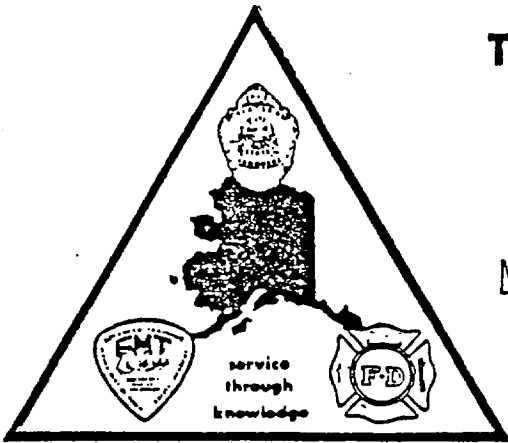


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 99
December 10, 1985



MANDATORY RECORDING OF STATEMENTS FROM PERSONS IN CUSTODY

Reference: Donald STEPHAN
and
Malcom Scott HARRIS
v.
State of Alaska

Alaska Supreme Court
Opinion No. 2996
711 P.2d 1156
December 6, 1985

FACTS:

STEPHAN and HARRIS were arrested on unrelated criminal charges, taken to police stations and questioned (HARRIS was questioned on two separate occasions). Both defendants made inculpatory statements. In each instance, a working audio or video recorder was used during part, but not all, of the interrogation. The statements were admitted into evidence at trial over the objections of the defendants. HARRIS argued that he could have established the fact that he had not been informed of his Miranda rights if the entire interview had been recorded. STEPHAN argued that his confession was induced by promises of leniency and was obtained after he had requested an attorney. Both arguments were resolved in favor of the police at their respective suppression hearings.

ISSUE:

Is a recording a requirement of state due process when the interrogation occurs in a place of detention and a recording is feasible? (emphasis added)

HELD: Yes.

ISSUE:

Should evidence of the confession of a person in custody be excluded when police fail to record the interrogation in its entirety?

HELD: Yes.

REASONING:

1. Recording is a reasonable and necessary safeguard, which is essential to the adequate protection of right to counsel, right against self-incrimination and, ultimately, right to a fair trial for the accused.
2. Alaska's Constitution (Article I, Section 7), in this instance, affords rights beyond those guaranteed by the United States Constitution.

3. A recording requirement is justified, because a tape recording provides an objective means for evaluating what occurred during interrogation.
4. In both cases, the police were engaged in custodial interrogations in a place of detention. Compliance with the recording rule is not unduly burdensome under these circumstances. (emphasis added)
5. Exclusion is warranted because the arbitrary failure to preserve the entire conversation directly affects a defendant's ability to present his defense at trial or at a suppression hearing.

NOTES:

This exclusionary rule applies only to custodial interrogations conducted in a place of detention. However, the court went on to say:

"In a future case, however, we may be persuaded to extend the application of this rule, particularly if it appears that law enforcement officials are engaging in bad faith efforts to circumvent the recording requirement set forth in this opinion."

You might say this puts the police on probation. Do not try to "get around" this opinion by, for instance, trying to conduct a lengthy interrogation v parked in your vehicle instead of going to the police station. Remember--this opinion has to do with custodial interrogations at a place of detention.

SPECIAL NOTE TO POLICE ADMINISTRATORS:

The court also puts you on notice to change policy and enforce any violations by individual officers. The court states:

"The imposition of sanctions against an individual officer will not necessarily solve what appears to be a systemic problem. Agency policy and operations must change, not simply individual behaviors. We are confident that law enforcement agencies will establish effective procedures to implement the rule and provide adequate training for their personnel." (emphasis added)