



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 180
September 1, 1993

RIGHT TO COUNSEL--VOLUNTARY WAIVER

Reference: Frederick D. May, Sr.
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1305
_____ P.2d _____

FACTS:

Acting on information furnished by an informant, police apprehended Frederick May as he was leaving the scene of a residential burglary. May was arrested, transported to the police station and advised of his Miranda rights. Two officers participated in the interview of May. The interview was recorded on audiotape and videotape. At one point, one of the officers left the interview room and shortly thereafter May said, "I'd like to have an attorney present." At that point, the interview was ended. The videotape had continued running. Then May told the officer he wanted to speak with Officer Mosher, the officer who had left the room earlier.

Officer Mosher talked with May regarding his earlier request to have an attorney present. He told May that he needed to clarify the request and then asked, "Do you want to have an attorney present first, or do you want to talk to me about something?" May said, "I just want to talk." At that time, May confessed to the burglary.

ISSUE:

Did May make a knowing and intelligent waiver of his right to counsel and did police scrupulously honor his right to counsel?

HELD: Yes.

REASONING:

1. Before Officer Mosher resumed questioning May about the offense, he focused specifically on May's request for an attorney and established that May did not want one present before talking to him.

2. An accused who requests an attorney, "having expressed a desire to deal with the police only through counsel, is not subject

to further interrogation by the authorities until counsel has been made available, unless the accused initiates further communications, exchanges or conversations with the police." (emphasis added)

3. Officer Mosher's inquiry concerning May's invocation of his right to counsel was proper, because it was prompted by May's own re-initiation of communication.

NOTES:

In this case, the officer made no attempt to discourage May from seeking legal counsel, but merely clarified that May wished to speak with him without legal representation.

Review of Section P of the manual is recommended--especially the following cases:

Edwards v. Arizona, Legal Bulletin No. 48
Sheakley v. State, Legal Bulletin No. 55
Hampel v. State, Legal Bulletin No. 97
Plant v. State, Legal Bulletin No. 107
Rhode Island v. Innis, Legal Bulletin No. 153

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P, "Right to Counsel and Waivers during Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 180 numerically under Section R of the manual.