Inferring Uniformity: Towards Deduction and Certainty in the *Miranda* Context

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I. INTRODUCTION

In a ruling aimed at safeguarding an in-custody suspect’s right against self-incrimination, the Supreme Court held in *Miranda v. Arizona*\(^1\) that state and federal law enforcement officials must provide an in-custody suspect with a warning containing some variation of the following rights prior to interrogation: the right to remain silent and the right to the presence of counsel.\(^2\) If a suspect understands his (hereinafter “his” refers to in-custody suspects of both sexes) rights, he may waive any or all of the *Miranda* rights so long as the waiver is made “voluntarily, knowingly and intelligently.”\(^3\) Prosecutors have found statements made after a voluntary waiver helpful for decades.\(^4\)

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2. *Id.* at 444.
3. *Id.*
In *Miranda*, the Court’s primary concern was the “interrogation atmosphere and the evils it can bring.” One of the core premises of the *Miranda* decision is that in-custody interrogation is inherently coercive. The decision itself fully discusses why in-custody interrogation creates such a coercive environment. For this reason, the Court granted certiorari to “give concrete constitutional guidelines for law enforcement agencies and courts to follow.”

Unfortunately, the result of the *Miranda* decision and the warnings the Court announced have been anything but clear. Specifically, *Miranda*’s requirement of an accused’s right to the presence of counsel creates problems and inconsistencies because circuit courts disagree about how specific this particular *Miranda* warning must be to adequately protect a suspect’s rights. The Second, Fourth, Seventh, and Eighth Federal Circuit Courts of Appeal agree that a suspect’s Fifth Amendment right against self-incrimination is sufficiently protected without an express warning of a suspect’s right to have counsel present during interrogation. Conversely, the Fifth, Sixth, Ninth, and Tenth Circuit Courts of Appeal hold that *Miranda* requires an explicit warning of the right to the presence of counsel during interrogation. The result has been an unfair one; in-custody suspects who provide statements without having been clearly warned of their right to the presence of counsel during interrogation are treated differently in different jurisdictions. Some remain in jail, while others are free due to successful appeals.

It is time for the Supreme Court to clarify the *Miranda* holding to resolve the circuit split and achieve the right balance between the government’s interest in successful interrogations and the individual’s constitutional right against compelled self-incrimination. A requirement of a uniform specific warning, including the right to the presence of counsel during interrogation, would virtually guarantee that every in-custody suspect is adequately informed of his rights.

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6. Id. at 457-58.
7. Id. at 440-61. “An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak.” Id. at 461.
8. Id. at 441-42.
9. See Godsey, supra note 4, at 781-82 (explaining that the *Miranda* decision has received much attention from scholars regarding its “real world” impact).
10. See United States v. Frankson, 83 F.3d 79, 81-82 (4th Cir. 1996); United States v. Caldwell, 954 F.2d 496, 499-504 (8th Cir. 1992); United States v. Adams, 484 F.2d 357, 361-62 (7th Cir. 1973); United States v. Vanterpool, 394 F.2d 697, 698-99 (2d Cir. 1968) (holding that warnings adequately protect constitutional rights without explicitly stating that suspects may have counsel present during interrogation). *But see* United States v. Tillman, 963 F.2d 137, 140-42 (6th Cir. 1992); United States v. Noti, 731 F.2d 610, 615 (9th Cir. 1984); United States v. Anthon, 648 F.2d 669, 672-74 (10th Cir. 1981); Atwell v. United States, 398 F.2d 507, 510 (5th Cir. 1968) (requiring that suspects be told they have a right to counsel during interrogation).
11. *Frankson*, 83 F.3d at 81-82; *Caldwell*, 954 F.2d at 500-04; *Adams*, 484 F.2d at 361-62; *Vanterpool*, 394 F.2d at 698-99.
12. *Tillman*, 963 F.2d at 140-42; *Noti*, 731 F.2d at 615; *Anthon*, 648 F.2d at 672-74; *Atwell*, 398 F.2d at 510.
rights established by *Miranda* and solve the circuit split that has led to considerable confusion in *Miranda* jurisprudence.

This Comment examines the circuit split regarding the specificity required to adequately warn an in-custody suspect of the right to have an attorney present during interrogation. Next, this Comment highlights the problem of requiring that in-custody suspects use inductive reasoning to arrive at the meaning contained in *Miranda* warnings, and, ultimately, argues that in-custody suspects should not be required to infer meaning. Rather, in-custody suspects should be given a uniform warning of the right to the presence of counsel during interrogation, so that the suspect may deduce logical and certain conclusions regarding this immensely important right as established by *Miranda*.

II. THE WARNING REQUIREMENTS TO DATE

In *Miranda*, the Supreme Court created a set of warnings that investigators must give an in-custody suspect before interrogation can begin. The Court’s purpose in announcing the warnings was to protect the suspect’s right against compelled self-incrimination. Absent the existence of adequate warnings to an in-custody suspect, “no statement obtained from the defendant [during custodial interrogation] can truly be the product of his free choice.” Accordingly, the Court held that “[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” However, this Comment focuses on the right to the presence of an attorney specifically during interrogation.

The *Miranda* Court itself was inconsistent in describing the requirements of warnings regarding the right to the presence of counsel during interrogation. At some points in the decision, the Court seems only to require a general warning of the right to the “presence of counsel.” For example, the Court stated that “[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed.” Thus, some courts, such as the Fourth Circuit, have relied on the above quote in holding that *Miranda* does not require a specific warning of the right to the presence of counsel *during interrogation*. Consequently, the

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15. *Id.* (quoting *Miranda*, 384 U.S. at 458).
17. *Id.* at 466.
18. *Id.* (emphasis added).
The problem becomes one of timing; when does the right to presence of counsel begin? The *Miranda* decision also contains language regarding the warning requirement’s seemingly open-ended guidelines. The Court held:

> It is impossible for us to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States in the exercise of their creative rule-making capacities. Therefore we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted.  

Thus, the Court seemingly did not require particularized or uniform warnings regarding this right. The circuits that focus on this language assert that it is the concept of the right to the presence of counsel during interrogation that must be conveyed, not necessarily the specific words.  

However, *Miranda* also conveys a contradictory message. Within a twelve-page span, the Court specifically mentioned six times that the warning must be conveyed so as to inform a suspect of the right to the presence of counsel during interrogation. The Court held: “Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual’s right to choose between silence and speech remains unfettered throughout the interrogation process.” Courts that focus on this language and similar language throughout the opinion reach the conclusion that *Miranda* requires a specific warning of the right to the presence of counsel during interrogation.

The circuit split comes down to inference. Courts that do not require a specific warning of the right to the presence of an attorney during interrogation generally hold that a reasonable person, given the circumstances of the particular case, would conclude that he has the right to the presence of counsel during interrogation. On the other hand, courts that require a more specific warning

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21. Sweeney v. United States, 408 F.2d 121, 124 (9th Cir. 1969).
24. See *Atwell v. United States*, 398 F.2d 507, 510 (5th Cir. 1968) ("The advice that the accused was entitled to consult with an attorney, retained or appointed, ‘at anytime’ does not comply with *Miranda’s* directive ‘that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation.’” (citation omitted)).
25. See *Sweeney*, 408 F.2d at 124 (holding that “[t]he reference to the right to counsel following, as it did, immediately on the warning as to the right to remain silent” would lead reasonable persons to conclude that the right to the presence of counsel began immediately); United States v. Lamia, 429 F.2d 373, 377 (2d Cir. 1970) (holding that the “‘right to an attorney’” preceded by a warning of the right “that he ‘need not make any statement to us at this time’” was enough to lead a reasonable person to conclude that the right to the presence
often attack the chain of inference, especially under the pressures of interrogation.\textsuperscript{26} Requiring a more specific warning, including the right to the presence of counsel during interrogation, eliminates the need for persons in custody and undergoing interrogation to arrive at their own conclusions about their constitutional rights under the Fifth Amendment.

III. INDUCTION INFERENCE AND FAULTY CONCLUSIONS

Inductive reasoning, otherwise known as inductive inference, is a general conclusion based upon specific examples.\textsuperscript{27} Unlike deductive reasoning, which leads to an inevitable logical conclusion,\textsuperscript{28} inductive reasoning leads to a conclusion that at best is probably true.\textsuperscript{29} A rudimentary example illustrates the point: if a person is treated rudely by persons wearing purple hats on ten separate occasions, that person would likely infer that persons who wear purple hats are rude.\textsuperscript{30} Essentially, then, inductive reasoning is based upon a person’s perception of specific examples that lead to conclusions that may or may not be true.\textsuperscript{31} Perhaps the persons wearing purple hats and behaving rudely were part of a local gang or another unruly crowd, leaving the affronted person with a distorted view of all who wear purple hats.

A major problem with inductive inference is that perception of acquired data may be distorted, influenced, or simply incorrect.\textsuperscript{32} As Alfred North Whitehead put it, “[t]here is nothing basic in the clarity of our entertainment of sensa.”\textsuperscript{33} Each person might perceive or interpret different sensory stimuli or data in differing manners, according to his or her frame of reference.\textsuperscript{34} “Multiple
assumptions or inferences might be in error,” and such a situation leads to an incorrect conclusion.\textsuperscript{35} For example, suppose you ordered a computer from Company X to be delivered to your front porch.\textsuperscript{36} The representative from Company X told you that your computer arrived at your doorstep at 10:00 a.m. However, your spouse told you over the phone that there was no computer on the doorstep at 10:00 a.m. An inference, based upon either data set, that the computer is or is not on your doorstep, is inherently unreliable and could not be relied upon for a valid conclusion. Perhaps the delivery company gave Company X representative false data, your spouse could have simply overlooked the computer on the porch, or perhaps the computer was actually delivered at 10:30 a.m. In any event, no reasonably reliable inference could be drawn from the sensory data obtained by the listener.

As a result, the epistemic task in determining the validity of an inductive inference, then, is a complicated process.\textsuperscript{37} In the hypothetical above, the task is to resolve the apparent inconsistency by evaluating the reliability of each piece of evidence to determine which piece of evidence is more likely correct.\textsuperscript{38} However, in some situations, inductive inferences must be made not on inconsistencies, but on severely limited sets of data.\textsuperscript{39} Suppose Shopper goes to a super sale at Store Y and finds a sweater that Shopper wishes to buy. All of the hanging racks surrounding the sweater contain signs saying seventy percent off; however, the hanging rack that the sweater is on does not contain a sale sign. Shopper is then forced, based upon the facts (evidence) that Store Y is having a sale and the surrounding sale signs, to determine if the specific sweater is also on sale. Shopper cannot make a reliable determination as to whether the sweater is on sale without consulting a Store Y employee. In this hypothetical, “[t]he epistemic challenge is to warrant a conclusion about a population on the basis of evidence that is merely descriptive of a sample.”\textsuperscript{40}

In a simple shopping analogy, the stakes are very low; however, the importance of valid inductive inference increases exponentially when considering whether an in-custody suspect can reasonably infer a constitutional right from stated specific examples. “The task is especially difficult when there is much at stake, but the evidence is incomplete and the soundness of the inference is uncertain.”\textsuperscript{41} Accordingly, in the Miranda context, an in-custody suspect would need ample, unambiguous data sets in order to arrive at a clear understanding that he has the right to the presence of an attorney during interrogation, notwith-

\textsuperscript{35} Walker, supra note 28, at 1529.
\textsuperscript{36} See id. (providing a similar hypothetical).
\textsuperscript{37} See id. at 1529-31 (explaining the process for determining the validity of inference).
\textsuperscript{38} Id. at 1530.
\textsuperscript{39} Id. at 1550-51.
\textsuperscript{40} Id. at 1551.
\textsuperscript{41} Id. at 1523.
standing the danger of emotional interference on the inductive process in the interrogation context.

The reliability of conclusions based on inductive inferences increase based upon the sample size of the specific examples. To that end, the more samples (specific examples or warnings in the Miranda context) that show a particular characteristic, the more likely that a reliable generalization (inductive inference) can be drawn from observing the sample.

From the standpoint of logical analysis, such propositions combine a reference to some quantity of a subject group identified by a variable, with a prediction of a second variable. Words such as “some,” “many,” “almost all,” and “all” identify some portion of a group (“birds,” “parents,” “children,” or “cases of leukemia”), and the proposition predicates something as true of that portion, such as “being able to fly.” In other words, the subject-predicate structure of the proposition classifies some quantity of individuals into the categories of two different variables.

Thus, the larger the sample size indicated by the predicate, the more reliable the inferential conclusion about the subject. Likewise, the inverse is also true and a smaller sample size leaves the inference less reliable. In the Miranda context, basing a conclusion on such a small sample size, the warning of the right to remain silent coupled with the right to have an attorney at trial cannot reliably lead to the conclusion that one has the right to an attorney during interrogation, notwithstanding the ability of the thinker to think clearly in high pressure circumstances. In other words, an in-custody suspect must rely on only two warnings as the entire sample size from which to draw his inference.

In addition, language itself is unreliable to communicate concepts clearly, especially when diction containing a variety of meanings is employed. “When apparent inconsistencies arise within a set of propositions, the first step should be to investigate the meanings and structures of the linguistic expressions being used.” Thus, arriving at a correct inference founded on language-based stimuli requires clarity of thought and discerning rationale—all of which are likely lessened in an in-custody interrogation. Discrete discourse communities often eliminate ambiguity of language by developing a particular technical language for the purpose of avoiding inconsistencies of meaning.

42. See id. at 1550-53 (explaining that sample size and quality directly correlate with reliability of inference).
43. Id. at 1552.
44. Id.
45. Id.
46. See id. at 1532 (discussing linguistic influence on inference).
47. Id.
48. Id.
lawyers may have little difficulty deciphering the meaning of a given *Miranda* warning, it is imperative to keep in mind that the majority of in-custody suspects do not have the benefit of a legal education to inform their inferential chain.

A second problem regarding inference and language to arrive at meaning stems from “denotation or reference.” A single word can be used to refer to multiple events, temporal significance, or objects. For example, pronouns such as “it,” “her,” and “hers” are prone to use in confusing ways. “Expressions about relationships can create confusion of reference as well, such as ‘the next one’ or ‘the other one.’ With some words the fact of relationship is only implicit, and error is likely if the terms of the relationship are not clarified.” As discussed below, this is precisely one of the major problems that influences an in-custody suspect’s understanding or misunderstanding his right to counsel during interrogation.

IV. INFERENCES IN THE MIRANDA CONTEXT

*Sweeney v. United States* provides a clear example of how inductive inference applies to a typical in-custody interrogation. In this case, a defendant convicted of drug trafficking charges argued that incriminating statements he made to officers subsequent to his arrest were inadmissible. Prior to interrogation, agents advised the defendant that he had the right to remain silent, that any statement of the defendant could be used against him, that he had the “right to consult counsel,” and that he was entitled to use the telephone. The court of appeals held that the warning of the right to counsel following the warning of the right to remain silent and the availability of a telephone would lead a reasonable person to conclude that the right to counsel referred to the contemplated interrogation.

This holding rests upon an inferential chain that required the defendant to engage in a fairly complicated inductive process. For such a conclusion to be reliable, the warnings, operating as specific examples in the inductive process, would have to shorten the inductive leap, that is, provide more information from which to make a generalization. For example, a person who is given thirteen present-tense warnings can make a strong inference that the fourteenth will also be present-tense. Conversely, a person given only two present-tense warnings has

49. *Id.* at 1533.
50. *Id.*
51. *Id.*
52. *Id.*
53. 408 F.2d 121 (9th Cir. 1969).
54. *Id.* at 123.
55. *Id.* at 124.
56. *Id.*
57. *Id.*
58. *Id.*
a considerably weaker inference that the third warning will be present-tense as well. Thus, for the defendant to infer that each warning applied to the impending interrogation, he is forced to disregard the possibility that the “right to counsel” applied in the future, such as at trial. The required inferential chain is the following two propositions and conclusion:

A. If the right to remain silent applies presently, and  
B. The use of a telephone applies presently (presumably because there was no tense qualifier),  
C. Then the right to counsel probably applies presently.

The problems with the inductive leap in the above situation are that the sample size relied on is too small to be reliable, and the propositions leading to the conclusion rest on their own inferences. Meaning, the use of the telephone only applies presently if the absence of a tense qualifier means that the telephone usage can happen at this moment. If proposition A and B are taken in isolation, then C is not an inevitable conclusion, nor even a probable conclusion. The sample size consisting of two warnings is simply too small to warrant a conclusion regarding the temporal applicability of “the right to counsel.” Such a gamble would be risky in a business situation, let alone an interrogation where emotion and compulsion can operate to cloud reason.

The above analysis is bolstered by Atwell v. United States. In this case, the court held that advising a suspect that he was entitled to consult with an attorney, retained or appointed, “at anytime” was not clear enough under the directive of Miranda. The court held, “‘[a]nytime’ could be interpreted by an accused, in an atmosphere of pressure from the glare of the law enforcer and his authority, to refer to an impending trial or some time or event other than the moment the advice was given and the interrogation following.” Therefore, this holding attacks the inductive leap required to conclude that anytime means presently. “Anytime” could be inferred to mean “presently” or “in the future”; the listener would have to infer its definition from the contextual surroundings of the statement. Again, with no sampling of specific examples to base an inference, a listener simply would be posing a guess rather than a reliable inference.

Miranda requires “that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation.” In both examples above, the listener was given either no specific examples on which to base a conclusion, or very few. Miranda’s requirement for adequate warnings is not satisfied with a series of

59. 398 F.2d 507 (5th Cir. 1968).  
60. Id. at 510.  
61. Id.  
statements requiring the listener to supply the intended meaning of such statements. The only way to assure adequate warnings is to move away from allowing inference to suffice and to move towards a deductive strategy to assure full compliance with the Miranda directive.

V. TOWARDS UNIFORMITY AND DEDUCTION

Providing uniform warnings that are amenable to deductive certainty more closely follows the spirit of Miranda. Although courts have not yet adopted a uniform warning requirement for Miranda warnings, the logic of uniformity in Miranda jurisprudence has been well received in many courts. In United States v. Noti, the court noted the benefits of the use of Miranda cards to ensure that suspects have been adequately and consistently warned of the right to the presence of counsel during interrogation. The court noted that Miranda does not require a verbatim reading of the warnings, but held “[t]he police can always be certain that Miranda has been satisfied if they simply read the defendant his rights from a prepared card. Although we do not require such a reading, we encourage it. A verbatim reading would, in all instances, preclude claims such as Noti’s.”

The gravamen of the Noti court’s suggestion regarding the use of Miranda cards is an attack on the inference in the Miranda context and the inconsistencies derived from requiring in-custody suspects to infer their own conclusions from a set of warnings. The court suggested a major premise – that all suspects be warned specifically of the right to the presence of counsel during interrogation – that if followed would virtually guarantee that in-custody suspects had been adequately warned. In United States v. Tillman, the court further supported the notion of a uniform Miranda card. The court stated that “[w]e join with the Ninth Circuit in recommending such an approach as this reduces the chances for error, assists a police officer in the performance of his duties, and protects the rights of innocent citizens as well as those accused.” From a logical standpoint, both the Noti and Tillman courts advocated not for induction, but for deduction in the Miranda warning context.

63. Id.
64. See id.
65. See United States v. Noti, 731 F.2d 610, 615 (9th Cir. 1984) (finding that Miranda cards would ensure uniformity); see also United States v. Tillman, 963 F.2d 137, 141-42 (6th Cir. 1992) (agreeing with the Noti court’s analysis of Miranda cards).
66. Noti, 731 F.2d at 615.
67. Id.
68. See id. (recommending Miranda cards to ensure that defendant’s know their rights).
69. See id. (noting that Miranda cards ensure that defendants have been properly warned).
70. 963 F.2d at 141-42.
71. Id.
Deductive reasoning provides for certainty in conclusions. A deductive argument is one whose premisses are claimed to provide conclusive grounds for the truth of its conclusion. Every deductive argument is either valid or invalid: valid if it is impossible for its premisses to be true without its conclusion being true also, invalid otherwise. Deductive reasoning, then, takes the form of a syllogism. A simple syllogistic line of reasoning is as follows: if all “A”s are “B”s, and all “B”s are “C”s, then all “A”s are “C”s. In this syllogism, if the premises are valid, then the conclusion is inevitable. A specific example might help: all in-custody suspects are specifically warned of the right to the presence of counsel during interrogation; A is an in-custody suspect; therefore, A was specifically warned of his right to the presence of counsel during interrogation.

Deductive reasoning is a more concrete and exacting form of logic than inductive reasoning because inductive reasoning only leads to probabilities while deductive reasoning leads to certainty. Requiring a warning amenable to deduction minimizes or eliminates the problems with perception described above that are common and inherent to induction. “The role of perception in warranting propositions describing the world [interpreting warnings] depends upon the calibration of perceptions with the use of certain descriptive predicates.” However, a uniform warning lessens or eliminates the need for the in-custody suspect to interpret ambiguous warnings and eliminates the inductive inference.

To illustrate, “[a] proposition is said to have ‘existential import’ if it is typically uttered to assert the existence of objects of some specified kind. For example, the proposition ‘There are books on my desk’ has existential import, whereas the proposition, ‘There are no unicorns’ does not.” In other words, a specific warning such as “you have the right to the presence of counsel during this interrogation” has clearer meaning than “you have the right to counsel” because the first warning is tied to a specific time period, whereas the second is not. Thus, the first warning is amenable to simple deduction, and the second warning requires inference to determine during what time period counsel is available. The listener could only infer that “you have the right to counsel” applies presently. However, the listener could conclusively deduce that “you have the right to the presence of counsel during interrogation” applies presently. That is, the suspect will have been clearly and conclusively warned.

_Miranda_ is clear and unambiguous in its directive: “Accordingly, we hold that an individual held for interrogation must be clearly informed that he has the

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72. _COPI & COHEN, supra_ note 29, at 161.
73. _Id._
74. _Ross, supra_ note 27, at 186.
75. _Id._
76. _Id._
77. _See id._ at 182-86 (explaining the differences between inductive and deductive conclusion).
78. _Walker, supra_ note 28, at 1537.
79. _COPI & COHEN, supra_ note 29, at 181.
right to consult with a lawyer and to have the lawyer with him during interrogation under the system . . . we delineate today."80 The logical extension of *Miranda* is to require a precise warning so that every in-custody suspect is specifically warned of this important right. Therefore, a warning amenable to deduction should be used because it is consistent with *Miranda*, whereas a warning requiring induction stands in contrast to the holding. The reasoning is as follows: *Miranda* requires clarity and certainty as to the conclusion that in-custody suspects have the right to the presence of counsel during interrogation; deduction provides clarity and certainty in conclusions; therefore, *Miranda* warnings should be given in a manner amenable to deduction. Conversely, *Miranda* requires clarity and certainty as to the conclusion that in-custody suspects have the right to the presence of counsel during interrogation; induction provides probability conclusions rather than certainty and is subject to error; therefore, *Miranda* warnings should not be given in a manner requiring induction in the mind of the listener.

The Federal Bureau of Investigations (FBI) has wisely adopted a set of uniform warnings that favor deduction rather than induction.81 The warnings required by the FBI are as follows:

- Before we ask you any questions, you must understand your rights.
- You have the right to remain silent.
- Anything you say can be used against you in court.
- You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during questioning.
- If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
- If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time.
- You also have the right to stop answering at any time you talk to a lawyer.82

Given that the FBI, one of the world’s largest law enforcement agencies, has seen fit to make its *Miranda* warnings uniform, it logically follows that all law enforcement agencies could do so in order to protect citizens’ rights against self-incrimination.

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82. *Id.* at 203 n.4.
Several law enforcement agencies already require their officers to give clear and easily understandable *Miranda* warnings. Oftentimes, investigators are specifically told to provide simple, clear warnings to avoid a legal challenge. Because many law enforcement agencies already require uniformity, it is not such an insurmountable task to require all law enforcement agencies to apply uniform warnings that are amenable to deduction.

VI. SUPREME COURT PRECEDENT CONSTRUING *MIRANDA*

Critics will point out that the *Miranda* Court seemingly left it up to law enforcement agencies to determine the proper format of the warnings. The Court has twice confronted the issue of how specific *Miranda* warnings should be in order to adequately warn a suspect of his rights. Both *California v. Prysock* and *Duckworth v. Eagan* suggest that *Miranda* warnings need not be uniform, but neither case has solved the circuit split below.

*California v. Prysock* involved a juvenile defendant convicted of murder. The defendant appealed the denial of his motion to suppress statements made in what he claimed was a *Miranda* violation. On certiorari to the Supreme Court, the Court stated that “[t]his Court has never indicated that the ‘rigidity’ of *Miranda* extends to the precise formulation of the warnings given a criminal defendant.” That is, the Court seemingly held with finality that *Miranda* does not require uniform warnings. “Quite the contrary, *Miranda* itself indicated that no talismanic incantation was required to satisfy its strictures.”

*Prysock*, then, suggests that *Miranda* only requires the “fully effective equivalent” of the *Miranda* strictures. However, *Prysock* is not controlling on the question of what constitutes an adequate warning as to the right to the presence of counsel during interrogation because the suspect in *Prysock* was given a warning that required no inference. The suspect was warned, ““[y]ou
have the right to talk to a lawyer before you are questioned, have him present with you while you are being questioned, and all during the questioning."°95

These warnings do not require the suspect to draw inferences regarding their meaning. The warnings clearly and unequivocally lend themselves to deductive reasoning; that is, the listener can deduce with certainty that the right to have an attorney applies at the moment of that particular interrogation. In that sense, Prysock does not address whether inference should be avoided in the mind of the in-custody suspect.

Similarly, in Duckworth v. Eagan, another murder case appealed due to alleged Miranda violations, the Court again stressed that Miranda warnings need not be verbatim.°6 In Duckworth, the suspect was warned in a manner similar to the comprehensive FBI warnings:

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have a right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you’ve talked to a lawyer.°7

The Federal Court of Appeals for the Seventh Circuit held that the italicized language above “was ‘constitutionally defective because it denies an accused indigent a clear and unequivocal warning of the right to appointed counsel before any interrogation.’”°98 However, the Supreme Court reversed the Seventh Circuit and held that the warnings “touched all of the bases required by Miranda.”°99

As with Prysock, the holding in Duckworth is consistent with this Comment because the suspect was clearly warned of the right to have counsel present during interrogation.°100 However, the warnings given in Duckworth are not without problems. The dissent in Duckworth pointed out that “recipients of Miranda warnings are often ‘frightened suspects, unlettered in the law.’ The dissent opined that, because an accused often lacks an understanding of the law,
it would be unreasonable to expect the accused to interpret easily contradictory and ambiguous ‘if and when’ warnings.”

Given that the suspects in both Prysock and Duckworth were given precisely the kind of warnings that are amenable to deductive reasoning, any reliance on these cases as dispositive regarding the specificity of Miranda requirements is speculative. The fact is that the Court did not have to take the issue of inductive reasoning into account when deciding either case. Moreover, even if Miranda does not require a “talismanic incantation,” it certainly requires that a suspect be able to understand the warnings given. As shown above, the best way to ensure understanding is through deduction, not induction. Moreover, even if the holdings of Prysock and Duckworth are read to allow induction, the purpose of Miranda is to find the right balance between the important governmental interest in investigation and a citizen’s right against compelled self-incrimination.

The Supreme Court has repeatedly stated that Miranda warnings are prophylactic and can evolve and change over time. “However, in spite of forty years of legal developments and practical experience, the content of these famous four warnings has never been modified or even been subjected to systematic scrutiny.” Given the flexibility that the Court allowed in Miranda regarding the warnings, it is reasonable to conclude that the warnings themselves seek a balance between the important government investigatory interests and the constitutional interests of in-custody suspects. Professor Dressler notes that an important question in this area is whether the Supreme Court has discovered an appropriate balance between restrictions on police and constitutional guarantees. “While the Court has never directly held that the content of the warnings are subject to modification, the detachment of the warnings from the concept of Miranda-compulsion, and the recasting of the warnings requirement as a flexible, prophylactic rule, create leeway for modification.” This Comment does not propose a modification of the content of warnings; rather, it proposes a simple, universal clarification that would bring all Miranda warnings clearly within the scope of the Miranda decision.

104. See Roscoe C. Howard, Jr. & Lisa A. Rich, A History of Miranda and Why It Remains Vital Today, 40 VAL. U. L. REV. 685, 705 (stating that Miranda’s intent was to “strike a balance between law enforcement and the criminal suspect that gives the suspect, or any ordinary citizen, a moment to consider the rights bestowed upon them by the Constitution and make an informed decision about whether to waive those rights”).
105. Godsey, supra note 4, at 782.
106. Id. at 782-83.
107. DRESSLER & MICHAELS, supra note 14, at 419.
108. Godsey, supra note 4, at 790.
VII. BENEFITS OF DEDUCTIVE UNIFORMITY

In *Miranda*, the Court explained several concrete benefits that can be derived from ensuring that suspects are adequately warned of their right to have counsel present during interrogation.\(^{109}\) If a suspect is warned that counsel can be present, “the dangers of untrustworthiness” can be mitigated.\(^{110}\) The probability that coercion will take place is less than if a suspect is left wondering if he can have a lawyer with him during interrogation.\(^{111}\) In this sense, providing a specific warning actually streamlines the interrogation process and leaves less doubt as to whether the suspect was adequately warned and whether the conviction will be overturned.

Conversely, common sense dictates that the burden on law enforcement to provide a specific warning from which in-custody suspects can deduce a reliable conclusion is minimal. As noted above, the FBI already requires its arresting agents to read uniform *Miranda* warnings. Simply memorizing or reading from an agency *Miranda* card is not too much to ask. Providing uniform *Miranda* warnings that are amenable to deduction can actually help law enforcement agencies obtain the information they seek; that is, it can be used as a strategy for eliciting information.\(^{112}\)

The most direct way to execute this advice is to read the warnings from the standard preprinted *Miranda* form cards [amenable to deduction], even before engaging in any conversation with the suspect. To the extent that interrogators follow this practice, they are acting merely as conveyors of legal information, delivering the warnings in a way that appears non-partisan. The interrogator does not seek to persuade the suspect to waive *Miranda*, or to suggest that some benefit might follow from such a waiver. Instead, the interrogator merely delivers the *Miranda* warnings without any apparent strategy, as if he is indifferent to the suspect’s response.\(^{113}\)

Law enforcement agencies, then, can benefit from deductive *Miranda* warnings through fewer legal challenges and as a technique to build trust with an in-custody suspect. As long as the *Miranda* warnings are given clearly and in a manner that inevitably leads to a conclusion that the suspect has a right to have counsel present during the in-custody interrogation, the officers are free to interrogate accordingly.

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\(^{110}\) Id.

\(^{111}\) Id.

\(^{112}\) See Leo & White, * supra* note 83, at 432-33 (explaining that interrogators can use clear warnings to develop trust and avoid legal challenges).

\(^{113}\) Id.
Some analysts argue that *Miranda* warnings as applied today inhibit law enforcement efforts.\(^{114}\) In 1967, researchers in Pittsburgh discovered that 48.5% of suspects confessed their offenses before the *Miranda* decision.\(^ {115}\) However, soon after *Miranda*, only 32.3% made confessions.\(^ {116}\) Moreover, various studies since *Miranda* show that approximately 28,000 violent felony charges are dismissed annually.\(^ {117}\)

Conversely, more recent studies suggest a different scenario regarding waiver of Fifth Amendment rights.\(^ {118}\) “[R]oughly eighty percent of suspects waive their *Miranda* rights and talk to the police.”\(^ {119}\) It follows, then, that if this many suspects agree to talk with police, complete and clear *Miranda* warnings would not have the detrimental effect on law enforcement that critics assert.\(^ {120}\) The very purpose of the *Miranda* warnings is to apprise the suspect of his rights. Arguing that it is a negative that more persons will invoke their rights if clearer warnings are given seems to suggest that “hiding the ball” is a good thing and that we, as a society, do not want people to exercise their protective rights. This cannot be true.

Defenders of *Miranda* say that the practical effect of *Miranda* as applied today has led to “substantial benefits and vanishingly small social costs.”\(^ {121}\) Essentially, it is reasonable to argue that *Miranda* is based on fairness in the sense that it is unfair and unethical for officers to obtain confessions when a suspect simply does not understand his rights. It is this logic that mandates *Miranda* warnings be given in a clear, specific manner amenable to deduction so that any waiver of Fifth Amendment rights is done knowingly and voluntarily – our accusatorial system of justice requires it.

Uniformity in the *Miranda* context also greatly benefits courts and the judicial system. It is common knowledge that some law enforcement officers seek to circumvent *Miranda* by imposing what has become known as the “question-first tactic.”\(^ {122}\) This tactic includes staving off *Miranda* warnings until a confession has occurred or the officers believe a confession is close at hand.\(^ {123}\)

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115. Id. at 12.
116. Id.
119. Godsey, supra note 4, at 792.
120. Leo, supra note 118, at 226, 276.
123. Id.
In response to analyzing the legality of the “question-first tactic,” the Supreme Court established a multi-factor test that essentially becomes a case-by-case analysis of the circumstances surrounding a warning.\textsuperscript{124} “Therefore, courts must conduct an ‘agonizing case by case review process.'”\textsuperscript{125} However, requiring a uniform, deductive \textit{Miranda} warning relieves courts from determining the validity of \textit{Miranda} warnings on a case-by-case basis: either the warning was adequate or not. In this sense, a uniform and specific \textit{Miranda} warning could help alleviate some court congestion by removing cases from the docket that require specific factual analyses.

\textbf{VIII. CONCLUSION}

The solution to the circuit split regarding the specificity of \textit{Miranda} warnings is strikingly simple. To ensure that all in-custody suspects are clearly informed of their right to the presence of counsel during interrogation, officers should universally employ this simple warning: “You have the right to the presence of an attorney before and during this questioning.”

This warning is amenable to deduction in the sense that it does not require the suspect to make any kind of inference as to when the right to the presence of counsel begins and how long it lasts. Rather, the suspect can conclusively deduce this information. The gravamen of the proposed warning is that it eliminates any possible subjective coloring of the warning on behalf of the suspect. The warning, thus, is not subject to interpretation and inference.

The benefits of employing a warning that is not susceptible to inference are numerous. Such a warning could help to lessen any claim of compulsion, which was the focus of the \textit{Miranda} decision, and therefore alleviate congestion in the already crowded federal dockets. More importantly, if in-custody suspects choose to waive their rights after receiving such a warning, they will have done so knowingly and voluntarily. The burden is simply not great enough to ignore these substantial benefits. “\textit{Miranda} and its warnings maintain the balance between law enforcement and the public at large. The warnings serve to remind both sides of law enforcement that this country is based on individual rights that cannot be overridden—no matter how noble the cause.”\textsuperscript{126} For these reasons, \textit{Miranda} warnings regarding the right to the presence of counsel should be given clearly, without room for inferential mistake.

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\textsuperscript{124} Missouri v. Siebert, 544 U.S. 600, 611-12 (2004).
\textsuperscript{125} Goldberg, \textit{supra} note 122, at 1303.
\textsuperscript{126} Howard & Rich, \textit{supra} note 104, at 703.
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