APRIL, 1972

ALERT

CRIMINAL DIVISION

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

CONSENT SEARCHES I

In the very first issue of the ALERT Bulletin, in October of 1970, there appeared a discussion of consent searches as part of an article on the law of search and seizure. Because of the broad nature of the search and seizure article, the section on consent searches was necessarily brief and limited to basic rules and guidelines. Since the law in this area can be somewhat confusing and since law enforcement officers are often faced with opportunities to perform consent searches, it was felt that a more detailed discussion of the topic would be helpful. We are therefore devoting the main article of this and next month's ALERT Bulletin to consent searches.

It is a well established rule that the constitutional right of an individual to be secure in his person, house, and effects against unreasonable searches and seizures is a privilege which may be waived. A waiver is judicially defined as an intentional relinquishment of a known right or privilege. There are several ways in which a person may waive his Fourth Amendment rights. However, we will be concerned here only with consent searches, which are the principle medium by which waiver of Fourth Amendment rights is accomplished.

The basic idea of a consent search involves an individual allowing a law enforcement officer to search his person, premises, or belongings when the officer has neither a warrant nor justification for the search under any of the exceptions to the warrant requirement. (See ALERT, October 1970, page 2). The individual thereby relinquishes any right he has to object to the search on constitutional grounds. Furthermore, any evidence seized as a result of the search will be admissible in court despite the fact that there was no warrant and no probable cause.

It is not surprising then, that the consent search is frequently relied on by law enforcement officers because it does not require the time-consuming paper work involved in requesting a warrant nor does it require the often difficult determination of whether there is probable cause either to search or to arrest. However, because of this comparative lack of effort required to obtain a consent to search, the courts will indulge every reasonable presumption against a waiver of any person's Fourth Amendment rights, in order to protect individuals from intrusions on their privacy. As a result the courts have developed strict waiver requirements which must be met before any evidence seized as a result of a consent search will be admitted in court. Stated briefly, these requirements are as follows:

1. That the person from whom the consent is sought knows that he has a right **not** to consent to the search;
2. That the consent is given freely and voluntarily and not as the result of submission to an express or implied assertion of authority or other form of duress or coercion;
3. That the consent is clear and explicit.

When the prosecuting attorney attempts to introduce evidence into court, obtained as a result of a consent search, the court will require him to prove by "clear and convincing evidence" that the above requirements for a valid consent have been met. The prosecutor's ability to prove this will depend largely upon the actions taken by the law enforcement officer in obtaining the consent and conducting the search. The remainder of this article will therefore be devoted to explaining in detail the meaning of the requirements for a valid consent and providing guidelines for the law enforcement officer in conducting consent searches.

REQUIREMENT THAT THE PERSON BE AWARE OF HIS RIGHTS

Before a person can effectively waive his privilege against unreasonable searches and seizures, he must first be aware that he has such a privilege. Any consent he gives to a search of his person, premises or effects, therefore, must be a knowing or intelligent consent.

This requirement raises two questions for the law enforcement officer requesting consent to search.

1. Does the person know he has a right to refuse to consent to search?
2. If he does not know, does the officer have to tell him?

An immediate parallel is obvious between the consent to search situation and the custodial interrogation situation. As every officer should now know, the Supreme Court has required that warnings of constitutional rights be given in every situation where a person is to be interrogated and he is either in custody or deprived of his freedom of action in any significant way. *Miranda v. Arizona*, 284 U.S. 436 (U.S. Supreme Court, 1966).

However, the U.S. Supreme Court has not yet spoken in regard to whether similar warnings are required before a consent search is to be performed. Furthermore, the various state courts and lower federal courts have differed on the question, some requiring that warnings be given and some not

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requiring them. A variety of reasons have been given supporting both sides. The Supreme Judicial Court of Maine has decided that *Miranda* type warnings are **not** required to validate an otherwise voluntary consent to search and seizure on the basis that *Miranda* applies only to **testimonial** admissions and no testimonial evidence is sought in a search situation. The particular case in which this was decided involved a defendant going into a Canadian police officer's office and placing a gun on a desk before anything was said to him.

> "The defendant's argument that the State was required to prove that the Canadian officer in Quebec warned the defendant of his constitutional rights before he accepted the revolver from the defendant is destroyed by *Schmerber v. State of California* . . . which established the principle that *Miranda* applies only to **testimonial** admissions, none of which are involved here." *State v. Boisvert*, 236 A. 2d 419, 421-22. (Supreme Judicial Court of Maine, 1967).

Nevertheless, even though formal warnings are not absolutely necessary in Maine, the requirement that the person consenting to the search be aware of his right not to consent still remains. Since the courts will examine the circumstances of each case very carefully to determine if this requirement has been met, it is probably a safer procedure for the law enforcement officer to briefly inform the person of his rights. Then there will be no question as to whether defendant knew his rights when the defendant later objects to the introduction in court of evidence seized as a result of the consent search. The following suggested simple warning should adequately inform a person of his rights before he consents to a search:

> "I am a law enforcement officer. I would like to request permission from you to search your premises (person, belongings).
>
> You have an absolute right to refuse to grant permission for me to search unless I have a search warrant.
>
> If you do grant permission to search, anything found can be used against you in a court of law. If you refuse, I will not make a search at this time."

Of course, if an officer has clear indications that the person consenting already knows that he can insist on a search warrant if he so desires, there would be no need for the officer to give any warnings. An example is a case where the defendant, when asked by an officer to sign a Consent Search form, said "If I don't sign this, you are going to get a search warrant." The court in that case said that this statement demonstrated defendant's awareness of his right to resist the officer's search in the absence of a warrant. His subsequent signature on the form was therefore a relinquishment of a **known** right. *U.S. v. Curiale*, 414 F. 2d 744 (2nd Circuit Court of Appeals, 1969).

REQUIREMENT THAT THE CONSENT BE VOLUNTARY

Even though a defendant knows he has a right to refuse to consent to search, he may fail to exercise that right out of fear of a law enforcement officer or in submission to him as a symbol of authority. Under such circumstances, the consent would not be valid. In order to be valid, consent must be freely and voluntarily given and must **not** be the result of submission to an express or implied assertion of authority or any other form of duress or coercion.

There are no set rules for determining whether or not a consent to search has been voluntarily and freely given. Courts will look to all the circumstances surrounding the giving of the consent in making this decision. As one court has said,

> "Whether in a particular case an apparent consent was in fact voluntarily given or was in submission to an express or implied assertion of authority is a question of fact to be determined in the light of all the circumstances." *People v. Michael*, 290 P. 2d 852, 845 (Supreme Court of California, 1955)

The following examples should give some helpful guidelines to law enforcement officers in determining what circumstances the courts consider important on the issue of voluntariness.

Force or Coercion

The most obvious situation in which courts will find a lack of voluntariness of consent is where law enforcement officers use an actual show or threat of force in obtaining the consent. Thus, in a case where a defendant, confronted by police with drawn guns and a riot pistol, who told him they would get a warrant if necessary, gave them the keys to his car in an atmosphere of "dramatic excitement," the court held that the defendant did not give free and voluntary consent to search the vehicle. *Weed v. U. S.*, 340 F. 2d 827 (10th Circuit Court of Appeals, 1965). Also, in a case where a defendant permitted entry into his apartment only after officers threatened to kick down his door, the consent was obviously not free and voluntary. *People v. Loria*, 179 N. E. 2d 478, 482 (Court of Appeals of New York, 1961). Any such blatant display of force will almost always cause a consent to be held invalid because involuntary.

Submission to Authority

However, the show of force or coercion by law enforcement officers need not be of such an intense nature as in the above cases for a court to hold that a consent to search given in response to it was not voluntary. It has been held that even an implied or suggested assertion of authority by law enforcement officers may be enough to cause a resulting consent to search to be considered involuntary. The rationale behind this is that a person's submission to such a show of authority may not be an expression of his free will but may be nothing more than a show of respect for the supremacy of the law. Therefore the mere acquiescence or submission of a defendant to an assertion of authority by a law enforcement officer will usually not support a finding of voluntary consent.

An example is a case where officers received word from an informant that one Cooper was selling heroin in his hotel room. The

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officers went to the hotel, and confronted Cooper in the hall. They questioned him and searched him and found no heroin. The officers then asked him if they could search his room and he said they could and gave them the key. As the officers were unlocking the door, the defendant opened it and backed into the room. The officers found heroin on the defendant and arrested him.

The court held that the consent to search given by Cooper was not a valid consent.

> "(W)e are satisfied that a search or entry made pursuant to consent immediately following an illegal search, involving an improper assertion of authority, is inextricably bound up with illegal conduct and cannot be segregated therefrom." *People v. Johnson*, 440 P. 2d 921, 923 (Supreme Court of California, 1968).

Failure to Object to Search

Another example shows that a defendant's mere failure to object to a search will not in itself constitute the full and unqualified voluntary consent required by the law. An officer was investigating the ringing of a burglar alarm in an office building and he saw defendant in one of the offices. Defendant let the officer into the office and satisfactorily explained his presence as the owner of the office. As defendant walked away, he picked up a large envelope and placed it in his pocket. The officer then asked him "What did you put in your pocket? Let me see it?" Defendant then handed over the package, saying that it contained marijuana and that he had a permit for it. The officer arrested him for felonious possession of a narcotic drug.

The court found that the defendant's handing over of the package at the policeman's direction was the equivalent of a search and seizure.

> "This was not a voluntary act, a consent to waive the constitutional right to be free from unreasonable searches and seizures, but rather a submission to authority. No inference of consent may be drawn from the mere failure of a person to argue or object to a demand of an officer. Our courts 'indulge every reasonable presumption against waiver' of fundamental constitutional rights." . . . *People v. Abrahamson*, 243 NYS 2d 819 (Supreme Court of New York, 1963).

Nevertheless, although failure to object, by itself, will not establish a valid consent, it is still **some evidence** of consent, and when it is accompanied by other factors such as defendant's active cooperation with the officers in conducting the search, it may satisfy the requirement of free and voluntary consent on his part. Thus, there was voluntary consent in a case where the defendant directed the route to his apartment, pointed out the closet where his clothing was, and made no objection to the examination of bloodstained clothing or the taking and retention of it by the police. It is to be noted that there was nothing in this case to suggest violence, threats of violence, intimidation, or overawing of the defendant by the police. **State v. Hannah,** 191 A. 2d 124 (Supreme Court of Connecticut, 1963).

Misrepresentation, Deception, and Stealth

The courts look with similar disfavor upon any consent to search which is obtained by misleading or deceiving the person giving the consent as to the authority of the officer conducting the search. In the often cited case of *Bumper v. North Carolina*, officers went to the home of a rape suspect to look for evidence. The home was owned and occupied by defendant's grandmother. The officers told the grandmother they had a search warrant and she let them in. During the course of their search, a rifle was found which tended to incriminate the defendant.

At the hearing on the motion to suppress the rifle as evidence, the prosecutor did not rely on the warrant to support the legality of the search but relied on the grandmother's consent. (In fact, no warrant was ever returned nor was there any information about the conditions under which it was issued.)

The U.S. Supreme Court held that a search cannot be justified on the basis of consent when that consent has been given only after the officer conducting the search has asserted that he possesses a warrant.

> "When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, **freely and voluntarily given.** This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority. A search conducted in reliance upon a warrant cannot later be justified on the basis of consent if it turns out that the warrant was invalid. The results can be no different when it turns out that the State does not even attempt to rely upon the validity of the warrant, or fails to show that there was, in fact, any warrant at all.
>
> When a law enforcement officer claims authority to search a home under a warrant, he annouces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent." *Bumper v. North Carolina*, 391 U. S. 543, 548-50, (U.S. Supreme Court, 1968).

A similar situation presented itself in a Maine case where the prosecution attempted to justify a search made under a **void** warrant as a consent search. In that case, officers went to the defendant's home in his absence with a search warrant, showed it to the defendant's nineteen year old daughter, and were permitted by the daughter to enter and search. When the warrant later proved to be invalid, the court held that defendant's daughter's submission to the search under the warrant could not be construed as a consent search.

> "If the warrant was valid, no consent to enter and search was necessary. The officers' authority was contained in the warrant. Charlene's consent under such circumstances was of no more consequence than would have been an objection on her part. If the warrant was not valid and this is the assumption made on this issue—the principle is operative that submission to the presence of police does not rise to the dignity of consent to search. . . .
>
> The officers with a search warrant were at the door; they intended to enter and search; they informed Charlene of the war-

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rant; she consented to their entry and search. No stronger case of submission to entry under a search can well be put. The consent of Charlene has no meaning apart from the search warrant." *State v. Brochu*, 237 A. 2d 418, 422 (Supreme Judicial Court of Maine, 1967).

In another case, involving a different type of official misrepresentation, officers had arrested the defendant for robbery and murder and questioned him at police headquarters. He made no incriminating statements at that time. The next day, officers, without a search warrant, went to defendant's home to conduct a search. They falsely told defendant's wife that he had admitted the crime and had sent the police for the "stuff". The frightened and upset wife admitted the officers to the apartment and led them to money evidence from the robbery.

The court held that the consent given by the wife was not voluntary.

> "(I)t is well established that the consent may not be gained through stealth, deceit, or misrepresentation, and that if such exists this is tantamount to implied coercion." *Commonwealth v. Wright*, 190 A. 2d 709, 711 (Supreme Court of Pennsylvania, 1963).

Effect of Custody or Arrest on Voluntariness of Consent

The fact that a person is deprived of his freedom of action by law enforcement officers or is under arrest is an important factor to be considered by the courts in determining voluntariness of consent. Although **every** case in which a person giving consent is under such constraint will **not necessarily** result in a determination of involuntariness, the courts tend to examine very carefully any consent given under these circumstances. It is generally felt that a person who has been taken into cutody or arrested is "more susceptible to duress or coercion from the custodial officers."*U.S. v. Richardson*, 388 F. 2d 842, 845 (6th Circuit Court of Appeals, 1968). Therefore, when the validity of the search is tested in court, a heavier burden is placed on the prosecutor to prove the consent was freely and voluntarily given where the consenter was in custody than where he was not.

What this all means for the law enforcement officer is that he must be extra careful in ensuring that consent is voluntary when the person giving the consent is in custody or under arrest. He can do this by looking to all the other circumstances surrounding the giving of the consent, and by not doing anything himself which would tend to influence or coerce the person consenting. For example, if a person in custody gives his consent to search and actively cooperates with the officer, or expresses a belief that no incriminating evidence will be found, courts will usually find these factors indicative of voluntariness. Also, if a person has been informed of his rights by the custodial officer, a subsequent consent is usually considered to be voluntarily given.

On the other hand, if the person in custody is subjected to additional coercive action on the part of the law enforcement officer such as handcuffing, display of weapons, or incarceration, courts are likely to consider a resulting consent to search as involuntary. The same would be true if an officer interrogated a person in cutody, or failed to warn him of his rights, or attempted to deceive him. Furthermore, evasive or uncooperative conduct on the part of the person in custody is considered to be an indication that the consent is not voluntary.

It must be reemphasized here that none of the above mentioned factors will determine by itself whether a consent is voluntary or involuntary. Courts will look to **all** the surrounding facts and circumstances and it is nearly impossible to predict how a court will decide in any given situation. About all that can definitely be said in this context is that it will be harder to prove a consent was voluntary when the person giving the consent was in custody than if he was not. Law enforcement officers should be aware of all the variables which the courts consider so they can control the situation as much as possible or at least make a rational decision on whether or not to conduct a search based on consent or to get a warrant.

NOTE: The foregoing principles apply when the defendant's arrest or detention is legal. However, when the arrest is illegal, courts will generally hold that any consent given is "fruit of the poisonous tree" and necessarily involuntary. As one court recently stated,

> "At the time of the initial arrest, appellant consented to the search of his automobile. Generally where a person has consented to a search this removes a later objection that it was conducted without a warrant. However, where the consent and search are accompanied by an illegal arrest, the events are so intertwined, one with the other, that the consent does not expunge the taint of the illegal arrest." *State v. Barwick*, 482 P. 2d 670, 673 (Supreme Court of Idaho, 1971).

It is therefore very important that all law enforcement officers know and apply the laws of arrest. A detailed discussion of these laws can be found in the July, August and September 1971 issues of the ALERT Bulletin.

REQUIREMENT THAT CONSENT BE CLEAR AND EXPLICIT

The third requirement of a valid consent is that the expression of consent be clear, explicit and unequivocal. This means that there must be no doubt or ambiguity in the consenting person's communication to the officer of his willingness to allow the search. A close relationship can be seen between this requirement and the previously discussed requirement of voluntariness because hesitation or ambiguity in the expression of consent could be one indication that the consent is not voluntary.

It is immaterial whether a person's consent to search is written or verbal. Both are equally effective in waiving the person's right to object to the search. However, whenever practicable, a written consent should be obtained by the officer. A signed and witnessed writing provides the best proof of a clear, voluntary waiver of a known right. The following form is suggested for obtaining a written consent to search:

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CONSENT TO SEARCH

_____
Date

_____
Location

I, _____,
having been informed of my constitutional right not to have a search made of the premises hereinafter mentioned without a search warrant and of my right to refuse to consent to such a search, and knowing that if I consent to such a search, anything found can be used against me in court, hereby authorize _____
_____ and
_____,
(names officers or agents)
_____,
(titles of officers or agents and name of agency)
to conduct a complete search of my premises located at _____.

These (officers or agents) are authorized by me to take from my premises any letters, papers, materials or other property which they may desire.

This written permission is being given by me to the above-named persons voluntarily and without threats or promises of any kind.

_____
(signed)

Witnesses: _____

A further consideration is that consent need not be expressed in words but may be implied by the acts or conduct of defendant. An example of this is a case where police were investigating the death of an infant and went to the home of the defendant. The officers asked the defendant's husband if they could go into the room containing the infants crib. The husband handed the officers the keys, saying that he did not want to go in there himself. Incriminating evidence against the defendant was found in the room.

The court held that a valid consent to search had been given by the husband although he did not express it verbally or in writing. The fact that he handed the officers the keys, knowing their intent to search the room, was a clear and unequivocal expression of his consent. *People v. Crews*, 231 N.E. 2d 451 (Supreme Court of Illinois, 1967).

* * * * *

This completes the portion of the article dealing with the validity of the consent to search. In next month's ALERT, we will discuss the scope of consent searches, the question of who may give consent, and other related issues.

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.

Search and Seizure L

Defendant was convicted on charges arising out of a sale of heroin and cocaine. Following a tip, a law enforcement officer contacted the defendant and bought heroin from him. Later the officer went to the home of the defendant to make another purchase. While there, he observed the defendant mixing a white powder on the kitchen table. The officer said he had to go downstairs to get the money and he called in other officers who were waiting outside. They all entered the apartment, arrested the defendant, and seized the narcotics. There was no warrant.

The court held that the seizure of the drugs was not improper.

> "When as here, the home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater sanctity than if it were carried on in a store, a garage, a car, or on the street."

U.S. v. Riles, 451 F. 2d 190 (3rd Circuit Court of Appeals, 1971).

Search and Seizure; Consent L

Defendant was convicted of wilfully and knowingly possessing goods which were stolen while moving in interstate commerce and appealed, claiming an unlawful search and seizure. Defendant had stored cases of stolen watches in the garage of one Burris. Acting on information from an informant, two officers went to the Burris home and requested consent to search the garage. Burris let the officers into the basement. They copied identification numbers from the boxes and later seized the watches.

The court upheld the search as a consent search relying upon the fact that Burris had the right to at least joint use of the garage. Burris continued to use the garage for parking his automobile, housing his dog, and miscellaneous storage. Defendant was not given exclusive control nor right to exclusive possession of any part of the garage. In these circumstances, the court felt that defendant assumed the risks that Burris would allow others in the area. *U.S. v. Martinez*, 450 F. 2d 846 (8th Circuit Court of Appeals 1971).

Right to Speedy Trial; Defendant must be Accused JP

The defendants were indicted on 19 counts in April of 1970 covering a number of incidents involving the fraudulent conduct of their business. The acts alleged covered a period from March, 1964 to February, 1966. In May of 1970 the defendants moved to dismiss the indictments "for failure to prosecute in violation of their rights to due process and a speedy trial." In 1968 the defendants had delivered some of their business records to the government, and a number of newspaper articles in 1967 implied that prosecution of the defendants was imminent.

The District Court judge dismissed the indictment for "lack of speedy prosecution" reasoning that the delay seriously prejudiced the ability of the defendants to present their defense. The United States appealed directly to the Supreme Court. That Court held that the Sixth Amendment right to a speedy trial has no application un-

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til the defendant in some way becomes "accused," an event which occurred in this case when the appellees were indicted in April of 1970. "The Amendment would appear to guarantee to a criminal defendant that the Government will move with the dispatch which is appropriate to assure him an early and proper disposition of the charges against him. 'The essential ingredient is orderly expedition and not mere speed.' *Smith v. United States*, 360 U.S. 1, 10 (1959)." *United States v. Marion*, 404 U.S. 307 (United States Supreme Court, December, 1971).

Plea Bargaining; Permissibility of Withdrawing Plea JP

Defendant and the prosecutor agreed that the defendant should withdraw his previous not-guilty plea to two felonies and plead guilty to a lesser included offense and the prosecutor would make no recommendation as to sentence. A new prosecutor at hearing on sentence several months later recommended the maximum sentence which the judge imposed, although he stated he was uninfluenced by the recommendation. The defendant attempted unsuccessfully to withdraw his guilty plea, and his conviction was affirmed on appeal.

The Supreme Court vacated the judgment and remanded the case back to the state court for it to determine whether there be specific performance of the plea agreement or whether the defendant should be afforded the relief of withdrawing the guilty plea. The Court held the guilty plea. The Court held that the interests of justice and recognition of the prosecution's duties in relation to promises made in connection with plea bargaining required the remand. *Santobello v. New York*, 404 U.S. 257 (Uinted States Supreme Court, December 1970).

MAINE COURT 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.

Instructions to Jury JP

Defendants were convicted of grand larceny and appealed. They claimed that the trial judge's instruction to the jury concerning the probative effect which might be given to a finding that defendants had been in possession of recently stolen goods denied them due process in that it denied them the benefit of a presumption of innocence.

The Supreme Judicial Court held that due process had not been denied in that the trial, judge had cautioned the jury in clear language that the State was required to prove every element of the crime, including taking and larcenous intent, beyond a reasonable doubt. *State v. Collamore*, 287 A. 2d 123 (Supreme Judicial Court of Maine, February, 1972)

Post-Conviction Habeas Corpus J

Defendant had pled guilty to the charge of escaping from the Men's Correctional Center and was sentenced. In a post-conviction habeas corpus petition he claimed that his plea was not made voluntarily and understandingly. The basis for this claim was that the trial court did not comply with *Rule* 11, *Maine Rules of Criminal Procedure* in

1) making such inquiry as may satisfy it that defendant in fact committed the crime charged, and
2) addressing the defendant personally and determining that the plea was made voluntarily with understanding of the nature of the charge

The Supreme Judicial Court held that there was a presumption of regularity attaching to a judgment of conviction and that the burden was upon the petitioner by the fair preponderance of the evidence to establish the contrary. The Court further found that the trial court did not satisfy the requirements of *Rule* 11, and that the resulting prejudice to the petitioner made it fitting that the burden should shift to the State to prove that the guilty plea was voluntary despite the non-compliance with Rule 11. *Cote v. State*, 286 A. 2d 868 (Supreme Judicial Court of Maine, January, 1972).

Post-Conviction Habeas Corpus J

Defendant had pled guilty to the crime of robbery and was convicted and sentenced. In a petition for postconviction relief, one of his claims was that there were violations of law in the acceptance and entry of his plea of guilty, specifically that the requirements of *Rule* 11, *M. R. Crim. P.* had not been met.

The Supreme Judicial Court held that a conviction of crime and imposition of penalty based upon a plea of guilty, could only be valid under the Federal Constitution if the formal plea is supported on the record by underlying factual information showing that the formal plea was in fact a voluntary and understanding consent by the defendant. *Rule* 11, *M. R. Crim. P.* provides a method for providing such a record. However, even though a state court trial judge may have failed within the confines of interrogation conducted by him of defendant personally to make an adequate affirmative record of voluntariness and understanding, the guilty plea can still be salvaged by a resort to evidence presented in post-conviction proceedings. The evidence which may be presented at such post-conviction proceedings is unrestricted as to source as long as it is admissible under evidentiary principles. *Morgan v. State*, 287 A. 2d 592 (Supreme Judicial Court of Maine, February, 1972).

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

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