



---

# DPS TRAINING BULLETIN

---

LEGAL BULLETIN NO. 153  
February 19, 1991

## RIGHT TO COUNSEL - VOLUNTARY WAIVER

Reference: State of Rhode Island  
v.  
Thomas J. Innis

United States Supreme Court  
446 US 291  
May 12, 1980

### FACTS:

Innis was identified from a photograph as the person responsible for the armed robbery of a taxi driver. A shotgun was used in the robbery. The body of another taxi driver, killed by shotgun blast, had been discovered several days prior to the second robbery. A police officer observed Innis on a public street in the vicinity of a school for handicapped children. Innis was arrested and several officers, including a police Captain, advised him of his Miranda rights. Innis stated he understood his rights and wanted to speak with a lawyer. The Captain on the scene directed three officers to transport Innis to the police station and instructed them not to question nor intimidate him in any way.

Enroute to the police station, two of the officers engaged in a conversation between themselves concerning the missing shotgun. One of the officers stated that there were "a lot of handicapped children running around in this area" because a school for such children was nearby, and "God forbid one of them might find a weapon with shells and they might hurt themselves."

Innis interrupted the officers' conversation, stating they should turn the car around so he could show them where the gun was located. Upon returning to the scene, he was again advised of his Miranda rights and stated he understood them but "wanted to get the gun out of the way because of the kids in the area in the school." The gun and his statements were used against him at his trial for the robbery and the homicide of the taxi driver.

### ISSUE:

Was Innis interrogated in violation of the standards promulgated in the Miranda opinion?

HELD: No.

### REASONING:

1. There was no express questioning of Innis; the conversation between the two officers was, at least in form, nothing more than a dialogue between them to which no response from Innis was invited. (emphasis added)

2. Innis was not subjected to the "functional equivalent" of questioning, since it cannot be said that the officers should have known that their conversation was reasonably likely to elicit an incriminating response from Innis. (emphasis added)

3. There is nothing in the record to suggest that officers were aware that Innis was peculiarly susceptible to an appeal to his conscience concerning the safety of handicapped children.

4. Volunteered statements of any kind made to police are not barred by the Fifth Amendment privilege against self-incrimination and are admissible in evidence.

NOTES:

Innis initiated communication in this case, thereby making a volunteered statement. Compare/contrast this case with Brewer v. Williams, Legal Bulletin No. 154, where police initiate communication in the famous "Christian burial" case.

Both Innis and Williams are older cases, but should be made a part of the Alaska Legal Briefs manual. A general review of Section P of the manual is recommended.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P of your Contents and Text. File Legal Bulletin No. 153 numerically under Section R of the manual.