In the

Supreme Court of the United States

Alvin A. Beckwith, Jr.,

Petitioner,

V.

United States,

Respondent.

No. 74-1243

Washington, D. C.
December 1, 1975

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IN THE SUPREME COURT OF THE UNITED STATES

ALVIN A. BECKWITH, JR., Petitioner,	:	
v.	:	No. 74-1243
UNITED STATES, Respondent.	:	

Washington, D. C.,

Monday, December 1, 1975.

The above-entitled matter came on for argument at 11:56 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

JOHN G. GILL, JR., ESQ., 17 West Jefferson Street, Rockville, Maryland 20850; on behalf of the Petitioner.

SCOTT P. CRAMPTON, ESQ., Assistant Attorney General, Department of Justice, Washington, D. C. 20530; on behalf of the Respondent.

C O N T E N T S

[Afternoon Session - pg. 5]

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 74-1243, Beckwith against the United States.

Mr. Gill.

ORAL ARGUMENT OF JOHN G. GILL, JR., ESQ.,

ON BEHALF OF THE PETITIONER

MR. GILL: Mr. Chief Justice, may it please the Court:

My name is John G. Gill, Jr. I represent Alvin Beckwith, the Petitioner in this case.

We're here seeking reversal of the District of Columbia Circuit affirmance of his conviction on one count of attempting to evade and defeat federal income taxes.

We feel that the trial court should have been reversed -- or should be reversed, because it committed error in denying the petitioner's pretrial motion to suppress statements made to Special Agents of the Internal Revenue Service at a crucial August 2nd, 1972, interview, which provided the entire starting point for the net worth or expenditure, circumstantial evidence theory of prosecution, and without which we believe the prosecution below would not have been able to proceed.

The facts brought out at that pretrial motion to suppress -- the trial took place on a stipulated record after the denial of the motion to suppress -- took the form of the testimony of two Special Agents of the Intelligence Division,

the Criminal Division of the Internal Revenue Service. Those agents testified that in March of 1972 they received a tip from an informant that Mr. Beckwith, the petitioner, was not reporting all of his income taxes.

During the next three months, they testified, they did a considerable amount of investigation: into his background; into his family; and, indeed, into specific transactions.

On August 2nd, 1972, unannounced, at 8:00 a.m. in the morning, they arrived at the home of a friend in Silver Spring, Maryland, where the petitioner was staying. The petitioner had to finish dressing, and they went into the dining room for three hours, between 8:00 a.m. and 11:00 a.m.

Prior to questioning, the agents read to him from a card certain advice of rights which is concededly short of the warnings required by Miranda vs. Arizona, if that case is held to apply to these circumstances.

MR. CHIEF JUSTICE BURGER: We'll resume there at one o'clock.

MR. GILL: Yes, Your Honor.

[Whereupon, at 12:00 noon, the Court was recessed, to reconvene at 1:00 p.m., the same day.]

AFTERNOON SESSION

[1:01 p.m.]

MR. CHIEF JUSTICE BURGER: Mr. Gill, you may continue. You have 27 minutes left.

ORAL ARGUMENT OF JOHN G. GILL, JR., ESQ.,

ON BEHALF OF THE PETITIONER - Resumed

MR. GILL: Thank you, Mr. Chief Justice.

May it please the Court:

I believe I was to the point where I had mentioned that limited warnings had been given to the petitioner.

During the next three hours, the agents questioned him about a number of things which, significantly, are incorporated into Stipulation No. 2, which made up the starting point for the net worth prosecution. Sources of possible nontaxable income during the year 1971; cash on hand, going all the way back, I believe, to 1965 or, at least, to 1967. And other items, through which they buttoned down the starting point for the prosecution.

The agents testified that his liquor store in the District of Columbia was to be opened at 10:30, and the petitioner sent the person with whom he was staying, who was also an employee at the liquor store, to open the store.

Thereafter, after the interview, he went and produced certain records from the liquor store to the agents, without any warrant or summons.

The petitioner testified that he was 44 years of age, he had a ninth grade education, he knew very little about tax returns -- and this was corroborated by the observations of the agents during their testimony. He testified that he had never filed or prepared an income tax return in his entire life.

QUESTION: How would that affect the merits of this case?

MR. GILL: Well, in the waiver context, Your Honor, it shows what a need for warnings there are, because, indeed, there was absolutely no knowing waiver. This case is perhaps a graphic illustration of -- this person testified he had no idea he was incriminating himself.

QUESTION: You mean he might just blurt out the truth?

MR. GILL: Our position, Your Honor, of course is that the situation was coercive from a legal and psychological point of view.

I think -- I say this in the context of emphasizing the need for counsel, the need for an effective warning as to his right to remain silent.

I don't know if the truth or the non-truth of it is significant for purposes of this argument.

QUESTION: Well, absent a violation of the Fifth Amendment, which prohibits compulsory self-incrimination, I presume society has an interest in seeing guilty defendants

incriminate themselves --

MR. GILL: Yes, Your Honor.

QUESTION: -- so long as it's voluntary.

MR. GILL: Yes, Your Honor.

This particular type of statements that were being elicited from him, though, was specifically recognized by this Court,in Holland vs. United States, to be probably unreliable or, in many cases -- Point No. 5, which we have quoted in our brief, says: In this type of an interview, a taxpayer is more often concerned with a quick settlement or placating the agents than reliability.

If I could pick up that question, Your Honor. What one of us here, including myself, could go back four or five years and tell how much cash we had on hand with reliability?

I think there was a great potential for unreliability here.

QUESTION: But certainly the man has it within his power to say, "I don't remember; I don't know."

MR. GILL: Yes, Your Honor.

QUESTION: Maybe what he said, if anything that he disclosed is not supported by the government's case in chief, it perhaps isn't all that revelent, is it?

MR. GILL: Well, there could be arguments made as a matter of weight. But, again, as this Court recognized in Holland, the government agents can pick and choose among the

good and the bad and use them against him as party admissions at trial. They are very incriminating, I think, especially in this situation.

The petitioner testified that he did not recall the word "criminal" being used by the agents. They testified they had told him one of their functions was to investigate criminal tax frauds -- the possibility of criminal tax frauds brought.

He also testified he did not think he had incriminated himself at all during the three-hour interview.

We feel that the decision below and the requirement of actual physical restraint and custody is improper for Miranda purposes, for a number of reasons:

First of all, this, we feel, in the meaning of the Fifth Amendment, was indeed a criminal case. At the beginning of his oral opinion, the District Judge, which is found in the Appendix to the Petition for Certiorari, at 1b, he found in fact it was criminal from the very beginning. And his finding, we feel, is supported by the fact that there were approximately three months of investigation of the petitioner prior to the interview.

We feel it's supported by what the United States Attorney's office for the District of Columbia issued in the form of a press release at the time of indictment. They said petitioner was the subject of "legal harassment" by virtue of

the prosecution of the tax laws against those who they felt were involved in narcotics underworld activity.

The obvious implication, we feel, being unprovable narcotic activity. And we point out that petitioner has no record for such activity.

Also, the arrest was effected by the combined forces of Internal Revenue agents and Bureau of Narcotics and Dangerous Drugs agents.

We also feel, in addition to being clearly a criminal case at the time of the interview, this was indeed a critical stage. We've already made reference to Holland vs. United States. That Court recognizes, in this type of prosecution, the starting point is crucial to the government. In fact, without it, I don't think they have any case; and I think it's been virtually conceded throughout the courts so far, that they need that starting point, which came entirely out of petitioner's own mouth.

QUESTION: Didn't we hold, in Kirby v. Illinois, that the critical stage did not begin until there was an indictment?

MR. GILL: I'm not sure of the specific language. I know that was in the lineup area.

QUESTION: More specifically, I think the holding there might have been that the explicit right to the assistance of counsel does not begin constitutionally until there's an

indictment or other charge.

MR. GILL: Yes, Your Honor. I don't think --

QUESTION: I don't think it affected -- I don't think it had much to do with the right against compulsory self-incrimination.

MR. GILL: Yes. And, Mr. Justice Rehnquist, I said "critical", I think in perhaps the Miranda terms, in the values that Miranda sought to protect against. Specifically the Fifth Amendment value. And maybe I'm using "critical" -- if you take that as a term of art that was dealt with in Kirby vs. Illinois with respect to counsel.

But for this prosecution, this type of prosecution, I feel it was indeed critical.

We feel --

QUESTION: Well, it's always critical if something happened that hurt your case.

MR. GILL: Yes. And --

QUESTION: There's always a critical moment, if at that moment something happened that prejudiced you.

MR. GILL: And, Your Honor, I think -- this was not just one bit of evidence, this was the whole starting point, which is totally necessary to this entirely circumstantial type of prosecution.

We feel that the District of Columbia Circuit's requirement of the necessity for a finding of physical restraint

is particularly inappropriate for a tax prosecution. We focus on the language which, at least four times, was repeated in Miranda. It said, custody "or otherwise deprived of his freedom of action in any significant way."

We say custody is inappropriate for a tax case, because arrest, or the taking of a person into physical restraint by the government is a matter that is foreign to the tax prosecution in most cases. We quote from Law Review commentators who say: Anyone who knows anything about tax prosecutions knows that arrest doesn't have much significance if it happens at all.

Usually, the experience, I submit, is that the tax violator first comes into physical restraint or custody when his appellate remedies are exhausted, and he surrenders to the Marshals. This is so for a number of reasons. It's not a crime of violence. The government doesn't have an interest in getting the man off the street for the protection of others.

Once the agents have come to look at his returns, the crime is not likely to be repeated. There's not much possibility of flight because of the business-connected, geographically orientated type of business activity often associated with income tax. And the investigations take a long time, as is exhibited by this case; and focused for a long time.

Also, identity is not an issue at all in a tax violation. The terms in Miranda, the police do not, when they

are making their general on-the-scene, fast-moving investigation, have to give warnings to the people they talk to. I think that is directed, when you analyze it, towards who committed the crime.

In the average criminal context, a crime is reported, and the law enforcement officers go out to find out who did it, who's responsible, let's bring him to justice.

In a tax prosecution, it's different. You know who did it. His name is at the bottom line of the return. There's no question -- identity is immediately apparent, so there's no need for a fast-moving investigation that could be inhibited by the warnings we ask to attach in the criminal context here.

In this case, the crime was reported three or four months before, in March of 1972. They knew the existence of the crime. There was no question of identity. They knew where to go. They knew who to talk to. They were building a case.

We feel the formal accusatory stage -- perhaps not as formal as an indictment, but virtual or putative, this man was a defendant, he was an accused. And we ask for the accused's right to self-incrimination, just in the same sense that Miranda sought to protect it.

Now, we recognize, of course, that coercion is necessary for a Fifth Amendment violation, and for requirements for these prophylactic Miranda type warnings, to insure voluntary waiver, to insure that the person's right to refrain from

compelling himself is not trampled upon.

We feel that during the tax investigation there are such legal and psychological pressures at play that a taxpayer is coerced to speak. That in the language of Miranda, his freedom of action, freedom of choice is significantly restrained.

First of all, I think the case must be viewed against the repetitive experience of a person. He knows, with specific request, that every April 15th, or more often during the year, he has to tell on himself; talk to the Internal Revenue, to his pecuniary detriment pay his taxes as his civil obligation as a responsible citizen. And he does that. And most people in the United States do that without compulsion.

We submit there is highly compulsion when the representative of the Internal Revenue Commissioner actually visits your home to talk to you. He's there for some -- we're used to telling on ourselves.

Most significant, I feel, for purposes of Miranda requirements, is the fact of the complexity of the tax laws. You take the Internal Revenue Code and just look at it. Take the regulations that are authorized by that Code, and which set up civil obligations, and look at it. It is a morass of complexity to the average citizen. It's, I submit, complex to the average attorney, who is not an expert in tax law.

We --

QUESTION: Mr. Gill.

MR. GILL: Yes, Your Honor?

QUESTION: You are emphasizing the tax nature of this case. Let's assume for the moment that the local sheriff had dropped in to this residence at eight o'clock in the morning, investigating, say, a burglary, and the petitioner had been a guest in the house, and the sheriff said, "I'm trying to find out who committed this burglary, and I'd like to know where you were on the night of the burglary."

He gave no Miranda warnings, or suppose he did say what was said in this case, that of course nobody has to speak, you have a Fifth Amendment right to remain silent. That would be a non-tax situation.

Would you view that as different?

MR. GILL: Well, it would depend on a few more circumstances, I think, Your Honor.

Just as you've given it; yes.

QUESTION: It would be different?

MR. GILL: Because the person -- I think you said a burglary in your hypothetical, Mr. Justice Powell?

QUESTION: Yes. Yes.

MR. GILL: The person who's confronted to answer questions about a burglary, he has an orientation, if he's of average intelligence.

Now, I know there are legal technicalities, as was evidenced by the Escobedo case, where he said, "I didn't do it;

you did it", and he exhibited some knowledge.

But, generally speaking, the person or the citizen under investigation for an average on-the-street crime or a crime has a familiarity. There's just no starting point. This is the great unknown in the tax, it's so complex, and terribly frightening to the taxpayer, because it is so unknown.

QUESTION: In the case I put there was certainly no custody, there was no custodial interrogation.

MR. GILL: Yes, Your Honor.

QUESTION: But you view this case as involving custodial interrogation, because it is a tax case; is that your --

MR. GILL: That's one of the main points, that the subject matter --

QUESTION: Is there any other point that is relevant to whether or not this was custodial?

MR. GILL: Yes, Your Honor. The combination of -- and confusion in the mind of the taxpayers, as to his civil obligations and his criminal rights under the Fifth Amendment, to decline to incriminate himself.

And another point, fears that I will develop throughout my argument. But I think this is one of the most significant.

Miranda quoted at different places the concern and the need for these warnings in the following language:

In each of these cases the defendant was thrust into an unfamiliar atmosphere: the tax laws. The subject matter of the tax laws, we submit, is a terribly unfamiliar atmosphere.

Miranda, at another point, gives us: An individual is swept from familiar surroundings.

Now, maybe the dining room of that friend's home was nothing like the back room of the police station, --

QUESTION: But don't you have to read all those statements in light of the facts of the Miranda case, that it was a police station, and they all relate to those facts; and those aren't general philosophical observations in an opinion, are they?

MR. GILL: I think they are, Your Honor. I think this is the policy --

QUESTION: Well, on that theory, then, one might claim that if a policeman stops you on the street while you're walking and begins to ask you some questions, that you're unaccustomed to talking to a policeman in a uniform, with a badge and a gun, and therefore all the Miranda warnings must apply before the policeman can have any conversation with you?

MR. GILL: Well, I think Miranda itself sought not to include that.

QUESTION: Yes, and several other cases.

MR. GILL: It's a matter of degree --

QUESTION: But you're taking some language that related

to a police station and taking it out of context.

MR. GILL: I respectfully submit I'm not, Your Honor. Because it was this concern with being swept away from any focal point in which to make an intelligent choice.

QUESTION: What was the author of the opinion talking about? He was talking about a case in which the man was in a police station, wasn't he?

MR. GILL: Yes, Your Honor.

QUESTION: Well, then, isn't it out of context when you take it out of a police station?

MR. GILL: Well, if you analyze it just from its facts, I agree, Your Honor. But I think, for purposes of my presentation here, I think it's a good analogy. The complexity of the subject matter has put this person into an unfamiliar atmosphere, the equivalent, we feel, of a police station.

QUESTION: Mr. Gill, are you drawing any distinction between a call by an ordinary revenue agent, if I may so describe him, and a Special Agent in the Intelligence Division?

MR. GILL: Yes, Your Honor.

QUESTION: Well, it seems to me your entire argument, though, is directed to a tax consultation. Isn't there as much fear and trembling when the first agent shows up as there is when a second one does?

MR. GILL: In many cases, yes, Your Honor. However, the distinction is this:

The Fifth Amendment is not jeopardized in the way it is here. The transfer has been made -- or there was no transfer in this case, this was an unusual case in that the defendant was initiated with the Special Agents. His Fifth Amendment rights are in jeopardy. I don't think this Court, in Miranda, sought to protect people who are not likely to be charged in a criminal case, and convict themselves out of their own mouth in derogation of their Fifth Amendment right to refrain from self-incrimination.

What's different here is that these agents were, at the time of the interview, building a case against the petitioner, in order to convict him. Therefore the heightened need for warnings.

Yes, Your Honor, some of my arguments do apply in the civil context.

QUESTION: What, specifically -- what prejudice did he suffer from the so-called defects in the warnings here?

MR. GILL: If it please the Court, he was given a warning that might be appropriate to give a non-target defendant summoned before the Grand Jury. It's the difference between the defendant privilege in a criminal case and the witness privilege. This is why I make and emphasize this was a criminal case being built against Mr. Beckwith.

QUESTION: Well, specifically, what I'd like to have you answer is: What was he entitled to that he didn't get by

way of specific questions here?

MR. GILL: Your Honor, under Miranda --

QUESTION: One is the fact he was not told he could remain silent.

MR. GILL: Yes.

QUESTION: And yet he was told he could have counsel.

MR. GILL: I have -- I take issue with whether or not that was an effective advice of the right to counsel. He was told: "I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

I admit, this has some superficial appeal, when the government argues he was effectively warned.

But, when you think of it in terms of a close analysis of the requirements that the Court set down in Miranda, and against this situation, the jeopardy he was in, I think you can see.

That advice, "I advise you further you may, if you wish, seek the assistance of an attorney before responding", it sounds to me like, if you analyze it, he might make one phone call.

Miranda made it clear that in this --

QUESTION: Now, what is the other, if any -- what other right was he entitled to be told about, that he didn't get?

MR. GILL: He had the right to be told that he had the right to an attorney with him during questioning.

This takes on heightened importance because the agent here had his tax return there for him to go over. In effect --

QUESTION: Any other rights?

MR. GILL: He was -- I don't know if you mentioned it at first; he was not told of his right to remain silent.

QUESTION: Any other rights?

MR. GILL: I think he was not effectively told of his right to consult with an attorney; it was watered down.

QUESTION: You're not making any claim that he was entitled to an attorney if he -- or to be told he could have an attorney if he couldn't afford it?

MR. GILL: Yes, I am, Your Honor. The government argues --

QUESTION: Is there any claim of indigency here?

MR. GILL: That was not developed in the record below.

QUESTION: This is a paid appeal, isn't it?

QUESTION: Didn't he own a liquor store?

QUESTION: Isn't this a paid appeal?

MR. GILL: Yes, Your Honor.

QUESTION: So there's no claim of indigency anywhere.

MR. GILL: Well, Your Honor -- no, I think we -- we're in the situation where a person is being investigated for not paying his taxes. I think a legitimate inference is that he didn't -- that the taxes are not being paid because he didn't

have enough money to pay them.

The government's argument that tax cases are present where there's a lot of money involved, I don't think holds up, because there is that distinct possibility.

People are not paying their taxes because they don't have funds.

QUESTION: Well, in a true Miranda situation, in a conventional, plain vanilla, Miranda situation, where a person is in custody at a police station and being interrogated by the police, the duty of the police to warn him that he's entitled to a lawyer at State expense if he cannot afford one is certainly not predicated upon a preliminary finding of indigency; is it?

MR. GILL: That's correct, Your Honor.

QUESTION: It's an absolute duty under the Miranda case.

MR. GILL: Yes, Your Honor. And millionaires are advised as well as --

QUESTION: Precisely!

MR. GILL: If I could point out two more factors which we feel enter into the coercive atmosphere here.

The first -- in the government's brief, at page 32, indicates this quite succinctly. They say: Indeed, the petitioner had to answer the agent's questions anyway, ultimately.

And then they go on to say, "as long as it would

not incriminate him."

The Seventh Circuit which has, on these specific warnings, in Judge Stevens' opinion in Oliver vs. United States, found that full Miranda warnings had to be given and the statements thus had to be suppressed, has held that there is a confusion here between his civil obligations and his rights in a criminal case.

This is precisely the point. The person thinks he has a compusion. There are specific Internal Revenue Code provisions compelling him to provide records, make statements, give anything the Secretary wants in the way of information. He doesn't know, unless he's effectively warned, and he cannot make an intelligent decision.

Secondly, from the point of view of coercision, there is a compulsion. He caught between a rock and a whirlpool, we submit.

The agents are there seeking information. He knows if he doesn't talk to them, he will be subjected to a full-scale audit. How does it -- what form does this take?

QUESTION: Isn't that just a fact of life that every taxpayer is confronted with, constantly? When you --

MR. GILL: Yes, Your Honor.

QUESTION: Do you need a warning just before you sign your tax return?

MR. GILL: No, Your Honor. But a criminal case --

QUESTION: And you might be incriminating yourself.

MR. GILL: Yes, you might; generally speaking.

QUESTION: A great many people do incriminate themselves when they sign their tax returns, don't they?

MR. GILL: Yes, Your Honor.

However, when these agents visit him, to interrogate him or ask him questions, and they're building a criminal case against him, he is under a compulsion that derives from the fact that he knows he'll be subjected to a full-scale audit. Socially embarrassing, when contacts are made with your clients, your friends, your customers, your creditors; potentially because the taxpayer in almost all matters has the burden of proof, potentially very expensive, if those agents are dissatisfied and they assess a deficiency.

These pressures, we feel, are at his mind, and this is what's been recognized by the Seventh Circuit. And, on the whole, the analysis is that there are such pressures, both from a legal, civil-legal point of view, confusion, complexity, that the taxpayer must be warned of the full rights under Miranda, or his privilege against self-incrimination.

I think it's pointed up, if this Court takes note of two cases, Malloy vs. Hogan and Holland vs. United States, under the warning that was given here, how could a person in petitioner's circumstances, a ninth-grade dropout, ever know that to incriminate yourself had the broad meaning of Malloy vs.

Hogan?

How could he know that by telling him how much cash he had on hand a few years back could incriminate him in the complex type of prosecution that was being built against him?

Your Honor, I'd like to mention one more thing --

QUESTION: Well, how could he ever waive counsel, then, by himself?

MR. GILL: Well, this -- I think perhaps there never could be a fully intelligent waive of counsel --

QUESTION: You have to say that, don't you; yes.

MR. GILL: -- without -- However, if he were told, Your Honor, of the absolute right to remain silent, that could potentially have had much more meaning and had heightened necessity because of these factors I point out.

I would like to mention one other thing, Your Honor, that's intervened between the submission of briefs here. I found out about it at five o'clock Friday.

A United States Government organization, the Administrative Conference of the United States, has done a very exhaustive study of the administration of the tax laws. I haven't reviewed it. I've seen a summary of it. I feel contained therein is a tremendous amount of support for petitioner's argument here. I don't think the case should stand or fall on that, but I call of its existence, it's not quite in final form, all the recommendations have not been made; but

I think this Court should be aware of its existence in the same type the Miranda Court looked at certain reports in the area Miranda was concerned with.

I see my time is up. I thank the Court for its attention.

QUESTION: Where are those -- are they available?

MR. GILL: Beg pardon?

QUESTION: What you found out about Friday evening, when --

MR. GILL: It's not available generally yet, the report in itself. Summaries are available at the Administrative Conference of the United States, 2021 L Street, Northwest, I believe it is.

QUESTION: Thank you.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Crampton.

ORAL ARGUMENT OF SCOTT P. CRAMPTON, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. CRAMPTON: Mr. Chief Justice, and may it please the Court:

I'd like to emphasize briefly certain facts that we believe to be salient here.

First, the age; he's 44 years of age. He was a manager of a liquor store. He was the secretary-treasurer of the corporation. He had stipulated taxable income that he had

spent, the $24,600, while his return had reporter $10,000.

Counsel speaks of the complexity of the tax laws. I don't think that complexity really is pertinent here. There was a question of whether or not he had $24,000 of income that he could spend. They asked him whether he had any cash on hand at various periods of the time, the beginning of each year. I don't think it's unreasonable to ask a person whether he had three or four hundred dollars on hand at any given time, or whether he had ten or fifteen thousand dollars on hand.

They asked him if he had any inheritances, any gifts, and he said he did not.

As far as the meeting itself is concerned, he went upstairs to finish dressing after he knew who was here to visit him. The agents exhibited their badges and their credentials. He was given the customary Internal Revenue Service warning, which advised him that the agents could not compel answers to information that might tend to incriminate him, and that his answers might be used against him in a criminal proceeding.

And, furthermore, and quite significant, I believe, he was told that he could have the assistance of an attorney before responding. And he admitted in his own testimony that he did have an attorney-accountant that had prepared his returns, so that he knew whether or not he wanted to have that man present.

QUESTION: Well now, General Crampton, you say you

think that's quite significant. You're not implying that you think that was constitutionally necessary, are you? That warning.

MR. CRAMPTON: No.

QUESTION: Then, why is it significant?

MR. CRAMPTON: The significant part, if the Court please, was that he had an attorney, he was told he could bring him in, and he elected not to.

I mean, I don't think that --

QUESTION: Well, --

MR. CRAMPTON: That, to me, takes away from the compulsion. If --

QUESTION: -- then, are you implying that had that statement not been made to him, there would have been a constitutional violation?

MR. CRAMPTON: No.

QUESTION: Well, then, why is it significant?

MR. CRAMPTON: Well, I think it shows that the agents' and the Internal Revenue Service position was to, in effect, comply with at least the philosophy of Miranda, and let these people know they could do it.

QUESTION: Well, it seems to me, then, that you're implying that there is an obligation to comply with the philosophy of Miranda. And I didn't understand your argument to be that.

MR. CRAMPTON: No. It's not. But I'm saying we did it. I think it was --

QUESTION: Well, then, I don't see why it's significant, if I may say so.

MR. CRAMPTON: Well, the significance, as I say, is, I think, that he had the counsel and he didn't elect to bring him in.

QUESTION: At least you ought to argue that last!

[Laughter.]

MR. CRAMPTON: All right, sir.

Another thing is he testified at the trial that he understood the warning, and he also said that he was asked by the agents to read the warning out loud, and that he did that.

The agents described the interview as friendly. And the defense counsel agreed, in his argument to the court, that it was friendly; and the defendant, in his own testimony, referred to the parties as "cracking jokes and laughing".

They later went to the liquor store to obtain some records. They went in separate cars. I think there was a 45-minute interval there. And at that time he delivered the books and records, after again being told that he did not have to do so.

The defendant also said that he chose not to answer certain questions that were asked him, and that he was not pressed by the agents for his answer.

After a hearing, the testimony of the two agents and the petitioner here, the District Court found he is entitled to it, the Miranda warning, when the court finds as a fact that there were custodial circumstances:

"I have to find a situation that required it, and I find, on this record, that there is no evidence whatsoever of any such situation."

A little later he went on and he said he knew he could have a lawyer, and he knew that he didn't have to say anything to them.

And, finally, "I find from the evidence, and it is uncontradicted, that his basic rights were in fact explained to him."

When the case was considered by the Court of Appeals, that Court said, in part: There is no claim that Beckwith's mental condition or education were so limited that he was particularly susceptible to interrogation; the entire interview was free of coercion.

It was also noted by the Circuit Court that the defendant was complaining that the meeting was so friendly that he was deceived into believing that he was not incriminating himself.

The defendant apparently contends that this was a criminal case from the outset, and that he should have had the full Miranda warnings.

As we understand his position, he wants to extend Miranda far beyond the custodial circumstances considered in that opinion.

At the outset, we dispute his basic premise, that the case was criminal from the outset. The case originated from information furnished by an informant.

In 1972 the Internal Revenue Service initially [sic]
?,000... screened 132 allegations of fraud. Only 8,000 of these actually resulted in an investigation, and out of the 8,000 only -- prosecution was not recommended in 7,000. Thus, seven out of eight cases ended up as civil matters. The actual prosecutions were in the neighborhood of a thousand.

The taxpayer's brief even says that seven out of eight cases are not prosecuted. So that when this case started, no one could say this was going to be a criminal case at the outset.

QUESTION: Well, would it be any different if it was? Let's assume they had crime on the mind.

MR. CRAMPTON: No, I don't think it would. But I don't think that --

QUESTION: Well, argue that last, then!

[Laughter.]

MR. CRAMPTON: I've got several I have to argue last, then.

But I think the point here is that we -- the taxpayer

was not in the same situation as one who is under arrest. The self-incrimination clause says no person shall be compelled in any criminal case to be a witness against himself. The Miranda Court found the compulsion to exist from the custodial circumstances.

Here there have -- as I say, the District Court found none. And as we read this Court's opinion in Schneckloth vs. Bustamonte, the Miranda warnings do not reach an investigate questioning of a person not in custody.

QUESTION: Mr. Crampton, did these agents give him that usual spiel that, "You know, you can tell me this, or I can get it some other way"?

MR. CRAMPTON: The record doesn't say that, Mr. Justice Marshall. I don't think -- the fact that they were there three hours is some indication that there was an extended discussion, all right; but I didn't see anything in the record of that type of testimony.

QUESTION: Well, I'm glad to see some government officers that work at eight o'clock in the morning. Do they get out that early all the time?

You know, you could be waking a man up at eight o'clock in the morning.

MR. CRAMPTON: This man said he started work at seven-thirty, and he knew when the man went to the liquor store, apparently, and so he was there to meet him.

The taxpayer argues that the interview with the Internal Revenue agent had a psychological, coercive effect upon the taxpayer. But, as the Chief Justice, I think, has already indicated, that same thing could be said of the police officer who stops the nervous housewife. She certainly doesn't have to -- he doesn't have to give her a Miranda warning before asking to see her driver's license.

The defendant talks of a warning needed when the case reaches the accusatory stage, and since only one case out of 132 ripens into an indictment, I think it's very difficult to say when such a nebulous test would be applied.

It seems to us that, short of a reference of a case from the Internal Revenue Service to the Department of Justice, the question, then, is where to draw the line, and we think that this Court has drawn an appropriate line when they talk about the custodial circumstances. This is a rule adopted in ten out of the eleven Circuits, all but the Seventh, as counsel has noted.

The defendant argues to the contrary, but his basic authorities are some Law Review articles and case notes; and we submit that the reasoning of the various Circuit Courts that have considered this is,by far, more persuasive.

Finally, if a warning is deemed to be necessary, it seems that the one given here was sufficient. It warned him of possible criminal consequences, that there was no need for

him to incriminate himself, and that he could have an attorney.

It fell short of the Miranda warning in two regards: one, with the right to remain silent; and, second, the right to an appointed attorney.

We submit, in tax cases, that the law requires records to be kept and returns to be filed, and that if taxpayers could always remain silent, the self-assessment system would be seriously undermined.

It also seems clear that there's no need to offer appointed counsel at the time of each investigation. We submit that the judgment below should be affirmed.

MR. CHIEF JUSTICE BURGER: Very well, --

QUESTION: Mr. Crampton, just as a matter of curiosity, what is the routine used today by Special Agents? Do they have a -- do they give Miranda warnings now in consultations, before they start in?

MR. CRAMPTON: To my knowledge, they still give just the warning that was given here.

QUESTION: Here.

MR. CRAMPTON: That was -- apparently there was some conflict throughout the country as to what was being done. I think that's one of the reasons why the Internal Revenue Service issued this requirement. And, as far as I know, that's the one that's still in effect, and they are still using it.

QUESTION: And the buildup of the Seventh Circuit line

of cases hasn't changed that at all?

MR. CRAMPTON: No. No.

QUESTION: Unh-hunh.

MR. CRAMPTON: The Seventh Circuit really stands alone in requiring the Internal Revenue Service to go that far.

QUESTION: What about this administrative development that Mr. Gill told us he learned about Friday evening?

MR. CRAMPTON: Well, I read about it in the papers. It's some report that they made, saying that a lot of people have difficulties with examinations by the Internal Revenue Service, I guess. Well, I don't think that's really very new or very important. Everybody knows that. But the way to avoid that is --

QUESTION: Well, why was it news in the papers, then?

MR. CRAMPTON: Well, apparently, some group had been working for several years in building a report that was to be, I think, discussed with the Internal Revenue Service to see if changes could be made somewhere along in their administration.

QUESTION: Well, there were a couple of letters to the Editor criticizing one newspaper's treatment of it, too, weren't there? From the head of the Administrative Procedure Commission and from a former Commissioner of Internal Revenue.

MR. CRAMPTON: Yes, there were. Several of the Commissioners of Internal Revenue wrote in, saying that they

thought that the publicity given it had not been a fair appraisal of it. I do remember that.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 1:40 o'clock, p.m., the case in the above-entitled matter was submitted.]

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