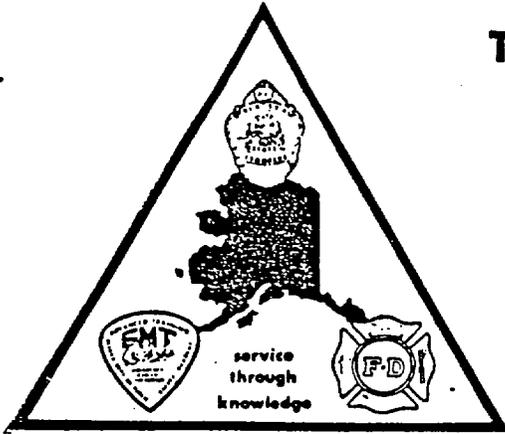


# DEPARTMENT OF PUBLIC SAFETY

## TRAINING ACADEMY

LEGAL BULLETIN NO. 55  
May 18, 1982

### RIGHT TO COUNSEL--VOLUNTARY WAIVER



Reference: Ross T. SHEAKLEY  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 87  
644 P.2d 864  
May 13, 1982

#### FACTS:

SHEAKLEY got into an argument with his girlfriend in a bar located in Haines, Alaska. The argument moved to the street and SHEAKLEY began to beat her; the police were called. Officer Gorman responded and attempted to resolve the dispute by separating the two. SHEAKLEY began to fight with the officer and knocked him to the ground causing the officer to lose consciousness. When the officer came to, SHEAKLEY was kneeling on top of him and forced his finger into the eye socket of Officer Gorman and gouged out his eye. The officer attempted to plead with SHEAKLEY, but SHEAKLEY told him when he was done gouging out one eye he was going to do the same to the other eye then drag him into the bushes and kill him. SHEAKLEY then took the officer's service revolver. The officer was able to get away and request help from persons in a car. SHEAKLEY pulled his girlfriend into the patrol car and, after firing the officer's revolver, drove away.

Hours later, Police Chief Fain arrested SHEAKLEY. Enroute to the police station, SHEAKLEY was read his Miranda warnings. SHEAKLEY was not interviewed at that time. After SHEAKLEY was placed in a cell, he asked to call his attorney. Chief Fain told him the attorney he wanted would not be in his office and lived out of the city and had no home telephone. The Chief told SHEAKLEY to wait until around 9:00 a.m. and SHEAKLEY said that would be alright. At about 9:00 a.m., the Chief attempted to call the attorney and there was a recording device on the phone; the Chief advised SHEAKLEY of this.

Around noon, SHEAKLEY asked to speak with Chief Fain; he wanted to "tell him his side of the story". SHEAKLEY was taken out of the cell and the Chief dialed the attorney's number and again received the tape-recorded message. The Chief gave the phone to SHEAKLEY who did not leave a message for the attorney. SHEAKLEY asked about other attorneys in Haines and was given two names. An attorney by the name of Blanton was contacted and spoke on the phone with SHEAKLEY. Blanton told SHEAKLEY that he would not be able to represent him because he represented the City of Haines. Blanton further advised SHEAKLEY he would soon be transported to Juneau and the Public Defender Agency could represent him. SHEAKLEY was advised

by Blanton that "he need not make any statements to the police at all". At the end of the conversation, Chief Fain asked SHEAKLEY if he still wanted to talk to him and SHEAKLEY responded that he did. SHEAKLEY was again given the Miranda warnings and then questioned.

SHEAKLEY was subsequently convicted and sentenced to twenty-five years in prison. SHEAKLEY raised several issues in appeal.

ISSUE:

Was SHEAKLEY's request for counsel fully honored and was his statement to Chief Fain voluntarily given?

HELD: Yes.

REASONING:

1. Chief Fain did not question SHEAKLEY before nor after his request for counsel.

2. After making his initial request, SHEAKLEY took the initiative and attempted to tell Fain "his side of the story". Even at this stage, Fain refrained from taking any statements and assisted SHEAKLEY in contacting an attorney. (emphasis added)

3. After SHEAKLEY spoke with Blanton, he was again advised of his rights and was once more asked if he wanted to make a statement--only when SHEAKLEY replied that he did was he allowed to proceed.

4. The police were under no obligation to continue calling until they reached an attorney who happened to be in and who could represent SHEAKLEY.

NOTES:

SHEAKLEY's initial request for counsel was fully honored and he subsequently waived it voluntarily.

There were several other issues presented to the court. One had to do with a photograph of the injuries sustained by the officer; the photograph was properly admitted. A defense psychiatrist gave testimony on "alcohol amnestic syndrome" and in an attempt to discredit the psychiatrist the prosecutor questioned him on a college course he had planned on "sexual dysfunction" which included class participation with a surrogate sexual partner. The psychiatrist had also once modeled male underwear and this also was brought out by the prosecutor on cross-examination. The court recognized that the prosecutor was attempting to discredit the psychiatrist by making him appear foolish. The court felt that this was improper cross-examination of the psychiatrist, but it did not amount to "plain error." The sentence was also upheld.

It is suggested that Edwards v. Arizona, Legal Bulletin No. 48, be reviewed. This case surrounds the right to counsel during custodial interrogation and "initiated contact" on the part of the defendant.