

## THE NEWEST CONSTITUTIONAL RIGHT – THE RIGHT TO MIRANDA WARNINGS

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Until June 26, 2000, a person who was in custody and being subjected to police interrogation did not have a Constitutional right to be given *Miranda* warnings; *Miranda* warnings were just the mechanism by which a state or Federal law enforcement officer ensured that the subject of his custodial interrogation knew what his or her rights were before the interrogation began. If a law enforcement officer conducted a custodial interview without first giving *Miranda* warnings, it was not a Constitutional violation, and so the worst that could happen was the suppression of the improperly obtained statement. Today, because a person in custody has a Constitutional right to be given his *Miranda* rights, is it possible, even likely, that failure to give a subject *Miranda* rights will serve as the basis for a *Bivens* or Title 42, United States Code, Section 1983 civil rights claim? Only time will tell. Why did the Rehnquist Supreme Court, in an opinion authored by the Chief Justice himself, take this momentous step? To find the answer, we must look to the decision of *Dickerson v. United States*, 530 U.S. 428 (June 26, 2000) itself.

The essence of the Rehnquist decision is that a simple voluntariness test is too difficult to apply when trying to determine whether a statement that is taken without the benefit of *Miranda* warnings is reliable enough to be presented to a jury. Until the decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), the courts had fluctuated between concerns

over meeting the requirements of the Fifth Amendment (“no person shall be compelled in any criminal case to be a witness against himself”) and due process issues under the Fifth and Fourteenth Amendments, which required that no confessions should be coerced or obtained by overcoming a person’s voluntary free will.

In *Miranda*, the Supreme Court found that custodial interrogations by their very nature are coercive, and that in order to combat the coercive atmosphere, a subject had to be informed, in language that he could understand, of four fundamental rights: the right to remain silent, the act that anything he said could be used against him in court, the right to have an attorney present during questioning, and that one would be appointed to represent him prior to any questioning if he could not afford to hire one. In *Dickerson*, Chief Justice Rehnquist states that *Miranda* laid down “concrete constitutional guidelines for law enforcement agencies and courts to follow.”

In his decision in *Dickerson*, the Chief Justice comes to the conclusion that the rights set forth in *Miranda* are constitutional in nature based upon the fact that the *Miranda* decision and its two companion cases were state cases, not Federal; the U.S. Supreme Court does not have supervisory jurisdiction over state courts, and therefore the decision must have been Constitutionally based. The Chief Justice states: “*Miranda* requires procedures that will warn a suspect in custody of his right to remain silent and which will assure the suspect that the exercise of that right will be honored.” The opinion further states that even if this Court would not have issued *Miranda* in

the first place, because it is already in place, there must be compelling reasons to overturn it, and none have been presented. *Miranda* warnings have become such a part of our culture that this Court will not overturn them, and now they have Constitutional stature.

What is the practical result of *Dickerson* to a Law Enforcement Officer? Because of this decision, Law Enforcement Officers will need to be even more careful when evaluating a situation to determine whether, from the perspective of the subject, he or she reasonably could feel that it was a custodial interview. If the answer to that question is yes, then *Miranda* warnings must be given fully and properly. If an officer fails to give *Miranda* warnings in a situation that is later determined to have required them, under the decision issued in *Dickerson*, this would appear to be a violation of the subject's Constitutional rights. Will the failure to give *Miranda* warnings be grounds for a *Bivens* or §1983 action? Unfortunately, I believe that the answer, as a result of this decision, will be yes.