University of Baltimore Law Review

Volume 34
Issue 1 *Fall 2004*

Article 4

2004

The Routine Booking Question Exception to Miranda

Meghan S. Skelton

James G. Connell III
United States Department of Defense

THE ROUTINE BOOKING QUESTION EXCEPTION TO *MIRANDA*

Meghan S. Skelton†
James G. Connell, III††

Questions seeking identifying information often begin the interaction between the police and a suspect. Questions inquiring into an individual's name or address are common both when an individual is first stopped as well as once a suspect is arrested and booked.

The police must have a record of a suspect's identity before they can jail an individual awaiting arraignment.[1] Indeed, police departments must obtain, as mandated by statute, personal information on suspects, such as physical descriptions, photographs, and fingerprints, for investigative purposes in the crime for which the suspect has been arrested, as well as for investigating other crimes.[2] This biographical data—name, address, age, weight, and physical description—is considered "routine booking information."[3]

Without question, answers to "routine booking questions" can be incriminating. If a driver's license and social security card list two different names, the answer to "What is your name?" could be used in a prosecution for obstruction of justice, forged documents, or any number of other crimes.[4] A suspect's statement identifying his or her ad-

---

† BA Duke University 1992; JD William and Mary 1995.
†† BA Florida State University 1993; JD William and Mary 1996.

1. When the state takes a person into its custody and holds him or her there against his or her will, the Constitution imposes upon it a duty to assume some responsibility for the person's safety and general well-being. *See* Youngberg v. Romeo, 457 U.S. 307, 307, 312-13, 315 (1982) (holding that, *inter alia*, food, shelter, and physical safety are liberty interests to which each incarcerated or restrained person is entitled under the Due Process clauses of the Fifth and Fourteenth Amendments). The state must therefore elicit certain information from people it takes into custody in order to see to their individual needs and safety.
2. *See, e.g.*, ALASKA STAT. § 12.80.060 (Michie 1962); ARIZ. REV. STAT. ANN. § 41-1750 (West 2004); CONN. GEN. STAT. ANN. § 29-11 (West 2003); GA. CODE ANN. § 35-3-4 (2000); IDAHO CODE § 67-3004 (Michie 2001); N.C. GEN. STAT. § 148-76 (2003); VA. CODE ANN. § 19.2-390 (Michie 2004); W. VA. CODE ANN. § 15-2-24 (Michie 2004).
3. Pennsylvania v. Muniz, 496 U.S. 582, 584, 590-91, 601-02 (1990).
4. *See, e.g.*, United States v. Alejandro, 118 F.3d 1518, 1521-22 (11th Cir. 1997) (finding that possession of multiple birth certificates in different names supported conviction of possession of counterfeit birth certificates with intent to transfer them in violation of 18 U.S.C. § 1028(a)(2)); United States v. Poole, 794 F.2d 462, 464, 466 (9th Cir. 1986) (describing that a federal agent discovered the falsity of the defendant's previously given name when

dress could be incriminating if the police had recently searched the suspect's home and discovered contraband there.[5] Giving the police an address can help the police establish an element of an offense.[6]

Answers to these questions, posed by the police, are testimonial responses by a suspect that the government may use to prove the case against the suspect.[7] If these routine booking questions constitute custodial interrogation, the questions trigger the Fifth Amendment privilege against self-incrimination[8] and the constitutional requirement of giving warnings pursuant to *Miranda v. Arizona*.[9]

Although the admissibility of the answers to these questions has been frequently litigated since the early 1970s, no unified approach exists. The Supreme Court has weighed in on the issue twice, but has not resolved it.[10] In one decision, *Rhode Island v. Innis*,[11] the Court addressed the definition of interrogation and appeared to define interrogation to exclude words and actions that are "normally attendant to arrest and custody," despite the fact that routine booking questions are indeed direct questions posed by a police officer.[12]

Roughly ten years later, the Supreme Court specifically addressed routine booking questions in *Pennsylvania v. Muniz*.[13] Four justices determined that these questions, although custodial interrogation, were exempt from *Miranda*.[14] Some courts, relying on the plurality in *Muniz* or without any analysis, have concluded that routine booking questions are simply exempt from the requirements of *Miranda*.[15]

---

the agent filled out a booking form used by federal marshals); United States v. LaVallee, 521 F.2d 1109, 1112 (2d Cir. 1975) ("A person's name, age, address, marital status and similar data, while usually non-incriminatory in character, may in a particular context provide the missing link required to convict."); State v. Love, 717 A.2d 670, 671-72 (Conn. 1998) (holding that defendant's possession of differing identification cards supported conviction of credit card theft).

5. United States v. Disla, 805 F.2d 1340, 1347 (9th Cir. 1986) (holding that a question regarding a suspect's address related to an element of the offense—possession of cocaine—thus was not routine booking information).
6. *Id.*
7. *See Poole*, 794 F.2d at 466; *LaVallee*, 521 F.2d at 1112.
8. U.S. CONST. amend. V. "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." *Id.*
9. 384 U.S. 436 (1966).
10. Pennsylvania v. Muniz, 496 U.S. 582 (1990); Rhode Island v. Innis, 446 U.S. 291 (1980).
11. 446 U.S. 291 (1980).
12. *Id.* at 300-01.
13. 496 U.S. 582 (1990).
14. *Id.* at 601 (Brennan, J., plurality opinion in which O'Connor, Scalia, and Kennedy, JJ., joined).
15. *See, e.g.*, United States v. Shea, 150 F.3d 44, 47-48 (1st Cir. 1998); Presley v. Benbrook, 4 F.3d 405, 408 (5th Cir. 1993); State v. Cuesta, 791 A.2d 686, 693 (Conn. App. Ct. 2002); Commonwealth v. Acosta, 627 N.E.2d 466, 468-69 (Mass. 1993).

Almost every jurisdiction in this country has addressed whether *Miranda* warnings are necessary before a police officer may ask a suspect routine booking questions.[16] Some courts have concluded that routine booking questions do not constitute interrogation and therefore do not require any warnings.[17] Other courts have concluded that the questions are interrogation, but are otherwise exempt from *Miranda's* procedural requirements.[18]

The procedures involved in asking these questions are critical to the admissibility of the answers. The resolution of whether the privilege against self-incrimination applies to these questions is frequently litigated and analyzed, but without consistent results. The *Innis* definition of interrogation is open to interpretation. In *Innis*, the Supreme Court explained its definition as encompassing all words or behaviors that the police "should know are reasonably likely to elicit an incriminating response from the suspect."[19] Some courts, using the test espoused in *Innis*, find that the police should know that asking booking questions will elicit incriminating responses, and have accordingly held that the questions amount to interrogation.[20] In the same opinion, however, the Supreme Court appeared to state that questions "normally attendant to arrest and custody" do not amount to interrogation.[21] The plurality in *Muniz*, on the other hand, indicated that routine booking questions are covered by a blanket exception to *Miranda*.[22]

This article will examine the law of custodial interrogation as it relates to routine booking questions. After a brief overview of Supreme Court cases that form the backbone of other courts' analyses of the issue and the emergence of the routine booking question exception to *Miranda*, it will examine the cases that focus on whether routine booking questions constitute interrogation. It then examines the different approaches to the routine booking question exception—whether courts view the questions or circumstances subjectively, objectively, or using both types of analyses. Finally, it concludes that the excuse of a routine booking question exception to *Miranda* can be used to broaden custodial interrogations beyond constitutional limits. In order to prevent this and allow for police departments to gather the basic identification data necessary to administer jails and pre-trial services, courts should return to a basic, common-sense approach to the routine booking question exception. First, they should require that the question be asked during booking rather than in any field

16. *See infra* notes 136-47 and accompanying text.
17. *See infra* notes 136, 138-40 and accompanying text.
18. *See infra* notes 144-45 and accompanying text.
19. *Innis*, 446 U.S. at 301.
20. *See infra* notes 122-30 and accompanying text.
21. *Innis*, 446 U.S. at 301.
22. *Muniz*, 496 U.S. at 601-02.

interview or other investigatory context. Second, they should limit the questions that qualify for this exception to those seeking only biographical data necessary for booking. Third, they should permit questions to fall within this exception only if they are not reasonably likely to lead to an incriminating response.

I. CUSTODIAL INTERROGATION

A. The Miranda Warnings Requirement

As with most of the rights and privileges enumerated in the Constitution, the Fifth Amendment privilege against self-incrimination stems from an interest in preventing governmental abuses that were rampant during the Stuart monarchy.[23] The privilege against self-incrimination developed based on the principle that the government must respect the "dignity and integrity of its citizens."[24] Fundamentally, each individual has a due process interest in remaining free from coerced confessions, and a confession is admissible against an individual only if he or she confesses voluntarily.[25] This is a personal right of an

23. *See* Miranda v. Arizona, 384 U.S. 436, 458-59 (1966); *see also* Arizona v. Washington, 434 U.S. 497, 507 (1978) (tracing the history of the Double Jeopardy Clause to a reaction against the power of judges under the Stuart monarchs to dismiss a jury if the prosecution had presented insufficient evidence with the hopes that a second trial would result in a conviction); Furman v. Georgia, 408 U.S. 238, 253-55 (1972) (Douglas, J., concurring) (explaining that the Eighth Amendment prohibition against cruel and unusual punishment stems from a desire to end the use of torture and brutality common under Stuart monarchs); United States v. Johnson, 383 U.S. 169, 178 (1966) (canvassing the history of the immunity provisions of the Speech and Debate clause and concluding that it "was the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Commons and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators."); James W. Ely, Jr., *The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process*, 16 CONST. COMMENT. 315, 320-21 (1999) (outlining the origins of substantive due process to the Magna Carta, and asserting that the English made little use of it until the reign of the Stuarts); Joseph E. Olson & David B. Kopel, *All the Way Down the Slippery Slope: Gun Prohibition in England and Some Lessons for Civil Liberties in America*, 22 HAMLINE L. REV. 399, 402-03 (1999) (explaining that the right to bear arms, form militias, and petition the government for the redress of grievances arose just after the Glorious Revolution in response to the Stuart monarchs' absolutism and forced disarming of the population).

24. *Miranda*, 384 U.S. at 460 ("[T]o respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth.").

25. *See* George C. Thomas III, *A Philosophical Account of Coerced Self-Incrimination*, 5 YALE J.L. & HUMAN. 79, 80, 81-82 (1993) (describing a Kantian, positive liberty construction of coercion that rests on whether the individual possibly being coerced has full information—an individual's choice to act may be coerced simply because she is uninformed).

individual; the Fifth Amendment protects an individual against undue compulsion regardless of the intentions of the government officer.[26] To ensure that police respect a suspect's dignity, the Supreme Court dictated that, before initiating a custodial interrogation, a police officer must give the now-familiar warnings that the suspect has the right to remain silent, that any statements may be used against him or her, that the suspect has the right to consult with counsel and to have counsel present at the interrogation, and that the suspect has the right to court-appointed counsel if he or she is indigent.[27]

Although the Supreme Court stated that these warnings were "an absolute prerequisite" to custodial interrogations,[28] it has nonetheless chipped away at the privilege, finding certain custodial interrogations exempt from the requirement that a suspect receive *Miranda* warnings in order to render any statements admissible.[29] For example, the Court has held that a suspect's responses to questions asked in violation of *Miranda* may be admitted for impeachment purposes.[30] Likewise, the Court has carved out a "public safety" exception to the requirement that *Miranda* warnings be given before a defendant's statements can be admitted into evidence when "police officers ask questions reasonably prompted by a concern for the public safety."[31] The Court has also approved of the admission of confessions that came after *Miranda* warnings, even though the suspect originally confessed prior to receiving any warnings.[32] In addition, an incarcerated

26. *See* Jonathan L. Marks, Note, *Confusing the Fifth Amendment with the Sixth: Lower Court Misapplication of the* Innis *Definition of Interrogation*, 87 MICH. L. REV. 1073, 1088 (1989) ("It does not matter what police intend if the acts cause the individual to be aware of unconstitutional pressures. At the moment those pressures occur the right is violated.").
27. *Miranda*, 384 U.S. at 471-73.
28. *Id.* at 471.
29. *See infra* notes 30-35 and accompanying text.
30. Harris v. New York, 401 U.S. 222, 225-26 (1971). This impeachment exception has led to the absurd and unconscionable result that, even when police intentionally ignore a suspect's invocation of the right to remain silent or the Fifth Amendment right to counsel by continuing to question him or her with the specific purpose of extracting impeachment information, courts still admit the statements. *See* People v. Peevy, 953 P.2d 1212 (Cal. 1998) (holding that the impeachment exception to *Miranda* applied and permitting the admission of statements despite the police officers' admitted and intentional misconduct, therefore violating the suspect's Fifth Amendment rights), *cert. denied*, 525 U.S. 1042 (1998); *see also* Kelly McMurry, *California Supreme Court Chips Away at* Miranda, 34 TRIAL 81 (1998); James L. Kainen, *The Impeachment Exceptions to the Exclusionary Rules: Policies, Principles, and Politics*, 44 STAN. L. REV. 1301 (1992).
31. New York v. Quarles, 467 U.S. 649, 655-56 (1984).
32. Oregon v. Elstad, 470 U.S. 298, 310-11 (1985). In *Elstad*, the defendant made an incriminating statement prior to receiving *Miranda* warnings, which the state conceded were inadmissible. *Id.* at 301-02. After the defendant had made these statements, however, the police again questioned him, this time after administering the warnings, and the defendant waived his right to remain silent and executed a written confession. *Id.* at 301.

suspect's answers to the questions posed by undercover police officers masquerading as inmates in a jail may be admitted despite the lack of *Miranda* warnings.[33] For each of these exceptions, the Court accepted that the questioning arose in the context of a custodial interrogation, but concluded that either the policy reasons justifying the warning requirement were absent,[34] or the need for the information outweighed the constitutional privilege against self-incrimination.[35]

B. Emergence of the Routine Booking Question Exception

In the 1970s, courts began recognizing another exception to *Miranda*: admission of statements suspects made while the police were collecting biographical information during the booking process.[36] Most of these cases took the position that inquiries into routine biographical information used for administrative purposes did not consti-

---

The Court held that the admitted violation of the defendant's Fifth Amendment rights in the first confession did not taint the second confession. *Id.* at 318. *But see* Missouri v. Seibert, 124 S. Ct. 2601, 2608-10 (2004) (holding that *Miranda* warnings administered in the middle of a continuous interrogation are ineffective)

33. Illinois v. Perkins, 496 U.S. 292, 296-98 (1990). The Court stated: "Ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within *Miranda's* concerns." *Id.* at 297.

34. *See Perkins*, 496 U.S. at 297-98 (explaining that an incarcerated suspect feels no compulsion to confess when bragging to people whom he or she believes to be other inmates but are actually undercover officers); *Elstad*, 470 U.S. at 315-16 (holding that, although the police may have failed to give *Miranda* warnings because of "reluctance to initiate an alarming police procedure," the elements of coercion were not present at the custodial interrogation).

35. *See Quarles*, 467 U.S. at 655-57 (holding that, despite the fact that the defendant was handcuffed and surrounded by at least four officers, the police needed to act spontaneously in order to see to their own safety and the safety of others, rather than simply adhering to a police manual); *Harris*, 401 U.S. at 225-26 (holding that admitting statements made in violation of *Miranda* to impeach a defendant simply used "the traditional truth-testing devices of the adversary process").

36. *See, e.g.*, United States v. LaVallee, 521 F.2d 1109, 1112-13 (2d Cir. 1975) (relying on a draft of the American Law Institute's MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 140.8(5) (Proposed Official Draft 1974), which limits the necessity of *Miranda* warnings to "'questioning designed to investigate crimes or the involvement of the arrested person or others in crimes' as distinguished from 'non-investigatory questioning'"). *But see* Cavaness v. State, 581 P.2d 475, 480 (Okla. Crim. App. 1978) (holding that information on administrative forms is admissible only if a defendant has been given *Miranda* warnings at the time of questioning: "In a situation such as this, with questioning taking place at the jail during booking, and where the questions asked are simply informational, i.e., name, age, address, etc., then in order for the State to use a defendant's answers against him or her the interrogation must be preceded by a warning reasonably contemporaneous in time").

tute interrogation.[37] Many of these courts reasoned that *Miranda* did not apply to booking questions because the police or other investigating officers were not attempting to elicit incriminating information.[38] Although the courts on the surface applied a bright-line rule that the questioning did not amount to interrogation, they justified this conclusion from the subjective intent of the police, concluding that *Miranda* did not apply when the police intentions were not investigatory.[39]

Some courts took the approach that questions regarding biographical information did not call for testimonial responses. The Court of Appeals for the Seventh Circuit held that answers to questions regarding aliases or other identifying information were not testimonial because "[a]n alias is as much an identifying characteristic as a defendant's voice or handwriting," and because no *Miranda* warnings are necessary to extract handwriting exemplars.[40]

This evolving exception was not without its critics. Even courts that recognized a booking exception to *Miranda* acknowledged that the

37. *See LaVallee*, 521 F.2d at 1113 ("Accordingly we hold that since the answer furnished by Hines to the arresting officer in respect to his inquiry regarding Hines' marital status constituted merely basic identification required for booking purposes, its admission was not barred because of the officer's failure to satisfy *Miranda's* warning-waiver procedure."); United States v. La Monica, 472 F.2d 580, 581 (9th Cir. 1972) ("[T]he officer[ ] made no effort to question him about the contraband . . . [and] was not seeking evidence but was trying to identify and inventory La Monica's personal effects."); Nading v. State, 377 N.E.2d 1345, 1347 (Ind. 1978) ("Routine administrative questioning concerning an arrestee's name and address are usually not considered to be part of an 'interrogation.'"); State v. Kincaide, 602 P.2d 307, 311 (Or. 1979) ("[A] request for defendant's name after his arrest was a question asked for a 'standard administrative purpose' as the first step in booking, and hence was not interrogation within the ambit of the *Miranda* rule." (citing State v. Whitlow, 510 P.2d 1354, 1357 (Or. Ct. App. 1974))).

38. *See, e.g., La Monica*, 472 F.2d at 581; *Nading*, 377 N.E.2d at 1347; *Kincaide*, 602 P.2d at 311.

39. *See, e.g., LaVallee*, 521 F.2d at 1112-13; *Kincaide*, 602 P.2d at 311 (citing *Whitlow*, 510 P.2d 1354) (questioning during booking is not interrogation).

40. United States v. Prewitt, 553 F.2d 1082, 1085-86 (7th Cir. 1977). Chief Justice Rehnquist found this approach persuasive, and thirteen years later, in *Pennsylvania v. Muniz*, concluded that the answers to questions seeking biographical information were not testimonial. 496 U.S. 582, 608 (Rehnquist, C.J., concurring in part, concurring in the result in part and dissenting in part). Chief Justice Rehnquist, joined by Justices White, Blackmun, and Stevens, asserted that a question regarding the date of Muniz's sixth birthday was simply a test of Muniz's mental coordination rather than an attempt to elicit testimony. *Id.* at 607. He asserted that the question was no different from the "walk and turn" or "one leg stand" portion of a field sobriety test, only that it tested mental acuity rather than physical coordination. *Id.* The fact that this particular test required the use of the voice had no impact. *Id.* Nonetheless, Chief Justice Rehnquist accepted as a matter of course that, "had the question related only to the date of his birth, it presumably would have come under the 'booking exception' to *Miranda* . . . to which the Court refers elsewhere in its opinion." *Id.*

intent of the police could interfere with the constitutional protections that the Court in *Miranda* intended to provide.[41] The Court of Appeals for the Second Circuit apologized, stating "[w]e recognize that this exception to *Miranda* lends itself to the possibility of abuse by police who might, under the guise of seeking pedigree data, elicit an incriminating statement."[42]

1. *Rhode Island v. Innis*[43]

In *Innis*, the Supreme Court for the first time alluded to a routine booking question exception, although the Court's focus was on defining interrogation.[44] The Providence, Rhode Island, police began searching for Thomas J. Innis after a taxi driver reported that he was robbed by a man wielding a sawed-off shotgun.[45] The taxi driver described his assailant and identified Innis in a photo line-up.[46] A patrolman spotted Innis on the street and arrested him with no difficulty.[47] At the time of his arrest, Innis was unarmed.[48] The patrolman, and then later other officers who arrived at the scene, advised Innis of his *Miranda* rights.[49] Innis invoked his right to counsel.[50] A police captain then instructed the officers to neither question Innis nor in any way coerce him to make any statements.[51]

While several patrolmen were riding in a car to the police station with Innis, they began discussing the missing sawed-off shotgun.[52] One stated that a school for handicapped children was located nearby, where many children played in the school yard, and "God forbid one of them might find a weapon with shells and they might hurt themselves."[53] Another officer in the car agreed, stating that "it was a safety factor and that [they] should, you know, continue to search for the weapon and try to find it."[54] The first officer then said that it would be too bad if a little girl "would pick up the gun, maybe kill

41. *Muniz*, 496 U.S. at 610-11.
42. *LaVallee*, 521 F.2d at 1113 n.2; *see also* Procter v. United States, 404 F.2d 819, 821 (D.C. Cir. 1968) ("The arrested person may, of course, be 'booked' by the police. But he is not to be taken to police headquarters in order to carry out a process of inquiry that lends itself, even if not so designed, to eliciting damaging statements." (quoting Mallory v. United States, 354 U.S. 449, 454 (1957))).
43. 446 U.S. 291 (1980).
44. *Id.*
45. *See id.* at 293; *see also* State v. Innis, 391 A.2d 1158, 1160-61 (R.I. 1978).
46. *Innis*, 446 U.S. at 293.
47. *Id.* at 294.
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.* at 294-95 (quoting the testimony of Patrolman Gleckman).
54. *Id.* at 295 (quoting the testimony of Patrolman McKenna).

herself."[55] Innis then interrupted the officers and told them to "turn the car around so that he could show them where the gun was located."[56] When they arrived back at the scene of the arrest, the captain again advised Innis of his *Miranda* rights, but Innis replied "that he 'wanted to get the gun out of the way because of the kids in the area in the school.'"[57]

The trial court found that Innis made the statements after being completely and repeatedly informed of his Fifth Amendment rights and accordingly admitted his statement into evidence.[58] The Rhode Island Supreme Court vacated the judgment and remanded the case,[59] holding that Innis had invoked his Fifth Amendment right to counsel, and that the patrolmen violated that right by conversing as they did in the car and that all interrogation should have ceased.[60] The United States Supreme Court reviewed the case to determine whether the patrolmen had in fact conducted an interrogation.[61]

The Court decided that *Miranda* did not apply just to situations involving express questioning, recognizing that the police might use "indirect" methods of interrogation, and held that *Miranda* applies to both express questioning and its "functional equivalent."[62] The Court defined "functional equivalent" as "words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response."[63] The Court explained that the intent of the police is not relevant, instead focusing on the perceptions of the suspect.[64] The Court described its inquiry as an objective test, with the subjective intent of the police acting as only a factor for a court to consider in determining whether certain words or actions were the functional equivalent of direct questions.[65]

---

55. *Id.* (quoting the testimony of Patrolman Williams who testified that he overheard this comment made by Patrolman Gleckman).
56. *Id.*
57. *Id.*
58. *Id.* at 296.
59. State v. Innis, 391 A.2d 1158, 1164 (R.I. 1978).
60. *Id.*
61. *Innis*, 446 U.S. at 293.
62. *Id.* at 299 n.3, 300-01. Indirect questioning had gained popularity as a more effective means of interrogating suspects. *See* Welsh S. White, *Interrogation Without Questions:* Rhode Island v. Innis *and* United States v. Henry, 78 MICH. L. REV. 1209, 1211 (1980) (footnotes omitted) ("Leading police manuals today reflect an awareness that the high-pressure browbeating practices of the past are less likely to be effective than subtler, more psychologically oriented tactics, including some that involve no questioning of the suspect at all.").
63. *Innis*, 446 U.S. at 301. The Court explained that incriminating responses include both exculpatory and inculpatory statements "that the prosecution may seek to introduce at trial." *Id.* at 301 n.5.
64. *Id.* at 301.
65. *Id.* at 301-02 nn.7-8.

The Court concluded that the conversation between the officers in the police car did not amount to interrogation.[66] First, because the conversation included no express questioning, it failed to satisfy the first prong of the definition.[67] Second, the Court concluded that the officers' conversation was not the functional equivalent of interrogation.[68] The majority held that the officers should not "have known that their conversation was reasonably likely to elicit an incriminating response from [Innis]."[69] Also, "There is nothing in the record to suggest that the officers were aware that the respondent was peculiarly susceptible to an appeal to his conscience concerning the safety of handicapped children."[70] The Court characterized the conversation as consisting of nothing more than "a few offhand remarks" and found that this was not a case where the officers "carried on a lengthy harangue."[71] Indeed, the Court found that the conversation, under the circumstances, was not "particularly evocative."[72]

The *Innis* opinion drew sharp dissents.[73] Justice Marshall wrote that he agreed with the majority's definition of interrogation—that the *Miranda* safeguards should "apply whenever the police conduct is intended or likely to produce a response from a suspect in custody."[74] He summarized the majority's position as requiring an "objective inquiry into the likely effect of police conduct on a typical individual," while also taking into account particular sensitivities of the suspect that the police know about.[75]

Despite this substantial agreement, Justice Marshall lambasted, "I am utterly at a loss, however, to understand how this objective standard as applied to the facts before us can rationally lead to the conclusion that there was no interrogation."[76] He continued:

> One can scarcely imagine a stronger appeal to the conscience of a suspect—*any* suspect—than the assertion that if the weapon is not found an innocent person will be hurt or killed. And not just any innocent person, but an innocent child—a little girl—a helpless, handicapped little girl on her way to school. The notion that such an appeal could not be expected to have any effect unless the suspect were known to have some special interest in handicapped children verges

66. *Id.* at 302.
67. *Id.* at 302 ("Rather, that conversation was, at least in form, nothing more than a dialogue between two officers to which no response from the respondent was invited.").
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.* at 303.
72. *Id.*
73. *Id.* at 305-17 (Marshall, J., dissenting).
74. *Id.* at 305 (Marshall, J., dissenting).
75. *Id.* (Marshall, J., dissenting).
76. *Id.* (Marshall, J., dissenting).

> on the ludicrous. As a matter of fact, the appeal to a suspect to confess for the sake of others, to "display some evidence of decency and honor," is a classic interrogation technique.[77]

Justice Marshall concluded that the officers' remarks would have clearly been an interrogation if they had been directed to Innis and that the result should not change simply because the remarks were addressed to another police officer.[78] The police were not overheard accidentally; instead, the police engaged in this conversation intending Innis to hear and should have been held accountable for the pressures to speak that they were creating.[79]

After *Innis* was decided, many courts began examining statements that suspects made during routine booking procedures in light of the definition of interrogation.[80] Several courts determined that the policy reasons behind *Miranda* did not apply to the collection of biographical material from suspects so that continued questioning—if the questions were routine and not investigatory—was permissible even after the suspect had invoked either the Fifth Amendment right to remain silent or right to counsel.[81] Other courts examined the intent of the police: Did they specifically plan and expect to receive an incriminating answer from the suspect?[82]

2. *Pennsylvania v. Muniz*[83]

Although the Supreme Court specifically addressed routine booking questions in *Pennsylvania v. Muniz*, no clear rule emerged from this fractured plurality opinion.[84] The opinion of the Court answers only a limited question and creates no new rule or test.

---

77. *Id.* at 306 (Marshall, J., dissenting) (citing F. INBAU & J. REID, CRIMINAL INTERROGATION AND CONFESSIONS 60-62 (Williams & Wilkins 2d ed. 1967) as providing an example to his proposition).
78. *Id.* (Marshall, J., dissenting).
79. *Id.* at 306-07 (Marshall, J., dissenting).
80. *See infra* notes 82-83.
81. *See infra* Section II.A.
82. *See, e.g.*, United States v. Glen-Archila, 677 F.2d 809, 815 (11th Cir. 1982) (discussing the booking procedure: "The interrogation appears to have been a straightforward attempt to secure biographical data necessary to complete booking, and the questions asked did not relate, even tangentially, to criminal activity."); United States v. Booth, 669 F.2d 1231, 1238 (9th Cir. 1981) (citations omitted) (explaining that an exception for routine booking procedures arises because background questions rarely elicit an incriminating response: "Ordinarily, the routine gathering of background biographical data will not constitute interrogation. Yet we recognize the potential for abuse by law enforcement officers who might, under the guise of seeking 'objective' or 'neutral' information, deliberately elicit an incriminating statement from a suspect.").
83. 496 U.S. 582 (1990).
84. *Id.* at 600-01. Justices O'Connor, Scalia, and Kennedy joined Justice Brennan in the plurality opinion. Chief Justice Rehnquist, joined by Justices White, Blackmun, and Stevens, filed an opinion that addressed the booking

The opinion of the Court concludes that a question asking the defendant for the date of his sixth birthday is testimonial and should have been suppressed since it was asked in the absence of *Miranda* warnings.[85] Further, the defendant's statements made while the police were instructing him about a breathalyzer test were not responses to interrogation because the officer's instructions and questions were limited to whether Muniz understood the test and wished to submit to it, and were in accord with legitimate police procedure and "were not likely to be perceived as calling for any incriminating response."[86]

Several of the justices, however, held that seven other questions police had asked the defendant—his name, address, height, weight, eye color, date of birth, and current age—"are nonetheless admissible because the questions fall within a 'routine booking question' exception."[87] Justice Brennan, joined by Justices O'Connor, Scalia, and Kennedy, wrote:

> We disagree with the Commonwealth's contention that Officer Hosterman's first seven questions regarding Muniz's name, address, height, weight, eye color, date of birth, and current age do not qualify as custodial interrogation as we defined the term in *Innis*, merely because the questions were not intended to elicit information for investigatory purposes.[88]

Justice Brennan also applied the definition of interrogation to statements Muniz made in response to the officer's directions to perform sobriety tests.[89] Justice Brennan rejected the defense's claim that statements Muniz gave during the sobriety tests violated *Miranda*:

> Officer Hosterman's dialogue with Muniz concerning the physical sobriety tests consisted primarily of carefully scripted instructions as to how the tests were to be performed. These instructions were not likely to be perceived as calling for any verbal response and therefore were not "words or actions" constituting custodial interrogation, with two narrow exceptions not relevant here.[90]

---

questions without analysis, finding that the videotaped answers were not testimonial and thus did not warrant application of the Fifth Amendment privilege against self-incrimination. *Id.* at 608 (Rehnquist, C.J., concurring in part, concurring in the result in part, and dissenting in part).

85. *Id.* at 590-94, 600.
86. *Id.* at 605 (citation omitted).
87. *Id.* at 601 (Brennan, J., plurality opinion).
88. *Id.* at 601 (Brennan, J., plurality opinion) (citation omitted).
89. *Id.* at 603-04.
90. *Id.* at 603. Justice Brennan did not provide a citation for the quoted "words or actions" language, although it can be found in the *Innis* definition of the functional equivalent of interrogation. 446 U.S. at 301. The two exceptions consist of Officer Hosterman's requests that Muniz count aloud from 1 to 9 while performing the "walk and turn" test and that he count aloud from 1 to 30 while balancing during the "one leg stand" test. Muniz's

Justice Brennan further explained that the dialogue "contained limited and carefully worded inquiries as to whether Muniz understood those instructions, but these focused inquiries were necessarily 'attendant to'" a legitimate field sobriety test, so that "Muniz's incriminating utterances during this phase of the videotaped proceedings were 'voluntary' in the sense that they were not elicited in response to custodial interrogation."[91] Justice Brennan cited *South Dakota v. Neville*,[92] where the Court held that asking a suspect to submit to a blood alcohol test was not interrogation within the meaning of *Miranda*.[93] Similarly, Justice Brennan concluded that statements made by Muniz during an explanation of how a breathalyzer examination worked "were not prompted" by custodial interrogation because the officer administering the test "carefully limited her role to providing Muniz with relevant information about the breathalyzer test and the Implied Consent Law."[94] He reasoned that "[t]hese limited and focused inquiries were necessarily 'attendant to' the legitimate police procedure . . . and were not likely to be perceived as calling for any incriminating response."[95]

Justice Marshall, in a separate opinion that concurred in part and dissented in part, concluded that the question regarding Muniz's birthday was custodial interrogation.[96] He disagreed with the creation of a routine booking question exception to *Miranda*, instead asserting that a straightforward analysis of whether an interchange between a suspect and the police constituted interrogation was sufficient to cover the issue of routine booking questions.[97] The first and simplest step in this analysis is to consider whether the interchange involved a direct question.[98] To Justice Marshall, the primary question at issue—the date of Muniz's sixth birthday—"clearly constituted custodial interrogation because it was a form of 'express questioning.'"[99] Instead of instituting a new exception to *Miranda* for routine booking questions, he opined that "[t]he far better course would be to maintain the clarity of the doctrine by requiring police to preface all direct questioning of a suspect with *Miranda* warnings if they want his responses to be admissible at trial."[100]

---

counting at the officer's request qualifies as a response to custodial interrogation. *Muniz*, 496 U.S. at 603 n.17.

91. *Muniz*, 496 U.S. at 603-04.
92. 459 U.S. 553 (1983).
93. *Muniz*, 496 U.S. at 604 (citing *Neville*, 459 U.S. at 564 n.15).
94. *Id.* at 605.
95. *Id.* (citation omitted).
96. *Id.* at 608 (Marshall, J., concurring in part and dissenting in part).
97. *See id.* at 610-11 (Marshall, J., concurring in part and dissenting in part).
98. *See id.* at 610 (Marshall, J., concurring in part and dissenting in part).
99. *Id.* at 611 n.1 (Marshall, J., concurring in part and dissenting in part) (quoting *Innis*, 446 U.S. at 300-01).
100. *Id.* at 610 (Marshall, J., concurring in part and dissenting in part).

He further concluded that the officers' instructions regarding the sobriety tests and breathalyzer examination were the "'functional equivalent' of express questioning because," given Muniz's apparent intoxication, "the police should have known that their conduct was 'reasonably likely to elicit an incriminating response.'"[101] He explained that the *Innis* decision instructed that the "perceptions of the suspect" are of paramount concern in determining whether words or actions of police are the functional equivalent of direct questioning.[102] Given Muniz's apparent intoxication and the statements he had made during the roadside sobriety tests, Justice Marshall concluded that the police who booked him should have known that their words and actions were reasonably likely to elicit an incriminating response.[103] Therefore, he concluded, "Muniz's statements were thus the product of custodial interrogation and should have been suppressed because Muniz was not first given the *Miranda* warnings."[104]

In sum, four justices—Brennan, O'Connor, Scalia, and Kennedy—explicitly recognized a routine booking question exception to *Miranda* for "questions to secure the 'biographical data necessary to complete booking or pretrial services.'"[105] One explicitly rejected a separate exception to *Miranda*: Justice Marshall.[106] Justices Rehnquist, Stevens, White, and Blackmun expressed no opinion on the question of a routine booking question exception.

II. ROUTINE BOOKING QUESTIONS CONSTITUTE "INTERROGATION" BECAUSE THEY ARE EXPRESS QUESTIONING OF A PERSON IN CUSTODY

Lower courts have sharply split over the conceptual foundation of the routine booking question exception.[107] One approach is to analyze routine booking questions to determine whether they are interrogation at all;[108] the second approach is to treat routine booking questions as an exception to the *Miranda* doctrine.[109] The majority of courts draw on the definition of the functional equivalent of express questioning found in *Rhode Island v. Innis* to conclude that routine booking questions do not constitute "interrogation."[110] The plurality in *Muniz*, however, and a few lower courts, have held that asking rou-

101. *Id.* at 612-13 (Marshall, J., concurring in part and dissenting in part) (quoting *Innis*, 446 U.S. at 301).
102. *Id.*
103. *Id.* at 613 (Marshall, J., concurring in part and dissenting in part).
104. *Id.* at 614 (Marshall, J., concurring in part and dissenting in part).
105. *Id.* at 601 (citation omitted).
106. *Id.* at 609-10 (Marshall, J., concurring in part and dissenting in part).
107. *See infra* Part IIA–C.
108. *See infra* Part IIA.
109. *See infra* Part IIB.
110. *See infra* Part IIA.

tine booking questions does amount to interrogation.[111] Inclusion of routine booking questions in the definition of interrogation is most consistent with the Supreme Court's pronouncements on the meaning of interrogation.

A. *Application of the* Innis *Definition of Interrogation*

In *Miranda*, the Supreme Court defined interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[112] Fourteen years later, the Supreme Court explained in *Innis* that, "the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."[113]

As a matter of plain language, the *Innis* Court's definition of interrogation includes two situations: (1) express questioning, and (2) other "words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response."[114]

At least prior to *Muniz*, only the Court of Appeals for the First Circuit followed the rule that all express questioning during the booking process constitutes per se interrogation.[115] It held that "[t]he exception in *Innis* for police actions or statements 'normally attendant to arrest and custody' does not apply to the 'express questioning' which occurred here, but only to its 'functional equivalent.'"[116]

Other courts immediately questioned, however, whether the *Innis* Court meant what it said about express questioning.[117] In a case decided shortly after *Innis*, the Court of Appeals for the District of Columbia considered the possibility that booking questions, "though express questions, may not be considered part of 'express questioning.'"[118] Subsequently, many courts have explicitly rejected the plain language reading of *Innis* and have concluded that asking booking

111. *See infra* notes 131-36 and accompanying text.
112. 384 U.S. 436, 444 (1966) (defining custodial interrogation).
113. 446 U.S. 291, 301 (1980); *see also* White, *supra* note 62, at 1223 (footnote omitted) ("[I]t is now clear that 'interrogation' can take place even when the police speech is not punctuated by a question mark, nor directly addressed to the suspect. Moreover, it is also clear that 'interrogation' now includes police tactics which do not even involve speech.").
114. *Innis*, 446 U.S. at 300-02.
115. *See* United States v. Montgomery, 714 F.2d 201, 202 (1st Cir. 1983) ("Since the questioning here was express, we have no occasion to go farther. This was custodial interrogation.").
116. United States v. Downing, 665 F.2d 404, 407 (1st Cir. 1981).
117. *See infra* note 120 and accompanying text.
118. United States v. Foskey, 636 F.2d 517, 522 n.3 (D.C. Cir. 1980).

questions, although direct questions calling for a response from a suspect, are neither express questions nor interrogation.[119]

Many courts have conflated the two portions of the *Innis* definition when considering routine booking questions.[120] In *United States v. Bogle*,[121] the D.C. Circuit, which had previously held that all express questioning was interrogation,[122] explicitly adopted a mixture of the *Innis* language when considering routine booking questions: "[O]nly questions that are reasonably likely to elicit incriminating information in the specific circumstances of the case constitute interrogation within the protections of *Miranda*."[123]

---

119. *See, e.g.*, United States v. Bogle, 114 F.3d 1271, 1274-75 (D.C. Cir. 1997); State v. Evans, 523 A.2d 1306, 1314 (Conn. 1987) ("Although the United States Supreme Court's opinion appears to assume that direct questioning of a suspect in custody always constitutes interrogation, courts which have addressed the issue after *Innis* have held that the reasoning which supports *Innis* and the purpose behind *Miranda* itself, compel the conclusion that not every express question posed in a custodial setting is equivalent to 'interrogation.'"); Jones v. United States, 779 A.2d 277, 282-83 (D.C. 2001) ("Such a construction of the critical sentence in *Innis* may be plausible as a matter of syntax, but it has been rejected by numerous authorities, and we do not find it persuasive."); State v. Tibiatowski, 590 N.W.2d 305, 309 (Minn. 1999) ("Although *Innis* dealt with statements rather than questions, the Court made it clear that even express questions are not always interrogation. For example, routine booking questions are exempt from *Miranda* requirements."); State v. Walton, 41 S.W.3d 75, 84 (Tenn. 2001) ("Nevertheless, because its proscription on express questioning without the *Miranda* safeguards is unqualified, the *Innis* definition of interrogation appears, upon first reading, to exclude from evidence all answers to express questioning while the defendant is in custody. No case has ever extended the holding of *Innis* this far . . . .").

120. *See, e.g.*, *Bogle*, 114 F.3d at 1275 ("[W]e hold that express questioning constitutes interrogation only when it is reasonably likely to elicit an incriminating response . . . ."); United States v. Gotchis, 803 F.2d 74, 79 (2d Cir. 1986) ("Routine questions about a suspect's identity and marital status . . . are rather the sort of questions 'normally attendant to arrest and custody.'" (quoting *Innis*, 446 U.S. at 301)); United States v. Stewart, 770 F. Supp. 872, 879 (S.D.N.Y. 1991) ("Questions 'normally attendant to arrest and custody' are explicitly excluded from the Supreme Court's definition of 'interrogation.'" (quoting *Innis*, 446 U.S. at 301)); State v. Sallis, 574 N.W.2d 15, 18 (Iowa 1998) ("It is the rule that questions 'normally attendant to arrest and custody' do not constitute interrogation." (quoting *Innis*, 446 U.S. at 301)); Commonwealth v. Kacavich, 550 N.E.2d 397, 397 (Mass. App. Ct. 1990) ("Interrogation under *Miranda* does not involve questioning 'normally attendant to arrest and custody.'" (quoting *Innis*, 446 U.S. at 301)); Wilson v. State, 857 S.W.2d 90, 94 (Tex. Ct. App. 1993) ("Questioning 'normally attendant to arrest and custody' is not interrogation." (quoting *Innis*, 446 U.S. at 301)); Wright v. Commonwealth, 348 S.E.2d 9, 12 (Va. Ct. App. 1986) ("The term 'interrogation' under *Miranda* does not include words or actions by the police which are normally attendant to arrest and custody." (citing *Innis*, 446 U.S. at 301)).

121. 114 F.3d 1271 (D.C. Cir. 1997).

122. *See, e.g.*, Proctor v. United States, 404 F.2d 819, 820-21 (D.C. Cir. 1968).

123. *Bogle*, 114 F.3d at 1275.

The Court of Appeals for the Ninth Circuit followed a similar line of reasoning. In its influential decision in *United States v. Booth*, the Ninth Circuit quoted *Innis* for the proposition that "interrogation may be 'either express questioning or its functional equivalent,'" and "admit[ted] that the Court's opinion appears to assume that direct questioning of a suspect in custody always constitutes interrogation."[124] The Ninth Circuit also noted, however, that the *Innis* Court found that interrogation "must reflect a measure of compulsion above and beyond that inherent in custody itself."[125] Applying this principle to express questioning as well as its functional equivalent, the court reasoned that "[a] definition of interrogation that included any question posed by a police officer would be broader than that required to implement the policy of *Miranda* itself."[126] The Ninth Circuit held that express questions constitute interrogation only when they "are 'reasonably likely to elicit an incriminating response from the suspect,'"[127] and has continued to adhere to this reasoning.[128]

B. *Application of the* Muniz *Treatment of Routine Booking Questions As Interrogation*

By the time the Supreme Court addressed routine booking questions in *Muniz*, the *Innis* approach to routine booking questions had gained widespread acceptance.[129] The *Muniz* plurality, however, took a different approach by deciding that routine booking questions amounted to interrogation.[130] Justice Brennan rejected Pennsylvania's claim that biographical questions "do not qualify as custodial interrogation as [the Court] defined the term in *Innis* . . . merely because the questions were not intended to elicit information for investigatory purposes."[131] Justice Marshall likewise concluded that the

124. United States v. Booth, 669 F.2d 1231, 1237 (9th Cir. 1981) (quoting *Innis*, 446 U.S. at 300-01).
125. *Id.* (quoting *Innis*, 446 U.S. at 300). Other courts have used similar reasoning to conclude that routine booking questions are not interrogation. *See Bogle*, 114 F.3d at 1275; United States v. Carmona, 873 F.2d 569, 573 (2d Cir. 1989); United States v. Avery, 717 F.2d 1020, 1024 (6th Cir. 1983); People v. Anderson, 837 P.2d 293, 296 (Colo. Ct. App. 1992); *Sallis*, 574 N.W.2d at 18; State v. Williams, 623 S.W.2d 118, 121 (Tenn. Crim. App. 1981).
126. *Booth*, 669 F.2d at 1237.
127. *Id.* (citing *Innis*, 446 U.S. at 301).
128. *See, e.g.*, United States v. Foster, 227 F.3d 1096, 1102-03 (9th Cir. 2000) (quoting *Booth*, 669 F.2d at 1237).
129. *See supra* section II.A.
130. Pennsylvania v. Muniz, 496 U.S. 582, 601 (1990); *but see* Thomas v. United States, 731 A.2d 415, 423 n.12 (D.C. 1999) (indicating that the approach taken by the majority of courts—that if the police should know a question is reasonably likely to elicit an incriminating response from a suspect, then it amounts to interrogation—is different from the approach explained by the Court in *Muniz*).
131. *Muniz*, 496 U.S. at 601 (Brennan, J., plurality opinion) (citation omitted).

booking questions were interrogation because they were express questions.[132] Chief Justice Rehnquist, writing for the remaining justices, did not address the question.[133]

Despite the clearly expressed rationale of the five justices, some lower courts nonetheless cite *Muniz* for the proposition that routine booking questions are not interrogation.[134] A minority of courts, however, have recognized that routine booking questions constitute custodial interrogation within the meaning of *Innis*.[135]

Many courts, both federal and state, have held that routine booking questions are not interrogation.[136] For example, the Court of Appeals for the Eighth Circuit, in deciding that collecting routine biographical data is exempt from *Miranda*, held that "[a] request for routine information necessary for basic identification purposes is not interrogation under *Miranda*, even if the information turns out to be incriminating."[137] Similarly, the Colorado Court of Appeals held that "the purpose of the *Miranda* rule is to protect a suspect against investigative interrogation and not from the routine gathering of basic identifying data needed for booking and arraignment. Thus, interrogation does not include questions 'normally attendant to arrest and custody.'"[138]

---

132. *Id.* at 611 n.1 (Marshall, J., concurring in part and dissenting in part).
133. *See id.* at 606-08 (Rehnquist, C.J. concurring in part and dissenting in part).
134. *See, e.g.*, Wilson v. State, 857 S.W.2d 90, 94 (Tex. Ct. App. 1993) (finding that "[q]uestions incident to booking are outside the constitutional definition of 'interrogation'" (citing *Muniz*, 496 U.S. at 600)).
135. *See* State v. Jones, 656 A.2d 696, 701 (Conn. App. Ct. 1995) (finding "[t]he questions the police asked of the defendant during the booking procedure qualify as custodial interrogation"); People v. Rodney, 648 N.E.2d 471, 473 (N.Y. 1995) (asserting "[t]he Supreme Court has recognized that 'routine booking questions' constitute custodial interrogation"); *In re* Travis S., 685 N.Y.S.2d 886, 890 (N.Y. Fam. Ct. 1999) (quoting *Muniz*, 496 U.S. at 601-02) (asserting "[t]he Supreme Court has held that the asking of 'routine booking questions' constitutes custodial interrogation, but that answers given in response to those questions fall outside the protection of *Miranda* if they are 'reasonably related to the police's administrative concerns'"); State v. Geasley, 619 N.E.2d 1086, 1089 (Ohio Ct. App. 1993) (stating that "[w]hile finding that such questioning constitutes interrogation, the court held it permissible when 'reasonably related to the police's administrative concerns'" (quoting *Muniz*, 496 U.S. at 601-02)).
136. *See* United States v. Bogle, 114 F.3d 1271, 1274-75 (D.C. Cir. 1997) (rejecting a definition of interrogation that would include all express questioning, including routine booking questions); United States v. Stewart, 770 F. Supp. 872, 879 (S.D.N.Y. 1991) (finding "[a]gent Finn's questions concerning pedigree are questions normally attendant to custody, and therefore do not constitute interrogation"); United States v. Brown, 744 F. Supp. 558, 569 (S.D.N.Y. 1990) (holding that routine booking questions do not amount to custodial interrogation).
137. United States v. Brown, 101 F.3d 1272, 1274 (8th Cir. 1996) (quoting United States v. McLaughlin, 777 F.2d 388, 391 (8th Cir. 1985), an earlier opinion of the court which predated *Muniz*). The court in *Brown* also referred to *Muniz* in support of this proposition. *Id.*
138. People v. Anderson, 837 P.2d 293, 296 (Colo. Ct. App. 1992) (quoting *Innis*, 446 U.S. at 301).

Many other courts have similarly ignored or misquoted *Muniz* when addressing whether booking questions are interrogation.[139] A number of courts have cited Justice Brennan's plurality opinion for the proposition that routine booking questions form a blanket exception to *Miranda*.[140]

Hawaii has gone so far as to explicitly consider the distinction between analyzing routine booking questions under the definition of interrogation and treating them as falling under an exception, and rejecting the exception approach taken in *Muniz*. In 1993, the Inter-

139. *See, e.g.*, Thomas v. United States, 731 A.2d 415, 424 (D.C. 1999) (stating "[t]he underlying rationale for the exception is that routine booking questions do not constitute interrogation because they do not normally elicit incriminating responses"); Allred v. State, 622 So. 2d 984, 987, 987 n.10 (Fla. 1993) (finding that "routine booking questions do not require *Miranda* warnings" and that *Muniz* held that they are not interrogation); Slaughter v. State, 525 S.E.2d 130, 133 (Ga. Ct. App. 1999) (referring to questions seeking biographical information as "not interrogation under *Miranda*"); Curry v. State, 643 N.E.2d 963, 977 (Ind. Ct. App. 1994) (stating that "[l]imited and focused inquiries on the part of police normally attendant to arrest and custody do not constitute custodial interrogation"); State v. Sallis, 574 N.W.2d 15, 18 (Iowa 1998) (finding that "[i]t is the rule that questions 'normally attendant to arrest and custody' do not constitute interrogation" (quoting *Innis*, 446 U.S. at 301)); State v. Tibiatowski, 590 N.W.2d 305, 309 (Minn. 1999) (asserting that "[a]lthough *Innis* dealt with statements rather than questions, the Court made it clear that even express questions are not always interrogation. For example, routine booking questions are exempt from *Miranda* requirements."); Alexander v. State, 736 So. 2d 1058, 1063 (Miss. Ct. App. 1999) (finding "the information about whether Alexander lived in the trailer was no more than biographical information that the booking officer would have received during routine booking procedures, and therefore, these questions are 'non-interrogative' within the meaning of *Miranda*"); State v. Causey, 761 N.E.2d 644, 647 (Ohio Ct. App. 2001) (finding that "[r]outine booking questions do not constitute custodial interrogation"); Commonwealth v. Jasper, 587 A.2d 705, 708-09 (Pa. 1991) (asserting "general information such as name, height, weight, residence, occupation, etc. is not the kind of information which requires *Miranda* warnings since it is not information generally considered as part of an interrogation"); Wilson v. State, 857 S.W.2d 90, 94 (Tex. Ct. App. 1993) (stating that "[q]uestions incident to booking are outside the constitutional definition of 'interrogation.'"); State v. Walton, 824 P.2d 533, 535 (Wash. Ct. App. 1992) (asserting that "request[s] for routine information necessary for basic identification purposes [are] not interrogation even if the information revealed is incriminating").

140. *See, e.g.*, United States v. Foster, 227 F.3d 1096, 1103 (9th Cir. 2000) (finding that "[s]uch limited, biographical questions are permitted even after a person invokes his or her *Miranda* rights"); *Brown*, 101 F.3d at 1274 (holding that "routine biographical data is exempted from *Miranda's* coverage"); Baird v. State, 440 S.E.2d 190, 192 (Ga. 1994) (holding that questions regarding age, marital status, address, and education "fall[ ] within the 'routine booking questions' exemption from *Miranda*"); People v. Abdelmassih, 577 N.E.2d 861, 864-65 (Ill. App. Ct. 1991) (holding that non-incriminatory questions, such as defendant's place of employment, were "not proscribed by *Miranda*"); *Rodney*, 648 N.E.2d at 473 (holding that answers given to routine booking questions "are not suppressible even when obtained in violation of *Miranda* . . .").

mediate Court of Appeals of Hawaii adopted the routine booking question analysis of *Muniz*, but determined that under the circumstances, "[t]he routine booking question exception [did] not apply . . . [because] the police should have known that [the question] was reasonably likely to elicit an incriminating response."[141] In 2001, the Supreme Court of Hawaii criticized the intermediate court's analysis, writing that the lower court's

> formulation of the routine booking question exception impliedly acknowledges that the "exception" is, when scrutinized, no real exception at all. Rather, whether a question is a "routine booking question," the answer to which, generally speaking, is not reasonably likely to be incriminating, is simply an aspect of the totality of the circumstances considered in determining whether the questioning officer has subjected the accused to "interrogation."[142]

The Supreme Court of Hawaii thus declined, as a matter of state constitutional law, to adopt a routine booking question exception, reasoning that such analysis was subsumed in the determination of interrogation.[143]

Only a few courts have recognized the holding in *Muniz* that routine booking questions are a form of interrogation. For example, New York's highest court has acknowledged that, "[t]he Supreme Court has recognized that 'routine booking questions' constitute custodial interrogation."[144] These few courts cite *Muniz* for the proposition that routine booking questions are a form of interrogation, and discuss the questions under an exception to *Miranda* rather than excluding them from *Miranda* analysis altogether.[145]

A recent Supreme Court case is likely to heighten, rather than eliminate, the confusion in the lower courts. In *Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County*,[146] the Supreme Court upheld a Nevada statute that required a person to identify himself during an investigatory, non-custodial stop against Fourth and Fifth Amendment challenges.[147] The state contended that a person's name was outside the scope of the Self-Incrimination Clause because it was nontestimo-

141. State v. Blackshire, 861 P.2d 736, 742 (Haw. Ct. App. 1993).
142. State v. Ketchum, 34 P.3d 1006, 1018 (Haw. 2001).
143. *Id.*
144. People v. Rodney, 648 N.E.2d 471, 473 (N.Y. 1995); *see also In re* Travis S., 685 N.Y.S.2d 886, 890 (N.Y. Fam. Ct. 1999) (finding that "[t]he Supreme Court has held that the asking of 'routine booking questions' constitutes custodial interrogation . . ." (citing Pennsylvania v. Muniz, 496 U.S. 582, 601-02)).
145. *See* State v. Jones, 656 A.2d 696, 701 (Conn. App. Ct. 1995); Hughes v. State, 346 Md. 80, 91, 97, 695 A.2d 132, 138, 138 n.2, 141 (1997); *Rodney*, 648 N.E.2d at 473; *In re* Travis S., 685 N.Y.S.2d at 890-91; State v. Geasley, 619 N.E.2d 1086, 1089 (Ohio Ct. App. 1993).
146. 124 S. Ct. 2451 (2004).
147. *Id.* at 2459-61.

nial.[148] The Court "decline[d] to resolve the case on that basis,"[149] reasoning that, "[s]tating one's name may qualify as an assertion of fact relating to identity."[150] The Court ultimately held that the Self-Incrimination Clause did not protect the defendant's refusal to provide his name because the name was not incriminating, but noted that "a case may arise where there is a substantial allegation that furnishing identity at the time of a stop would have given the police a link in the chain of evidence needed to convict the individual of a separate offense."[151] *Hiibel* provides little guidance to courts addressing routine booking questions.

C. *Routine Booking Questions Are a Form of Interrogation*

Despite the majority of lower courts that have ruled or assumed otherwise,[152] questions such as "Where do you live?" are a form of interrogation as a matter of both Supreme Court precedent[153] and common sense. The conclusion of many courts that routine booking questions are not interrogation is simply not consistent with the Supreme Court's *Miranda* jurisprudence.[154] From *Miranda* on, every Supreme Court case to consider the topic has held that express questioning constitutes interrogation.[155]

Thus, *Innis* broadened, not narrowed, the definition of interrogation. *Miranda* itself, of course, defined interrogation as "questioning initiated by law enforcement officers."[156] *Innis* considered not whether classes of questions exist that should be excluded from the definition of interrogation, but whether interrogation was limited to express questioning.[157] The Court in *Innis* noted that the definition of interrogation in *Miranda* "and other references throughout the opinion to 'questioning' might suggest that the *Miranda* rules were to apply only to those police interrogation practices that involve express questioning of a defendant while in custody. We do not, however, construe the *Miranda* opinion so narrowly."[158] When the Court in *Innis* defined interrogation as "either express questioning or its func-

148. *Id.* at 2460.
149. *Id.*
150. *Id.* at 2460-61.
151. *Id.* at 2461.
152. *See supra* Section I.B.
153. *See supra* Section II.
154. *Miranda*, 384 U.S. at 444.
155. *See, e.g.*, Pennsylvania v. Muniz, 496 U.S. 582, 597 n.11, 600, 601 (1990); Rhode Island v. Innis, 446 U.S. 291, 298 (1980).
156. 384 U.S. at 444.
157. *See* 446 U.S. at 298-99, 300-01.
158. *Id.* at 298-99; *see also id.* at 299 n.3 ("To limit the ambit of *Miranda* to express questioning would 'place a premium on the ingenuity of the police to devise methods of indirect interrogation, rather than to implement the plain mandate of *Miranda*.'" (quoting Commonwealth v. Hamilton, 285 A.2d 172, 175 (Pa. 1971))).

tional equivalent,"[159] the Court treated the functional equivalent of express questioning as an expansion of interrogation. This "latter portion of [the] definition" focuses on the perceptions of the suspect rather than the police.[160]

A test to determine the functional equivalent of interrogation is necessary because the issue is open to dispute.[161] A direct question, on the other hand, is easy to identify, and the majority and dissenters do not dispute what constitutes express questioning or how to determine it. The members of the Court perceived nuances in the determination of the functional equivalent of express questioning, but found none in the determination of express questioning. The Supreme Court in *Innis* found the meaning of express questioning unambiguous, and reserved the debate over the relative importance of police intent and suspect's perceptions for the functional equivalent of questioning.[162]

Despite the attempts of some lower courts to conflate the issues involved in express questioning and its functional equivalent,[163] a plain

---

159. *Id.* at 300-01.

160. *Id.* at 301. This additional test is as important in the analysis of express questioning as it is in the analysis of its functional equivalent. The interaction between the intent of the police and the perceptions of the suspect formed one of the fundamental disagreements between the majority and dissent in *Innis*. The majority wrote that an action or conduct "that the police should know is reasonably likely to evoke an incriminating response from a suspect . . . amounts to interrogation." *Id.* Justice Stevens maintained in the dissent that "the definition of 'interrogation' must include any police statement or conduct that has the same purpose or effect as a direct question." *Id.* at 311 (Stevens, J., dissenting). The Court re-examined the definition of interrogation, focusing on the subjective perceptions of the defendant in *Arizona v. Mauro*, 481 U.S. 520 (1987). In that case, the defendant had invoked his right to counsel, but the police allowed his wife to talk to him with a police officer listening, and with a tape recorder in the room. *Id.* at 520. The Court held that the police had not interrogated the defendant, despite the fact that they knew that the defendant might make an incriminating statement to his wife and despite the fact that they had placed the tape recorder in the room with the express purpose of creating a record of his statements. *Id.* at 527, 528-29. The Court also held that "[o]fficers do not interrogate a suspect simply by hoping that he will incriminate himself." *Id.* at 529. The decision turned on the subjective intent of the police and the reasonable perceptions of the defendant: "We doubt that a suspect, told by officers that his wife will be allowed to speak to him, would feel that he was being coerced to incriminate himself in any way." *Id.* at 528.

161. *Compare Innis*, 446 U.S. at 301 (defining interrogation as including "any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response"), *with id.* at 309 (Stevens, J., dissenting) (stating that "any statement that would normally be understood by the average listener as calling for a response is the functional equivalent of a direct question . . ." and that the majority "takes a much narrower view").

162. *See Innis*, 446 U.S. at 298-99, 301.

163. *See supra* note 120.

reading of *Innis* clearly establishes that questions are interrogation. Interrogation includes express questioning, and some police words or actions beyond express questioning, but *Innis* does not contemplate express questions outside the definition of interrogation. This clear inclusion of questioning within interrogation, of course, does not mean that the element of custody is not necessary to bring an interrogation within the strictures of *Miranda*, or that exceptions to *Miranda* requirements do not exist. It does mean, however, that any express question, routine or not, booking-related or not, falls within the definition of interrogation.

Indeed, the first part of the Court's application of its own definition to the facts showed that direct questions are interrogations when the Court concluded that the police officers' conversation failed the first prong of the interrogation test because it did not include questions directly posed to the suspect.[164]

Muniz confirmed that direct questions constitute interrogation.[165] The opinion of the Court noted that, "for purposes of custodial interrogation such a question [calling for a testimonial response] may be either express, as in this case, or else implied through words or actions reasonably likely to elicit a response."[166] Justice Brennan, writing for four justices, distilled *Innis* to the proposition that

> custodial interrogation for purposes of *Miranda* includes both express questioning and words or actions that, given the officer's knowledge of any special susceptibilities of the suspect, the officer knows or reasonably should know are likely to "have . . . the force of a question on the accused," and therefore be reasonably likely to elicit an incriminating response.[167]

Justice Brennan explicitly wrote:

> We disagree with the Commonwealth's contention that Officer Hosterman's first seven questions regarding Muniz's name, address, height, weight, eye color, date of birth, and current age do not qualify as custodial interrogation as we defined the term in *Innis* merely because the questions were not intended to elicit information for investigatory purposes.[168]

Four other members of the Court, led by Chief Justice Rehnquist, would have held that the "sixth birthday" question was not testimo-

164. *Innis*, 446 U.S. at 302.
165. 496 U.S. 582, 600 (1990).
166. *Id.* at 597 n.11.
167. *Id.* at 601 (Brennan, J., plurality opinion) (quoting Harryman v. Estelle, 616 F.2d 870, 874 (5th Cir. 1980)).
168. *Id.* (Brennan, J., plurality opinion) (citation omitted).

nial, and did not address the question of interrogation at all.[169] Justice Marshall left no doubt that he considered the questions at issue in *Muniz* to be custodial interrogation.[170] He wrote, "The sixth birthday question . . . clearly constituted custodial interrogation because it was a form of 'express questioning.'"[171]

Every Supreme Court case to consider the question has held that express questions are a form of interrogation, regardless of the purpose behind or effect of asking those questions.[172] Under the reasoning of *Muniz* and its predecessors, therefore, routine booking questions constitute interrogation.

III. VARYING APPROACHES TO THE ROUTINE BOOKING QUESTION EXCEPTION

Once courts conclude that routine booking questions are a form of interrogation, they must determine what test to apply in assessing whether a given question falls under the routine booking question exception. Courts and commentators have split on the appropriate test, often without recognizing a distinction between the competing approaches.[173] Some courts view the intent of the police as determinative, an approach largely derived from the language of the *Muniz* plurality.[174] Other courts have applied the language of the *Innis* majority to assess the likelihood that a given question will produce an incriminating response.[175] Some have advocated a third approach, in which a court should inquire whether a reasonable person in the suspect's place would view the questions as seeking incriminating information.[176] To settle this debate, the Supreme Court will need to recognize and decide among the various approaches.

Few courts have addressed, or even noticed, the tensions between the competing approaches to the routine booking question exception. In *Hughes v. State*, however, the highest court of Maryland concluded that a meaningful distinction exists between *Innis*-based and *Muniz*-based analyses.[177] It wrote:

> The difference between the two standards is that the [*Muniz*-based test] limits the scope of the booking question excep-

169. *See id.* at 606-08 (Rehnquist, C.J., concurring in part, concurring in the result in part, and dissenting in part).
170. *Id.* at 608, 611 n.1 (Marshall, J., concurring in part and dissenting in part).
171. *Id.* at 611 n.1 (Marshall, J., concurring in part and dissenting in part) (quoting Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980)).
172. *See, e.g.*, *Muniz*, 496 U.S. at 597 n.11, 600, 601; *Innis*, 446 U.S. at 298.
173. *See infra* notes 177-80 and accompanying text.
174. *See infra* section III.A.
175. *See infra* section III.B.
176. *See infra* section III.C.
177. 346 Md. 80, 92-94, 695 A.2d 132, 138-39 (1997); *see also* Timbers v. Commonwealth, 503 S.E.2d 233, 237 (Va. Ct. App. 1998) (recognizing the three approaches described in this article).

> tion based solely on the actual intent of the police officer in posing the question, while the [*Innis*-based test] restricts the exception based on an objective assessment of the likelihood, in light of both the context of the questioning and the content of the question, that the question will elicit an incriminating response.[178]

As the court in *Hughes* explained, "The distinction between the two standards has gone largely unremarked upon in post-*Muniz* discussions of the routine booking exception."[179] Indeed, *Hughes* appears to be the first to identify the conflict.[180]

This section will discuss the main approaches courts have taken to the routine booking question exception, based either on the majority opinion in *Innis* or the plurality opinion in *Muniz*. It will also discuss a third way to approach booking questions, followed by a smaller number of courts, that combines the two approaches into a hybrid analysis of the questions.

This is not to say that courts within one jurisdiction consistently apply one approach across their decisions. In adopting the hybrid approach to routine booking questions, the intermediate court of Virginia has noted that its prior decisions had variously addressed "(1) the subjective intent of the police, (2) the objective likelihood of self-incrimination, and (3) an objective evaluation of the manifestation of the officer's intent."[181] Most courts, however, have not even recognized the multiple approaches, much less explicitly chosen among them. Although it is possible to articulate differences even within these three approaches,[182] this trichotomy encompasses most of the differences between them.

A. *The* Muniz*-Based Approach: The Subjective Intent of Law Enforcement Officers*

The plurality in *Muniz* limited the scope of the routine booking question exception in the following language: "Without obtaining a waiver of the suspect's *Miranda* rights, the police may not ask questions, even during booking, that are *designed* to elicit incriminatory admissions."[183] Consistent with the guidance given by the plurality, several federal courts have chosen to follow a subjective intent ap-

178. *Hughes*, 346 Md. at 93, 695 A.2d at 138.
179. *Id.*
180. *See* Abigail N. Ross, Recent Decision, *Recognizing and Limiting the Routine Booking Question Exception*, 57 MD. L. REV. 753, 769-70 (1998).
181. *Timbers*, 503 S.E.2d at 237 (citations omitted).
182. *See, e.g.*, Alexander S. Helderman, *Revisiting* Rhode Island v. Innis: *Offering a New Interpretation of the Interrogation Test*, 33 CREIGHTON L. REV. 729, 738-45 (2000) (describing four approaches federal courts have taken in applying *Innis*).
183. 496 U.S. at 602 n.14 (emphasis added).

proach to the routine booking question exception to *Miranda*.[184] In these cases, the intent of the investigating officer is not just relevant, but is determinative.[185]

The subjective intent approach to the routine booking question exception, interestingly, has its origin in *Innis*, which ultimately ruled that "the perceptions of the suspect, rather than the intent of the police" determine whether a statement is the functional equivalent of interrogation.[186] In dissent, Justice Stevens argued for a broader scope for interrogation than the "should have known" standard adopted by the majority:

> In short, in order to give full protection to a suspect's right to be free from any interrogation at all, the definition of "interrogation" must include any police statement or conduct that has the same purpose or effect as a direct question. Statements that appear to call for a response from the suspect, as well as those that are *designed to do so*, should be considered interrogation.[187]

From reading *Innis* alone, it would be reasonable to conclude that the "designed to elicit" standard was all but irrelevant. In fact, the majority rejected the Rhode Island Supreme Court's suggestion that the meaning of interrogation under *Miranda* was similar in scope to the Sixth Amendment prohibition against "'deliberately elicit[ing]' incriminating information from a defendant in the absence of counsel after a formal charge . . . ."[188] The majority wrote "that the *Miranda* safeguards were designed to vest a suspect in custody with an

---

184. *See infra* notes 193-205 and accompanying text.

185. *See id.*

186. 446 U.S. at 300-02. The Supreme Court reiterated this focus on the perceptions of the suspect in *Arizona v. Mauro*, 481 U.S. 520, 528-29 (1987), where the key factor in reaching the decision was "examining the situation from [the suspect's] perspective."

187. *Innis*, 446 U.S. at 311 (Stevens, J., dissenting) (emphasis added). In fact, Justice Stevens argued for the third, "objective observer" approach detailed in Part III.C, *infra*. *Id.* The majority responded by explaining that its "should have known" standard includes police practices designed to elicit incriminating responses. *Id.* at 301-02. The majority noted:

> This is not to say that the intent of the police is irrelevant, for it may well have a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response. In particular, where a police practice is *designed to elicit an incriminating response* from the accused, it is unlikely that the practice will not also be one which the police should have known was reasonably likely to have that effect.

Id. at 301 n.7 (emphasis added). Justice Stevens quoted this language in return, and argued: "This factual assumption is extremely dubious. I would assume that police often interrogate suspects without any reason to believe that their efforts are likely to be successful in the hope that a statement will nevertheless be forthcoming." *Id.* at 311 n.8 (Stevens, J., dissenting).

188. *Id.* at 300 n.4 (quoting Massiah v. United States, 377 U.S. 201, 206 (1964)).

added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police."[189] *Innis* clearly held that what the police should know, not their intent or designs, is the key to determining the functional equivalent of interrogation.[190]

Nevertheless, the Department of Justice resurrected the "designed" standard in its brief in *Muniz*, and Justice Brennan adopted it in his plurality opinion.[191] After holding that the biographical questions fall within the routine booking question exception, Justice Brennan warned in a footnote,

> As *amicus* United States explains, "[r]ecognizing a 'booking exception' to *Miranda* does not mean, of course, that any question asked during the booking process falls within that exception. Without obtaining a waiver of the suspect's *Miranda* rights, the police may not ask questions, even during booking, that are *designed to elicit incriminatory admissions.*"[192]

Based on Justice Brennan's language, many courts have adopted a subjective intent test, focusing on the intent of the police in questioning suspects during booking. The Court of Appeals for the Fourth Circuit, for example, has determined the admissibility of answers to routine booking questions by examining the intent of the police in asking the questions.[193] In a case analyzing a conversation that occurred immediately following the defendant's arrest, the Fourth Circuit decided that statements made by a Drug Enforcement Agency agent did not rise to the level of the functional equivalent of interrogation because the questions were not "an attempt to solicit information."[194]

In a later case, the Fourth Circuit acknowledged that the routine booking question exception does not apply to questions "that are designed to elicit incriminatory admissions," but declined to consider whether the exception might also apply under other circumstances as well.[195] The court relied on, as determinative, the fact that "although [the defendant] gave as his address one of the stash houses, there is

189. *Id.* at 301.
190. *Id.* at 301-03.
191. 496 U.S. 582, 601-02 (1990) (Brennan, J., plurality opinion) (quoting Brief for Amicus Curiae United States at 12-13, Pennsylvania v. Muniz, 496 U.S. 582 (1990) (No. 89-213)).
192. *Id.* at 602 n.14 (Brennan, J., plurality opinion) (emphasis added) (quoting Brief for Amicus Curiae United States at 13, Pennsylvania v. Muniz, 496 U.S. 582 (1990) (No. 89-213)).
193. United States v. Jackson, 863 F.2d 1168, 1172 (4th Cir. 1989).
194. *Id.* at 1171-72.
195. United States v. D'Anjou, 16 F.3d 604, 608-09 (4th Cir. 1994); *see also* United States v. Taylor, 799 F.2d 126, 128 (4th Cir. 1986) (holding that essentially any request for identifying information is ministerial and may be asked in the absence of *Miranda* warnings). This case, however, acknowledges an objective inquiry in that it also mentions that the officers had no

no evidence in the record disclosing that it was believed at the time to be a stash house or that the police anticipated that the question regarding [the defendant's] address would be incriminating."[196] In a third case, the Fourth Circuit described an exchange between deputies and the defendant during "routine criminal processing" as an "exchange of insults" between the officers and the defendant rather than "a ploy to obtain incriminating information."[197]

The Fourth Circuit thus does not examine whether the question was likely to uncover incriminating information, the possible reactions of a neutral observer to the questions, or the perceptions of the defendant. Instead, the court treats the intent of the questioning officer as determinative.[198]

Similarly, several other federal courts also focus on the intent of the police.[199] For example, the Court of Appeals for the Tenth Circuit has explained that the reason that routine booking questions are not interrogation is that they "do not normally elicit incriminating responses."[200] But when the interrogator's intent belies the soundness of this justification, the court does not permit the admission of the answers.[201] Specifically, "[W]here questions regarding normally routine biographical information are designed to elicit incriminating in-

---

"reasonable expectation that their questions would be likely to elicit [incriminating] information." *Id.*

196. *D'Anjou*, 16 F.3d at 609.

197. Riley v. Dorton, 115 F.3d 1159, 1165 (4th Cir. 1997). The court does consider, however, that the defendant does not "identify any words or conduct of the officers which were 'reasonably likely to elicit an incriminating response.'" *Id.* (quoting *Innis*, 446 U.S. at 301).

198. *See supra* notes 193-97.

199. *See, e.g.*, United States v. Virgen-Moreno, 265 F.3d 276, 293-94 (5th Cir. 2001) ("[Q]uestions designed to elicit incriminatory admissions are not covered under the routine booking question exception."); United States v. Carmona, 873 F.2d 569, 573 (2d Cir. 1989) ("Nor were the questions intended, as in *Edwards* [*v. Arizona*, 451 U.S. 477 (1981)], to elicit a confession or incriminating information. The police meant only to gather ordinary information for administrative purposes."); United States v. Feldman, 788 F.2d 544, 554 (9th Cir. 1986) (considering the determinative factor that "Manavian's question to Feldman seeking his name was not aimed at eliciting a criminal response, but merely at corroborating the information made available to the police by the rental agency"); United States v. Stewart, 770 F. Supp. 872, 879 (S.D.N.Y. 1991) ("[A]lthough some pedigree information had been taken prior to the interview at FBI headquarters, there is no indication that Agent Finn's conduct was designed 'to elicit an incriminating response.'" (quoting *Innis*, 446 U.S. at 301)).

200. United States v. Parra, 2 F.3d 1058, 1068 (10th Cir. 1993); *see also* United States v. Dougall, 919 F.2d 932, 935 (5th Cir. 1990) ("Previously, we have held the sort of biographical questions—name, birth information, address, height, weight—asked here are part of the booking routine, not intended to elicit damaging statements, and thus not interrogation for fifth amendment purposes." (citing United States v. Menichino, 497 F.2d 935 (5th Cir. 1974)).

201. *Parra*, 2 F.3d at 1068.

formation, the questioning constitutes interrogation subject to the strictures of *Miranda*."[202] The court does not consider whether routine booking questions under other circumstances could also be subject to the strictures of *Miranda*.

The Court of Appeals for the Sixth Circuit similarly considers subjective factors when examining routine booking questions, although, unlike the Fourth Circuit, it includes an examination into the defendant's subjective condition.[203] After stating that *Innis* expanded the definition of interrogation beyond only questioning initiated by the police, the court concluded that "absent evidence that a defendant has particular susceptibility to the questioning or that the police used the booking questions to elicit incriminating statements from the defendant, routine biographical questions are not ordinarily considered interrogation."[204] Therefore, under this approach, any question to an arrestee about biographical information would not constitute interrogation unless the defendant made an affirmative showing that the police were trying to obtain incriminating information or that the arrestee was particularly susceptible to coercion.[205]

---

202. *Id.* The court went on to say that, when the police officer's subjective intent is to elicit an incriminating response, the question is "reasonably likely to elicit incriminating information relevant to establishing an essential element necessary for a conviction." *Id. See also* United States v. Villota-Gomez, 994 F. Supp. 1322, 1334 (D. Kan. 1998) (citing *Parra* and concluding that the response to a question about the defendant's name should be suppressed because "[i]t is clear that SA Molina's questions to Perea-Vivas following his invocation of his right to remain silent were intended to elicit incriminating admissions . . .").

203. United States v. Clark, 982 F.2d 965, 968 (6th Cir. 1993).

204. *Id. But see* United States v. Soto, 953 F.2d 263, 265 (6th Cir. 1992) ("Absence of intent to interrogate, while not irrelevant, is not determinative of whether police conduct constitutes interrogation."). The *Clark* court did not cite *Soto* and did not address this apparent inconsistency in the circuit's approach. Instead, it relied on an earlier decision, *United States v. Avery*, 717 F.2d 1020, 1024 (6th Cir. 1983), which analyzed the subjective intent of the police. *See also* United States v. Broadus, 7 F.3d 460, 464 (6th Cir. 1993) (citing *Avery*, 717 F.2d at 1025, and quoting *Clark*, 982 F.2d at 968, for the proposition that routine booking questions are not interrogation "[a]bsent evidence that 'the police used the booking questions to elicit incriminating statements . . .'"). The court also has not addressed the fact that routine booking questions are nonetheless "'questioning initiated by law enforcement officials,'" the definition of interrogation used in *Miranda*. *Clark*, 982 F.2d at 967-68 (quoting *Miranda*, 384 U.S. at 444).

205. *See Avery*, 717 F.2d at 1024 (admitting into evidence responses to biographical questions because "there is no evidence that the defendant was particularly susceptible to these questions, or that the police somehow used the questions to elicit an incriminating response from the defendant"); *see also* Louisell v. Dir. of Iowa Dep't of Corrs., 178 F.3d 1019, 1023 (8th Cir. 1999) (While examining statements made during booking, the court noted, "In determining whether the statements were the result of an interrogation, we focus on Louisell's perception of the attending circumstances."); *Villota-Gomez*, 994 F. Supp. at 1334 ("From the defendant's standpoint, these questions were clearly designed to elicit incriminating information. The fact

Several states also focus on the subjective intent of the police when considering the admissibility of responses to routine booking questions. Long before the Supreme Court decided *Innis*, Illinois courts had been inquiring into the intent of the investigator when considering the admissibility of statements made during booking procedures. In 1970, in recognizing a routine booking question exception, the Supreme Court of Illinois held that "[t]he preliminary questions asked an accused with respect to his name and address, which are part of the booking proceedings certainly do not amount to an interrogation in order to elicit incriminating testimony or admissions from the defendant."[206] Following *Innis*, Illinois courts continued to regard the intent of the police as determinative, rather than examining whether the question was reasonably likely to elicit an incriminating response.[207]

Other states also consider the subjective intent of the police as determinative. In holding that *Miranda* did not require warnings before booking, the Oklahoma Court of Criminal Appeals explained that "[t]he purpose of the questions was merely to obtain background information and not to elicit incriminating responses."[208] One Florida court has held that "routine booking questions do not require *Miranda* warnings because they are not designed to lead to an incriminating response; rather, they are designed to lead to essential biographical data."[209] Finally, according to the courts in Connecticut, asking routine booking questions constitutes custodial interrogation, but does not require *Miranda* warnings because "the purpose of the questions [is] not to elicit an incriminating response. Rather, the purpose [is] to gather the biographical data necessary to complete the booking procedure."[210]

---

that the information obtained by that question was actually used in booking the defendant under his true name does not convince the court under the circumstances of this case that this mode of inquiry was part of a routine booking procedure.").

206. People v. Fognini, 265 N.E.2d 133, 134 (Ill. 1970); *see also* People v. Dees, 361 N.E.2d 1126, 1135-36 (Ill. App. Ct. 1977) (listing criteria used to determine admissibility of responses to booking questions, including the intent of the police).

207. People v. Davis, 431 N.E.2d 1210, 1213 (Ill. App. Ct. 1981) ("[M]ere preliminary questions with respect to an accused's name and address, which are part of the routine booking proceedings, do not amount to an interrogation that can be described as designed to elicit incriminating testimony or admissions. It follows that no *Miranda* warnings were required."); *see also* People v. Stewart, 406 N.E.2d 53, 56 (Ill. App. Ct. 1980) (decided one day after *Innis* and holding that brief and routine booking questions by police are necessary and proper).

208. Gilbert v. State, 951 P.2d 98, 112 (Okla. Crim. App. 1997).

209. Allred v. State, 622 So. 2d 984, 987 (Fla. 1993).

210. State v. Jones, 656 A.2d 696, 701 (Conn. App. Ct. 1995); *see also* State v. Cuesta, 791 A.2d 686, 694 (Conn. App. Ct. 2002) (holding that the purpose in asking the biographical question is the key to the analysis). *But see* State v. Evans, 523 A.2d 1306, 1314 (Conn. 1987) (citing *Innis* and stating that

The subjective intent approach to the routine booking question exception has thus found great favor with the lower courts, perhaps because it is easy to apply.[211] In the unlikely event that a law enforcement officer admits at a suppression hearing that she intended to elicit an incriminating response from a suspect by means of a booking question, the response to the booking question falls outside of the exception.[212] If the officer does not admit that her question was designed to elicit an incriminating response, and the defendant cannot provide objective proof of the officer's underlying intent, the exception applies and the response is admissible.[213]

The subjective approach poses significant dangers to the Fifth Amendment. Under this approach, the only hurdle to using an answer to a booking question as evidence against an accused is the intent of the police officer. If the officer intends to elicit incriminating information, the information is not admissible absent proof that the defendant received *Miranda* warnings.

The police may credibly state that they intended only to learn the suspect's address when they asked where the accused lived. This intent is not inherently unlawful or wrong, but the question may pose several constitutional problems. Given the circumstances of the crime under investigation, the information already known to the police, and the circumstances of the arrest, that question could provide necessary evidence establishing the guilt of the accused and the police could know this when asking the question.

For example, if the crime under investigation involves possession and the contraband was discovered at a certain address and the accused states that his or her address is where the contraband was found, the answer to an otherwise innocuous biographical question can establish an element of the offense.[214] Despite the supposedly innocuous intent of the police, the individual's personal right to provide no testimonial evidence against himself or herself may be violated. If the suspect does not receive *Miranda* warnings before answering these questions, there is no assurance that the suspect has knowingly and voluntarily waived his or her Fifth Amendment rights.

Citizenship is biographical information that is particularly sensitive now. A police officer may ask a suspect for immigration status or citizenship, intending only to obtain biographical information for book-

---

the test whether a question is interrogation is objective, but also stating that the intent of the police is relevant and acknowledging that the police may use objectively neutral booking questions with the intent to elicit incriminating statements); *see also* Ottis v. State, 496 S.E.2d 264, 268 (Ga. 1998) ("Herman's testimony failed to reveal any evidence of intent to get the accused to make an incriminating statement in response.").

211. *See supra* notes 193-210 and accompanying text.
212. *See supra* notes 193-210 and accompanying text.
213. *See supra* notes 193-210 and accompanying text.
214. *See* United States v. Disla, 805 F.2d 1340, 1347 (9th Cir. 1986).

ing.[215] The answer to that question, however, could lead to a suspect's indefinite incarceration and prosecution for unrelated crimes or immigration violations.[216] Clearly this question could lead to serious violations of the individual's rights, although the question itself is not necessarily an inappropriate question for the government to ask.[217] Therefore, an approach to the routine booking question exception that addresses more than just the police officer's intent is necessary to ensure the integrity of the Fifth Amendment privilege against self-incrimination.

B. *The* Innis*-Based Approach: An Objective Assessment of the Likelihood of an Incriminating Response*

Many courts follow a more objective examination of routine booking questions based on *Innis's* definition of the functional equivalent of interrogation.[218] This approach asks whether the police reasonably should have known that the question would elicit an incriminating response.[219] The theory behind this approach is that, regardless of whether a police officer intends to elicit inculpatory information, the questions may nonetheless create the risk of coerced self-incrimination that *Miranda* warnings were designed to eliminate.[220] In *Innis*, the Supreme Court held that

> the term interrogation refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.[221]

---

215. *See, e.g.*, United States v. Salgado, 292 F.3d 1169, 1171-72 (9th Cir. 2002).
216. *Id.*
217. *See generally* LAWYERS COMMITTEE FOR HUMAN RIGHTS, A YEAR OF LOSS: REEXAMINING CIVIL LIBERTIES SINCE SEPTEMBER 11 (2002), (discussing recent infringements on constitutional and civil rights, particularly of non-citizens, in the wake of the September 11 terrorist attacks), *available at* http://www.humanrightsfirst.org/us_law/loss/loss_main.htm.
218. *See infra* notes 219-48 and accompanying text.
219. *See, e.g.*, United States v. McLaughlin, 777 F.2d 388, 391-92 (8th Cir. 1985); State v. Mack, 345 S.E.2d 223, 225 (N.C. Ct. App. 1986). Professor White has found commentators' iterations of the "reasonably likely to elicit" test as early as a 1966 conference. *See* Welsh S. White, *Interrogation Without Questions:* Rhode Island v. Innis *and* United States v. Henry, 78 MICH. L. REV. 1209, 1229 n.137 (1980) (citing Henry B. Rothblatt & Robert M. Pitler, *Police Interrogation: Warnings and Waivers—Where Do We Go from Here?*, 42 NOTRE DAME LAWYER 479, 486 n.42 (1967)).
220. *See* Mills v. State, 278 Md. 262, 273-74, 363 A.2d 491, 497 (1976) (pointing out the flaws in a subjective approach).
221. 446 U.S. 291, 292 (1980).

The plurality in *Muniz* demonstrated that it considered this language relevant to booking questions by quoting this and other language from *Innis*.[222]

Although courts often rely on this language in discussing routine booking questions, the language does not provide a clear framework for analysis.[223] Most fundamentally, the language does not appear to contemplate the idea that a question "normally attendant to arrest and custody" may also be "reasonably likely to elicit an incriminating response."[224] Notwithstanding this ambiguity, lower courts "have interpreted *Innis* to mean that the routine booking question exception does not apply if a police officer knows, or should know, that a routine booking question, although innocuous on its face, is reasonably likely to evoke an incriminating answer."[225]

Under this approach, not every question about biographical information automatically qualifies for the routine booking question exception.[226] The determination is made on a case-by-case basis because "[e]ven a relatively innocuous question may, in light of the unusual susceptibility of a particular suspect, be reasonably likely to elicit an incriminating response."[227] Also, "[Q]uestions colorably administrative in nature may constitute a custodial interrogation if they are objectively likely to elicit an incriminating response."[228]

Several factors inform whether the questioner should have known that the question was likely to elicit an incriminating response.[229] Many courts consider the nature of the information or the nature of the question.[230] Some courts limit the statements admissible under this exception to the most basic form of identifying data, like name and address, excluding more detailed background information like criminal record, drug use, or employment history.[231] Some courts

222. 496 U.S. 582, 600-01 (1990) (Brennan, J., plurality opinion); *cf.* Illinois v. Perkins, 496 U.S. 292 (1990) (holding that a defendant's voluntary statements are admissible even though he was not aware that he was speaking to a law enforcement officer).

223. *See supra* section II.A.

224. *See* Hughes v. State, 346 Md. 80, 91, 695 A.2d 132, 138 (1997). "Indeed, the Court in *Innis* appears to have had booking inquiries in mind when it excluded from its definition of 'interrogation' those words and actions 'normally attendant to arrest and custody.'" WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 6.7, 504 (West 1984).

225. *See Hughes*, 346 Md. at 91, 695 A.2d at 138.

226. United States v. Mata-Abundiz, 717 F.2d 1277, 1280 (9th Cir. 1983) (citing United States v. Booth, 669 F.2d 1231, 1238 (9th Cir. 1981)).

227. *Booth*, 669 F.2d at 1238 (citing *Innis*, 446 U.S. at 302 n.8).

228. State v. Rossignol, 627 A.2d 524, 526 (Me. 1993).

229. *See, e.g.*, United States v. Minkowitz, 889 F. Supp. 624, 627 (E.D.N.Y. 1995).

230. *See, e.g., id.*

231. *Id.* (relying on United States *ex rel.* Hines v. LaVallee, 521 F.2d 1109, 1113 (2d Cir. 1975) and United States v. Burns, 684 F.2d 1066, 1076 (2d Cir. 1982)); *see also* State v. Ballard, 439 A.2d 1375, 1383-84 (R.I. 1982) (permitting the response to "What is your name?" because that question is not

limit the questions subject to this exception to those inquiring into the information required for a booking form.[232] For example, in Maryland, for the exception to apply, "the questions must be directed toward securing 'simple identification information of the most basic sort;' that is to say, only questions aimed at accumulating 'basic identifying data required for booking and arraignment' fall within this exception."[233]

Often, courts will examine whether the question, albeit inquiring into identifying or biographical information, is relevant to the crime under investigation in order to decide if the officer should have known the question was likely to lead to an incriminating statement.[234] Furthermore, "where a purportedly routine booking question provides some proof of an element of the crime for which the

---

"reasonably likely to elicit an incriminating response" (quoting *Innis*, 446 U.S. at 301).

232. *See* State v. Echevarria, 422 So. 2d 53, 54 (Fla. Dist. Ct. App. 1982) (holding that the question "Who hit you?" was not covered by the booking question exception although it took place while the defendant was being booked); *see also* State v. Sargent, 762 P.2d 1127, 1132 (Wash. 1988) ("While it is well established that routine booking procedures do not call for *Miranda* warnings, this court recently held that a question which is not necessary for booking the defendant is interrogation for *Miranda* purposes."); State v. Walton, 824 P.2d 533, 535 (Wash. Ct. App. 1992) ("A question which is *not required* for booking purposes is 'interrogation' for *Miranda* purposes." (alteration in original)).

233. Hughes v. State, 346 Md. 80, 94-95, 695 A.2d 132, 139 (1997) (quoting *LaVallee*, 521 F.2d at 1113 & n.2); *see also* Commonwealth v. Guerrero, 588 N.E.2d 716, 719 (Mass. App. Ct. 1992) (finding that information regarding "name, age, address, next of kin, weight, height, [and] eye color . . . is pertinent . . . to the custodial responsibilities of the police[,]" but that "[t]he relevance of occupation and employment to those responsibilities is less immediately obvious, and, in light of the *Muniz* decision, it will be preferable, unless *Miranda* warnings are repeated prior to booking, to scrub questions about employment status from the booking ritual").

234. *See* United States v. Gill, 879 F. Supp. 149, 152 (D. Me. 1995) (finding that the police officer should not have known that the defendant's place of birth, given while the defendant was being driven to the jail, would be incriminating because the officer "had no reason to believe that Gill's place of birth was even tangentially an issue in the investigation"); United States v. McLaughlin, 777 F.2d 388, 391-92 (8th Cir. 1985) ("Only if the government agent should reasonably be aware that the information sought, while merely for basic identification purposes in the usual case, is directly relevant to the substantive offense charged, will the questioning be subject to scrutiny."); Thompson v. United States, 821 F. Supp. 110, 121 (W.D.N.Y. 1993) (holding that questions regarding citizenship were not exempt from *Miranda* during the booking of suspects of "an undercover drug operation targeting illegal alien Jamaican nationals"); People v. Rodney, 648 N.E.2d 471, 474 (N.Y. 1995) (analyzing whether a defendant's employment history is a "pedigree" question subject to the exception laid out in *Muniz* because it is not "'reasonably related to [the] administrative concerns'" of custody (quoting *Muniz*, 496 U.S. at 601-02)).

suspect is arrested, the booking question exception will be less likely to apply."[235]

Questions about citizenship often run afoul of this inquiry, as they may be closely connected to the crime under investigation and therefore reasonably likely to elicit an incriminating response. For example, the Court of Appeals for the First Circuit held that, in a case involving people apprehended on the high seas and found to have drugs in their possession, questions about citizenship are not covered by a routine booking question exception to *Miranda*.[236]

Similarly, the Court of Appeals for the Ninth Circuit has held that the routine booking question exception "is inapplicable . . . where the elicitation of information regarding immigration status is reasonably likely to inculpate the respondent."[237] Because questions regarding immigration status often are directly related to an element of a crime, an investigator should know that these questions are likely to elicit an incriminating response and are therefore considered investigatory and are not exempt from *Miranda*.[238] The court stated:

> When a police officer has reason to know that a suspect's answer may incriminate him, however, even routine questioning may amount to interrogation. Thus, while there is usually nothing objectionable about asking a detainee his place of birth, the same question assumes a completely different character when an INS agent asks it of a person he suspects is an illegal alien.[239]

The police officer's experience or knowledge can lead to the conclusion that an otherwise routine biographical question is reasonably likely to lead to an incriminating response. For example, depending on other information available to the investigator, questions about residence could be reasonably likely to lead to evidence of an element of a crime, and therefore would fit the definition of interrogation used by the courts that follow the objective test based on *Innis*. For example, after finding a large quantity of cocaine at an apartment and asking neighbors for a description of the residents, then arresting someone near the apartment who met the description, indicates that

---

235. *Hughes*, 346 Md. at 95, 695 A.2d at 140.

236. United States v. Doe, 878 F.2d 1546, 1551-52 (1st Cir. 1989) (noting that "[w]hen, or whether, the United States can prosecute a person found on such a ship is not immediately obvious; and the possibility that prosecution will turn upon citizenship is great enough (and should be well enough known to those in the drug enforcement world) that Coast Guard officers ought to know that answers to such questions may incriminate").

237. United States v. Gonzalez-Sandoval, 894 F.2d 1043, 1046 (9th Cir. 1990).

238. *Id.* at 1046-47; *see also* United States v. Mata-Abundiz, 717 F.2d 1277, 1279 (9th Cir. 1983) (holding that an INS agent with 23 years of experience had reason to know that an admission regarding alienage, "coupled with the evidence of firearms possession, could lead to federal prosecution").

239. United States v. Henley, 984 F.2d 1040, 1042 (9th Cir. 1993).

the investigating officer "should have known that the question regarding . . . residence was reasonably likely to elicit an incriminating response. . . . [T]he question as to where [the defendant] lived was related to an element (possession) of the crime that [the officer] had reason to suspect [the defendant] committed."[240]

Likewise, when an officer has background knowledge about a suspect and a victim, this background information will influence whether the officer should know that the questioning is reasonably likely to elicit an incriminating response.[241] In this situation, a Florida district court noted:

> There can be no question that [the officer], armed with the information he already possessed, and not having informed the defendant that he was under arrest for murder, should have known that his background questions regarding the defendant's trip from Cuba and his past employment were reasonably likely to result in an incriminating response. At the very least, he was likely to obtain, as he did, confirmation of [the defendant's] associations with the victim and another suspect in the murder.[242]

Many courts state that the police officer's intent or investigatory purpose is relevant, but not conclusive, to determining whether the question is reasonably likely to elicit an incriminating response.[243] Under this approach, the police officer's intent is clearly secondary, and "the test for determining reasonable likelihood of incrimination 'focuses primarily upon the perceptions of the suspect, rather than the intent of the police.'"[244]

Another factor that many courts consider is the context of the questioning. Some courts permit questioning about biographical information under any circumstances.[245] Others require the questioning to

240. United States v. Disla, 805 F.2d 1340, 1347 (9th Cir. 1986).
241. State v. Madruga-Jiminez, 485 So. 2d 462, 463-64 (Fla. Dist. Ct. App. 1986).
242. *Id.* at 464.
243. *See, e.g.*, United States v. Minkowitz, 889 F. Supp. 624, 627.(E.D.N.Y. 1995).
244. *Id.* at 629 (quoting *Muniz*, 496 U.S. at 601); *see also* United States v. Ventura, 85 F.3d 708, 711 (1st Cir. 1996) ("Again, the inquiry is objective: how would the officer's statements and conduct be perceived by a reasonable person in the same circumstances?"); United States v. Taylor, 985 F.2d 3, 7 (1st Cir. 1993) ("The 'functional equivalence' test does not turn on the subjective intent of the particular police officer but on an objective assessment as to whether the police statements and conduct would be perceived as interrogation by a reasonable person in the same circumstances."); People v. Anderson, 837 P.2d 293, 296 (Colo. Ct. App. 1992) (holding that "the question of whether an officer's words or actions are 'reasonably likely to elicit an incriminating response' must be viewed from the perspective of the suspect"); Mitchell v. United States, 746 A.2d 877, 891 (D.C. 2000) ("The test . . . is an objective one . . . .").
245. *See* United States v. Edwards, 885 F.2d 377, 384-85 (7th Cir. 1989) (holding that answers to identification questions asked at the time of arrest were admissible despite the lack of *Miranda* warnings because the same questions

be after arrest and at the police station during formal booking.[246] Still others consider whether the questioning occurred during booking procedures as relevant, among other factors, in weighing whether the officers should have known that the question was reasonably likely to lead to an incriminating response.[247] In rejecting a prosecution argument that incriminating information was admissible under the routine booking question exception, the Ninth Circuit explained:

> [T]he questioning conducted by [the investigator] had little, if any, resemblance to routine booking procedures. . . . [B]ooking is essentially a clerical procedure, occurring soon after the suspect arrives at the police station. . . . [T]hree factors . . . indicate[ ] that the challenged questioning was not booking: (1) the government agency involved does not ordinarily book suspects, (2) a true booking had already occurred and the agency had access to

---

would be asked during booking and then would be deemed admissible); State v. Smith, 785 So. 2d 815, 818 (La. 2001) ("Because the officer's field interview asked for no more information than an individual might supply in response to booking questions as a routine incident of an arrest, [the officer's] inquiries did not amount to interrogation for *Miranda* purposes."). *But see* United States v. Ortiz, 835 F. Supp. 824, 835 (E.D. Pa. 1993) (holding that the *Muniz* exception applies only if the individual is being booked); State v. Stevens, 511 N.W.2d 591, 599 (Wis. 1994) (adopting the routine booking question exception but refusing to extend the exception to questions asked at the time of the arrest).

246. *Ortiz*, 835 F. Supp. at 835 ("But the premise of the *Muniz* plurality was that the defendant was already subject to 'booking' and therefore such 'biographical data' was not investigatory and, thus, was exempt from *Miranda's* application. The ordinary English usage of the verb to *book* means that the defendant is already arrested. That is to say, he could not have been *booked* unless he was arrested, and if such 'routine booking questions' are to receive the *Muniz* vaccine they must be made as part of a lawful arrest."); *Stevens*, 511 N.W.2d at 599 (refusing to apply the routine booking question exception to questions asked during an arrest and holding, "[T]his court will not extend the exception to incriminating questions asked at the time of the arrest").

247. *See* Pirtle v. Lambert, 150 F. Supp. 2d 1078, 1090-91 (E.D. Wash. 2001) (considering whether the question was asked while the defendant was being arrested and held face down on the ground—rather than in a police station while being booked—as definitive in determining that the questioning was interrogation); *see also* United States v, Disla, 805 F.2d 1340, 1347 (9th Cir. 1986) ("The questioning here did not arise in a routine 'booking' setting. . . . In light of both the context of the questioning and the content of the question, we must conclude that Disla was subjected to interrogation."); Lester v. State, 332 S.E.2d 31, 32 (Ga. Ct. App. 1985) ("Merely asking a suspect for his name and for identification during booking are not questions reasonably likely to elicit incriminating responses."); State v. Ketchum, 34 P.3d 1006, 1027 (Haw. 2001) (considering relevant that "the information was not gathered in a traditional station house or other formal booking station . . .").

> the information obtained, and (3) the questioning occurred well after the suspect was placed in custody . . . .[248]

The focus on the reasonable likelihood of eliciting an incriminating response, rather than the subjective intent of the police officers, allows for more protection for an individual's Fifth Amendment rights. It allows for more attention to the policies behind *Miranda*, thus preventing the police from using the coercive nature of confinement to extract confessions. Regardless of the subjective intent of the police, a booking question—or the circumstances under which it is asked—may result in a situation where the booking question is reasonably likely to elicit an incriminating response, or the police should have known that the question was reasonably likely to elicit an incriminating response even though it was a colorably administrative question. Instead of looking at the single factor of the police officer's intent, this approach examines many more factors, such as the nature of the crime and the circumstances of the questioning, before deciding whether the question violates the Fifth Amendment.

C. The Hybrid Approach: A Reasonable Person's View of the Officer's Intent

A minority of jurisdictions apply a hybrid approach to the routine booking question exception, which is not strictly drawn from either the *Innis* majority or the *Muniz* plurality. Under this approach, the relevant question is whether an objective observer would conclude that the police intended to elicit incriminating information.[249]

The hybrid approach also has its genesis in *Innis*, and has received considerable support from commentators. In his dissent in *Innis*, Justice Stevens proposed an alternative standard in lieu of the majority's "should have known" standard: "[A]ny police conduct or statements that would appear to a reasonable person in the suspect's position to call for a response must be considered 'interrogation.'"[250] Justice Stevens referred to his proposed standard as objective,[251] and considered it to include "[s]tatements that appear to call for a response from the suspect, as well as those that are designed to do so."[252] Justice Stevens

248. United States v. Mata-Abundiz, 717 F.2d 1277, 1280 (9th Cir. 1983). Indeed, United States Pretrial Services Office, the agency that obtains information for arraignment and detention review for federal courts, includes a promise to the accused not to use the information it obtains in a prosecution against him or her. *See* United States Pretrial Services Office *at* http://www.vaept.uscourts.gov/defendant/inv.htm (last visited Sept. 13, 2004) (Providing information to defendants including that the information the defendant provides a pretrial services officer will not be used as evidence regarding the charges against him or her).

249. White, *supra* note 62, at 1232.

250. 446 U.S. at 311 (Stevens, J., dissenting).

251. *Id.* at 311 n.10 (Stevens, J., dissenting).

252. *Id.* at 311 (Stevens, J., dissenting).

drew his proposed test from, or at least shared its conception with, an article on the case written by Professor Welsh White.[253]

Despite the fact that Justice Stevens was the sole justice in *Innis* to adopt this analysis, several commentators have adopted this hybrid approach as the proper reading of the *Innis* majority standard. Shortly after *Innis*, Professor White argued that "the best reading of the *Innis* test is that it turns upon the *objective* purpose *manifested* by the police."[254] He proposed framing the test as follows: "[I]f an objective observer (with the same knowledge of the suspect as the police officer) would, on the sole basis of hearing the officer's remarks, infer that the remarks were designed to elicit an incriminating response, then the remarks should constitute 'interrogation.'"[255] Professors LaFave and Israel have adopted Professor White's interpretation of *Innis* in their treatises.[256]

A few courts have adopted the hybrid analysis advocated by the commentators. Virginia, for example, has settled on an interpretation of *Innis* that requires "a determination [of] whether an objective observer would view an officer's words or actions as designed to elicit an incriminating response."[257] Massachusetts' intermediate courts have, on occasion, applied the hybrid approach to evaluate "whether an objective observer would infer that [a question] was designed to elicit an incriminating response."[258] The Florida Supreme Court has held that

253. *Id.* at 312 n.12 (Stevens, J., dissenting) (discussing Welsh S. White, Rhode Island v. Innis: *The Significance of a Suspect's Assertion of His Right to Counsel*, 17 AM. CRIM. L. REV. 53, 68 (1979)).

254. White, *supra* note 62, at 1231.

255. White, *supra* note 62, at 1232.

256. LAFAVE , *supra* note 224, § 6.7(a), at 502-03, 506, 511.

257. Blain v. Commonwealth, 371 S.E.2d 838, 841 (Va. Ct. App. 1988); *see also* Timbers v. Commonwealth, 503 S.E.2d 233, 237 (Va. Ct. App. 1998). Both of these cases are from Virginia's intermediate court; the Supreme Court of Virginia has not spoken on the topic.

258. Commonwealth v. Chadwick, 664 N.E.2d 874, 876 (Mass. App. Ct. 1996); *see also* Commonwealth v. D'Entremont, 632 N.E.2d 1239, 1242 (Mass. App. Ct. 1994); Commonwealth v. Kacavich, 550 N.E.2d 397, 397 (Mass. App. Ct. 1990); Commonwealth v. Rubio, 540 N.E.2d 189, 193 (Mass. App. Ct. 1989); *cf.* Commonwealth v. Torres, 678 N.E.2d 847, 851 n.7 (Mass. 1997) (acknowledging the existence of Professor White's hybrid test without comment). Massachusetts, like many other jurisdictions, has been less than uniform in its application of the standards developed in *Innis* and *Muniz*. *Cf.* Commonwealth v. Rise, 744 N.E.2d 66, 72 (Mass. App. Ct. 2001) ("In order for the response to booking question [sic] to be compelled, the booking question must be designed or reasonably likely to elicit an incriminating response."). Although the Massachusetts high court has reversed a trial court's suppression of a suspect's response on the basis that its inquiry focused too heavily on the officer's intent, *see Torres*, 678 N.E.2d at 851, it has also repeatedly inquired into whether booking questions are designed to elicit incriminating responses. *See* Commonwealth v. Woods, 645 N.E.2d 1153, 1157 (Mass. 1995); Commonwealth v. Chipman, 635 N.E.2d 1204, 1211 (Mass. 1994); Commonwealth v. Acosta, 627 N.E.2d 466, 469 (Mass. 1993).

interrogation occurs "when a person is subjected to express questions, or other words or actions, by a state agent, that a reasonable person would conclude are designed to lead to an incriminating response."[259]

IV. STANDARDS COURTS SHOULD APPLY TO ROUTINE BOOKING QUESTIONS

The existence of a routine booking question exception to *Miranda*, although not endorsed by a majority of the Supreme Court, has become a fixture of Fifth Amendment jurisprudence.[260] This exception, however, is not necessary to ensure that the government learns the information essential for custody. *Miranda* is no bar to the government's ability to obtain this information. In excluding statements made after a defendant invoked his *Miranda* rights, the Court of Appeals of Michigan stated, "This is not to say that police may not seek to obtain information vital to the care and health of a person taken into custody, including necessary information on possible drug use."[261] When the questions seeking this information are asked after a defendant has received *Miranda* warnings and invoked those rights, however, the information is inadmissible.[262] Admitting this information into evidence "would be to encourage the subverting of an accused's constitutional right to remain silent under the guise of obtaining statements purely for his own benefit."[263]

Generally, however, courts do not agree with the approach described above. The routine booking question exception appears to be here to stay. No current approach to this exception, standing alone, guarantees that an accused who has not knowingly and voluntarily waived his or her rights, will not be required to testify against him or herself in a criminal trial. The three approaches focus on whether the questioning constitutes interrogation based on *Innis* and *Muniz*, but this is only the initial inquiry. While it is true that statements made during a custodial interrogation without pre-issued *Miranda* warnings are inadmissible, a constitutional evaluation of background or biographical questions requires further inquiry.

Analysis of this exception must begin with the questioning itself. Because the questions are "booking questions," clearly they are asked in a custodial context.[264] Accordingly, the second tier of analysis of

259. Traylor v. State, 596 So. 2d 957, 966 n.17 (Fla. 1992); *see also* State v. Edwards, 661 So. 2d 865, 866 (Fla. Dist. Ct. App. 1995) (quoting *Traylor*, 596 So. 2d at 966 n.17).
260. *See supra* Part I.B.
261. People v. Hooper, 270 N.W.2d 518, 519 (Mich. Ct. App. 1978).
262. *Id.*
263. *Id.*
264. *See Miranda*, 384 U.S. at 444 (holding that the Fifth Amendment applies to interrogations that occur when the suspect is in "custody or otherwise deprived of his freedom of action in any significant way"); *see also* Berkemer v. McCarty, 468 U.S. 420, 440-42 (1984) (determining that custody for *Mi-*

Innis, whether the question is reasonably likely to lead to incriminating information, should be irrelevant. Because a routine booking question is a direct question, it is a custodial interrogation and thus is subject to traditional Fifth Amendment analysis. As such, an answer to a booking question should be admissible only if voluntary.

Although the best assurance that a statement is made to the police voluntarily is if it is made after *Miranda* warnings were given, almost every jurisdiction has admitted into evidence answers to these questions even in the absence of these warnings.[265] Although the government needs certain biographical information attendant to jailing suspects, that need does not justify ignoring the policies behind *Miranda*. The second level of analysis under *Innis* informs whether the questions violate the policies behind *Miranda*.[266]

Most importantly, this exception must be narrowly applied in order to ensure that the Fifth Amendment is not ignored. At a minimum, this exception must be applied only when the question is asked during actual booking—in the police station, while filling out forms that are seeking information that is actually attendant to arrest and custody. "Field booking" or other questioning that is not directly related to custody should not fall within this exception, even if the topic of the questioning is biographical information.

Similarly, the exception must be limited to basic biographical information, such as name, address, height, and weight. Any attempt to use this exception for more extensive questioning is not consistent with the justification for the exception.[267]

If the question is reasonably likely to lead to an incriminating response, the question, albeit routine, should not be permitted in the absence of *Miranda* warnings. Likewise, if the police should know that the question is likely to lead to an incriminating response, it should not be permitted without warnings.[268] In addition, courts should not permit routine booking questions that are designed to elicit incriminating information without first requiring *Miranda* warnings.

A. The Questioning Must Occur During Booking

In order for questioning to fall within the routine booking question exception to *Miranda*, the questioning must occur during booking. Although this seems a rather obvious point, too many jurisdictions ig-

---

randa purposes may occur before formal arrest, but that the curtailment of a suspect's freedom of action necessary to trigger *Miranda* is the "functional equivalent of formal arrest").

265. *See* LAFAVE, 2 CRIMINAL PROCEDURE § 6.7(b) (2d ed. 1999).

266. *See supra* section II.A.

267. *See Muniz*, 496 U.S. at 592-600 (discussing whether the answer to the sixth birthday question was testimonial and concluding that it was).

268. *See Innis*, 446 U.S. at 300-02.

nore this basic limitation.[269] This requirement, however, is essential both as common sense and as most consistent with the reasons for the exception expressed by the Supreme Court.

In *Muniz*, Justice Brennan described the routine booking question exception as exempting "from *Miranda's* coverage questions to secure the biographical data *necessary to complete booking or pretrial services.*"[270] Thus, questions that are "requested for record-keeping purposes only" fall within the exception.[271]

Questions that police ask for routine administrative purposes are not the sort at which *Miranda* was aimed. The policy behind *Miranda* focused on protecting individuals from police abusing the coercive nature of custody to extract confessions,[272] not the administrative concerns of operating jails or administering pre-trial services.[273] The Court of Appeals for the Second Circuit justified the routine booking question exception on the grounds that, in *Miranda*, "the Supreme Court was concerned with protecting the suspect against interrogation of an investigative nature rather than the obtaining of basic identifying data required for booking and arraignment."[274] The exception was carved out from *Miranda's* ambit in order "to facilitate the administrative duties of the police at the station house."[275] In order to be consistent with *Muniz* and the purposes behind *Miranda*, any question asked outside the booking process, and not directly tied to assisting in administering booking and custody, should not fall within the routine booking question exception.[276]

Miranda was aimed at protecting suspects from a wide variety of possible abuses of the interrogation process, and *Innis* served to broaden those protections by clarifying the extent of the definition of interrogation.[277] Courts should therefore keep the routine booking question exception on as tight a leash as possible. Doing so will prevent the exception from being used as a post hoc justification for asking a superficially benign question in exactly the sort of circumstances that

269. *See* State v. Smith, 785 So. 2d 815, 817-18 (La. 2001) (admitting into evidence identifying data collected during a "field interview" of the suspect); *see also* United States v. Edwards, 885 F.2d 377, 385 (7th Cir. 1989) (admitting into evidence data gathered during a field interrogation on the grounds that the same questions would eventually be asked during booking, when they would fall within the routine booking question exception).
270. 496 U.S. at 601 (internal quotes omitted) (emphasis added).
271. *Id.*
272. Arizona v. Mauro, 481 U.S. 520, 529-30 (1987).
273. *See* People v. Abdelmassih, 577 N.E.2d 861, 864 (Ill. App. Ct. 1991) (describing *Muniz* as exempting from *Miranda* routine booking questions that are "asked to secure biographical data reasonably related to the police's administrative concerns").
274. United States *ex rel.* Hines v. LaVallee, 521 F.2d 1109, 1112-13 (2d Cir. 1975).
275. Jones v. United States, 779 A.2d 277, 290 (D.C. 2001) (Mack, J., dissenting).
276. *See id.* (Mack, J., dissenting).
277. *See Mauro*, 481 U.S. at 526.

led the Court to conclude that custodial interrogations were inherently coercive.[278]

Just such a situation happened in *Pirtle v. Lambert*[279] in the state of Washington.[280] Officers in the Spokane sheriff's department apprehended a murder suspect and asked the suspect whether he knew why he was under arrest.[281] He responded by stating, "Of course I do, you might as well shoot me now."[282] The state argued that the question was routine and asked without an investigatory interest.[283] The court disagreed, contrasting a booking setting with the actual circumstances of the questioning: an "inherently coercive environment created by being held face and stomach down on the ground with a gun pointed at his head and under a threat of being shot if he didn't cooperate . . . ."[284]

Limiting the routine booking question exception to questions asked during booking is a fundamentally clear-cut way for courts to assess routine booking questions. Not only is it consistent with the Supreme Court's iteration of the exception in *Muniz*, but it is an easily applied bright line test. The bright line, however, is not arbitrary. To the contrary, the bright line sheds light on whether the police were acting with an investigatory purpose or responding to their administrative, record-keeping needs. It also indicates whether the questioning occurred under the sort of coercive circumstances that *Miranda* intended to target.

The first question a court should ask in assessing a routine booking question case is whether the questioning occurred during booking. If it did not, the inquiry should end, the exception should not apply, and a straightforward Fifth Amendment analysis should follow. If it did, the court must examine the questioning in more detail.

B. The Questioning Must Be Limited to Biographical Data

Once a court has satisfied itself that the questioning occurred in an administrative booking context, the court should examine the content of the questioning. *Muniz* permits only questions regarding biographical data that are directly related to the administration of the jail.[285] Several courts have identified the limited scope of biographical infor-

278. *See* State v. Ketchum, 34 P.3d 1006, 1025 (Haw. 2001) (holding that the officer's asking the defendant his address, having found him in bed early in the morning, and trying to justify admitting it into evidence on the ground that it was a routine identification question was a "*post hoc* rationalization of his having elicited an incriminating admission").
279. 150 F. Supp. 2d 1078 (E.D. Wash. 2001).
280. 150 F. Supp. 2d 1078 (E.D. Wash. 2001).
281. *Id.* at 1083, 1091.
282. *Id.* at 1091.
283. *Id.*
284. *Id.* at 1090-91.
285. *See* 496 U.S. at 601.

mation that should be covered by this exception: height, weight, address, age, date of birth, race, and social security number.[286] Essentially, only questions asking for basic identification information are covered by the exception.

Like the inquiry into the context of the questioning, inquiring into the content of the questioning provides courts with a straightforward rule of thumb for determining whether a question is exempt from *Miranda* under the routine booking question exception. Simple biographical data may be covered, but questions seeking more broadly defined information are not.

This limitation on content is necessary to curb the possibility of police abuses of administrative procedures.[287] Although recognizing a need for police to gather biographical data, the Connecticut Supreme Court stated that it was cognizant of the fact that the booking question exception could be abused by "law enforcement officers who might, under the guise of seeking objective or neutral information, deliberately elicit an incriminating statement from a suspect."[288]

The basis for this limitation on content thus has its roots in *Innis*: Questions about simple biographical information are unlikely to elicit incriminating responses. "[T]he rationale for creating an exemption to *Miranda* for questions asked during booking is that these questions are generally unrelated to the crime and are therefore unlikely to elicit an incriminating response . . . ."[289] Questions seeking biographical information tend to be "'non-investigative' questions not designed to investigate crimes or the involvement of the arrested person or others in crimes."[290] The purpose of asking a defendant for his or her name, address, height, weight, and age is not to elicit an incriminating response, but is to "gather the biographical data necessary to complete the booking procedure."[291]

Questions that exceed the scope of this basic biographical data can demonstrate a deliberate attempt to elicit incriminating information. For example, asking an individual who is suspected of drug distribution about his employment status does not fall within the routine booking question exception because that question can lead to an in-

286. *See, e.g.*, Varner v. State, 418 So. 2d 961, 962 (Ala. Crim. App. 1982); Franks v. State, 486 S.E.2d 594, 597 (Ga. 1997).

287. *See* United States v. Minkowitz, 889 F. Supp. 624, 627 (E.D.N.Y. 1995) ("The first factor that a court should consider is the nature of the information being sought. Recognizing the possibility of abuse by police, the Second Circuit has emphasized the need to limit the pedigree exception to simple identification information of the most basic sort." (internal quotation omitted)).

288. State v. Evans, 523 A.2d 1306, 1314 (Conn. 1987) (internal quotations omitted).

289. *Franks*, 486 S.E.2d at 597.

290. *Varner*, 418 So. 2d at 962.

291. State v. Jones, 656 A.2d 696, 701 (Conn. App. Ct. 1995).

criminating response, as unemployment can be linked to a motive to distribute drugs.[292] Likewise, asking an injured suspect, "Who hit you?" is reasonably likely to lead to an incriminating response and is therefore not exempted from *Miranda* simply because asked during booking.[293] Questioning a suspect about their name, height, or weight is easily distinguished from questions regarding an obvious injury; the former facilitates the booking process, while the latter is likely to lead to an incriminating response.[294]

Limiting the content of the questions that are covered by the routine booking question exception is a simple and straightforward way for a court to ensure that the question is aimed at administrative, record-keeping purposes rather than a substantive investigation of the crime. This limitation, however, does not end the inquiry. The courts must examine other circumstances surrounding the questioning to ensure that applying the routine booking question is just and consistent with the Fifth Amendment.

C. *The Objective,* Innis*-Based Approach Is the Most Consistent With Miranda*

Once a court is satisfied that the questioning occurred in an administrative, booking setting, and that the content of the questions sought only basic biographical information, the court must then examine the questioning in more depth before being assured that the question satisfies the strictures of the Fifth Amendment. Not every question about biographical data should qualify for the exception automatically; if a police officer knows or should know that a routine booking question is likely to elicit an incriminating response, that question violates the rules established in *Muniz* and *Innis.*

Many routine booking question cases that apply this *Innis*-based definition of interrogation incorrectly hold that not all direct questions by law enforcement officers constitute interrogation; they hold that only those direct questions that are reasonably likely to elicit an incriminating response are an interrogation requiring *Miranda* warnings.[295] Despite the flaw in that basic premise, this standard is instructive for courts to assess whether an otherwise routine booking question asked during a routine booking should nonetheless require *Miranda* warnings. Under all the circumstances in a given case, if the routine booking question is reasonably likely to elicit an incriminating response, the question is likely to involve the investigatory, psychologi-

292. *See* Commonwealth v. White, 663 N.E.2d 834, 844 (Mass. 1996).
293. State v. Echevarria, 422 So. 2d 53, 54 (Fla. Dist. Ct. App. 1982). The answer to this question was that the man the suspect had killed had hit him. *Id.*
294. *Franks,* 486 S.E.2d at 597.
295. *E.g.,* United States v. McLaughlin, 777 F.2d 388, 391 (8th Cir. 1985); State v. Evans, 523 A.2d 1306, 1314 (Conn. 1987).

cal ploys and coercive tone that the Supreme Court intended *Miranda* to address.[296]

Consistent with the case law and policies behind the Fifth Amendment jurisprudence, the routine booking question exception should not apply when, under the facts and circumstance of a given case, a question is reasonably likely to elicit an incriminating response or the law enforcement officer should know that the questions are likely to elicit an incriminating response. Like the two other criteria discussed above, this condition for applying the routine booking question exception guards against abuses by the police and ensures that the questioning is directed at administrative, record-keeping concerns rather than investigatory interests.[297]

When attempting to ensure that the questioning is targeted to administrative concerns, courts should be particularly sensitive to the designs of the police. When the police intend to elicit an incriminating response, they are more likely to be taking advantage of the coercive nature of the interrogation. As the Ninth Circuit explained, "we recognize the potential for abuse by law enforcement officers who might, under the guise of seeking 'objective' or 'neutral' information, deliberately elicit an incriminating statement from a suspect."[298] Thus, "[Q]uestions designed to elicit incriminating admissions are not covered under the routine booking question exception."[299] Any question that is designed to elicit an incriminating response, of course, falls within the *Innis*-based limitation on the exception: it is both reasonably likely to elicit incriminating information and the police officer should know that it is likely to elicit incriminating information.

Finally, the analysis should also account for any particular susceptibilities of the suspect. Because the Fifth Amendment privilege against self-incrimination is a personal right of the accused, the perceptions of the accused are a necessary element in determining whether the accused has been subjected to undue coercive influences. Moreover,

296. *See* United States v. Booth, 669 F.2d 1231, 1237-38 (9th Cir. 1981) (explaining that questions that are reasonably likely to elicit an incriminating response involve the psychological intimidation that *Miranda* was aimed to prevent). When assessing the reasonable likelihood of an incriminating response, courts should account for the nature of the crime under investigation, the facts and circumstances known to the investigating officer, and the circumstances of the questioning. *See id.* at 1238.

297. *See* United States v. Minkowitz, 889 F. Supp. 624, 626-27 (E.D.N.Y. 1995).

298. *Booth*, 669 F.2d at 1238.

299. United States v. Virgen-Moreno, 265 F.3d 276, 293-94 (5th Cir. 2001); *see also* United States v. Parra, 2 F.3d 1058, 1068 (10th Cir. 1993) ("[W]here questions regarding normally routine biographical information are designed to elicit incriminating information, the questioning constitutes interrogation subject to the strictures of *Miranda*."); United States v. Doe, 878 F.2d 1546, 1551 (1st Cir. 1989) ("The cases that create this exception, however, note that it does not apply where the law enforcement officer, under the guise of asking for background information, seeks to elicit information that may incriminate.").

the *Miranda* jurisprudence is focused on protecting individuals from psychological ploys and the undue coercion found in custodial situations. If certain personal characteristics of the suspect would make him or her more likely to respond to the psychological ploys or be more susceptible to coercion, the Fifth Amendment requires that the police give *Miranda* warnings before any answers of that defendant can be said to be voluntary.

D. Conclusion

Society trusts the government to care for individuals who are accused and convicted of crimes. With that trust, the government assumes the responsibility for those people's health and welfare, which requires it to learn certain information about an individual. That need for information, however, is no justification for ignoring longstanding constitutional principles and basic intrinsic civil rights.

Courts can ensure that law enforcement officers obtain the basic biographical data they need for administrative, record-keeping purposes while still protecting an individual's Fifth Amendment privilege against self-incrimination. First, before applying the routine booking question exception to *Miranda*, the court must require that the questioning be asked during an actual booking. Second, the questioning must seek information only related to basic identification. Third, the question must not be reasonably likely to lead to an incriminating response. Finally, the police should not be permitted to ask any questions that they should know are reasonably likely to lead to an incriminating response. These basic requirements can help assure that all routine questioning of suspects complies with the Fifth Amendment.