JULY, 1972

ALERT

CRIMINAL DIVISION

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

SEARCH INCIDENT TO ARREST II

SEARCH OF PREMISES

In the main article of last month's ALERT we left off with a discussion of the permissible search of the **person** of an individual incident to his arrest. We continue now with a consideration of the permissible search of premises incident to the arrest of an individual. It should be stressed at the outset that the law enforcement officer's conduct in this area is governed by the rule of the U.S. Supreme Court decision in *Chimel v. California*. We will therefore repeat the quotation from the *Chimel* case which bears on the search of premises incident to arrest:

> "And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'— construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." (395 U.S. 752, 762-63).

It is not possible to derive from this quote definite guidelines as to how large an area around an arrestee is "within his immediate control" and is therefore subject to search by an officer. This determination depends on several factors such as the size and shape of the room, the size and agility of the arrestee, whether the arrestee was handcuffed or otherwise subdued, the size and type of evidence being sought, the number of people arrested, and the number of officers present. The following case summaries should give some idea of how courts have recently treated this question of permissible area of search incident to arrest.

In a case dealing with the question of the area within a defendant's reach, officers went to the defendant's trailer home to arrest him as a participant in an armed robbery. They found him lying in bed. One officer immediately searched under the blankets for a gun as other officers attempted to subdue the defendant, who was resisting. Two revolvers were found in a box at the foot of the bed. The court held that this was within the area of defendant's reach and that the revolvers were admissible in evidence. *People v. Spencer*, 99 Cal. Rptr. 681 (Court of Appeal of California, 1972).

It is clear that if a person is arrested out of doors, a search of that person's home or apartment cannot be justified as incident to the arrest. Thus, in a case where the defendant was arrested in his back yard and the arresting officers then went up to his apartment and searched it, the evidence found in the apartment was inadmissible. The court held that such a search as incident to arrest was unreasonable as extending beyond the arrestee's reach. *Frazier v. State*, 488 P.2d 613 (Court of Criminal Appeals of Oklahoma, 1971).

However, if it is necessary for an arrested person to go into a different area of the premises from that in which he was arrested, the officer, for his own protection, may accompany him and search if necessary. A case illustrating this point involved an arrest under warrant for conspiracy to commit extortion. The arrest took place early in the morning and the arrested person was in his bedclothes. One of the officers suggested that the defendant change into street clothes before leaving for the station. The defendant agreed and went to his bedroom followed by the officers. As the defendant went to a chest of drawers to obtain clothing, one of the officers searched the drawer and found a blackjack and several other weapons. The defendant was convicted of illegal possession of a blackjack.

The court held the search was lawful.

> "Certainly, if immediately after a lawful arrest, the arrestee reads the arrest warrant and without coercion consents to go to his bedroom to change into more appropriate clothing, the arresting officers — incident to that arrest — may search the areas upon which the arrestee focuses his attention and are within his reach to gain access

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to a weapon or to destroy evidence." *Giacalone v. Lucas*, 445 F. 2d 1238, 1247 (6th Circuit Court of Appeals, 1971).

Search of Persons Other Than the Arrestee

Often, when an arrest is made, there are other persons in the vicinity besides the arrested person. If a potential accomplice of the arrested person is located on the premises where the arrest was made, it has been held that police may search the area within the accomplice's immediate control. In such a case, two defendants were arrested in their apartment. The arresting officers then noticed two men lying on two couches in the living room. A gun and ammunition had already been found on the premises and the officers did not know the identity of the other two men. One officer directed the two men to stand and another officer searched two end tables near the men. The officer found obscene materials.

The court held that the search was reasonable for the protection and safety of the officers. Not only had weapons already been found in the apartment but it was reasonable to assume that the two men were accomplices of the arrested person.

> "Both men had apparently been sleeping in the Portela apartment and were likely relatives or intimate friends of the Portelas. Since they were both in full view of Portela, who had already been placed under arrest, it would be reasonable for the agents to assume that if Portela had signalled the two unidentified men, they would have been able to reach over and draw a weapon out of the end tables." *U.S. v. Manarite*, 314 F. Supp. 607 (U.S. District Court, Southern District of N.Y., 1970).

SEARCH OF OTHER AREAS OF THE PREMISES

Under the rule of the *Chimel* case, an officer is not allowed to search any other areas of the premises except the limited area in which the defendant was arrested. There may, however, be circumstances justifying an officer's going into other areas to merely look around. For example, an officer, for his own protection, may look into other rooms, to see if other persons are around. Also, he may have to go through other rooms in leaving the premises. These movements of the law enforcement officer are not considered searches because the officer is not looking for weapons or incriminating evidence. Nevertheless, if an officer observes such evidence lying open to view, he may seize it, and it will be admissible in court under the "plain view" doctrine.

In a bank robbery case, the defendant was arrested in his girl friend's apartment. At the time of his arrest, the apartment was dark and the defendant was nude. One of the officers went to get clothing for the defendant and found two jackets of the type that had been described as having been worn by the bank robbers. On the way out of the apartment, one of the officers turned on the kitchen light so he could see his way. On the floor was revealed money from the robbery.

The court held that both the jackets and the money were admissible in evidence. Finding no violation of the **Chimel** rule, the court said:

> "Since they were bound to find some clothing for Titus rather than take him nude to FBI headquarters on a December night, the fatigue jackets were properly seized under the 'plain view' doctrine. Welch was entitled to turn on the kitchen lights, both to assist his own exit and to see whether the other robber might be about; when he saw the stolen money, he was permitted to seize it. Everything the agents took was in their 'plain view' while they were where they had a right to be; there was no general rummaging of the apartment . . ." *U.S. v. Titus*, 445 F. 2d 577 (2nd Circuit Court of Appeals, 1971).

In another case, officers arrested the defendant in a dentist's office for robbery of a liquor store. They went into other rooms of the dentist's suite to look for possibly dangerous persons and found a stolen bottle of whiskey in plain view in the dentist's laboratory.

The court held that the bottle of whiskey was admissible in evidence. The officers had no way of knowing who else might be on the premises. They were justified in conducting a search of the suite to assure themselves that no hostile and possibly dangerous persons were hiding in other rooms. The bottle of whiskey was in plain view in the dentist's laboratory and there was no evidence that the officers engaged in any general search of the premises beyond that necessary to find any other persons that might have been present. *U.S. v. Miller*, 449 F. 2d 974 (District of Columbia Court of Appeals, 1971).

OTHER REQUIREMENTS FOR A VALID SEARCH INCIDENT TO ARREST

Arrest Must Be Lawful

In our discussion up to this point, whenever we have spoken of search incident to arrest, it has been assumed that the arrest was a **lawful** arrest. This point deserves to be emphasized because, if the arrest is not lawful, the search incident to that arrest will automatically be held unlawful by the court, even if all proper procedures are followed in conducting the search. It therefore becomes very important for the law enforcement officer to both know and carefully comply with the laws of arrest. A detailed discussion of the law of arrest in Maine can be found in the July, August, and September 1971 issues of ALERT. Every officer is strongly advised to review those issues if he is not clear on any aspect of the law of arrest.

Search Must be Contemporaneous With Arrest

A search made incident to arrest is not reasonable unless it is made contemporaneously with the arrest. To be contemporaneous, a search must be conducted as close in time to the arrest as is practically possible. In a case illustrating this point, the defendant, a suspected possessor of narcotics, was lawfully arrested on a

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downtown street corner. The officers then took him to his home some distance away and there conducted an intensive search which yielded narcotics. On the basis of this evidence, defendant was convicted of narcotics possession.

The court held the search of the house was unreasonable.

> "In the circumstances of this case, however, the subsequent search of the petitioner's home cannot be regarded as an incident of his arrest on a street corner more than two blocks away. A search 'can be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest.' " *James v. Louisiana*, 382 U.S. 36, 37 (U.S. Supreme Court, 1965).

The reason for this rule is that the law gives an officer the right to search an arrested person only 1) to protect himself, 2) to prevent escape, and 3) to prevent the destruction of evidence. If an officer delays a search, it indicates that he was not concerned about any of those three possibilities, but that he conducted the search for another reason, thereby making the search illegal.

Sometimes, however, it is not feasible for an officer to search immediately upon making an arrest. This would be true if the officer intended to make a search of the arrestee's body cavities for drugs, if the arrestee was a person of the opposite sex, or if other circumstances make a search inadvisable. In these situations, the officer should remove the arrested person from the scene and conduct the search as soon as favorable circumstances prevail. For example, in one case, an arrest for an armed bank robbery took place in a crowded hotel lobby, which was lit only by candles because of a power failure. The court held that under these circumstances it was proper for officers to make only a cursory search for weapons at the hotel and to make a more thorough search later at the station. *U.S. v. Miles*, 413 F. 2d 34 (3rd Circuit Court of Appeals, 1969).

The requirement that the search be substantially contemporaneous with the arrest does not necessarily mean that the arrest must precede the search. Although this will almost always be the case, under certain circumstances the search may precede the arrest and still be a valid search incident to arrest. In order for this to be true, the following requirements must be present:

1. There must be probable cause for arrest before either the search or the arrest is carried out; and

2. Both the arrest and search must be integral parts of a single incident.

Usually the search will occur before the arrest when there is a dangerous situation or an emergency. This, however, is not necessary in order for the search to be valid. An example is a case where a law enforcement officer had probable cause to arrest the defendant based upon another officer's tip, his own observations, and other information. The officer encountered the defendant outside his house, immediately searched him finding heroin, and then arrested him. The court upheld the search on the ground that the fruits of the search were in no way necessary to establish probable cause for the arrest which immediately followed. Also, the search was substantially contemporaneous with the arrest and confined to the immediate vicinity of the arrest. *U.S. v. Thomas*, 432 F. 2d 120 (9th Circuit Court of Appeals, 1970).

Arrest Must Not Be a Subterfuge to Justify Search

A law enforcement officer may not use an arrest as a pretext to search for evidence. If the arrest even though technically valid, is actually a mere subterfuge by which the officer attempts to justify an otherwise illegitimate search, the search will be held unreasonable. The standard by which a law enforcement officer will be judged has been stated by the U.S. Court of Appeals for the 9th Circuit:

> "Whether or not an arrest is a mere pretext to search is a question of the motivation or primary purpose of the arresting officer. Improper motivation has been found where the arrest is for a minor offense which serves as a mere 'sham' or 'front' for a search for evidence of another unrelated offense for which there is no probable cause to arrest or search . . . It has also been found where the arresting officer deliberately delays making the arrest in order to allow the arrestee to enter the premises which the officer desires to search." *Williams v. U.S.*, 418 F. 2d 159 (9th Circuit Court of Appeals, 1969).

Who May Conduct the Search

If practical, the law enforcement officer making the arrest is the one who should conduct the search incident to the arrest. As was mentioned earlier, this search should be made at substantially the same time as the arrest. If an officer makes an arrest and does not search the arrested person right away, but some time later allows another officer to search him, the later search may be held unlawful. It would not meet the requirement of spontaneousness nor would it indicate a concern for the protection of the officer or the prevention of the destruction of evidence.

Nevertheless, if the arresting officer transfers an arrested person to the custody of another officer, the second officer may again search the arrested person. This second search is allowed because the second officer is entitled to protect himself and is not required to rely on the assumption that the arrestee has been thoroughly searched for weapons by the arresting officer. *U.S. v. Dyson*, 277 A. 2d 658 (District of Columbia Court of Appeals, 1971).

SUMMARY

The *Chimel* case has significantly narrowed the scope of a search authorized incident to a lawful arrest. Only for purposes of protection of the officer, prevention of escape, and prevention of destruction of evidence may an officer make such a search. Furthermore, the search is limited to the person of the individual arrested and the area into which he might reach to grab a weapon or destroy evidence. The resulting effect of these limitations is to take away from the law enforcement officer his previous right to search the entire premises incident to an ar-

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rest. Now, under *Chimel*, if the officer has probable cause to search for fruits, instrumentalities, contraband, or other evidence in the place where he plans to make an arrest, he must first obtain a valid search warrant. If the officer does not have probable cause, then he must limit his search incident to arrest according to the guidelines discussed in this article or justify it on some other basis such as consent, emergency, or hot pursuit, each of which has its own unique limitations. The result in many cases will be that the officer will have to simply refrain from searching or else take the risk that the evidence he seizes will be held inadmissible in court. Where possible, then, it is always advisable for an officer to obtain a search warrant. In next month's issue of ALERT, we will discuss in detail the procedures and requirements for obtaining search warrants.

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.

Plain View Doctrine L

Defendant was convicted of unlawfully transporting in interstate commerce stolen U. S. Savings Bonds and he appealed. Defendant had been arrested for a misdemeanor and at the police station, it was agreed not to prosecute if the defendant left town. Defendant invited the arresting officer to go to the motel to see that he left town. In the motel, the officer saw a $500 savings bond protruding from under a stack of dirty clothes. When questioned about this, defendant emptied a bag containing stolen goods and confessed that he had stolen the goods.

The court held that there was no search involved. The officer was in the motel with the permission of the defendant. He had a right to be there and he saw the bonds lying in plain view. *U.S. v. Atkinson*, 450 F. 2d 835 (5th Circuit Court of Appeals, October, 1971).

Confessions JP

Petitioner was convicted of armed robbery in 1961 and challenged his conviction in a habeas corpus proceeding. The evidence introduced at his trial was a confession made after arrest and at the station house. Petitioner claimed the confession was involuntary. At a hearing out of the presence of the jury, the judge, on a preponderance of the evidence, ruled the confession voluntary and admissible. The judge did not instruct the jury it must find the confession voluntary before it could be used in determining guilt or innocence.

The Supreme Court held that a reasonable doubt standard at a voluntariness hearing is not required, since the hearing and its results have no bearing on the reliability of the jury verdict. The purpose of the hearing is for the benefit of the defendant, to give him a clear cut determination that the confession used against him was in fact voluntary. The voluntariness hearing, out of the presence of the jury, is conclusive as to the admissibility of the confession, and an instruction as to voluntariness need not be given the jury. The truthfulness of the confession, however, will still be a jury issue. *Lego v. Twomey*, 404 U.S. 477 (U.S. Supreme Court, January, 1972).

Vagueness JP

Eight defendants were arrested and convicted at various times under a Jacksonville, Florida vagrancy ordinance. Four of the defendants were charged with "prowling by auto", when they stopped by a new car lot previously broken into several times, but with no evidence of a break on that night. Two defendants were charged with being "vagabonds", because they stopped in a dry cleaning shop to wait for a friend, were asked to leave, and walked two or three times over a two block stretch looking for their friend. One defendant was arrested for "loitering" and being a "common thief" because he pulled up to his girlfriend's house during the arrest process of another man. Another defendant was charged with being a "common thief" because he travelled at a high rate of speed to his home early one morning, yet no speeding charge was brought against him. One defendant was charged with vagrancy—"disorderly loitering on street" and "disorderly conduct—resisting arrest with violence", when he was searched because of a police officer's belief of his opprobrious character and he resisted when two heroin packets were felt in his pocket.

The Supreme Court ruled the ordinance is void for vagueness because a person of ordinary intelligence does not have fair notice that his contemplated conduct is forbidden by the statute and because it encourages arbitrary and erratic arrests and convictions. *Papachristou v. City of Jacksonville*, 405 U.S. 156 (U.S. Supreme Court, February, 1972).

Fair Trial JP

Petitioner was convicted in 1947 of statutory rape. He initiated a habeas corpus proceeding in 1969. initial trial introduced petitioner's initial trial introduced petitioners prior criminal record for impeachment purposes. Petitioner's prior convictions had been obtained without the assistance of counsel.

The Supreme Court held that the prior convictions were constitutionally invalid under *Gideon v. Wainwright* and thus denied petitioner due process when used for impeachment purposes. *Loper v. Beto*, 405 U.S. 473 (U.S. Supreme Court, March 1972).

New Trial JP

Petitioner was convicted of passing forged money orders. While appeal was pending, defense counsel discovered the government had failed to disclose during trial a promise to its key witness that he would not be prosecuted if he testified for the government.

The Supreme Court held that due process requires a new trial because suppression of material evidence, irrespective of the good or bad faith of the prosecution, could have affected the judgment of the jury. Here, since the government's case depended almost en-

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tirely on the key witness's testimony, his credibility was an important issue, and evidence of any understanding or agreement as to future prosecution would be relevant to his credibility and the jury was entitled to know it. *Giglio v. U.S.*, 405 U.S. Supreme Court, February, 1972).

Identification; Sufficiency of Evidence JP

Defendant was convicted of entering to commit a felony and assault and battery with intent to kill. He claimed that the evidence against him was insufficient to convict him and that corroboration was needed. The only evidence was the identification of defendant by the victim—a 74 year old man, who admittedly only got a 5 second look.

The court held that the evidence was sufficient to sustain the conviction. A conviction can be supported by the identification of a single eye-witness. It is for the jury to pass on the witness's ability to recall his assailant. *Bryant v. State*, 278 N.E. 2d 577 (Supreme Court of Indiana, February, 1972).

Grand Jury JP

Defendant was found guilty of theft. The crucial issue raised is whether the veil of secrecy governing grand jury proceedings is violated if a member of the county attorney's staff is permitted to testify at trial as to admissions made by the potential defendant before the grand jury after he has voluntarily executed a written waiver of his right to immunity against self-incrimination.

The court held that where the waiver is voluntary and knowingly made and there is no hint of impropriety in obtaining it, the court does not err in admitting the testimony. But the prosecutor can not use devious means to obtain a waiver of immunity from the potential defendant for his grand jury testimony, which the prosecutor thereafter offers as evidence at trial. *State v. Falcone*, 195 N.W. 2d 572 (Supreme Court of Minnesota, March, 1972).

Marijuana; Possession JPL

Defendant was convicted of illegal possession of marijuana and appealed. The police, armed with a search warrant, entered defendant's home and found a fraction of a gram of marijuana in the bedroom occupied by his daughters. No other marijuana was found in the house and none was found on his person.

The court held that a charge of possession of narcotic drugs requires union of act and intent, and the necessary intent does not exist when an amount is so minute as to be incapable of being applied to any use, though chemical analysis may identify a trace of narcotics. The court also held that unlawful possession of narcotic drugs could not be established merely by proof that contraband was found in a bedroom which was customarily occupied by defendant's daughters but to which he also had access. *Watson v. State*, 495 P. 2d 365 (Supreme Court of Nevada March, 1972).

Operating Under the Influence JPL

Defendant was convicted of operating a motor vehicle while under the influence of intoxicants, and of unreasonably refusing to take a blood test. His operator's license was suspended for a period of 90 days and he appealed. When arrested, defendant was advised of the law regarding blood tests. He agreed to take the test. Before administreing the blood test, hospital personnel requested defendant to sign two forms. He refused to the forms or take the blood test unless he was allowed to call an attorney. This request was refused.

The court held that a person charged with operating a motor vehicle while under the influence of intoxicants does not have a constitutional right to consult an attorney before deciding whether to take a blood test. *Coleman v. Commonwealth*, 187 SE 2d 172 (Supreme Court of Virginia, March 1972).

Search and Seizure L

Defendant was convicted of aiding and abetting the forging and passing of United State Treasury Bonds. Defendant appealed. Defendant's son-in-law, who was a deputy sheriff, was requested by defendant's stepmother to enter unoccupied home of defendant for purpose of obtaining and forwarding certain stock certificates owned by defendant's father. While within the home, the deputy sheriff took a side venture looking behind a mirror and discovered stolen bond certificates.

The court held that under these circumstances this evidence was uncovered through a search and seizure and that the deputy was acting in his capacity as a law enforcement officer, rather than exclusively as a son-in-law on a family mission. The evidence seized from defendant's home was taken without the benefit of a search warrant. Absent a search warrant, the search and resulting seizure of the certificates violated the Fourth Amendment. *U.S. v. Clarke*, 451 F. 2d 584 (5th Circuit Court of Appeals, November, 1971).

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.

Confrontation of Witnesses JP

Defendant was convicted of assault and battery of a high and aggravated nature and appealed. The assault was made upon a deputy sheriff and was witnessed by a sixteen year old who was on probation. The defendant claimed that the trial court had refused to allow the defendant to introduce evidence that the sixteen year old had been threatened with probation revocation if he did not testify in the deputy sheriff's favor.

The Supreme Judicial Court found that the court record below showed that the trial justice had only excluded the juvenile record per se under 15 M.R.S.A. §2606. The justice did **not** prevent evidence bearing on any threats made to the witness or that he was, in fact, on probation. Therefore, the defendant was not deprived of his right to impeach the witness merely because he did not exercise that right. *State v. Carey*, 290 A. 2d 839. (Supreme Judicial Court of Maine, May 1972.)

Jury Instructions J

Defendant was convicted of

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murder and appealed. The trial record showed that in the instructions to the jury on the crime of murder, the trial judge used the phrase "malice or forethought even expressed or implied" instead of "malice aforethought either express or implied." Defendant claimed this was reversible error.

The Supreme Judicial Court held that even if the record were correct and the trial judge had erred in the instruction, it still did not constitute manifest or obvious error. The trial judge had given careful and painstaking legal definitions and explanations relating to the questioned instruction and thereby gave those words the same meaning as if the instruction had been properly given. *State v. Trott.* 289 A. 2d 414, (Supreme Judicial Court of Maine, March, 1972).

Search Warrant; Sufficiency JPL

A motion to suppress evidence seized under a search warant was granted on the basis that the warrant was insufficient. The basis for insufficiency was that the complaint justice failed to state the grounds for probable cause in the body of the warrant. The state appealed on the basis that the necessary facts supporting probable cause were incorporated in the warrant by clear reference to attached affidavits.

The Supreme Judicial Court agreed with the State.. It held that reference to an attached affidavit served the purpose behind requiring the grounds of probable cause to appear on the face of the warrant—namely to provide a reviewing court with a complete record. Furthermore, the warrant becomes complete when the attached affidavits are considered a part of it. *State v. Hollander*, 289 A. 2d 419 (Supreme Judicial Court of Maine, March, 1972).

Expert Witnesses JP

Defendant was convicted of the sale of marijuana. On appeal, he challenged the qualifications of the the State's expert witness who identified the substance as marijuana.

The court upheld the expert's qualifications. The expert had minored in chemistry in college and had passed a chemical qualification as a condition of his employment with the State. He had worked in the State chemical laboratory for ten years and had experience in chemical testing before that. He had experience in testing for marijuana and used an established procedure in this instance. The court held that a person may be competent to testify as an expert although his knowledge was acquired through practical experience rather than scientific study, training, or research. *State v. Carvelle*, 290 A. 2d 190 (Supreme Judicial Court of Maine, April, 1972).

Pretrial Identification JP

Defendant was convicted of murder and appealed. Defendant claimed that the methods used in a pretrial confrontation with witnesses were so unfair as to violate the "due process" clause of the 14th Amendment. Witnesses to the murder were allowed to view the defendant through a one-way mirror. Defendant was sitting with two other men whom the witnesses knew to be detectives. The witnesses identified the defendant as the murderer.

The court said that even assuming that the conduct of this confrontation was "unnecessarily suggestive and conducive to irresponsible mistaken identification," the conviction must be sustained because the error was harmless beyond a reasonable doubt. First, defendant took the witness stand and admitted that he was one of the participants in the incident involved. In addition, other evidence showed that defendant was virtually caught in the act, so that the identification provided by the eyewitnesses was superfluous. The court found it incredible that a rational jury might have acquitted the defendant for lack of identification had the identification testimony of the eyewitnesses been excluded at trial. *State v. LeBlanc*, 290 A. 2d 193 (Supreme Judicial Court of Maine, April, 1972).

Disorderly Conduct JPL

The plaintiff sued defendent, a police officer, for false arrest and assault and battery. The officer had arrested the defendant for a violation of 17 M.R.S.A. 3953 which provides in part:

> "Any person who shall by any offensive or disorderly conduct, act or language annoy or interfere with any person in any place . . ."

Defendant had directed an obscenity at the police officer but no one else in the vicinity heard it. In the instructions to the jury, the trial judge said that the phrase "annoy or interfere with any person" did not include police officers. The trial court found for the plaintiff and the defendant police officer appealed.

The Supreme Judicial Court held that the trial court's instruction to the jury was inaccurate. The wording of the statute is clear and unequivocal in referring to "any person." The Legislature could easily have modified the expression by adding "except police officers" or similar language when the statute was originally enacted. Furthermore, the court said:

> "We can conceive of no reason why a police officer, or other public official responsible for maintaining law and order, should have to be the object of obscenities and vulgarities of the type which, if addressed to a layman, would have a direct tendency to incite him to acts of violence." *Bale v. Ryder*, 290 A. 2d 359 (Supreme Judicial Court of Maine, May, 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

James S. Erwin — Attorney General
Richard S. Cohen — Deputy Attorney General In Charge of Law Enforcement
Peter W. Culley — Chief, Criminal Division
John N. Ferdico — Director, Law Enforcement Education Section

This bulletin is funded by a grant from the Maine Law Enforcement Planning and Assistance Agency.