influenced either measure in either study. However, due to the wide range of cell sizes for each ethnic group, the homogeneity of variance assumption was severely violated, so these results should be interpreted with some caution. A more demographically balanced purposive sample would be required to assess this issue more rigorously.

Despite its shortcomings, this paradigm offers a high level of experimental realism. Although Phase 1 sessions were condensed and brief in duration, a theft was staged that was believable, engaging, and at times quite stressful—and seen by innocent participants as a real, potentially high-stakes situation. This aspect of the study is also worthy of comment. Even after excluding from participation those prone to anxiety, the tension during these sessions was often palpable (e.g., one participant wanted to phone her father, another called the guard a racist, several emptied their bags in an effort to prove their innocence). This part of the process was contained in time, however, and care was taken during debriefing. Participants in both studies were queried after their sessions but before they were fully debriefed. At that point, 58.33% spontaneously described the experience in positive terms; 28.13% were neutral; 12.5% were negative. In the latter category, one participant confided that it was "horrible for me emotionally, but realistic, because anyone could be put in a situation like that at any time." In this regard, most saw the experience as interesting or enlightening, believable, well planned, and realistic. Participants would likely have reported far more negative affect, even after debriefing, if the sessions were much longer.

It is particularly noteworthy that the interview condition fully adhered to the courts' objective criteria for noncustodial questioning. For that reason it is striking that participants in these sessions did not feel freer to leave than those in the interrogation condition. Nor did they feel free to leave when explicitly advised as such. Given that interviews were conducted by a civilian guard on a college campus and not by a detective at a police station, our results may well underestimate the extent to which real suspects feel free to terminate situations deemed noncustodial by law.

Practical Implications and Future Directions

In Study 1, a clear divergence in perceptions was obtained wherein observers believed actors felt free to leave when the actors themselves did not. Study 2 showed that even when actors are explicitly advised that they could leave, which significantly increased the belief that they were in fact free to leave, that advisement did not significantly increase their subjective feelings of freedom. In the absence of evidence that advisement precludes feelings of custody in actors, a finding worthy of additional research, police and the courts should be cautious of their belief in the efficacy of this practice (cf. Weisselberg, 2008). Consistent with the classic actor-observer effect in attribution, this divergence raises questions about using a reasonable-person standard in evaluating custody. With judges making the determination from an observer's perspective, our results suggest the troubling possibility that subjective freedom will be over-attributed to suspects, thereby curtailing their essential rights to *Miranda* warnings nationwide and the video recording of interrogations in states that mandate this practice for custodial interrogations.

Consistent with past research in non-legal domains, results suggest a simple but potentially potent way to reduce this divergence: instruct judges who rule on custody to imagine

themselves in the suspect's position. In our studies, this personal reframing of the question closed the divergence gap by bringing observers in line with the actors themselves. The resulting synchrony in perceptions may stem from an alteration in the observer's visual and cognitive orientation, leading them to see the impinging situation from the suspect's perspective, thereby eliminating differences in attribution (Storms, 1973). Alternatively, it may emerge from an increase in empathic understanding (Davis, Conklin, Smith, & Luce, 1996; Regan & Totten, 1975), which can increase self-related cognitions about others (Davis et al., 2004) and facilitate an understanding of intergroup discrimination (Todd, Bodenhausen, & Galinsky, 2012) and another person's opposing attitudes (Tuller, Bryan, Heyman, & Christenfeld, 2015).

Given the implications for law, policy, and practice, we believe that future research should proceed in two directions. First, although Phase 1 actors (and perspective-taking observers) consistently reported feeling captive during interviews even after advisement, the reason for this effect is less clear. Perhaps what they lacked was the motivation of urgency because the session was brief, giving precedence to alternative motivations (e.g., to help, to receive credit, to not appear evasive). With all actors factually innocent and perceived as such by observers, it is also possible that because of the phenomenology of innocence, some participants failed to grasp the potentially perilous nature of their predicament (Guyll et al., 2013; Kassin & Norwick, 2004; for an overview, see Kassin, 2005). In addition to unpacking the mechanism underlying this effect in self-report, future research should devise behavioral measures of custody by examining whether participants actually attempt to terminate, or not, after lengthier periods of time and when they are highly motivated to do so.

The second direction is to examine perceptions of custody in different Phase 2 populations. The striking divergence obtained between actors and observers is surprising when one considers that both populations consisted of adult laypersons. In reality, however, the custody inquiry is decided by a trial judge—a population of observers far removed from the “average” reasonable person and yet to be tested. Similarly, future research should cast as observers other life-relevant populations such as police officers (who make real-time custody determinations in deciding whether to Mirandize a suspect or record the interrogation) and juveniles (a population prone to compliance, poor comprehension of *Miranda*, and a high risk of false confession). It is our hope that this research serves as a starting point in the study of custody.

Conflict of Interest Statement

The authors declare no conflict of interest.

Author Contributions

All authors contributed to the study conception and design. F.A. and T.L. conducted data collection and performed the analyses. All authors contributed to interpretation of analyses. F.A. drafted the manuscript, and S.K. and T.L. provided critical revisions. All authors approved the final version of the manuscript for submission.

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