



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 166  
January 3, 1992

## CUSTODIAL INTERROGATION OF PERSON NOT UNDER ARREST

Reference: Rochette Moss  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1189  
P.2d  
December 27, 1991

### FACTS:

At approximately 6:00 p.m. on November 9, 1988, ten police officers dressed in police-marked raid gear served a search warrant on the Moss residence. All of the officers had their weapons drawn when the warrant was being served. Four persons, including Moss, were inside the residence. The warrant authorized a search for drugs. After first searching a couch, occupants of the residence were ordered to sit on it so they could be easily observed. Police wanted to make sure no-one was able to destroy evidence or have access to weapons. A uniformed officer was stationed at the entrance to the residence for about twenty minutes to ensure that no-one came in or left.

After securing the residence, the occupants were told that they were not under arrest and the police would be "out of their hair" and gone as soon as the search was completed. Several occupants, including Moss' wife, elected to leave the residence.

Moss went to a back bedroom with one of the officers and was questioned regarding his drug activities. Moss subsequently made some admissions that were used against him at his trial. He was not given his Miranda warning. Upon completion of the search, which lasted about two hours, police left the residence. Moss was not arrested at that time.

ISSUE: Was Moss in custody for purposes of Miranda?

HELD: Yes.

### REASONING:

1. Custodial interrogation means questioning initiated by law-enforcement officers after a person has been taken into custody or otherwise deprived of freedom of action in any significant way. (emphasis added)

2. The amount of force which police used to enter and maintain control is a factor which supports the finding that any reasonable person in Moss' position would have felt that he or she was in

police custody.

3. Moss was in custody during police questioning. Police entered Moss' residence at gunpoint and controlled his and the other occupants' movements, at least at the beginning of the search.

NOTES:

Whereas, for safety reasons, the court does not have a problem with officers having weapons drawn during this type of entry, it seems apparent that in the future when weapons are drawn persons interviewed should be advised of their Miranda rights just in case the court considers them to be in custody.

Because there was a dissent on this case, it is possible that the Attorney General will appeal it to the Alaska Supreme Court.

Review of Section P of your Alaska Legal Briefs manual is suggested.

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. 166 numerically under Section R of the manual.