

MAINE STATE LEGISLATURE

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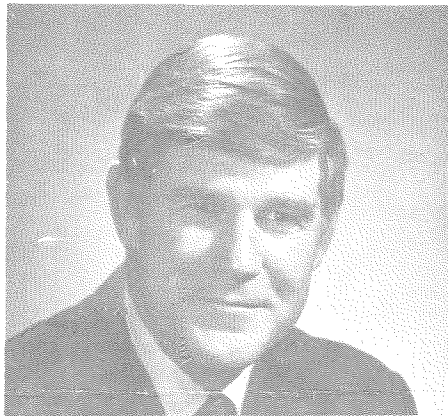
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JANUARY 1971

ALERT

CRIMINAL DIVISION

FROM THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF MAINE.



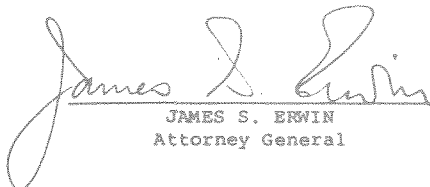
MESSAGE FROM THE ATTORNEY GENERAL JAMES S. ERWIN

In this month's issue of ALERT, we have focused our lead article in the area of bomb threats, a problem that has been plaguing many Maine communities, particularly throughout the last year. We feel it important that this subject be gone into in some depth, since there seems to be a complete lack of uniformity of procedures in this area. Materials on this subject from throughout the country have been examined in detail, resulting in what we feel are a set of guidelines that will be useful to all law enforcement agencies in coping with this most urgent problem.

I would like to emphasize that these guidelines should not be taken as the law of the State of Maine, but merely as suggested procedures that this office feels are workable and would bring some uniformity of approach to bomb threat situations.

Also, you will find included, the present laws in reference to bomb threats and the depositing of bombs as contained in Title 17 of the Maine Revised Statutes Annotated. I would solicit from each and every one of you any suggestions that you might have to strengthen these laws as they now exist and any suggestions communicated to this office will be evaluated to determine whether or not legislation should be introduced into the 105th Legislature.

I might also mention, in closing, that the Criminal Division is presently drafting amendments to other criminal statutes that we feel will be of aid to law enforcement. Later issues of ALERT will go into these proposed statutory changes in more detail.


JAMES S. ERWIN
Attorney General

BOMBS AND THE HANDLING OF BOMB SITUATIONS

In recent years, there has been an increasing resort to violence in our society whether it be in furtherance of political goals or as the isolated expression of pranksters or disturbed individuals. One aspect of this trend has been the use of bombs and bomb scares either to actually destroy lives and property or to disrupt the daily routine of established institutions. The targets of these attacks and threats have usually been buildings housing schools, churches, governmental agencies, military units, or banks.

Because of the danger to lives and property and the emergency circumstances always surrounding a bomb scene, it is essential that law enforcement officers be prepared to act in a quick, safe, orderly, and intelligent manner. Some areas in Maine that have already experienced bomb threats have already set up coordinated procedures for handling these situations through conferences of concerned citizens and law enforcement officials. This article will draw from knowledge accumulated at these conferences and from information disseminated by the F.B.I. and other law enforcement agencies throughout the country.

The guidelines that will be set out here are not designed to be rigidly followed by all law enforcement agencies in all areas. The size, location, population, and other characteristics of a particular city or town must all be considered in handling situations involving bombs or bomb threats. Furthermore, many of the suggestions, such as those dealing with crime scene searches and investigative techniques will be applicable to crimes other than bombing. Therefore, parts of this article should be read broadly and not as applying exclusively to bomb situations.

Jurisdiction

The primary responsibility for the investigation and control of bomb and

bomb threat offenses rests upon local law enforcement agencies. Bombings are acts of violence which are clear cut violations of State laws, and although they may have a political, religious, or racial basis, they are nevertheless subject to State jurisdiction. The applicable statute in the State of Maine appears in the column FROM THE LEGISLATURE in this issue.

Although the responsibility for handling bomb situations rests with state and local law enforcement authorities, the F.B.I. will provide certain supplemental services when needed. The resources of its laboratory and fingerprint facilities are available when this type of scientific analysis is necessary. Also, the F.B.I. will cooperate by covering out-of-State leads of interest to State and local law enforcement agencies in their investigations.

CHARACTERISTICS OF BOMBS

Although it is beyond the scope of this article to go into detail concerning the makeup and detonation of the many different kinds of explosives, the law enforcement officer should be generally familiar with this information both for safety purposes and to aid him in conducting an intelligent investigation. Therefore a brief description of explosive materials and initiators follows.

Explosive Materials

In general, all explosive materials may be classified as "low" or "high" explosives. Low explosives, such as black powder and smokeless powder, produce their effects by rapid combustion accompanied by the creation of large volumes of gases. Black powder may be packed in cylinders or pellets, or stored loosely in kegs or cans. Explosions of "low" explosives are readily recognized by the general overall destructiveness, without excessive fragmentation, which results.

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High explosives, such as dynamite, nitroglycerin, and a large group of military explosives, including TNT, RDX, and other plastic explosives, produce their effects by a molecular rearrangement which results, practically instantaneously, in the production of large volumes of gases and shock waves with devastating results.

Dynamite is ordinarily packaged in short cylindrical sticks. Nitroglycerin is a somewhat oily colorless liquid which may be tinged with brown or yellow. It is extremely sensitive to even slight shock and cannot be handled safely by persons who are not professional explosive men, no matter what the container may be. The military plastic explosives come in blocks resembling whitish putty. Explosions resulting from "high" explosives are characterized by extensive fragmentation of objects near the focus of the charge and less intensive fragmentation at greater distances from the detonation point.

Initiators

Each group of explosives requires a particular ignition or detonating system. "Low" explosives require a spark or flame to detonate them. A widely used method of igniting "low" explosives is "safety fuse", which is made of black powder and has a black core. It burns at a standard rate to allow determination of delay periods. Electrical methods, such as a "squib", may also be employed to initiate "low" explosives. However, the delaying fuse need not be complex and may be something as simple as a burning cigarette.

There are several methods of detonating "high" explosives. The "detonating fuse" is ropelike in appearance with a core, usually white, of high explosive material. It is an explosive in itself or may be used to set off other explosives in contact with it. A common type is known as Primacord.

Fuse caps and electric blasting caps may also be used to detonate "high" explosives. Both are sensitive to shock, friction, and heat. Electric blasting caps are small metal cylinders with two wires protruding from one end or an open end for the insertion of an ignition fuse. Under certain circumstances, even a radio transmitter can detonate an electric blasting cap.

Considering the above information, only the greatest care should be exercised if any of the above materials are found by a law enforcement officer. An explosives expert should be called immediately and under no circumstances should any heat, shock, or

electric current be applied to or near the materials. The materials should be kept under police guard and no-one allowed near them until an explosives expert declares the area safe.

ANALYSIS OF THE BOMB PROBLEM

In examining the problems posed by bombings and threats of bombings, there are four different sets of circumstances under which law enforcement authorities will be faced with deciding what action is called for.

1. No actual bomb threat has been received, but conditions in the area or the presence of likely bombing targets make it advisable to take preventive steps.

2. A bomb scare or threatening message has been received.

3. An unexploded bomb or suspected bomb has been located.

4. An actual bomb explosion has occurred.

Likely Bomb Threat Area

In any area where likely bombing targets exist or conditions indicate the potential for this type of crime, the local law enforcement agency should give careful consideration to preventive planning and precautionary measures. These steps are important because they may lead to the identification of a bomber or potential bomber or even cause a potential bomber to abandon his plan.

The following steps, which may be taken even prior to the receipt of a bomb threat, are not to be considered as complete or mandatory. Procedures will vary according to such factors as manpower, equipment, time, locale, etc.

1. Compile a list of educational, religious, governmental, and military institutions which might be targets for bombings.

2. Know the principle responsible officials connected with such places and the locations of their residences, as such residences might also be targets for bombings.

3. Contact these officials and also people in the surrounding neighborhoods and ask them to be on the alert for unusual activity or the presence of individuals who might be "casing" a particular place.

4. Stress the necessity for immediately reporting a bombing or attempted bombing.

5. Set up a system for receiving reports of such activity to the police. It may be desirable to have one officer responsible for receiving and coordinating information and handling investigations.

6. Manpower permitting, coordinate and focus police patrol on critical areas.

7. Solicit cooperation of responsible civic organizations and leading citizens.

8. Treat every complaint at the outset as a legitimate one, and immediately and thoroughly check it out.

9. Establish contact with all users and suppliers of explosives. Have them report any unusual sales, thefts, or missing supplies of explosives, and check out suspicious actions.

10. Establish contact with other law enforcement agencies in the general area.

11. Inform officials and citizens of preliminary actions to take should an actual bombing occur. This would include being alert for persons or cars fleeing the scene and cordoning off the scene to protect and preserve it for law enforcement investigators.

Bomb Threat

The following procedures are suggested should an actual bomb threat be received and reported to police.

1. Every bomb threat should be treated at the outset as legitimate. It cannot be assumed that it is the work of a crank or prankster.

2. At the target area, crowds should be dispersed and the area roped off for the protection of onlookers and to facilitate operations by law enforcement personnel. All non-official personnel should be kept a distance of at least 300 feet from the danger zone.

3. The advisability of evacuation of the building should be stressed. However, this decision is up to the official in charge of the building.

4. Law enforcement officers should make sure that the evacuation, if any, is carried out calmly and orderly and that it is complete. Established evacuation procedures of the particular building should be followed. Care should be taken to ensure that trigger-type bombs are not activated along the route of march.

5. The search for the reported bomb must be planned and the plan followed to the letter. Otherwise, areas that might conceal the bomb might not be properly probed. Where possible, local law enforcement officials should become familiar with the layout and physical characteristics of potential target buildings.

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6. A thorough interview must be conducted with the person who received a telephoned bomb scare report in an effort to identify the caller. The interview must go into infinite detail as to the exact language used; the possible age of the caller; the accent; voice characteristics; and any racial, religious or political threats. Exact time and date are also important.

7. A control file should be opened where all reports on threats of bombing may be filed, coordinated, and studied. By studying the details, a pattern may emerge by which the caller may be identified.

Finding a Bomb

In view of the infinite possible varieties of bombs, no definite procedure can be established for handling all of them. The most important consideration of the law enforcement officer is to safeguard human life and property. With this in mind, the following procedures are called for in practically all instances where a bomb or suspected bomb is discovered.

1. If not already done, the danger area should be cleared of all unnecessary personnel. Persons evacuated should be removed at least 300 feet from the point of possible explosion.

2. An organized police guard should be established outside the danger area until experts have either rendered the bomb harmless or removed it.

3. Power, gas, and fuel lines leading into the danger area should be shut off, and flammable materials in the surrounding area should be removed if possible.

4. The services of a competent explosives expert should be obtained. No law enforcement officer, unless he is a qualified bomb expert, should approach or attempt to move the bomb. Any jarring, tilting, or turning of the bomb or anything connected with it could trigger it off.

5. Arrangements should be made for fire department, rescue, and medical assistance to stand by. Barricade materials such as sandbags and mattresses should be used for protection against flying objects and as shields for personnel.

6. Once the bomb has been rendered harmless or removed, it should be preserved for investigative leads such as fingerprints.

7. Re-entry of the building will be by order of the official in charge

of the building upon the advice of law enforcement officials. Therefore, law enforcement officials must be certain that all possible steps have been taken to ensure that the building is safe to re-enter.

Actual Bomb Explosion

In the event of an actual bombing, police must proceed to the scene without delay in order that the area will be protected from the intrusion of unofficial persons motivated by curiosity. Once again, safety should be the primary consideration and the crime scene area should be roped off to allow fire, medical, and other emergency personnel to operate freely and to guard against the dangers of secondary explosions. The bomb scene should also be continuously guarded to preserve it for the gathering of evidence.

After the vital steps mentioned above are taken, the efforts of law enforcement officers will be directed toward identifying the person or persons responsible for the crime. It is here that the collection, identification, preservation, and examination of evidence plus the techniques of interviewing become important. These topics will be discussed in detail in the February issue of ALERT.

FROM THE LEGISLATURE

Although the Maine Statute on bombs has been in effect for some time, it is set out here to supplement this month's lead article.

BOMBS

Title 17 M.R.S.A. Chapter 21

§ 501. Sending or deposit of

Whoever sends or procures to be sent to another or deposits or procures to be deposited any bomb or infernal machine, with intent that the same shall explode to cause injury to the person or property of another, whereby any person is injured, shall be punished by imprisonment for any term of years. If upon explosion no person is injured, the imprisonment shall be for not more than 20 years.

§ 502. Construction, assembling or possession

Except for lawful purposes in any instance, whoever knowingly constructs, assembles, or knowingly has in his possession any device, bomb or infernal machine capable of being exploded, or knowingly possesses materials appropriate for the construction thereof, shall be punished by a fine of not more than \$1,000 or by imprisonment of not more than 15 years, or by both.

§ 503. False reports of bombs

Whoever gives a false report, knowing such report to be false, to anyone as to the deposit of any bomb or infernal machine in any place shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

§ 504. Calling out public agency on false report

Whoever calls out or causes to be called out any fire department, police department or other municipal department, sheriff department or State Police, or any portion or persons thereof, by intentionally giving a false report as to the deposit of any bomb or infernal machine in any place, knowing such report to be false, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 5 years, or by both.

NOTE:

With the support of a \$228,301 LEAA Grant, the International Association of Chiefs of Police has established the National Bomb Data Center to provide comprehensive information on the handling of bombing incidents to law enforcement agencies. This material will supplement and expand upon the information contained in this month's ALERT. A pamphlet describing in detail the services offered by the National Bomb Data Center is available on request from the International Association of Chiefs of Police, 1319 18th Street, N.W., Washington, D.C. 20036.

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine.

ALERT

The matter contained in this bulletin is information for the criminal law community only. If there is any question as to the subject matter contained herein, the cases cited should be consulted. Nothing contained herein shall be considered as an Official Attorney General's opinion unless otherwise indicated. Any change in personnel, or change in address of present personnel should be reported to this office immediately.

James S. Erwin Attorney General
Richard S. Cohen Chief, Criminal Division
John N. Ferdice Editor

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IMPORTANT RECENT DECISIONS

Note: Cases that are considered especially important to a particular branch of the law enforcement team will be designated by the following code: J - Judge, P - Prosecutor, L - Law Enforcement Officer.

Admissibility of Scientific Evidence J

The defendant was convicted of murdering his ex-sweetheart's fiancee by sending him a bomb through the mail. The evidence against him was largely circumstantial and he contended that the admission of expert testimony as to results of tests conducted by a process known as neutron activation analysis was improper. The basis of his contention was that the test is new and unreliable and has not yet been generally accepted by scientists in its field.

The appeals court affirmed the defendant's conviction holding that the lower court's admission of the disputed evidence was not reversible error. The standard for admissibility is whether the test in question has become sufficiently established to have gained general acceptance in its particular field and the trial judge has considerable discretion in determining this. Questions of newness or unreliability go only to the weight of the evidence and are for the jury to decide.

U.S. v. Stifel, 6th Circuit Court of Appeals (October 1970).

Disclosed Informant JP

An airlines official in California spotted marijuana in an open suitcase owned by the defendant who was about to depart for New York. The airlines official notified federal agents, who in turn informed the New York police of defendant's description and other details. Defendant was arrested without a warrant and searched upon landing in New York.

At the trial, the informant's reliability was not shown by proof that other information furnished by him in the past had resulted in arrests and convictions. However, the appeals court held that this requirement applies only to undisclosed informants.

Here, the informant's name was known and the defendant could have investigated, conferred with, interrogated, or subpoenaed him to trial.

People v. Foley, New York Supreme Court, Queens County (November 1970).

Obscenity JPL

A California couple exchanged admittedly obscene films through the mail with the defendant in New York. These films were intended for private enjoyment of the recipients involved. Defendant's conviction under the Comstock Act for sending obscene matter through the mails was reversed on appeal.

The decision was based on *Stanley v. Georgia*, which held that a person has the right to enjoy obscene material in the privacy of his home. The court said that this right included the right to get the snut to be savored in the home. Other factors which persuaded the court were that the defendant did not "pander" the goods, did not mail to unsuspecting recipients, nor display his wares on some streetcorner. Also, there was no commercial gain involved on either side.

U.S. v. Dellapina, 2nd Circuit Court of Appeals (October 1970).

Entrapment JP

The defendant appealed his conviction of selling heroin, claiming entrapment as a defense. The court applied an entrapment test which did away with the traditional bifurcation into subissues of inducement and predisposition. Under this new test, if the defendant shows, through government witnesses or otherwise, that the government agents corrupted him, the burden of disproving the entrapment is on the government. However, a showing of corruption is not made simply by evidence of solicitation. There must be some evidence to show unreachiness.

U.S. v. Rodrigues, 1st Circuit Court of Appeals (October 1970).

MAINE COURT DECISIONS

Fair Trial — Judge Contact with Jury J

The petitioner had been convicted of murder and sentenced to life imprisonment. He sought post-conviction habeas corpus, claiming that because of the contact of the presiding justice with the jury during his trial, petitioner was deprived of his constitutional rights to a fair trial and of his liberties without due process of law.

During the period of the trial, the presiding judge on one occasion had talked briefly with one of the jurors outside the motel where the jury and

judge were staying. The judge had also visited the motel recreation room and met socially with the jurors for about a half hour one evening. In neither instance was there any talk about the case.

The principle that applies here is that when a jury is physically segregated from outside contacts and influences in a criminal case, and there is a conversation with a third party by a juror, prejudice will be presumed until rebutted by the State by clear and convincing proof. In this case, the finding was that the judge's contact with the jurors was motivated by the friendly interest of the judge and there was no evidence to the contrary. The presumption of prejudice from these contacts was found by the Court to have been overcome by clear and convincing evidence. *Reed v. State of Maine*, Docket No. 635, (October 1970).

Fair Trial — Composition of Jury JP

The appellant sought appeal from a denial of post-conviction habeas corpus relief, claiming that the trial jury which convicted him in a rape case was unlawfully constituted in violation of the U.S. and Maine Constitutions.

In the habeas corpus proceeding below, the Court found that the jury composition was not representative of the area served by the jury either as to occupations or population distribution. However, the irregularity was not found to be the result of design, but the fault of the system and the petitioner's failure to timely raise objection to the array of jurors.

The Maine Supreme Judicial Court agreed on the basis that there is no constitutional requirement that jury panels should be *in fact* representative of a cross-section of the community. The real issue is whether the jury lists or rolls from which the panel was drawn were made up from an artificially limited base or in a discriminatory manner such as when the absence of a class from the jury pool results from design or discrimination.

In this case, even though there were irregularities in the system for selecting a jury panel, the Court found that there was no evidence tending to show that any class of persons eligible for jury service was purposefully excluded, nor was there proof of any systematic discriminatory practices disenfranchising any social group from jury service. *Christian v. State of Maine*, Docket No. 624, (August 1970).