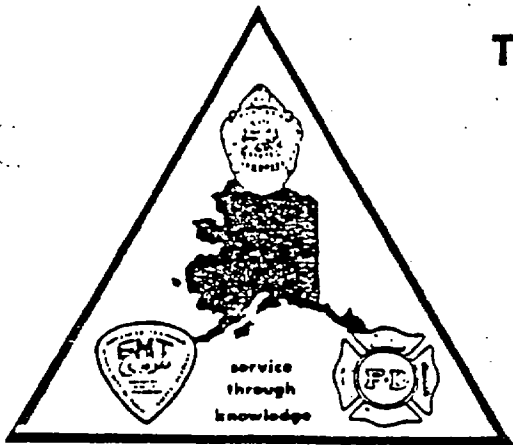


TRAINING ACADEMY

LEGAL BULLETIN NO. 89KNOWING AND INTELLIGENT
WAIVER OF RIGHTSReference: SMITH v. IllinoisUnited States Supreme Court
36 CrL 4126
December 10, 1984FACTS:

Steven SMITH, age 18, was arrested for armed robbery. He was taken to an interrogation room by two police officers. SMITH was given his Miranda rights by one of the officers and the following exchange took place:

"...Q: You have a right to consult with a lawyer and to have a lawyer present with you when you're being questioned. Do you understand that?"

A: Uh, yeah. I'd like to do that."

The officer then continued to read SMITH his rights and asked him if he wanted to talk without a lawyer. SMITH replied, "Yeah and no, uh, I don't know what's what, really." The officer then told SMITH that he could talk to him without a lawyer present and that he could "stop at anytime you want to." SMITH agreed to talk and made some incriminating statements before cutting off questioning and requesting an attorney. The initial statements were used at SMITH's trial and he appealed.

ISSUE:

Did the police scrupulously honor SMITH's request for a lawyer?

HELD: No.

REASONING:

1. SMITH invoked his right to counsel when he said, "Uh, yeah, I'd like to do that," in response to the advisement of the right to counsel.

2. An accused in custody, "having expressed his desire to deal with the police only through counsel, 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 assistance of counsel. (emphasis added)

If the accused invoked his right to counsel, courts may admit his reponses to further questioning only on finding that (a) he initiated further discussions with the police, and (b) he knowingly and intelligently waived the right he had invoked. (emphasis added).

NOTES:

Remember--a valid waiver "cannot be established by showing only that the accused responded to further police-initiated custodial interrogation." (see Edwards v. Arizona)

It is not sufficient to merely read the Miranda warning; you must also have a valid waiver.

You should review the following bulletins:

Edwards v. Arizona, Legal Bulletin No. 48, which discusses the right to counsel during custodial interrogation.

Oregon v. Bradshaw, Legal Bulletin No. 74, where defendant initially requested attorney then "changed his mind" by initiating contact with the arresting officer.

Alili v. State of Alaska, Legal Bulletin No. 77, where police gave defendant his Miranda warning, but did not receive a valid waiver; his subsequent confession was suppressed.

It is essential you understand that Miranda requires two distinct and different preparations. You must first give the warning and second obtain a knowing and intelligent waiver. It will be up to you to demonstrate that the defendant's legal rights were scrupulously honored.