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## Self Incrimination: The Status of Miranda Warnings in Tax Investigations

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**SELF INCRIMINATION: THE STATUS OF *Miranda* WARNINGS IN TAX INVESTIGATIONS—*Beckwith v. United States*, 425 U.S. 341 (1976).**

Filing tax returns at one time or another becomes a part of every working American's life. In the large majority of cases, the returns are filed honestly and, if ever audited, receive the approval of the Internal Revenue Service (IRS). But what if this approval is not forthcoming? Indeed, what if the audit results in a finding of criminal liability?

The fifth<sup>1</sup> and sixth<sup>2</sup> amendments guarantee freedom from self-incrimination, and the right to have assistance of counsel in all criminal prosecutions. *Miranda v. Arizona*,<sup>3</sup> a controversial decision which affects many of the contacts between police, government investigative agencies, and the people being investigated by them, specifically stated these rights among others.<sup>4</sup> In *Beckwith v. United States*,<sup>5</sup> the Supreme Court was asked to decide "whether a special agent of the Internal Revenue Service, investigating potential criminal income tax violations, must, in an interview with a taxpayer, not in custody, give the warnings called for by this Court's decision in *Miranda v. Arizona*. . . ."<sup>6</sup> After affirming the district court's holding that the statements made by Beckwith were admissible against him in the ensuing tax fraud prosecution even though he had not been given the full *Miranda* warnings prior to the interview,<sup>7</sup> the Court held that it was the "custodial nature" of an interrogation which triggered the necessity for adherence to the specific requirements of its *Miranda* holding.<sup>8</sup> Speaking for the majority in

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1. The fifth amendment to the Constitution of the United States in pertinent part provides: "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law. . . ." U.S. CONSR. amend. V.

2. The sixth amendment to the Constitution of the United States in pertinent part provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. CONSR. amend. VI.

3. 384 U.S. 436 (1966).

4. The full reading of the *Miranda* rights is as follows:

He [the suspect] must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

*Id.* at 479.

5. 425 U.S. 341 (1976).

6. *Id.* at 341.

7. *Id.* at 345.

8. *Id.* at 346.

*Beckwith*,<sup>9</sup> Chief Justice Burger stated that previous Supreme Court decisions<sup>10</sup> specifically stressed the custodial factor and confined their rulings to situations where this factor was present. Since Beckwith was at no time taken into custody during the investigation, his claim that he was entitled to the *Miranda* warnings was found to be without merit.

### I. STATEMENT OF FACTS

Two special agents of the IRS met with Alvin Beckwith to ask him questions about his federal income tax liability for the years 1966 to 1971. These agents first arranged to meet Beckwith at his home, and later, with his permission, met with him at his place of employment to investigate other records.

Before the agents took any statements from Beckwith, the senior agent read from a printed card which contained only a portion of the *Miranda* warnings.<sup>11</sup> Beckwith responded that he understood his rights; he was not, however, specifically told that he had a right to remain silent. Thereafter, he gave statements to the agents which "covered his sources of income prior to 1972, his cash on hand each year from 1965 through 1971, and certain other important facts concerning the preparation of the computations of his 1971 Federal Income Tax Returns."<sup>12</sup> Both parties stipulated that without Beckwith's abovementioned statements and admissions to use as a starting point, "the prosecution would not have had a provable case against petitioner."<sup>13</sup>

As a result of the investigation, a criminal tax fraud proceeding was instituted. Prior to trial, Beckwith moved to suppress all statements made to the agents on the ground that he had not been given the warnings mandated by *Miranda*.

### II. DECISION OF THE COURT

Beckwith was convicted before the United States District Court

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9. *Id.*

10. *E.g.*, *Orozco v. Texas*, 394 U.S. 324 (1969); *Mathis v. United States*, 391 U.S. 1 (1968). *See also* *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973).

11. Under the fifth amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding.

Brief for the United States at 2-3, *Beckwith v. United States*, 425 U.S. 341 (1976).

12. Brief for the petitioner at 3-4, *Beckwith v. United States*, 425 U.S. 341 (1976).

13. *Id.* at 4.

for the District of Columbia<sup>14</sup> which refused to suppress the evidence he had unwittingly given to the IRS investigators. The United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's ruling,<sup>15</sup> and the United States Supreme Court granted *certiorari*<sup>16</sup> to resolve the differing rulings on this question by the Seventh Circuit in *United States v. Oliver*<sup>17</sup> and the remaining circuit courts in cases within their jurisdictions. The Supreme Court affirmed the *Beckwith* ruling,<sup>18</sup> thus resolving the issue whether or not the full *Miranda* warnings need to be given to a person who is under investigation by the IRS but not in custody.

In a majority opinion by Chief Justice Burger, a noted opponent of the exclusionary rule,<sup>19</sup> the Court dispelled any notions that it would make the *Miranda* warnings applicable to situations other than those where there was custodial interrogation or where the individual was "otherwise deprived of his freedom of action in any significant way."<sup>20</sup> The majority refused to accept the proposition that an individual being investigated by the IRS is under subtle psychological pressures to reveal certain aspects of his case to the investigating agents. It thus refused to hold that the individual is deserving of the full *Miranda* warnings, at least from the moment the case is assigned to the Intelligence Division of the IRS, which is the section that decides whether a criminal prosecution should ensue. Even though the Court agreed that it is at this point that the individual becomes the "focus" of the investigation, it held that this was not enough to trigger the need for the warnings. Unless the "focus" of the investigation includes the decision to incarcerate the individual or deprive him of his freedom of action in any significant way, the *Miranda* warnings are not required.<sup>21</sup>

### III. ANALYSIS

While the *Miranda* decision did in fact place a great deal of emphasis on the custodial nature of the interrogation, certain decisions predating *Miranda* had recognized that coercion can be pres-

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14. The oral opinion of the district court denying Beckwith's motion to suppress evidence is not reported.

15. 510 F.2d 741 (D.C. Cir. 1975).

16. 422 U.S. 1006 (1975).

17. 505 F.2d 301 (7th Cir. 1974).

18. 425 U.S. 341 (1976).

19. See Burger's dissenting opinion in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 411 (1971).

20. 384 U.S. at 444.

21. 425 U.S. at 345.

ent in situations other than simple incarceration. For example, *Escobedo v. Illinois*<sup>22</sup> contained language which suggested that the duty to warn a party of his rights might depend on the purpose of the inquiries made by the investigating agents. The Court emphasized that “[w]hen the process shifts from investigatory to accusatory—when its focus is on the accused and its purpose is to elicit a confession—our adversary system begins to operate . . . and the accused must be permitted to consult with his lawyer.”<sup>23</sup> As Professor Steven Duke, a leading commentator on the subject, observes, “in a non-custodial interrogation, the duty to warn may depend on the purpose of the inquiries, which in turn may be ascertained by gauging the degree of the interrogator’s suspicion.”<sup>24</sup>

In *Beckwith*, this degree of suspicion was never in doubt. In fact, “[t]here was no civil audit by revenue agents that could [have been] thought of as routine or done at random. The trial judge assumed that there was never any civil intention on the part of the Government. . . .”<sup>25</sup> What then becomes apparent is that this was a criminal investigation from the very outset, and that its sole purpose was to gather evidence which could later be used in prosecuting the unwary *Beckwith*.

Another passage from Professor Duke is illustrative of the degree of erosion the *Miranda* principles have undergone at the hands of the Burger Court in decisions such as *Beckwith*. Duke’s article, which was written well before the *Beckwith* decision, correctly points out that “[i]f the questions are put by one who ‘knows’ the suspect is guilty and who, consequently, is engaged in building a case rather than investigating a possible crime, then his subject may deserve the *Miranda* warnings, even though not under arrest.”<sup>26</sup> Thus, “the greater the likelihood that statements obtained will in fact be offered in a criminal prosecution, the less likely that the defendant would be willing to waive his privilege and, consequently, the greater the need for assuring that he knows of his rights.”<sup>27</sup>

Such an argument moves one to reevaluate the original rationale underlying the *Miranda* decision. What was the reason behind clearly defining those rights? Indeed, what was the reason behind

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22. 378 U.S. 478 (1964).

23. *Id.* at 493.

24. Duke, *Prosecutions for Attempts to Evade Income Tax: A Discordant View of a Procedural Hybrid*, 76 *YALE L.J.* 1, 38 (1966).

25. Brief for Petitioner at 8, *Beckwith v. United States*, 425 U.S. 341 (1976).

26. Duke, *supra* note 24, at 38.

27. Duke, *supra* note 24, at 38 n.173.

the incorporation of the Bill of Rights (in this case specifically the fifth and sixth amendments) into the Constitution of the United States? One of the possible answers which immediately springs to mind is that the *Miranda* decision and the fifth and sixth amendments were made part of the existing corpus of United States law to protect the individual from coercion by agents of the government. Opponents of the exclusionary rule would premise a decision such as *Beckwith v. United States* upon the idea that since the government had decided to investigate Beckwith for criminal tax fraud, it must have had its reasons for doing so and therefore someone as obviously guilty as Beckwith is undeserving of the full *Miranda* rights because a reading of those rights might prevent him from being convicted? In *United States v. Wade*,<sup>28</sup> Justice Brennan, speaking for the majority, discussed the "critical stage" cases (including *Miranda*) stating:

[T]oday's law enforcement machinery involves critical confrontations of the accused by the prosecution at the pretrial proceedings where the results might well settle the accused's fate and reduce the trial itself to a mere formality. In recognition of these realities of modern criminal prosecution, our cases have construed the Sixth Amendment guarantee to apply to 'critical' stages of the proceedings. . . . The plain wording of this guarantee thus encompasses counsel's assistance whenever necessary to assure a meaningful 'defense.'<sup>29</sup>

The Seventh Circuit, in decisions worthy of note because of their readiness to recognize the presence of non-physical coercion, decided two cases which were heavily relied upon by the defendant in *Beckwith*.<sup>30</sup> In the first of these decisions, *United States v. Dickerson*, the Court stated that "[i]ncriminating statements elicited in reliance upon the taxpayer's misapprehension as to the nature of the inquiry, his obligation to respond, and the possible consequences of doing so, must be equally violative of constitutional protections as a custodial confession extracted without proper warnings."<sup>31</sup>

In the second of these decisions, *United States v. Oliver*, the Seventh Circuit pointed out that:

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28. 388 U.S. 218 (1967).

29. *Id.* at 224-25.

30. *United States v. Oliver*, 505 F.2d 301 (7th Cir. 1974); *United States v. Dickerson*, 413 F.2d 1111 (7th Cir. 1969).

31. 413 F.2d at 1116.

The application of *Miranda* does not turn on such a simple axis as whether or not the suspect is in custody when he is being questioned. As the Court repeatedly indicated, the prescribed warnings are required if the defendant is in custody "or otherwise deprived of his freedom of action in any significant way."<sup>32</sup>

After proclaiming this, the court correctly acknowledged that "[t]he fact of custody is emphasized in the opinion as having the practical consequence of compelling the accused to make disclosures."<sup>33</sup> The court further noted that "the test [of custodial interrogation] serves the purpose 'of determining when the adversary process has begun, *i. e.*, when the investigative machinery of the government is directed towards the ultimate conviction of a particular individual and when, therefore, a suspect should be advised of his rights.'"<sup>34</sup>

But when is the investigative machinery of government directed toward conviction? It is not only when the individual is formally arraigned or charged with a crime that the investigative machinery of government is directed toward ultimate conviction. Could it not also be when a special agent of the IRS is assigned to a case? Judge Cummings in *Dickerson* observed that it is rare that a taxpayer would know that he could refuse to produce his records to IRS agents. Nor would he be likely to make any distinction between revenue agents and special agents without some explanation as to the different functions of these two officers.<sup>35</sup> Another commentator noted the reasons which prevent the average taxpayer under investigation from using the caution commensurate with the risks involved in aiding the IRS agents in an investigation of his own resources.

First, there is always the fear of incurring a civil tax liability that hopefully might be avoided by cooperation. Also, the taxpayer may conclude that lack of cooperation will result in unwanted publicity about a tax liability. The average citizen, moreover, believes that the government prosecutes only the recalcitrant, uncooperative individual who is unwilling to pay what he owes. Who would believe the ironic truth that the cooperative taxpayer fares much worse than the individual who relies upon his constitutional rights!<sup>36</sup>

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32. 505 F.2d at 304 (footnote omitted).

33. *Id.*

34. 505 F.2d at 305, quoting *United States v. Turzynski*, 268 F.Supp. 847, 852 (N.D. Ill. 1967).

35. 413 F.2d at 1116.

36. Lipton, *Constitutional Rights in Criminal Tax Investigations*, 45 F.R.D. 323, 336 (1968).

Likewise the district judge in *Dickerson* noted that the average citizen who is faced with repeated questioning by two government agents is in an ominous situation to say the least. While “[t]he Government suggests that the defendant was in no way physically restrained, . . . we doubt that he really felt free to walk out on the investigators from the Internal Revenue Service.”<sup>37</sup> In fact, there can be “innumerable factors which act on the taxpayer’s mind compelling him to ‘cooperate’ with the federal authorities.”<sup>38</sup> The disregard of these “innumerable factors” in *Beckwith* demonstrates the way in which the foundation of the *Miranda* decision is being undermined. It is important to recognize that interviews by IRS agents are “inherently coercive” in the psychological sense, for the reason that the agents

[p]ersonify the authority of the federal government, and the ordinary taxpayer does not have either the ‘technical knowledge’ of his rights or the ‘toughness of fibre’ to decline to answer their questions despite the fact that he may have been warned that anything he says may be used against him.<sup>39</sup>

Thus, given the presence of psychological coercion and resulting prejudice, there arises a “need” on the part of the taxpayer to be warned of his rights. This “need,” if one accepts the *Miranda* rationale, is the precursor of the “right” that one has to the warnings embodied in that decision. As Arthur W. Andrews so clearly shows in his article on the effect of the *Miranda* and *Escobedo* decisions regarding tax investigations, counsel is needed from the very outset of the criminal investigation to advise the taxpayer of the benefits and risks of cooperation versus noncooperation with the IRS agents.”<sup>40</sup> In fact, acts or omissions constituting noncooperation with IRS agents during the course of an investigation are admissible against the taxpayer as evidence on the issue of willfulness, in both criminal and civil fraud cases.<sup>41</sup> With this being the present state of the law, it would indeed be expecting too much of the individual under investigation to refuse to cooperate with the IRS agents unless he was fully advised of all his *Miranda* rights, not just a portion of them.

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37. *United States v. Dickerson*, 291 F.Supp. 633, 636 (N.D. Ill. 1968).

38. *Id.* at 636-37.

39. Andrews, *The Right to Counsel in Criminal Tax Investigations Under Escobedo and Miranda: The ‘Critical Stage’*, 53 IOWA L. REV. 1074, 1113 (1967).

40. *Id.* at 1114.

41. *Id.* at 1114 n.235.

Two recent cases decided by the Seventh Circuit further show the erosion of the *Miranda* ruling. In the first of these cases, *United States v. Sicilia*,<sup>42</sup> the court refused to extend *Dickerson* to require Federal Bureau of Investigation special agents to give *Miranda* warnings in connection with a request to the defendant for permission to search his company's premises for a stolen fork-lift truck. The court reasoned that the reading of *Miranda* rights was not necessary because it was not until the stolen article was actually discovered on the premises that the investigation had progressed to the point at which the special agents were prepared to make an accusation against the defendant.<sup>43</sup> In the second of these two cases, *United States v. Dreske*,<sup>44</sup> decided subsequent to *Beckwith v. United States*, the court held that a taxpayer did not have to be advised of his constitutional rights against self-incrimination before he is questioned by an agent of the Collection Division of the IRS prior to the "formal referral" of the tax investigation to the Intelligence Division for an investigation of possible criminal violations.<sup>45</sup>

Taken together, and in conjunction with *Beckwith*, these cases do not bode well for the future of the *Miranda* rights. In fact, even the most recent case decided by the Supreme Court dealing directly with the *Miranda* rights can be seen as little solace to those who view the *Miranda* warnings as a noble attempt at adhering to the "spirit" of the Constitution as well as the "letter." Although the Court reaffirmed its allegiance to *Miranda* in *Brewer v. Williams*,<sup>46</sup> a very controversial case involving a confessed child killer, the decision was 5-4 with a strong dissent from Chief Justice Burger.

#### IV. CONCLUSION

The Supreme Court's recent decision of *Beckwith v. United States* does much to undermine the *Miranda* principles as enunciated by the Supreme Court barely ten years ago. Notwithstanding the even more recent decision of *Brewer v. Williams*, it appears that the *Miranda* principles have come under attack from the Supreme Court itself. The impact of *Beckwith* will be felt by the average citizen far more than will that of *Brewer*, since most citizens are unquestionably more affected by rulings having to do with taxing than with rulings concerning the rights of suspects in other criminal

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42. 475 F.2d 308 (7th Cir. 1973), cert. denied 414 U.S. 865 (1973).

43. *Id.* at 311.

44. 536 F.2d 188 (7th Cir. 1976).

45. *Id.* at 194-95.

46. 97 S.Ct. 1232 (1977).

investigations. While the Court's reluctance to expand the *Miranda* principles and apply them to methods of "psychological coercion" by IRS agents is understandable in its caution to prevent every interaction by government agents and the average citizen from being prefaced with a mandatory reading of the *Miranda* warnings, it is nevertheless regrettable. Through this one decision on the side of "caution," countless tax evasion convictions will undoubtedly be made easier. While the result may be laudable in itself, it gives cause for grave concern if seen as another in a series of decisions emasculating *Miranda*. In tax investigations at least, the thrust of *Miranda* has been severely limited.

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47. 345 U.S. 22 (1953).

48. *Id.* at 36.

