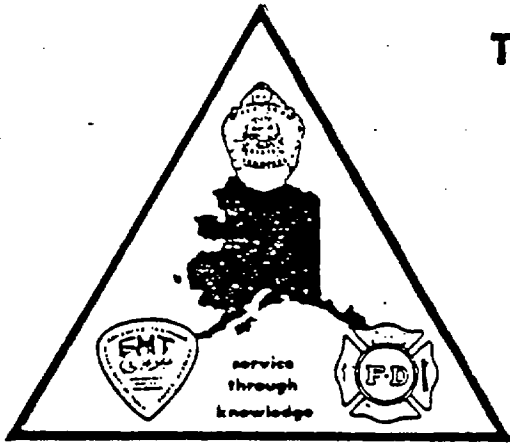


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 97



RIGHT TO COUNSEL DURING CUSTODIAL INTERROGATION

Reference: Roger A. HAMPEL
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 517
706 P.2d 1173
September 27, 1985

FACTS:

Police received a tip from an informant that HAMPEL and several others were involved in a homicide. Patrol officers spotted HAMPEL driving a vehicle and stopped him by blocking the path of his car. With guns drawn, the officers removed HAMPEL from his vehicle and placed him in the patrol car. He was not told he was under arrest nor that he was free to leave. A police investigator responded to the scene and told HAMPEL that his vehicle was possibly involved in a homicide and he wanted to talk with him at police headquarters. HAMPEL was told he was not under arrest.

During subsequent interrogation at the police station, HAMPEL was escorted to the bathroom and coffee room during breaks. He was never told he was free to leave. HAMPEL had been advised of his rights but, for the first hour, was not told he was a suspect in the homicide. Police merely told him they were interested in his vehicle. When one of the officers told HAMPEL he was a suspect, the following verbal exchange took place:

"HAMPEL: I've got one question.
OFFICER: Um-hum. Sure.
HAMPEL: Um, and the question is concerning a lawyer.
OFFICER: Concerning what?
HAMPEL: A lawyer.
OFFICER: Uh-huh.
HAMPEL: Okay, uh, first of all how would I be able to get one, a lawyer?"

The officer then began to elaborate on the fact that even though he was entitled to a lawyer, the system made it difficult to obtain one without first appearing before the court to determine if he was indigent, etc. HAMPEL then wanted to know where they would be kept until they got a lawyer if he or his friends were found guilty. He then stated, "...I'm not sure if I should even say anything right now or not, but I'll go ahead anyway." The officer continued the interrogation and obtained incriminating statements.

ISSUE: Was the interrogation of HAMPEL after he asked about obtaining a lawyer in violation of his constitutional rights?

HELD: Yes.

REASONING:

1. HAMPEL was in custody at the time he made his incriminating statements.
2. Miranda requires that a suspect be informed of his Fifth (self incrimination) and Sixth (right to counsel) Amendment rights before custodial interrogation. Custodial interrogation means 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. (emphasis added)
3. Having expressed his desire to deal with the police only through counsel an accused in custody is not subject to further interrogation by the authorities until counsel has been made available to him unless he validly waives his earlier request for the assistance of counsel. (emphasis added)
4. HAMPEL interrupted police questioning to ask, "...first how would I be able to get one, a lawyer?" It is clear that the interrogating officers did not attempt to clarify HAMPEL's request about obtaining a lawyer, but did manage to emphasize the obstacles involved in trying to obtain one.

NOTES:

Once a person in custody has asked about seeing an attorney, you must establish that you had scrupulously honored that request and that any further conversation had been initiated by the subject.

You should review the following cases:

Edwards v. Arizona, Legal Bulletin No. 48, which discusses the right to counsel during custodial interrogation and what constitutes a defendant's "initiation" of additional contact.

Sheakley v. State, Legal Bulletin No. 55, where the in-custody defendant first requested counsel then later changed his mind by initiating contact with the police.

Oregon v. Bradshaw, Legal Bulletin No. 74, where the in-custody defendant changed his mind and initiated contact with police.

Alili v. State, Legal Bulletin No. 77, where the defendant did not make a waiver of rights during continued interrogation.

Smith v. Illinois, Legal Bulletin No. 89, where the defendant asked about a lawyer but the officer kept reading the Miranda rights and then questioned him--this case is very similar to the HAMPEL case contained in this Bulletin No. 97.