NO RIGHTS ON PAPER: THE ERRONEOUS DECISION OF *STATE V. POWERS* AND A RESTORATIVE SOLUTION TO SUPERVISED RELEASE VIOLATIONS IN VERMONT

> Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that "illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure." The privilege was elevated to constitutional status and has always been "as broad as the mischief against which it seeks to guard." We cannot depart from this noble heritage.
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> –*Miranda v. Arizona*[1]

1. Miranda v. Arizona, 384 U.S. 436, 459–60 (1966) (citations omitted) (first quoting Boyd v. United States, 116 U.S. 616, 635 (1886); and then quoting Counselman v. Hitchcock, 142 U.S. 547, 562 (1892)).

INTRODUCTION

In the United States, 3.7 million people are on community supervision.[2] Community supervision is a term of art that encompasses all instances when people who have been convicted are monitored outside of a prison setting, including parole and probation.[3] The terms parole and probation, although different, are used throughout this article interchangeably when discussing community supervision programs. Despite this massive number, people on supervised release are frequently ignored by policymakers.[4] The terms supervised release and community supervision are used interchangeably throughout this article. Although often described as a more lenient punishment, supervised release is closely linked to incarceration.[5] Individuals face a wide range of sanctions, including incarceration, if found to violate one of the many stringent conditions of supervised release.[6] This creates a cyclical relationship where people on community supervision violate their conditions and are then reincarcerated.[7]

Further, supervised release disproportionately impacts marginalized communities. Individuals on supervised release report higher levels of health concerns, disabilities, mental health issues, and substance abuse.[8] Black Americans comprise around 30% of people on supervised release[9] despite only making up 12% of the national population.[10] Women face unique issues

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2. Leah Wang, *Punishment Beyond Prisons 2023: Incarceration and Supervision by State*, PRISON POL'Y INITIATIVE (May 2023), https://www.prisonpolicy.org/reports/correctionalcontrol2023.html (community supervision includes parole, probation, and furlough).

3. *Community Corrections (Probation and Parole)*, BUREAU OF JUST. STATS., https://bjs.ojp.gov/topics/corrections/community-corrections# (last visited Dec. 14, 2025).

4. Wang, *supra* note 2.

5. *Id.*; Tonja Jacobi et al., *The Attrition of Rights Under Parole*, 87 S. CAL. L. REV. 887, 899 (2014) ("Any violation of a release condition subjects the parolee to arrest and revocation of community supervision.").

6. Jacobi et al., *supra* note 5, at 899.

7. *Id.* at 902.

8. Wang, *supra* note 2 (citing Emily Widra & Alexi Jones, *Mortality, Health, and Poverty: The Unmet Needs of People on Probation and Parole*, PRISON POL'Y INITIATIVE (Apr. 3, 2023), https://www.prisonpolicy.org/blog/2023/04/03/nsduh_probation_parole/).

9. E. ANN CARSON & RICH KLUCKOW, U.S. DEP'T. OF JUST., CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2021 – STATISTICAL TABLES 10 tbl.7 (2023) (reporting that Black Americans comprise 1,136,000 of the 3,745,000 total population on supervised release as of 2021).

10. *See* Wang, *supra* note 2; *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, U.S. CENSUS BUREAU (Aug. 12, 2021), https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html.

complying with their release conditions due to child and family care obligations.[11]

When looking at mass punishment rates by state, Vermont ranks 49th in mass punishment, which includes both supervised release and incarceration.[12] Vermont subjects 763 per 100,000 of its citizens to incarceration or community supervision.[13] 69% of the 4,900 Vermonters experiencing correctional control are under community supervision, rather than in prison.[14] Correctional control refers to the governmental systems that oversee individuals convicted of crimes. This means that the majority of Vermonters in the criminal justice system are subjected to stringent conditions that control their supervised release. The rights of those on supervised release are a human rights issue that must be addressed.

In *State v. Powers*, parole officers questioned John Powers about a suspected violation of his conditional release.[15] The parole officers began to interrogate him without reminding him of his constitutional right against self-incrimination. After the initial confession, the probation officers made him complete a videotaped confession.[16] Only after did the officers inform him that he was under arrest.[17] The Superior Court held that Powers's statements made before the Miranda warning were inadmissible.[18] The Vermont Supreme Court reversed and held that Powers had no right to the protections afforded by the Fifth Amendment.[19] The Court reasoned that extending Miranda protections to interrogations related to parole violations would disturb the "atmosphere of trust and communication" between the parolee and their officer.[20] This holding means people on parole are not afforded the essential constitutional right against self-incrimination.

The Vermont Supreme Court incorrectly decided *Powers* because the decision violates the Fifth Amendment. Even if this decision did not violate the Fifth Amendment, the *Powers* decision goes against public policy. Part I of this Article reviews relevant United States Supreme Court and Vermont Supreme Court precedents pertaining to Miranda rights. Earlier Vermont Supreme Court decisions provided broad protection against self-

11. Wang, *supra* note 2.
12. *Id.* (results are out of 51, including D.C.).
13. *Id.*
14. *Id.*
15. State v. Powers, 2016 Vt. 110, ¶ 4, 203 Vt. 388, 392, 157 A.3d 39, 41.
16. *Id.*
17. *Id.* ¶ 4 n.1 (the Court noted that at this point, the parole officer told the police they had placed Powers in custody, and all the statements Powers made after this point, but before Mirandizing Powers, were suppressed by the trial court).
18. *Id.* ¶ 1.
19. *Id.*
20. *Id.* ¶ 39.

incrimination, like the protections found at the national level. However, the Vermont Supreme Court has slowly stripped away defendants' protections against self-incrimination. Meanwhile, the protections for those on parole are far fewer, as the Court systematically dismantled Miranda rights for people post-conviction. Part II of this Note dissects the Vermont Supreme Court's faulty analysis of the law and the counterproductive policy analysis expressed in the holding. Under a clear Miranda test, Powers was in custody and entitled to protection against self-incrimination. The ruling of *Powers* fails to achieve the purported goal of fostering an atmosphere of trust and communication between a parole officer and the parolee. Finally, Part III offers the solution of a restorative circle following a potential parole or furlough violation. This solution would improve the goal of open and honest communication between the parolee and their officer.

I. BACKGROUND

Most of us were first exposed to Miranda rights through TV shows and movies.[21] Depictions of Miranda rights in popular culture were so prominent that some theorists believed they were cemented into the minds of all Americans.[22] However, research shows that popular culture today includes fewer examples of Miranda rights.[23] Additionally, when Miranda rights are shown, they are often dramatized and distorted.[24] Research looking at the popular show *Law & Order: SVU* showed "an average of 1.12 civil rights violations per episode."[25] Along with excessive use of force, the fictional violations portrayed on TV most frequently involve failure to read Miranda warnings.[26] Police characters on shows like SVU will praise each other for ignoring *Miranda* and managing to catch "the bad guy."[27] Audiences finish their binge watch thinking that reading *Miranda* only protects criminals, rather than all citizens' public rights.[28] Relying on popular culture to inform

21. *See* Ronald Steiner et al., *The Rise and Fall of the* Miranda *Warnings in Popular Culture*, 59 CLEV. ST. L. REV. 219, 220 (2011) (mentioning Chief Justice Rehnquist's claim that the majority of Americans know their Miranda rights through TV).

22. *See id.* at 221 (continuing the discussion of how the prominence of Miranda warnings in popular culture resulted in the assumption that everyone knew them).

23. *Id.*

24. *Id.* at 220. For example, the infamous 21 Jump Street opening scene where the main character, Jenko, included profanities when Mirandizing his suspect. Clip, *Rookies First Arrest Scene - 21 Jump Street (2012)* YOUTUBE (Oct. 22, 2023), https://www.youtube.com/watch?v=Xxx7xJopaho.

25. Steiner et al., *supra* note 21, at 227.

26. *Id.*

27. *Id.*

28. *See id.* at 227, 230 (noting that when reviewing the 1993 season of *NYPD Blue*, a popular cop program, a total of 68 arrests resulted in only four full Miranda warnings).

citizens about the law results in misleading information. With less exposure to Miranda rights and rampant misinformation spread through TV, people in custody deserve proper reminders of their inherent rights. Miranda rights protect people from coercive interrogations and false confessions while upholding the legal system's legitimacy.

How the public perceives the police directly relates to how society complies with the law.[29] Police legitimacy is fostered through the concept of procedural justice.[30] Procedural justice has four elements: "treating people with dignity and respect; giving individuals 'voice' during encounters; being neutral and transparent in decision-making; and conveying trustworthy motives."[31] Procedural justice serves as a non-adversarial method of crime control.[32] This is fostered through positive relationships, treating people with dignity, and openness.

Current police techniques do not foster police legitimacy, especially during interrogations. The most common interrogation technique is the *Reid Technique*.[33] The Reid Technique prioritizes immediate confessions above all other concerns.[34] Additionally, interrogation techniques attempt to persuade the suspect not to exercise their right to remain silent.[35] Interrogators frequently try to build rapport with the suspect and encourage them to talk by suggesting that answering questions will benefit the suspect.[36] Deceptive interrogation techniques by law enforcement during interrogations are rampant and encouraged.[37] Interrogators are taught to express a clear belief that the suspect is guilty, regardless of the evidence.[38] These deceptive techniques can infiltrate supervised release programs, undermining their rehabilitative roots.

Part I.A. of the background discusses how parole and furlough started as rehabilitation programs but evolved to prioritize punishment over rehabilitation. Part I.B. discusses the constitutional protection against self-incrimination. Part I.C. reviews Vermont's historical emphasis on legislative reform and Vermont's interest in restorative justice. Part I.D. discusses Vermont Supreme Court cases regarding Miranda rights.

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29. Margareth Etienne & Richard McAdams, *Police Deception in Interrogation as a Problem of Procedural Legitimacy*, 51 TEX. TECH L. REV. 21, 23 (2021).

30. *Id.* at 24. (describing how procedural justice lays the framework for how police must act to promote fairness and trust in the institution while also reinforcing positive social values).

31. *Id.* (internal quotation marks omitted).

32. *Id.* at 25.

33. *Id.* at 28.

34. *Id.* at 29.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* (explaining that interrogators exaggerate or fabricate the facts to elicit a confession).

A. Philosophical Background of Criminal Rehabilitation in America

Parole and furlough started as a rehabilitative measure in the 1800s. Parole officers served as makeshift social workers to their parolees, emphasizing community reintegration.[39] In the 1970s, parole programs focused on only serving the punitive interests of the legal system.[40] Probation officers began focusing their efforts on enforcing the conditions of the probation instead of rehabilitating the person on probation.[41] This has resulted in impossibly stringent parole programs.[42]

In contrast, restorative justice—an ancient practice of healing and rehabilitation originating from Indigenous U.S. peoples—has retained its rehabilitative nature.[43] Restorative justice does not use punitive measures; it offers a compassionate and community-based method of dealing with crime that reflects the early efforts of parole in America.

The historical origins of community supervision focus on restorative rehabilitation, with parole dating back to the 1800s.[44] Parole programs were developed under the philosophy of community rehabilitation.[45] The United States was heavily influenced by the Irish Convict System, developed in 1854.[46] The Irish system, developed by Sir Walter Crofton, had a staged approach to rehabilitation.[47] This approach started with solitary confinement, followed by increasing levels of work and responsibility, ultimately resulting in conditional release.[48] Motivated by this approach, the United States

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39. *See* Ryan M. Labrecque, *Probation in the United States: A Historical and Modern Perspective*, *in* HANDBOOK OF CORRECTIONS IN THE UNITED STATES 155, 157 (O. Hayden Griffin III & Vanessa Woodward eds., 2017) (noting that probation officers worked with offenders, providing resources such as treatment programs and helping them re-integrate into society).

40. *See id.* at 8–9 (explaining that probation officers began prioritizing conformity and control because they believed technical violations were a precursor to further criminal behavior).

41. *Id.*

42. *See* Emily Widra, *One Size Fits None: How 'Standard Conditions' of Probation Set People up to Fail*, PRISON POL'Y INITIATIVE (Oct. 2024), https://www.prisonpolicy.org/reports/probation_conditions.html (discussing how parole conditions are impossibly stringent because they often restrict the parolee's ability to work, criminalize commonplace behaviors, and are enforced at the discretion of the probation agency).

43. Thomas J. Reed, *A Critical Review of the Native American Tradition of Circle Practices*, *in* INDIGENOUS RESEARCH OF LAND, SELF, AND SPIRIT 132–35 (2021).

44. *See* Labrecque, *supra* note 39, at 157 (explaining how rehabilitation is inherently restorative because it aims to improve and repair people's lives).

45. *Id.*

46. Snell Putney & Gladys J. Putney, *Origins of the Reformatory*, 53 J. CRIM. L. & CRIMINOLOGY 437, 440 (1962).

47. *Id.* at 438–40.

48. *Id.*

developed a reformative movement in the justice system.[49] The rehabilitative focus on parole remained intact for many years.[50]

Starting in the 1970s, a "get tough" on crime approach was adopted.[51] Research conducted by Robert Martinson in 1974 suggested that rehabilitation had minimal effects on reducing recidivism.[52] This gained attention and caused a societal rejection of rehabilitative programs.[53] In turn, this rejection of rehabilitative programs caused a fundamental shift in the function of probationary practices.[54] Parole officers no longer served as makeshift social workers encouraging community engagement and therapy.[55] Instead, they began prioritizing the punitive interests of the legal system over the needs of their parolees.[56]

The current emphasis on enforcing parole conditions has resulted in numerous technical violations.[57] Parole violations account for 30–40% of people admitted to state prisons.[58] Using this "get tough" attitude, states have slowly stripped away the rights of those on supervised release, creating an impossible standard for these individuals to adhere to.[59]

Even Vermont, known as a progressive state, fell prey to this travesty. The American Civil Liberties Union (ACLU) condemned Vermont's parole and furlough practices as lacking transparency and accountability.[60] Vermont's parole and furlough practices allow officers vast discretion to

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49. *Id.* at 441.

50. Labrecque, *supra* note 39, at 157.

51. *Id.* at 7–8.

52. *Id.*

53. *See id.* at 8 ("The conclusion that 'nothing works' dealt a devastating blow to the rehabilitative ideal.") (citing FRANCIS A. ALLEN, THE DECLINE OF THE REHABILITATIVE IDEAL: PENAL POLICY AND SOCIAL PURPOSE (1981)).

54. Labrecque, *supra* note 39, at 157.

55. *Id.*

56. *See id.* at 8–9. Parole officers began heavily enforcing the law enforcement aspects of their job including drug testing, reporting, and requiring parolees to inform their officer of their whereabouts. *Id.* at 8 (citations omitted). This was justified on the premise that violating parole conditions was a precursor to further criminal behavior and the strict enforcement of the parole conditions would serve as a deterrent. *Id.* at 9 (citations omitted).

57. *See id.* at 6. Parole officers are responsible for ensuring that parole conditions are being met. *Id.* When a parolee fails to comply with a condition, the parole officer has the discretion to report the technical violations. *Id.* A technical violation is when a parolee violates one of their conditions of release. *Id. See also* Jennifer Miller, *The Endless Trap of American Parole How Can Anyone Rebuild Their Lives When They Keep Getting Sent Back to Jail for the Pettiest of Reasons?*, WASH. POST (May 24, 2021), https://www.washingtonpost.com/magazine/2021/05/24/moral-outrage-american-parole/ (noting that the average number of conditions a person on parole must comply with is 17).

58. Miller, *supra* note 57.

59. *Id.*

60. *Parole & Probation Reform*, ACLU VT., https://www.acluvt.org/en/parole-probation-reform (last visited Dec. 14, 2025).

continue or revoke community supervision.[61] Further demonstrating its lack of transparency, Vermont failed to provide complete data to the Bureau of Justice Statistics regarding its probation and parole program in 2022.[62]

Additionally, Vermont continues to have a sizeable racial disparity in its justice system. Black people are disproportionately represented.[63] Despite only 1.5% of Vermont's population identifying as Black, 11% of the incarcerated population identifies as Black.[64] The overrepresentation of racial minorities in the state demonstrates the systemic flaws in Vermont's justice system.

B. The Constitutional Protections Against Self-Incrimination

The Fifth Amendment reads: "No person . . . shall be compelled in any criminal case to be a witness against himself."[65] This phrase is understood to protect individuals from self-incrimination.[66] The right to not self-incriminate was derived from English common law.[67] Additionally, early renditions of what are now Miranda rights are found in old English law.[68] Not having your words used against you has historical significance and is essential to our concept of justice.

In 1966, the Supreme Court held in *Miranda v. Arizona* that prosecutors could not use statements resulting from a custodial interrogation without clear procedural safeguards.[69] Procedural safeguards, such as Miranda rights, are recognized by the public as an important aspect of legitimizing police

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61. *Id.*; State v. Sylvester, 2007 Vt 125, ¶ 7, 183 Vt 541, 542, 944 A.2d 909, 911 (noting that in taking the evidence as a whole and viewing it in a light most favorable to the state, the Court will uphold a parole revocation if it is supported by credible evidence).

62. DANIELLE KAEBLE, U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, NCJ 308575 PROBATION AND PAROLE IN THE UNITED STATES 9 (2022).

63. Madeleine Dardeau & Lorretta Sackey, *Vermont: Monitoring Data Trends After 2020 Justice Reinvestment Initiative Reforms*, THE COUNCIL OF STATE GOV'TS JUST. CTR. (Nov. 2022), https://csgjusticecenter.org/publications/vermont-monitoring-data-trends-after-2020-justice-reinvestment-initiative-reforms/.

64. *Vermont's Prison System by the Numbers,* ACLU VT., https://www.acluvt.org/en/vermonts-prison-system-numbers# (last visited Dec. 14, 2025).

65. U.S. CONST. amend. V.

66. *Id.*

67. *See* John H. Langbein, *The Historical Origins of The Privilege Against Self-Incrimination at Common Law*, 92 MICH. L. REV. 1047, 1047 (1994) (tracing the origins of the common law privilege against self-incrimination to the late seventeenth century). The criminal trial was first viewed as an opportunity for the defendant to speak. *Id.* In the eighteenth century, the purpose of a criminal trial became an opportunity for the defense counsel to attack the prosecution's case. *Id.* at 1048.

68. *See id.* at 1061 ("Sir John Jervis' Act of 1848 . . . was [a] provision made to advise the accused that he might decline to answer questions put to him in the pretrial inquiry and to caution him that his answers to pretrial interrogation might be used as evidence against him at trial.").

69. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

authority.[70] Therefore, procedural safeguards not only serve to protect the criminal defendant but also reinforce the positive public perception of police action. The *Miranda* Court held that custodial interrogations include, but are not limited to, situations where the police deprived suspects of their freedom of action in any significant manner.[71] *Miranda* required law enforcement to inform people in custody about their right to remain silent, their right to an attorney, and that any statements made could be used against them.[72]

After *Miranda*, the Supreme Court continued to elaborate on its ruling. In 1985, the Court, although claiming to adhere to precedent, effectively stripped away the strong protections outlined in *Miranda*.[73] The bright-line rule from *Miranda* requires law enforcement to inform suspects before any custodial interrogation of their right to remain silent, their right to an attorney, and that what they say can be used against them.[74] In 1985, the Court held that pre-Miranda confessions did not render later Mirandized confessions inadmissible, provided the initial statement was voluntary and not the result of actual coercion.[75] Deliberate question-first tactics that elicit a confession before a Miranda warning were held inconsistent with *Miranda*.[76] The Court further elaborated that "custody" does not preclude situations outside of the traditional interrogation room.[77]

C. Vermont and Restorative Justice

Shining like a beacon of light within the mess that is our punitive justice system is a genuinely rehabilitative practice called restorative justice. Restorative justice is an ancient practice with philosophical underpinnings from Native American cultures.[78] Restorative Circles, typically known as *circle practice*, is a practice where people sit together in a circle and take turns expressing their feelings and experiences while passing a talking piece.[79] Circle practice is profoundly spiritual in Native American culture,

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70. *See supra* Part I.

71. *Miranda*, 384 U.S. at 444.

72. *Id.* at 479.

73. *See* Oregon v. Elstad, 470 U.S. 298, 318 (1985) (holding that a subsequent Mirandized confession made after a prior incriminating statement was admissible).

74. *Miranda*, 384 U.S. at 444.

75. *Elstad*, 470 U.S. at 318.

76. Missouri. v. Siebert, 542 U.S. 600, 606–07 (2004).

77. Mathis v. United States, 391 U.S. 1, 2, 4–5 (1968) (finding the Miranda principle applicable to questioning that took place in a prison during the suspect's term of imprisonment); Orozco v. Texas, 394 U.S. 324, 327 (1969) (finding the Miranda principle applicable to questioning that took place in the suspect's home).

78. Reed, *supra* note 43, at 135.

79. *Id.* at 132–36.

fostering community and interconnectedness.[80] Understanding the cultural roots of restorative justice is imperative to avoid sterilizing such a sacred practice. When tailoring restorative justice to fit the colonized justice system in America, we must be cognizant those who created restorative justice.

Modern restorative justice developed in the 1970s.[81] Modern restorative justice reflects similar goals and ideologies to traditional restorative justice. Central to restorative justice is the principle that "crime . . . is a violation of people and of interpersonal relationships."[82] Crime creates obligations, and the central goal is to put right the wrongs caused by the violations.[83] Restorative justice operates on the assumption that when the community comes together to address the harm, everyone will leave stronger.[84] The responsible party must be rehabilitated so that the community can heal from the violation.[85] Howard Zehr suggests that the one word to describe restorative justice is respect.[86] Restorative justice focuses on repairing harm and supporting the rehabilitation of the responsible party. Therefore, it reflects the same rehabilitative aspects that were present in the historical philosophy of parole.[87]

Vermont's legislature has prioritized restorative justice practices in the criminal justice system since the 1970s. Beginning in the 1970s, Vermont closed the Windsor prison and wanted to transform the space into community corrections.[88] The 1980s saw an influx of treatment programs focused on risk control and crime reduction.[89] Beginning in the 2000s, Vermont created legislation focused on integrating restorative practices.[90] Importantly, the Vermont General Assembly has directed by statute that the State should employ restorative justice approaches "whenever feasible" in response to

80. *Id.* at 132–37.

81. *See* HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE: REVISED AND UPDATED 18–19 (2015) (discussing how during the 1970's a rise of restorative justice pilot programs emerged and were influenced by indigenous practices).

82. *Id.* at 28 (internal quotation marks omitted).

83. *Id.* at 28–29.

84. *Id.* at 37.

85. *Id.* at 38–39.

86. *Id.* at 47.

87. *See supra* Part I.A.

88. Ping Showalter, State-Funded Restorative Justice in Vermont: The Future of Structure, Funding, and Flow 4 (May, 2022) (M.A. dissertation, Vermont Law School) (on file with Vermont State Legislature); Patrick O'Grady, *End of a Long Chapter in Windsor as Prison Closes*, VALLEY NEWS (Nov. 1, 2017), https://vnews.com/2017/11/01/only-staff-remains-and-windsor-prison-closes-down-208-years-after-the-first-prison-opened-on-state-street-in-1809-13432197/ (reporting that the Vermont Legislature voted to close the prison and convert it into transitional housing).

89. Showalter, *supra* note 88, at 4.

90. *Id.*; VT. STAT. ANN. tit. 28, § 2a (2025).

crimes.[91] Overall, Vermont's legislative initiative strongly encourages restorative justice within the criminal justice system.

D. The Vermont Supreme Court's Interpretation of Miranda Rights Negatively Impacts Individuals on Supervised Release

In contrast to the Vermont legislature, the Vermont Supreme Court continues to weaken Miranda rights. Research on the Court's treatment of Miranda rights has shown a reduction of protections over the years.[92] The Vermont Supreme Court shifts from a pro-defendant to a pro-prosecution stance once the defendant is in the post-investigation and arrest phase.[93] When given the opportunity, regarding pre-investigation issues such as warrant requirements, the Vermont Supreme Court is willing to extend the Vermont Constitution's protections beyond those the federal counterpart delineates.[94] However, it is less willing when dealing with issues of post-arrest.[95] The Vermont Supreme Court has remained true to this research. In *State v. Powers*, the Court abrogated the rights of everyone in post-conviction status—people on parole and furlough.[96]

Before the ruling of *Powers*, the Vermont Supreme Court set the stage for denying individuals in state custody their Fifth Amendment rights. The Vermont Constitution protects against self-incrimination.[97] When interpreting the Vermont Constitution, the Court initially remained consistent with the ruling in *Miranda*: Involuntary confessions coerced from a person in custody are not admissible in court.[98] The Vermont Supreme Court stated that whether a statement is involuntary involves analyzing whether the interrogator's action subverts the defendant's free will or rational intellect.[99]

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91. VT. STAT. ANN. tit. 28, § 2a(a) (2025) ("It is the policy of this State that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses . . . . The policy goal is a community response to a person's wrongdoing at its earliest onset . . . .").

92. Nathan Sabourin, *We're from Vermont and We Do What We Want: A Re-Examination of the Criminal Jurisprudence of the Vermont Supreme Court*, 71 ALB. L. REV. 1163, 1170 (2008).

93. *Id.* at 1200.

94. *Id.*(explaining how the Vermont Supreme Court has rejected the federal search-incident-to arrest warrant exception).

95. *Id.*

96. *See* State v. Powers, 2016 Vt. 110, ¶ 45, 203 Vt. 388, 409–10, 157 A.3d 39, 53–54 (holding that incriminating statements made to a probation officer are not entitled to Miranda protections).

97. VT. CONST. ch. I, art. 10.

98. State v. Badger, 141 Vt. 430, 439, 450 A.2d 336, 341–42 (1980) (holding that when a second confession is the product of an illegally obtained confession, the confession should be suppressed).

99. State v. Gilman, 158 Vt. 210, 213, 608 A.2d 660, 662 (1992) (noting that whether a confession is involuntary is determined by whether police officers' threats, promises, or coercion were sufficient to overcome the defendant's free will or rational intellect, causing the defendant to confess).

In 2008, the Vermont Supreme Court decided the case of *State v. Fleurie*.[100] In *Fleurie*, the Court rejected the *fruit of a poisonous tree* doctrine in application to Miranda rights.[101] The fruit of the poisonous tree doctrine dictates that if evidence is obtained illegally, it renders subsequent evidence inadmissible because it is tainted.[102] Traditionally, this doctrine applies to illegal searches under the Fourth Amendment.[103] The Court in *Fleurie* declined to extend the doctrine to confessions under the Fifth Amendment.[104] The Court held that pre-warning statements did not render later statements inadmissible.[105] The decision in *State v. Fleurie* has been heavily criticized as an example of the Vermont Supreme Court's inability to recognize the disparate impacts of allowing question-first tactics.[106] *Fleurie* undermined Vermont citizens' Miranda rights, while adding to what is known as *Miranda*'s "schizophrenic" jurisprudence.[107]

When specifically addressing the rights of individuals on parole, the Vermont Supreme Court singled out parolees in the decision of *State v. Steinhour*.[108] In *Steinhour*, the Court held that statements proving a violation of parole were admissible in a revocation hearing.[109] This case is the first example of the Vermont Supreme Court treating parolees differently from the general population. The Vermont Supreme Court has carved away an exception to these steadfast rights regarding the Miranda rights of paroled and furloughed individuals. Individuals on supervised release occupy a facet of case precedent in Vermont that facilitates the degradation of Fifth Amendment rights.[110]

The *coup de grâce* by the Vermont Supreme Court was the case of *Powers*.[111] After serving a sentence for forcible sexual assault on a 13-year-old girl, Powers entered community furlough supervised by the Vermont Department of Corrections.[112] Vermont Department of Corrections placed

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100. State v. Fleurie, 2008 Vt. 118, ¶ 24, 185 Vt. 29, 40, 968 A.2d 326, 333 (holding that pre-warning interrogations did not render the later Miranda warnings ineffective).

101. *Id.* ¶ 24 n.5.

102. *Id.*

103. *Id.* ¶ 15 n.3.

104. *Id.* ¶ 24 n.5.

105. *Id.* ¶ 24.

106. *See* Missouri. v. Siebert, 542 U.S. 600, 606 (2004); Briana Collier, *Disrespecting* Miranda *Rights: Vermont's Choice in* State v. Fleurie, 36 VT. B.J. 30, 30 (2010).

107. Collier, *supra* note 106, at 30.

108. State v. Steinhour, 158 Vt. 299, 300, 607 A.2d 888, 889 (1992).

109. *Id.* (holding that statements violating parole can be used against the defendant in a revocation hearing).

110. *Id.*

111. *Coup de grâce*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1999) (meaning a "death blow" or "an act or event that puts a definite end to something").

112. State v. Powers, 2016 Vt. 110, ¶ 2, 203 Vt. 388, 391, 157 A.3d 39, 41.

Powers on the highest level of supervision.[113] Powers's neighbors told his parole officer that Powers had drilled holes in his bedroom wall to view their teenage daughter.[114] Following this tipoff, Powers's parole officer and a community correctional officer arrived.[115] The officers told Powers they needed to enter the apartment.[116] After entering, the officer told Powers to sit down on the couch.[117] The parole officer kept Powers under surveillance while the community correctional officer investigated the alleged violation.[118] After finding evidence of a parole violation, the officers questioned Powers about whether he had anything to tell them.[119] The parole officer continued to ask this question to Powers, who was "visibly nervous," until Powers eventually confessed to the violation.[120] While still in his apartment, the police made Powers complete a videotaped confession.[121] Following this confession, the officer informed Powers that he was to be taken into custody.[122]

The Court held that Powers's statements to his parole officer were not protected under *Miranda*.[123] As it stands, the broad ruling in *Powers* strips away Miranda rights for people on parole and furlough.

II. THE VERMONT SUPREME COURT INCORRECTLY DECIDED *STATE V. POWERS*

State v. Powers is a debilitating Vermont Supreme Court decision. *Powers* failed to achieve *Miranda's* clear policies and the goals of the Vermont Supreme Court. In *Powers*, the Court had the chance to treat people under state supervision with the same care that is afforded to the general public. Instead, the Court put forth a decision that has far-reaching effects on those in the justice system. As a result, the Court stripped thousands of Vermonters of their Fifth Amendment rights; parole officers are given unfettered power; and Vermont's legal system kowtows to hypocrisy.

On both legal and policy grounds, the Court wrongly decided *Powers*. However, at the onset, it cannot be ignored that the specific facts of this case probably played a large role in influencing the decision. Acts of pedophilia

113. *Id.*
114. *Id.*
115. *Id.* ¶ 3.
116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.* ¶ 4.
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.* ¶ 40.

understandably cause visceral reactions in society. However, this does not excuse removing well-established Miranda rights. *Powers* stands as an example of how bad facts can create bad laws.

The Vermont Supreme Court incorrectly decided *Powers*. Part II.A. argues that Powers was in custody because his liberty was restricted by the parole officers. The Vermont Supreme Court incorrectly applied the case of *Minnesota v. Murphy*. *Murphy* is too factually distinct from *Powers* to control. The appropriate controlling case is *Orozco v. Texas* because it is factually similar to *Powers*. Finally, Part II.B. argues that Powers was in an inherently coercive environment when the parole officers began questioning him in his home. Therefore, Powers was entitled to Miranda protections.

The ruling of *Powers* is broad and strips defendants of any protections *Miranda* offers. Prior to *Powers*, any person had a right to be warned about the potential for self-incrimination when they were in custody.[124] Powers was in custody when the officers questioned him in his house because his freedom of movement was restricted.[125] Additionally, the environment at the time of questioning had the same coercive pressures as an interrogation.[126] The precedent set by *Powers* is a barrier to justice that must be acknowledged.

A. Powers Was in Custody Because His Liberty Was Restrained

Whether a person is in custody requires analysis of the facts.[127] First, the analysis examines whether a reasonable person would have felt free to leave under the specific circumstances.[128] Second, it examines whether the environment presents "the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*."[129] *Miranda* and its subsequent cases stand as landmark decisions that protect one of the most fundamental rights afforded in our Constitution: the right to protection against self-incrimination.

Custody is determined by first inquiring whether the objective circumstances of the interrogation suggest that a reasonable person would have felt they were not at liberty to terminate the interrogation and leave.[130] Factors include: the location of the questioning, its duration, statements made during the interview, the presence of physical restraints, the release of the defendant at the end of the questioning, and whether the environment

124. Miranda v. Arizona, 384 U.S. 436, 479 (1966).
125. *Powers*, 2016 Vt. 110, ¶ 3.
126. *Id.*
127. Howes v. Fields, 565 U.S. 499, 509 (2012).
128. *Id.*
129. *Id.*
130. *Id.*

presents similar coercive pressures associated with police station interrogations.[131] Because determining custody is very fact-dependent, close case comparison is necessary.

At the onset of its decision in *Powers*, the Vermont Supreme Court cited multiple decisions from non-binding courts suggesting that parolees are never in custody when providing incriminating evidence to their parole officer, absent handcuffs or incarceration.[132] The Court then attempted to march through the traditional custody factors. [133]

Part II.A.1 argues that *Minnesota v. Murphy* was the incorrect standard to analyze whether Powers was in custody. *Murphy* is factually distinct from *Powers*. Instead, the Court should have used *Orozco*. Part II.A.2 will lay out the factual similarities and present a better analysis of the facts in *Powers*. *Orozco* is the proper case from which to analogize. Following *Orozco* would have preserved Vermonters' Miranda rights.

1. *Murphy v. Minnesota* Is Too Factually Distinct to Apply as an Analogy for Powers's Relative Liberty

The Vermont Supreme Court argued that *Minnesota v. Murphy* controlled, as it was a close enough case comparison in facts and circumstances.[134] However, *Murphy* does not control because it is factually different from *Powers*. The factual similarity the Court focused on was that Murphy was on probation for sexual assault, not the circumstances surrounding his actual interrogation.[135] Murphy attended the meeting with his parole officer voluntarily and confirmed with little prompting what the officer had been told.[136] By contrast, Powers's interrogation took place immediately, without the time to volunteer information.[137] The parole officers struggled to get Powers to admit anything until they pressed him with repeated questions.[138] The Vermont Supreme Court largely ignored these factual differences.

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131. *Id.*

132. State v. Powers, 2016 Vt. 110, ¶ 9, 203 Vt. 388, 394, 157 A.3d 39, 44 (citing multiple non-precedential decisions); *see* State v. Hedlund, No. A08-0266, 2009 WL 1373670 at 2 (Minn. Ct. App. May 19, 2009) (holding that the defendant was not in custody because it was a routine drug test and he was free to leave at any time); United States v. Muhammad, 903 F. Supp. 2d 132, 140 (E.D.N.Y. 2012) (holding that a warrantless search of the home of a person on supervised release and subsequent statements made to a probation officer in a pre-planned meeting were constitutional).

133. *Powers*, 2016 Vt. 110, ¶ 10.

134. *Id.* ¶ 11.

135. *Id.* ¶¶ 11, 15.

136. Minnesota. v. Murphy, 465 U.S. 420, 424 (1984).

137. *Powers*, 2016 Vt. 110, ¶ 3.

138. *Id.* ¶ 4.

In *Murphy*, Murphy was on probation, and as a condition of his probation, he was required to attend counseling.[139] During one of these counseling sessions, Murphy admitted to his counselor that he raped and murdered a victim.[140] The counselor told Murphy's probation officer.[141] The probation officer contacted Murphy, requesting a meeting to discuss a treatment plan for the remainder of his probationary period.[142] Murphy voluntarily set up a meeting.[143] At the meeting, the officer told Murphy about the information received from the counselor.[144] Murphy admitted to the incriminating information but later sought its suppression under *Miranda*.[145] The Supreme Court held that Murphy was not in custody during the meeting with his probation officer and, therefore, not entitled to Miranda protections.

Powers is factually different from *Murphy* in several distinct ways. Powers did not voluntarily set up a meeting with his parole officers.[146] Instead, the officers showed up at Powers's door due to the neighbor's complaint.[147] In contrast, Murphy voluntarily set up the meeting with his parole officer and had control over when they would meet.[148] Custody has inherently coercive elements.[149] An individual's ability to control the interaction with law enforcement goes against a finding of coercion.[150] The voluntary and anticipated nature of Murphy's meeting suggests that Murphy would not feel restricted in his freedom.[151]

Because Murphy had control over the time of the meeting, the environment was inherently less coercive because there was no element of surprise.[152] On the other hand, Powers had no control over the interrogation given by his parole officers. Powers was ambushed in his home and forced

139. *Murphy*, 465 U.S. at 423.
140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.* at 424–25.
146. State v. Powers, 2016 Vt. 110, ¶¶ 54–55, 203 Vt. 388, 413, 157 A.3d 39, 56.
147. *Powers*, 2016 Vt. 110, ¶ 3.
148. *Murphy*, 465 U.S. at 423.
149. *See supra* Part I.B.
150. *See supra* Part I.B.
151. *See, e.g.*, Wong Sun v. United States, 371 U.S. 471, 491 (1968) (holding that voluntary return to the police to make a statement after an interrogation, particularly several days later, makes the statement admissible).
152. *See, e.g.*, Miranda v. Arizona, 348 U.S. 436, 450–51, 457 (describing the conditions of inherently coercive settings where the police use surprise tactics, like unfamiliar surroundings, to coerce defendants into confession).

to stay in one place while answering questions.[153] Therefore, one factor supporting that Powers was in custody is that he had no control over the time of the meeting. This would cause a reasonable person to feel as though their freedom was restrained.

Further supporting the argument that Powers had his freedom restrained more than Murphy, the Court in *Murphy* specifically stated that Murphy was free to leave at any time during the interview.[154] In fact, Murphy left after his confession.[155] On the other hand, Powers was not free to leave.[156] Powers was immediately brought to the Department of Corrections officer for processing following the confession.[157] At trial, the parole officer informed the court that Powers would not have been allowed to leave the apartment if he had tried.[158] This directly speaks to the factor of whether the defendant was released at the end of the questioning.

The Vermont Supreme Court reinforces the importance of free will when deciding if a person is in custody.[159] In *State v. Muntean*, the Court noted that the disclosure to a defendant that they are free to leave is *significant* in determining whether a reasonable person would have felt at liberty to terminate the interview.[160] Powers was never told that he was free to leave, and he was not free to leave.[161] The absence of any disclosure to Powers that he was free to leave means that his freedom was restrained; therefore, he was in custody.

Seemingly ignoring its own advice in *Muntean*, the Vermont Supreme Court cited *Howes v. Fields* instead.[162] Despite being incarcerated at the time of questioning, Howes was not considered to be in custody for Miranda purposes.[163] The Vermont Supreme Court applied this logic to Powers's situation.[164] However, when describing *Howes*, the Vermont Supreme Court

153. State v. Powers, 2016 Vt. 110, ¶ 3, 203 Vt. 388, 392, 157 A.3d 39, 41 (describing when the officers arrived at Powers's house following a tipoff and instructed Powers to sit on the couch).

154. Minnesota v. Murphy, 465 U.S. 420, 433 (1984).

155. *Id.*

156. *Powers*, 2016 Vt. 110, ¶ 5.

157. *Id.*

158. *Id.* ¶ 31.

159. State v. Muntean, 2010 Vt. 88, ¶ 25, 189 Vt. 50, 62, 12 A.3d 518, 526.

160. *Id.*

161. *Powers*, 2016 Vt. 110, ¶ 31.

162. *See* Sepehr Shahshahani, *When Hard Cases Make Bad Law: A Theory of How Case Facts Affect Judge-Made Law*, 110 CORNELL L. REV. 963, 1001 (2025) (noting that a technique judges use to circumvent precedent is to simply ignore inconvenient cases); *Powers*, 2016 VT 110, ¶ 10 (discussing *Howes*).

163. Howes v. Fields, 565 U.S. 499, 502 (2012) (rejecting the idea that an incarcerated person is always in custody for purposes of *Miranda*).

164. *Powers*, 2016 Vt. 110, ¶ 22 (arguing that just because Powers's liberty was restrained by his furlough status does not equate to being in custody for *Miranda* purposes).

conspicuously left out an important factor:[165] the defendant was repeatedly told he could leave at any time.[166] Despite the presence of *Muntean*'s significant factor—the knowledge by the person under interrogation that they are free to leave the interrogation—the Vermont Supreme Court carefully avoided that aspect when applying *Howes* to *Powers*. That is because Powers could not fit that determining factor. Unlike the defendant in *Howes*, Powers was never informed that he was free to leave.[167]

Taken as a whole, Powers had his freedom restrained. He was told to sit in one place—which is consistent with a finding that the defendant's freedom was restrained under *Miranda*. He was not allowed to leave following the confession. Indeed, the officers did not tell him he was free to leave at any point during the interview—the absence of such a statement was deemed significant in *Muntean* when determining whether a defendant felt at liberty to end questioning. There was no way for Powers to objectively feel he was not in custody. Therefore, Powers should have been given the protection of *Miranda*.

Despite clear evidence that Powers was in custody because his freedom was significantly restrained, the majority argued that Powers was not in custody because the parole officer's questions were open-ended.[168] This argument ignores logic and precedent. The Vermont Supreme Court stated in *Muntean* that, concerning whether a defendant was in police custody under *Miranda*, "a reasonable person understands that the police ordinarily will not set free a suspect when there is evidence strongly suggesting that the person is guilty of a serious crime."[169] Relevantly, Powers only confessed to the violation following the return of the correctional officer from investigating the alleged violation.[170] Powers knew the officer had discovered evidence of his violation at this point.[171] Applying *Muntean*, Powers knew he was not going to be set free because the officers had discovered proof of the violation. This fact speaks to the argument that a reasonable person in Powers' position would have believed he was in custody when he knew the officers had caught him violating his conditional release.

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165. *Id.*

166. *Howes*, 565 U.S. at 503.

167. *Powers*, 2016 Vt. 110, ¶ 31.

168. *Id.* ¶ 29. The parole officer repeatedly berated Powers, asking him if he had anything to report, suggesting to Powers that they were aware he had done something wrong. *Id.* ¶ 4.

169. State v. Muntean, 2010 Vt. 88, ¶ 28, 189 Vt. 50, 64, 12 A.3d 518, 528 (quoting State v. Pitts, 936 So.2d 1111, 1128 (Fla. Dist. Ct. App. 2006)).

170. *Powers*, 2016 Vt. 110, ¶ 4.

171. *Id.*

The Vermont Supreme Court's star case of *Murphy* further supports the argument that the questions posed to Powers were not open-ended. In *Murphy*, the United States Supreme Court stated that:

> A State may require a probationer to appear and discuss matters that affect his probationary status; such a requirement, without more, does not give rise to a self-executing privilege. The result may be different if the questions put to the probationer, however relevant to his probationary status, call for answers that would incriminate him in a pending or later criminal prosecution.[172]

Murphy made the distinction between routine conversations with parolees and their supervising officers and statements that, by their nature, require the parolee to incriminate themselves in a later criminal prosecution. This distinction has been made in other jurisdictions.[173] Applying this to *Powers*, the questions put to Powers required him to incriminate himself.[174] Powers's statements answering the officer's questions were incriminating and were used against him in a later criminal proceeding.[175] Therefore, the questions asked of Powers were not open-ended; they called for answers that would incriminate him. Powers was not subjected to a simple parole interview; it was a custodial interrogation. It resulted in incriminating statements later used in a criminal proceeding, violating the ruling in *Murphy* and Vermont's precedent.[176]

Overall, the Vermont Supreme Court did not choose cases with similar fact patterns in the issues that mattered when analyzing *Powers*. Murphy never experienced the same interrogative atmosphere. *Howes* turned out to be even more distant once the significance of the *Muntean* factor appeared in the fact pattern. Further, the Vermont Supreme Court failed to acknowledge case law clearly stating that incriminating statements made to parole officers

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172. Minnesota. v. Murphy, 465 U.S. 420, 435 (1984).

173. *Compare* Commonwealth v. Cooley, 118 A.3d. 370, 379 (Pa. 2015) (noting that because the officers were investigating a new crime unrelated to the crimes for which the defendant was on parole, and subsequently charged the defendant with new crimes stemming from his confessions, this created the functional equivalent to a custodial investigation worthy of Miranda warnings), *with* State v. Generoso, 384 A.2d 189, 192 (N.J. Super. Ct. App. Div. 1978) (holding that a defendant's statements used in parole revocation hearings do not implicate the Fifth Amendment because revocation hearings are not a criminal proceeding), *and* State v. Steinhour, 158 Vt. 299, 300, 607 A.2d 888, 889 (1992) (holding that incriminating statements made to parole officers cannot be used in a criminal proceeding absent Fifth Amendment protections).

174. *Powers*, 2016 Vt. 110, ¶ 22. Powers only had two options: incriminate himself or lie to his supervising officer. *Id.*

175. *Id.* ¶ 6.

176. *Murphy*, 465 U.S. at 435; *Steinhour*, 158 Vt. at 300, 607 A.2d at 889.

cannot be used in later criminal proceedings. The case that truly acts as a good analog to Powers's situation is *Orozco v. Texas*.

2. *Orozco v. Texas* Contains the Appropriately Analogous Facts to Understand Powers's Effective Restraint During Interrogation

The case that should inform the decision of whether Powers felt that he could leave the interaction between him and his parole officer is *Orozco v. Texas*. In *Orozco*, police officers questioned the defendant in his home about his potential association with a murder that happened a few hours before the questioning.[177] The officers testified that Orozco was not allowed to leave even though they did not inform him of this.[178] The officers elicited a confession from Orozco without Mirandizing him.[179] The United States Supreme Court held that Orozco was in custody and should have been Mirandized.[180] Holding true to the ruling set out in *Miranda*, the Court reasoned that Orozco was in custody because he had been significantly deprived of his freedom of action when being questioned in his home.[181]

The factual analysis must match as closely as possible because the environment is essential to whether a person was in "custody" under *Miranda*.[182] The decision in *Orozco* should control the inquiry of whether Powers's freedom was restricted because it is factually similar. Like Orozco, Powers was questioned in his home.[183] The Court in *Powers* argued that being questioned in his home weighed against the finding that Powers was in custody.[184] However, this fails to apply the clear standard outlined in *Orozco*: a person cornered and questioned in their home is in custody because their freedom is significantly restrained.[185]

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177. Orozco v. Texas, 394 U.S. 324, 325 (1969).

178. *Id.* at 325–26.

179. *Id.*

180. *Id.* at 327.

181. *Id.* ("The *Miranda* opinion declared that the warnings were required when the person being interrogated was 'in custody at the station *or otherwise deprived of his freedom of action in any significant way*.'").

182. *See* Howes v. Fields, 565 U.S. 499, 509 (2012) (determining whether a defendant is in custody requires examining the environment in which they were being held).

183. *See Orozco*, 394 U.S. at 325 (noting that the defendant was questioned by the police in his bedroom); State v. Powers, 2016 Vt. 110, ¶¶ 3–4, 203 Vt. 388, 403, 157 A.3d 39, 49 (noting that the defendant was questioned by the police in his living room).

184. *Powers*, 2016 Vt. 110, ¶ 28.

185. *Orozco*, 394 U.S. at 326–27 (finding that when interrogating a suspect in his own bed the police have "'otherwise deprived [the defendant] . . . of his freedom . . . in [a] . . . significant way,'" despite being questioned in the familiar environment of his bedroom (quoting Miranda v. Arizona, 384 U.S. 436, 477 (1966))).

Further supporting the argument that *Orozco* controls is that the officers in both *Powers* and *Orozco* testified that the suspects were not allowed to leave. The Supreme Court in *Orozco* mentioned this as additional support that Orozco's liberty was restrained and, therefore, that he was in custody. However, the Vermont Supreme Court dismissed this fact. The Vermont Supreme Court offered little explanation except that "[t]here is nothing in the record to suggest defendant knew the probation officer would not let him leave."[186] This explanation ignores the reasoning in *Orozco* and subverts common sense. If, like in *Powers*, a parolee is required to sit on their couch while being monitored by a parole officer, who has authority over the parolee, a reasonable person would feel like they could not leave. Therefore, Powers had his freedom significantly restrained. This is consistent with *Orozco*. Thus, Powers was in custody and should have been Mirandized.

B. Powers Was in Custody Because the Environment Was Inherently Coercive

The second inquiry when assessing if a person is in custody is whether the environment presents the same "inherently coercive pressures as the type of station house questioning at issue in *Miranda*."[187] In *Powers*, the Vermont Supreme Court stated that a person under state supervision knows that the parole officer is acting independently of the law and has no control over whether they are placed back in confinement.[188] This is blatantly wrong.

The United States Supreme Court has held that coercion is likely when there is an "appearance" that the interrogators control the defendant's fate.[189] Further, the Court has acknowledged that defendants understand that their supervising officers serve the state.[190] Therefore, the officers have immense power regarding their community supervision status.[191] In *Powers*, coercion was present because the parole officer directly controlled Powers's furlough status.

When parole officers question their parolee, there is inherent coercion because of the power imbalance.[192] The Michigan Supreme Court held that a

186. *Powers*, 2016 Vt. 110, ¶ 31.

187. Howes v. Fields, 565 U.S. 499, 509 (2012).

188. *Powers*, 2016 Vt. 110, ¶ 21.

189. Maryland v. Shatzer, 559 U.S. 98, 98 (2010).

190. Fare v. Michael C., 442 U.S. 707, 721 (1979).

191. *Id.*; *see, e.g.*, People v. Elliott, 833 N.W.2d 284, 297 (Mich. 2013); State v. Gallagher, 348 N.E.2d 336, 337–38 (1997) (arguing that the psychological pressure to comply with a parole officer's interrogation can be greater than the pressure when interrogated by law enforcement because parole officers have the power to return a parolee to prison).

192. *Elliott*, 833 N.W.2d at 297 ("Such inherently compelling pressures exist in the relationship between a parolee and a parole officer.") (internal quotation marks omitted).

parolee-parole officer relationship is unique in that it fosters heavy psychological pressures to answer questions by their supervision officers.[193] "As a parolee develops trust and begins to confide in a parole officer, the parole officer is more likely to elicit from the parolee incriminating statements that the parolee would likely not make to a police interrogator."[194] The Michigan Court differentiated between the defendant's parole officer and a random parole officer.[195] The Court held that the coercive relationship is present when the defendant has formed a bond with the supervising officer through frequent interactions.[196] The officer who questioned Powers in his home had an extensive relationship with Powers.[197] The officer had supervised Powers from 2009 to 2014.[198] During that time, the officer met with Powers twice a week.[199] Powers and his supervising officer had the time to establish a trusting relationship, resulting in inherently coercive pressures.

Therefore, when Powers was questioned by his parole officer, the environment was inherently coercive because of the unique power imbalance created between a parolee and their supervising officer. There was more than just the "appearance" that the officer controlled Powers's fate. The officer controlled his fate and Powers knew it.

The Court in *Powers* attempted to bolster its holding that the defendant was not in custody by citing *Beckwith v. United States.*[200] Once again, the Court used a factually different case and applied it to Powers. In *Beckwith*, the United States Supreme Court held that an investigative interview in the defendant's home was not a coercive atmosphere requiring Miranda warnings.[201] The Vermont Supreme Court failed to inform the reader of the full facts in *Beckwith*.[202] In *Beckwith*, Internal Revenue Agents came to the defendant's door, politely asked him if they could talk with him, excused him to get dressed, and informed him of his Fifth Amendment rights.[203] The Court found that he was not in custody.[204] The Court reasoned that the situation in

193. *Id.*

194. *Id.* at 297.

195. *Id.*

196. *See id.*

197. State v. Powers, 2016 Vt. 110, ¶ 2, 203 Vt. 388, 391, 157 A.3d 39, 41.

198. *Id.*

199. *Id.*

200. *Powers*, 2016 Vt. 110, ¶ 28 (arguing that because the defendant was questioned in his home, the environment was not inherently coercive).

201. Beckwith v. United States, 425 U.S. 341, 348 (1976).

202. *See Powers*, 2016 Vt. 110, ¶ 28 (limiting their discussion of the facts of *Beckwith* to "an investigative interview of a defendant in a home where he occasionally stayed . . . ."); Shahshahani, *supra* note 162, at 1004 (noting that a technique judges use to circumvent precedent is to "use[] legally colorable arguments to incrementally reverse or limit defendant-friendly laws").

203. *Beckwith*, 425 U.S. at 342–43.

204. *Id.* at 344, 348.

Beckwith did not present the same coercive environment that *Miranda* aimed to protect against.[205] Beckwith was not restrained to one place during the questioning and was informed of his Fifth Amendment rights.[206] Considering these circumstances, the Court held that he was not in custody.[207]

The facts in *Beckwith* were starkly different from those in *Powers*. In *Powers*, the defendant was required to let the officers in, told to sit in one place, and was never informed of his Fifth Amendment rights. The nature of the relationship between the defendants and the investigators was also very different. Coercion is likely when there is an apparent power imbalance.[208] In *Beckwith*, the Internal Revenue Agents did not have direct supervisory control over the defendant. In contrast, the parole officer in *Powers* did. Therefore, the fact that the officers controlled Powers' fate distinguishes his situation from *Beckwith*. This supports the argument that Powers was in custody because the environment was inherently coercive. Thus, the Vermont Supreme Court incorrectly used *Beckwith*, hoping the reader will not check the substance of its generalized statements.[209]

The ruling in *Powers* fails to achieve the purported policy of fostering an atmosphere of trust and communication between a parole officer and their parolee. When deciding *Powers*, the Vermont Supreme Court painted a rosy picture of rehabilitation and reform. Rehabilitation, it argued, is fostered by the positive relationship between the parolee and their officer.[210] The Vermont Supreme Court failed to realize that its ruling in *Powers* only further pushes parolees into the arms of officers who are trained to—and believe in using—"trust and communication" to build rapport and coerce confessions with that trust.[211] This is a failure that assumes probation still functions the same way it did when it was first invented.[212] The Vermont Supreme Court then incorrectly stated that "[t]reating probation officers as law enforcement officers primarily motivated to secure convictions for crimes and required to give Miranda warnings to those they supervise erects a substantial barrier to the development of forthright, open communication between probation officers and those they supervise."[213]

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205. *Id.* at 347.
206. *Id.* at 343.
207. *Id.* at 344.
208. Maryland v. Shatzer, 559 U.S. 98, 98 (2010).
209. Shahshahani, *supra* note 162, at 1004.
210. State v. Powers, 2016 Vt. 110, ¶ 37, 203 Vt. 388, 407, 157 A.3d 39, 52.
211. Etienne & McAdams, *supra* note 29.
212. *Compare* Labrecque, *supra* note 39, at 157 (noting that probation first started in the United States as a method of rehabilitation), *with* Jacobi et al., *supra* note 5, at 899 (noting that conditions of probation are now strictly enforced and can result in re-incarceration).
213. *Powers*, 2016 Vt. 110, ¶ 38.

The substantial barrier to open communication between a parolee and their officer already exists.[214] A parolee already understands that probation officers serve the state and will report any violations they see.[215] Ignoring this fact and stripping away the protection against self-incrimination only creates a chilling effect.[216] A chilling effect is a phenomenon where a person engages in self-censorship because they fear legal sanction.[217] Parolees will not want to talk openly with their supervising officers if the constant threat of self-incrimination is present.[218] At every stage of state interaction, parolees' rights are drastically diminished.[219] This can hardly leave room for the development of "open communication."

Additionally, to add to the hypocrisy, five years after *Powers*, the Vermont Supreme Court chastised the Department of Corrections (DOC) in *Davey v. Baker*.[220] The Vermont Supreme Court called the DOC's procedural actions for the furlough program "procedural mockery."[221] The Court further admitted that there was clear evidence in existing case law that the DOC had a history of "deficient procedural processes . . . [that do] little to instill confidence in that agency's application of its own rules."[222] Despite this scathing review of the DOC, the Vermont Supreme Court ruled in favor of the Department.[223] *Davey* stands as another example of the Vermont Supreme Court failing to protect its citizens while continuing to depart from federal precedent.[224] The Vermont Supreme Court ended the *Davey* decision

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214. Fare v. Michael C., 442 U.S. 707, 721 (1979) (noting that defendants are aware that their probation officers serve the state and are required to report any violations); Maryland v. Shatzer, 559 U.S. 98, 98 (2010) (noting that when the interrogator "appears" to hold influence over the fate of the suspect, the environment is coercive).

215. *Shatzer*, 559 U.S. at 98.

216. Jonathon W. Penney, *Understanding Chilling Effects*, 106 MINN. L. REV. 1451, 1465 (2022).

217. *Id.*

218. *Id.*

219. Jacobi et al., *supra* note 5, at 974.

220. In *Davey,* the Vermont Supreme Court affirmed the dismissal of a habeas corpus appeal. Davey v. Baker, 2021 Vt. 94, ¶ 22, 216 Vt. 153, 161 274 A.3d 817, 823.

The petitioner's furlough status was revoked by the DOC because the DOC claimed he violated his conditions. *Id.* ¶ 5. The DOC had attempted to contact him by calling him twice when he was not home. *Id.* ¶ 4. Because Davey failed to answer a simple phone call, the DOC charged the petitioner with escape-from-furlough violation but made no other attempts at locating him. *Id.* Davey was eventually arrested. *Id.* ¶ 5. A hearing was scheduled, but Davey received no communication from the DOC about it. *Id.* ¶ 8. Six months later, after multiple scheduled hearings were canceled without the DOC communicating with Davey about his case, a hearing finally occurred. *Id.* ¶ 9. The Court held that "[w]hile we agree that DOC's procedural errors raise legitimate concerns, petitioner did not avail himself of an appropriate alternative avenue to challenge DOC's decision regarding his furlough status." *Id.* ¶ 1.

221. *Id.* ¶ 22.

222. *Id.*

223. *Id.*

224. Sabourin, *supra* note 92, at 1183.

stating that "DOC must do better for the persons subject to the rules it alone promulgates and administers."[225] With a clear public policy advocating for trust and communication and clear deficiencies in the DOC procedures, the Court closed the *Powers* opinion with a cry for help, but no solution. Until now.

III. THE SOLUTION: A RESTORATIVE CIRCLE FOR PAROLE VIOLATIONS

To foster an atmosphere of trust and communication, restorative practices should be implemented following a potential supervised release violation. Research shows that a parolee's positive relationship with their supervising officer greatly determines parole success.[226] Positive relationships will not be cultivated through the current punitive parole violation system.

Internationally, restorative justice is being used to update community release programs. In Australia, programs that focused on rehabilitation instead of punishment following a parole violation showed reduced recidivism.[227] The Compliance Management or Incarceration in the Territory program (COMMIT) in Australia is an example of a restorative solution to parole violations.[228] The COMMIT program integrates restorative practices to address parole violations in many ways.[229] Firstly, the COMMIT program ensures procedural justice through open communication with the parolee about what their sanctions could be.[230] This is done through a "sanctions matrix" which lays out pre-determined sanctions for certain violations.[231] This promotes fairness and transparency within the system.[232] Secondly, parolees are supported by their officers to engage in therapeutic resources.[233] By focusing on fairness and rehabilitation, restorative models like the COMMIT program offer promising alternatives to the current punitive parole system.[234]

Another example of a successful restorative supervised release program is the *Turn Around Project*. The Turn Around Project is a grassroots

225. *Id.*

226. Brain DeLude et al., *The Probationer's Perspective on the Probation Officer-Probationer Relationship and Satisfaction with Probation*, 76 FED. PROB. 35 (2012).

227. Max Henshaw et al., *To Commit Is Just the Beginning: Applying Therapeutic Jurisprudence to Reform Parole in Australia*, 42 U.N.S.W. L.J. 1411, 1423 (2019).

228. *Id.* at 1426.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.* at 1432.

233. *Id.* at 1433.

234. *Id.* at 1437.

organization in Belfast, Northern Ireland.[235] Turn Around aims to provide community-based services to those in the justice system.[236] The organization works to provide employment opportunities and educational resources to formerly incarcerated people.[237] Additionally, they prioritize community understanding and outreach.[238] Turn Around's mission is "to find new solutions to old challenges."[239] Turn Around works to support people transitioning out of the justice system while encouraging wider community engagement.[240] The Turn Around Project has been very successful, providing transitional employment opportunities to over 250 people in its first ten years.[241]

Furthermore, Turn Around is working toward being recognized as an "innovative provider of strength-based personal development opportunities that are trauma, gender and neurodiversity-informed."[242] The Turn Around Project's community-based response when integrating formerly incarcerated individuals back into society is another international example of a restorative alternative to the punitive justice system.

Non-punitive alternatives to parole violations are successful.[243] Taking inspiration from international programs, a formal restorative circle should be the default method of handling a parole or furlough violation to maintain and foster a positive relationship.[244] This can be done through the legislature.

To ensure that restorative circles are used to address parole violations, the Vermont legislature should amend 28 V.S.A. § 552.[245] This statute outlines the current procedures for parole violations.[246] According to current legislation, Vermont should employ restorative alternatives "whenever feasible" in response to crimes.[247] Therefore, amending 28 V.S.A. § 552 would be consistent with the legislature's intent to incorporate restorative justice methods into crime response.[248] Currently, following a suspected violation, a parolee is detained.[249] Then, the parolee is brought before the

235. THE TURNAROUND PROJECT, STRATEGIC PLAN 2025–2028, at 2, 10 (n.d.).
236. *Id.* at 2.
237. *Id.*
238. *Id.* at 9
239. *Id.* at 2
240. *Id.*
241. *Id.*
242. *Id.* at 4.
243. THE TURNAROUND PROJECT, *supra* note 235, at 4.
244. ZEHR, *supra* note 81, at 64.
245. VT. STAT. ANN. tit. 28, § 552 (2025).
246. *Id.*
247. VT. STAT. ANN. tit. 28, § 2a(b) (2025).
248. *Id.*
249. VT. STAT. ANN. tit. 28, § 551(c) (2025).

Parole Board in a formal legal hearing.[250] If the suspected violation is established by substantial evidence, the Board has discretion to revoke parole or enter any alternative sanction that it deems necessary.[251] This process provides limited opportunity for open communication and transparency between the parolee and their officers. This is because it follows an adversarial model, creating a chilling effect.[252]

To improve open communication and transparency, 28 V.S.A. § 552 should be amended to include a restorative circle. The proposed amendment follows:

> § 552. Notification of Board; hearing
>
> (a) Upon the arrest and detention of a parolee, the parole officer shall notify the Board immediately and shall submit in writing a report describing the alleged violation of a condition or conditions of the inmate's parole.
>
> (b) As a first resort, when a person is alleged to have violated the terms of their conditional release or post-release supervision, they shall, upon their consent to the process, be brought before a restorative circle to resolve the alleged violation. The restorative circle shall comprise the Board, the supervising parole officers, a restorative practitioner, and the responsible party. Any statements said during the circle shall be kept confidential and shall not be used against the parolee during subsequent hearings, trials, or other adversarial proceedings.
>
> (c) Following the restorative circle, if the person on conditional release violates the terms of their conditions again, the Board, at its discretion, may conduct a formal hearing or another restorative circle. At formal hearings of the Parole Board, parole officers may be represented by legal counsel, who shall be provided by the appropriate State's Attorney or the Attorney General upon request.

250. VT. STAT. ANN. tit. 28, § 552(b) (2025).

251. VT. STAT. ANN. tit. 28, § 552(b)(2) (2025).

252. Penney, *supra* note 216, at 1465 (emphasizing that parolees fearing sanctions would be less inclined to discuss their struggles with parole conformity because their statements could further implicate them).

> (1) The formal hearing shall be conducted in accordance with such rules and regulations as the Board may adopt.
>
> (2) If the alleged violation is established by substantial evidence, the Board may continue or revoke the parole, or enter such other order as it determines to be necessary or desirable.
>
> (d) In the event of the withdrawal of any warrant by the authority of the Board, or in the event that the Board at the hearing, or during the restorative circle on the alleged violation, finds that the parolee did not violate any condition of his or her parole, or the law, the parolee shall be credited with any time lost by the interruption of the running of his or her sentence.

A restorative circle should be defined in 28 V.S.A § 402 as "a rehabilitative and structured group discussion about the conflict or issue brought before the Board that aims to understand the experiences of those involved, find solutions, and address the needs of the individuals involved." This definition aims to tailor the circle to the parolee's needs and the Board's purpose.

Courts should interpret the amended statute liberally because of its remedial nature.[253] Remedial statutes aim to provide redress for an existing problem and promote public good.[254] The proposed amendment aims to address many issues with the current adversarial parole system. These issues include a lack of transparency, harsh penalties for technical violations, and the chilling effect.[255]

The proposed amendment would foster an atmosphere of trust and communication. The Court in *Powers* discussed the importance of trust and communication between a parolee and their officer.[256] Through a non-punitive alternative to formal parole hearings, trust and communication would increase because parolees would no longer fear legal repercussions if they speak truthfully about the situation.[257] A restorative circle would replace the adversarial process. If given a safe space to do so, people on supervised

253. Wood v. Wallin, 2024 Vt. 21, ¶ 9, 219 Vt. 164, 168, 316 A.3d 266, 270; Rudolph H. Heimanson, *Remedial Legislation*, 46 MARQ. L. REV. 216, 221 (1962).

254. Heimanson, *supra* note 253, at 217.

255. Miller, *supra* note 57; Penney, *supra* note 216, at 1465.

256. State v. Powers, 2016 Vt. 110, ¶ 37, 203 Vt. 388, 407, 157 A.3d 39, 52.

257. Penney, *supra* note 216, at 1466 (discussing how people undergo a cost-benefit analysis before speaking and self-censor what they say based on a perceived fear of legal sanctions).

release would feel more comfortable expressing their struggles with conformity.[258]

To promote open communication, the proposed language mandates that statements made during the circle must be kept confidential. Any statements made during the circle are not allowed to be used against the parolee in future hearings or cases, thus reducing the chilling effect.[259] The power imbalance and fear of legal harm is removed,[260] thereby encouraging honest communication.

Restorative programs have been found to reduce recidivism.[261] Implementing a restorative circle would reduce the number of parolees who recidivate. If suspected violations are first funneled through a rigorous circle process that encourages accountability and rehabilitation, the Board would be less likely to order formal sanctions. Fewer formal sanctions would result in fewer people going back to prison because of parole violations. Overall, this amendment would drastically improve the current Vermont parole system.

The current parole system in Vermont is archaic. It fails to foster an atmosphere of trust and communication. The opportunity for change is ripe. Vermont's legislature recently overruled Governor Phil Scott's veto and passed an expansive restorative justice bill.[262] The restorative justice bill purports to ensure Vermont citizens have equitable access to restorative justice programs across the state.[263] However, Vermont's parole programs have not changed. In 2019, the Prison Policy Initiative gave Vermont a low grade of D+ for its parole system.[264] Amending 28 V.S.A. § 552 to include a restorative circle following a violation of a supervised release condition would promote the public policy of trust and communication articulated by

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258. Barb Toews & Jackie Katounas, *Have Offender Needs and Perspectives Been Adequately Incorporated into Restorative Justice*, *in* CRITICAL ISSUES IN RESTORATIVE JUSTICE 107, 109 (Howard Zehr ed., 2004).

259. Penney, *supra* note 216, at 1465 (requiring that any statements made during the circle will be kept confidential, thus removing the worry that what a person confesses to or says can be used against them in later proceedings).

260. *Id.*

261. *See* James Bonta et al., *An Outcome Evaluation of a Restorative Justice Alternative to Incarceration*, 5 CONTEMP. JUST. REV. 319, 329 (2002); Jeff Latimer, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 85 PRISON J. 127, 137 (finding restorative justice programs, on average, reduce recidivism compared to nonrestorative practices).

262. Shaun Robinson & Sarah Mearhoff, *Vermont Legislature Overrides Six Vetoes in One Day, Setting New Record*, VTDIGGER (June 17, 2024), https://vtdigger.org/2024/06/17/vermont-legislature-overrides-six-vetoes-in-one-day-setting-new-record/.

263. *Id.*

264. Jorge Renaud, *Grading the Parole Release Systems of All 50 States*, PRISON POL'Y INITIATIVE (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html.

the judiciary. Additionally, it would fall perfectly within the Vermont legislature's goals of expanding access to restorative solutions.

CONCLUSION

The Vermont Supreme Court's ruling in *State v. Powers* weakened the rights of those on supervised release by making generalized statements and focusing on inapposite case comparisons. The Vermont Court incorrectly concluded that people on supervised release are not afforded the constitutional right against self-incrimination in circumstances of alleged supervised release violations.

When addressing Miranda issues, courts should be careful to protect the purpose of Miranda rights: to prevent self-incrimination and maintain the integrity of the justice system. The Vermont Supreme Court's decision in *Powers* works against these goals by weakening the rights of people on supervised release while giving parole officers unfettered power.[265] This travesty should not be ignored.

To address this problem, this article offers the solution of amending 28 V.S.A. § 552. The proposed amendment replaces the current punitive system with a restorative circle process following a suspected violation of a person's conditional release. Implementing a restorative circle would encourage offender accountability and rehabilitation. This would foster the atmosphere of trust and communication the Vermont Supreme Court discussed in *Powers*.

Protection against self-incrimination is enshrined in the Constitution.[266] Efforts to undermine this protection must be closely scrutinized. Miranda rights were created in recognition that encroachment on individual liberties gains footing from subtle procedural deviations.[267] The ruling in *Powers* is an example of such deviations. Miranda rights were created to protect the people; "[w]e cannot depart from this noble heritage."[268]

–Lea Riell[*]

265. State v. Powers, 2016 Vt. 110, ¶ 40, 203 Vt. 388, 408, 157 A.3d 39, 52 (holding that statements made to a parole officer were not entitled to Miranda protections).

266. U.S. CONST. amend. V.

267. *See* Miranda v. Arizona, 384 U.S. 436, 459–60 (1966) (describing how we cannot prioritize confessions, thereby deviating from procedural safeguards, over fairness and justice).

268. *Id.*

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