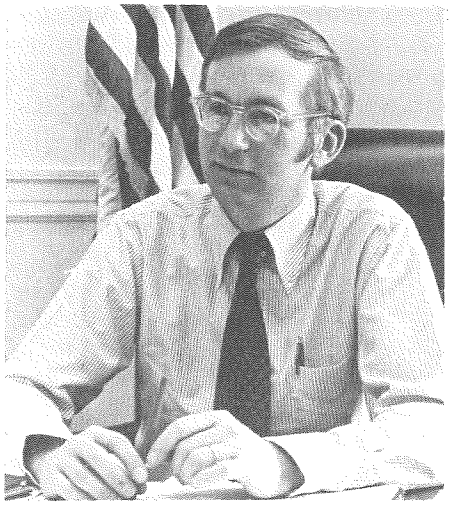
ALERT

APRIL 1974

CRIMINAL DIVISION

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



DRUG HANDLING PROCEDURES

MESSAGE FROM THE ATTORNEY GENERAL JON A. LUND

The main article of this month's ALERT on Drug Handling Procedures provides guidelines to assist law enforcement officers in processing drug evidence from the beginning of a case to its final disposition. I hope that this article will be a step toward the adoption of uniform drug handling procedures by law enforcement agencies throughout the state. We would like to thank Robert Ericson and his staff at the Public Health Laboratory and our police advisors for their assistance in preparing the article.

This issue of ALERT also contains summaries of two important recent U.S. Supreme Court decisions on search and seizure and a listing of books recently purchased for the Law Enforcement Education Section Library. I encourage all law enforcement officers to make use of the library either by stopping in and browsing around or by calling or writing the Law Enforcement Education Section to borrow specific books.

Jon A. Lund

JON A. LUND
Attorney General

The Law Enforcement Education Section has received numerous requests from Maine law enforcement officers for information and guidelines regarding the proper handling of drug evidence. Standard procedures for the collection, identification, preservation, and eventual disposition or destruction of drug evidence are a must. Ideally, such procedures should be uniform throughout the state. Unfortunately, drug handling procedures vary from department to department in the state, and in many cases departments do not have written procedures.

In response to the many drug-handling problems experienced by law enforcement agencies throughout the country, the International Association of Chiefs of Police is currently preparing a manual of recommended drug handling procedures which will be distributed to all departments in the near future. (The Law Enforcement Education Section will notify Maine law enforcement authorities when the manual has been published.) Maine law enforcement agencies should give serious consideration to the adoption of a uniform, standardized procedure such as that being prepared by the I.A.C.P. Until a uniform procedure is adopted, however, the following guidelines may provide assistance to officers confronted with problems relating to the handling of drug evidence.

BEFORE MARKING OR COLLECTING THE EVIDENCE

Before the officer begins to collect the drug evidence, he should take the following steps:

1. If possible, one or two officers should be designated to handle all evidence. This will ensure that the chain of custody will be kept as short as possible.

2. The evidence should be photographed in its original position.

3. The possibility of latent fingerprints must be explored.

4. The officer should check any possible containers of drugs very carefully because the containers may be rigged to destroy the evidence or injure the officer. Containers may be rigged with explosives, or their tops may be filled with acid.

5. The officer should make comprehensive notes concerning the evidence, including its amount and description, exact location where found, any pertinent measurements, and the identification marked on it.

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COLLECTING, PACKAGING AND SEALING DRUG EVIDENCE

After the officer has completed the preliminary tasks outlined above, he should carefully collect the evidence, making sure that it is not contaminated or destroyed. All specimens which the officer believes may be, or may contain, drug evidence should be collected and submitted to a laboratory for analysis. (Most Maine departments submit drug evidence to the Public Health Laboratory, Health and Welfare Department, State Street, Augusta, Maine.) The chemist in the laboratory can detect and analyze narcotics and other controlled substances (whether the specimen is substantial in size or a minute fragment) found in or on needles, syringes, foil packets, spoons, clothing, capsules, tablets, and in many other forms. Even if the suspect admits that the specimen is an unlawful drug, the officer should still submit the specimen for analysis. Failure to do so may jeopardize the State's case if the suspect subsequently elects to contest the identity of the substance. Laboratory analysis will either show that the substance is not an unlawful drug or identify the kind of drug involved.

All drug evidence must be collected and packaged so as to protect the specimens. More specifically, the officer must take all possible precautions (1) to avoid possible contamination between specimens, (2) to avoid damage of any kind to the evidence, and (3) to guard against loss or theft of the specimens during transmission or storage. The following suggestions for the protection of drug evidence should be followed by the officer in the collecting, packaging and sealing of drug specimens:

1. In General

a. The specimen should arrive at the lab in exactly the same condition as when it was first obtained.

b. The officer should collect, preserve and submit to the lab any labels or prescriptions which are found with the drugs or on the bottles, etc., which contained the drugs. Such information may facilitate identification of the substances by the lab chemists.

c. If only a trace of evidence is recovered, although the officer may suspect that chemical analysis may destroy the specimen and thereby preclude introduction of the specimen at trial, the officer should nevertheless submit the substance to the lab. If chemical testing does destroy the exhibit, the chemist can testify at trial that the recovered specimen was submitted and analyzed, but destroyed in the process of analysis.

d. If only a small amount of evidence can be recovered, the officer should not conduct a field test (using any of various narcotics testing kits) by treating the evidence with chemicals. Such testing contaminates the specimen and prevents accurate laboratory analysis.

e. If a very large quantity of a substance is recovered — in particular, large quantities of marijuana — the officer should not submit all of the recovered evidence to the lab. Lab storage facilities are inadequate to accommodate large amounts of drugs.

2. Use and Preservation of Original Container

a. Drugs may be submitted to the lab in their original container. However, if the officer does elect to leave the drugs in their original container, he should ensure that the container is properly sealed and should usually enclose the container within another package. Enclosure within another package is especially important when the original container is fragile (e.g., glass bottle or plastic bag).

b. If the officer elects to remove the drugs from their original container and to repackage them, he should preserve the original container (can, box, bottle, envelope or wrapper) which contained or which was otherwise connected with the evidence.

3. Packaging Drug Evidence

a. When packaging evidence, the officer should always select a container which will guard against damage or contamination. The best types of containers are sturdy, well-sealed plastic bags and sturdy plastic bottles with screw-on caps.

b. To avoid contamination, the officer should ensure that the container is clean and dry.

c. Containers should be of the approximate size of the materials submitted.

d. Bags of marijuana or glassine envelopes of heroin, demerol, or similar substances should be sealed, labelled and enclosed within a larger plastic bag.

e. Tablets, pills and capsules should be placed in clean, dry, plastic bottles.

f. Liquids should ordinarily be left in their original container and sealed.

g. Marijuana cigarettes or "joints" should be placed in a small, sturdy plastic bag.

h. LSD evidence should be recovered in its original package, if possible. Exposure to any other substance or material may render the specimen useless for testing purposes.

i. Small, fragmentary specimens should not be placed in envelopes alone because such specimens are often lost through the small flap openings of the envelope. The ideal container for such evidence is a sturdy and well-sealed plastic bag. Because the chemist can see the evidence in the plastic bag before he opens it, he is less likely to lose the evidence in the process of opening the container.

j. To avoid contamination, the officer should place each type of drug in its own container. If the officer is uncertain as to whether particular specimens are the same type of drug, he should place them in different containers.

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4. Sealing of Containers

a. The officer should seal the container so that no access to the evidence may be gained without irreparably damaging the container or the seal. This will ensure that any attempts at tampering with the evidence will be immediately detected.

b. Scotch tape or sealing wax may be used to seal many containers.

c. Large bags or boxes may be secured with string, rope, wire or tape. These fastenings may be further secured with tape or sealing wax.

d. Once he has affixed the seal to the container, the officer should write his name or badge number on the seal.

If the officer is in doubt as to what type of container to use to package a particular specimen, or if he has any other question regarding drug evidence, he should call the lab (289-3159) and obtain the necessary advice from the lab specialist.

MARKING THE EVIDENCE

All recovered drug evidence must be immediately and properly marked or labelled in order to assure its proper identification at a subsequent trial, which may not be held until many months after the seizure of the evidence. When the officer is requested to identify the drug exhibit at the trial, the effectiveness of his testimony will depend to a large extent upon the manner in which he has marked or labelled the evidence and recorded this information in his notebook.

With respect to the marking and labelling of drug evidence, the officer should bear in mind these considerations:

1. Unlike less fragile evidentiary specimens (e.g., firearms), drug evidence cannot be permanently marked on the evidence itself. The officer should either attach a label to the container and mark the identifying information on the label or place a tag on the package or container and mark the tag.

2. The officer should mark the evidence as soon as he has placed it in the container or as soon as he has removed it from its original position.

3. All identifying information which the officer marks on the container label or tag must also be recorded in the officer's notebook. Proper procedure requires that the officer document completely all information regarding the drug evidence and its handling, from the time that it is recovered, through time of trial and until its final disposition.

4. The more identifying information which can be marked on the evidence the better, since such information will make easier the officer's task of identification at trial. Identifying information which the officer marks on the container label should include the following:

a. Name of the officer recovering the evidence. (The officer should mark his name rather than merely his initials.)

b. Date and time of recovery of evidence.

c. Case number and defendant's name.

d. Nature of container's contents.

e. Location of evidence at time of recovery. (If evidence was taken from a certain suspect, vehicle, address, etc., this information should be included on the label.)

MAINTAINING THE CHAIN OF CUSTODY

The officer's employment of correct methods in the collecting, packaging and marking of drug evidence may be nullified if he cannot account for the persons who have handled, examined or stored the evidence from time of recovery through time of trial and until final disposition. The officer must know and be able to establish who has had custody of the evidence at all times. Moreover, each individual who handles the evidence bears the responsibility to account for every minute that the evidence is in his possession. A break in the chain of custody may prevent the state from introducing the exhibit into evidence at trial. (The legal aspects of the "chain of custody" of evidence will be discussed in a future ALERT.)

To ensure that the chain of custody can be established at a later date and to protect the evidence, officers should employ the following safeguards:

1. Limit the number of individuals who handle the evidence from the time of its recovery to the time it is presented in court.

2. If the officer must relinquish possession of the evidence, he should record in his notebook the following information:

a. to whom the evidence was given

b. time and date of transfer

c. reason for giving the evidence to another

d. when, and by whom, the evidence was returned

e. the lab number assigned to the evidence, if available.

3. Ensure that persons handling the evidence affix their names to the package or container.

4. Obtain a signed receipt from the person accepting the evidence.

5. When the evidence is returned, the officer should check his identification marks to be sure that he has received the same item that he transferred.

STORAGE OF DRUG EVIDENCE

Drug evidence awaiting analysis and that already analyzed should always be stored in a secure facility. However, since Maine police departments vary significantly in size and available resources, there will be considerable variations in storage procedures and facilities throughout the state. Nevertheless, the following procedures are suggested as minimum guidelines for all departments.

1. Access to the storage facility should be limited to as few individuals as possible.

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a. If the department has an evidence room or vault, only one officer (an "evidence officer" or "evidence technician") should have access to the room.

b. If, as in smaller departments, officers are assigned separate evidence lockers, each officer should have the only key to his locker.

2. An evidence log should be maintained to document the entry or removal of drug evidence into or from storage. Whenever evidence is removed, the reason for its removal should be documented.

3. Drug evidence should be periodically inventoried to determine whether all evidence is on hand and whether the seals on the containers have been disturbed.

4. Before placing evidence back into storage — for example, after an analysis — the officer should always check the condition of the seals on the container.

SUBMISSION OF EVIDENCE TO THE LAB

When submitting drug specimens to the lab for analysis, the officer should remember the following points:

1. Whenever possible, the officer should deliver the evidence to the lab personally.

2. If personal delivery cannot be accomplished, the evidence should be sent by registered mail, return receipt requested.

3. When the officer wishes to reacquire possession of the evidence, if he is unable to pick up the evidence personally, the lab will send the evidence to him by registered mail if so requested.

4. After having submitted the evidence, if the officer wishes to telephone the lab to check on the results of the analysis or for some other reason connected with the evidence, the officer should refer to the number the lab has assigned to the evidence. This will facilitate the chemist's task of finding the requested information, since all records and evidence are filed according to the assigned lab number. (The lab number is indicated on the receipt which the officer is given when he personally delivers the evidence to the lab. If the officer has delivered the evidence by mail, he will be unable to refer to the evidence by its number, unless he has already received the chemist's report. If the officer does not know the lab number, he should specify to lab personnel at least the following information: officer's name, defendant's name, type of drug, and date mailed.)

5. When submitting evidence, the officer should always indicate what county is to be billed for the analysis. This will be the county in which the criminal proceeding is brought.

DISPOSITION OF DRUG EVIDENCE

After the trial (or in the absence of a trial) if the lawful possession of the recovered drugs is not established or if lawful ownership of the drugs cannot be ascertained, the drugs must be disposed of pursuant to a court order. Disposition of the drugs is accomplished either by destroying the drugs or, in the case of narcotic drugs, by delivery to the Bureau of Health. An officer should not attempt to dispose of unlawful drugs unless he has obtained a court order specifying the manner of disposition.

Title 22 M.R.S.A. §§2376 and 2387 are the controlling statutes with respect to the disposition of drugs. These statutes provide that the court having jurisdiction over the drugs shall issue an order providing for the manner of disposition. The statutes also provide (1) that the officer responsible for custody of the drugs observe strict record-keeping requirements and (2) that the officer making final disposition of the drugs report under oath to the court the exact manner and circumstances of disposition. It is most important that officers assigned to dispose of drugs maintain all records required of them by statute.

After drug evidence is submitted to the lab for analysis, such evidence often continues to remain with the lab until trial. But because many drug cases never go to trial, considerable quantities of drugs which are no longer needed for evidentiary purposes remain at the lab, occupying valuable storage space. Consequently, the lab itself, after giving the county attorney advance notice of its intention to do so, will destroy drugs which have been in lab storage for a specified period of time.

CONCLUSION

Law enforcement agencies are encouraged to develop standard procedures for the handling of drug evidence. Although procedures will necessarily vary among different departments, departments should cooperate in the preparation of procedures so as to achieve some degree of uniformity. Procedures should emphasize protection of the evidence — both against loss or theft and against contamination — and maintaining the chain of custody. All officers should have a thorough knowledge of the procedures and should follow them explicity. Strict compliance with well-prepared procedures will contribute significantly to the just outcome of drug prosecutions.

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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FORUM

This column is designed to provide information on the various aspects of law enforcement that do not readily lend themselves to treatment in an extensive article. Included will be comments from the Attorney General's staff, short bits of legal and non-legal advice, announcements, and questions and answers. Each law enforcement officer is encouraged to send in any questions, problems, advice or anything else that he thinks is worth sharing with the rest of the criminal justice community.

Additions to Law Enforcement Education Section Library

The Law Enforcement Education Section has recently received the following books and pamphlets. These materials may be helpful to officers who wish to review various areas of criminal law and procedure, to examine unfamiliar areas of law and law enforcement, or to research a particular problem. Officers wishing to borrow one or more of these works should call 289-2146 or write to:

Law Enforcement Education Section
Department of Attorney General
State House
Augusta, Maine 04330

Alexander, *Classifying Palmprints* (1973).
A complete system of coding, filing and searching palmprints, written in easily understandable language.

Auten, *Training in the Small Department* (1973).
Suggestions on in-service training within the law enforcement organization with special emphasis on smaller law enforcement agencies.

Baken, *Slaughter of the Innocents* (1971).
An examination of child abuse and infanticide, including the historical, sociological, legal and medical aspects of child abuse, the way in which the problem of child abuse has remained hidden for so many years, and steps which should be taken to combat the problem.

Bristow, *Effective Police manpower Utilization* (1969).
A collection of four reports prepared for the 1966 President's Commission on Law Enforcement and the Administration of Justice. Stresses effective use of manpower through proper use of specialization.

Brodie & Feldstein, *The MTI Bombs Familiarization and Bomb Scare Planning Workbook* (1973).
Subjects treated include: steps to be taken in the event of a bomb scare; descriptions of various types of bombs; why people make bomb scare calls.

Browne, *Child Neglect and Dependency: A Digest of Case Law* (1973).
A compilation of case summaries relating to child welfare and a discussion of how the decisions of juvenile and family courts have changed over the years.

Bureau of Narcotics and Dangerous Drugs, *Guidelines for Drug Abuse Prevention Education* (1972).
Pamphlet designed to assist educational institutions prepare drug abuse programs for their students. Sample programs are included.

Chamber of Commerce (U.S.), *Deskbook on Organized Crime* (1972).
Pamphlet outlines areas of organized crime threatening the business community and suggests counter-measures to be taken by business management.

Colorado Springs District Attorney's Office, *Child Abuse Cases: Duties, Responsibilities and Authority under the Colorado Children's Code* (1972).
Pamphlet describing the duties and authority of Colorado law enforcement officers in child abuse cases.

Eldefonso, *Youth Problems and Law Enforcement* (1972).
Suggestions for officers working with juvenile offenders. Topics covered include prevention of delinquency and investigation of cases involving juveniles.

Erskine, *Alcohol and the Criminal Justice System: Challenge and Response* (1972).
Presents guidelines for the implementation of alcohol abuse programs, and discusses the need for better understanding of the alcohol abuse problem.

Ferguson & Miller, *The Polygraph in Court* (1973).
A detailed analysis of the polygraph as an investigatory and evidentiary device.

Godfrey & Harris, *Basic Elements of Intelligence* (1971).
Manual of theory, structure and procedures for use by law enforcement agencies against organized crime.

Inbau, Aspen & Carrington, *Evidence Law for The Police* (1972).
Discussion of the evidentary rules that officers are likely to encounter in the courtroom and in the course of investigation.

Irvine & Brelje, Law, *Psychiatry and the Mentally Disordered Offender* (3 vol. 1973).
Articles on the interactions of the criminal justice and mental health systems, and how those two fields relate to the mentally disordered offender.

Matthews & Rowland, *How to Recognize and Handle Abnormal People* (1954).
Pamphlet advising officers on how to handle mentally and physically ill persons, alcoholics, drug addicts, sex offenders and the mentally retarded.

Matthews, *Firearms Identification* (3 vol. 1973).
A well-illustrated three volume set containing extremely comprehensive materials on firearms identification.

Newman, *Architectural Design for Crime Prevention* (1971).
Suggestions as to how residential buildings can be designed to deter crime.

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Northwestern University Traffic Institute, *Speed Offenses* (1972).
Pamphlet designed to give officers a better knowledge and understanding of traffic laws and their enforcement.

Northwestern University Traffic Institute, *Traffic Officer in Court* (1965).
Training manual providing detailed instruction on police procedure in the courtroom.

Pike, *Protection Against Bombs and Incendiaries* (1972).
Offers protective techniques and procedures for reducing the threat of bombs to both people and institutions.

Post, *Combating Crime Against Small Business* (1972).
Suggestions for business management on ways to deter shoplifting, burglary and other crimes which commonly plague small businesses.

Pursuit, Gerletti, Brown & Ward, *Police Programs for Preventing Crime and Delinquency* (1972).
Numerous articles dealing with crime prevention programs and the role of the officer in preventing crime and delinquency.

Reiser, *Practical Psychology for Police Officers* (1973).
Written in layman's terms, this book is designed to provide the officer with answers to basic psychological questions about himself and the people he encounters in various field situations.

Rifas, *Legal Aspects of Video Tape and Motion Pictures in Law Enforcement* (1972).
Digest of case law on (1) the constitutionality of the use of video tapes and motion pictures as evidence, and (2) judicial acceptance of their use to record admissions, confessions, lineups, drunk drivers and public demonstrations.

Roberts & Bristow, *An Introduction to Modern Police Firearms* (1969).
Purpose of book is to aid in developing safe and responsible techniques for handling of firearms, to introduce the officer to shotgun and tear-gas equipment, and to suggest guidelines regarding the legal and ethical use of firearms.

Sansone, *Modern Photography for Police and Firemen* (1971).
Discusses proper techniques of police photography, as well as technical aspects of cameras, light filters, exposure meters, etc.

Spitz and Fisher, *Medicolegal Investigation of Death* (1973).
Written by both legal and medical experts, text covers all phases of death investigation.

Tetu, *Within the Law* (1972).
Pamphlet outlining the civil liberties of the law enforcement officer.

Tobias & Petersen, *Pre-Trial Criminal Procedure* (1972).
Sets forth, by textual material and actual case examples, the legal principles relating to search and seizure, confessions, right to counsel, and bail.

Watson, *Issues in Human Relations* (1973).
Five articles which convey difficult and subtle ideas about human relations in a way which is both readable and informative to the police officer.

Webster, *The Realities of Police Work* (1973).
An examination of the many and varied functions and services which law enforcement officers perform.

Weinstein, *Legal Rights of Children* (1964).
Digest of case law pertaining to the legal rights of children and the procedural rights of juvenile offenders.

Weinstein, *Supreme Court Decisions and Juvenile Justice* (1973).
Digest of case law pertaining to the rights of illegitimate children, parents, AFDC recipients, and juvenile offenders.

Zavala & Paley, *Personal Appearance Identification* (1972).
Presents useful methods of aiding witnesses in doing a better job of suspect identification.

MAINE COURT DECISIONS

PROCEDURE:
F §1.8 Jury Trial
CRIMES/OFFENSES:
C §6.3 Speeding – Other Offenses

In a case which originated in District Court, defendant was charged with speeding in violation of 29 M.R.S.A. §1251, but he declined to waive his right to a jury trial. The District Court judge then transferred the case to the Superior Court. The Superior Court justice concluded that defendant was charged with a petty offense and that he therefore had no constitutional right to trial by jury. The justice therefore remanded the case back to the District Court. The question which was reported to the Maine Law Court for its determination was whether Art. I, §6 of the Maine Constitution guarantees a right of trial by jury to a person accused of speeding, a violation punishable "by a fine of not less than $10 nor more than $100, or by imprisonment for not more than 90 days, or by both."

The court held that Art. 1, §6, of the Maine Constitution, which guarantees the right of trial by jury "in all criminal prosecutions", guarantees the right of trial by jury

> "to the accused in each and every criminal prosecution without limitation, restriction or qualification as to whether the subject matter of the prosecution is a 'petty' or 'serious' violation of the criminal law."

Thus, the defendant in the instant case was constitutionally entitled to a jury trial, a right of which he was deprived by the ruling of the Superior Court justice. *State v. Sklar,* Docket No. 1020 (Supreme Judicial Court of Maine, March 21, 1974)

COMMENT: This case means that a defendant in any *Maine criminal prosecution—whether a felony or a misdemeanor, or whether considered petty or serious—is entitled to a trial by jury, unless the defendant expressly waives that right.*

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TRAFFIC OFFENSES:
C §6.3 Speeding — Other Offenses
PROCEDURE:
F §1.1 Pleadings

Defendant was charged with a violation of 29 M.R.S.A. §1251(1) by a complaint which stated:

> "That on or about the 26th day of May, 1972, in the town of Washburn, County of Aroostook, and State of Maine, the above named defendant, Russell D. Scott, did then and there operate a certain motor vehicle, to wit, a motorcycle, on a certain public way in said Washburn, to wit, Route #164 there situate, at a careless and imprudent rate of speed greater than was reasonable and proper having due regard to the traffic then on said way and other conditions then existing in that said Russell D. Scott did then and there operate said motor vehicle at an excessive rate of speed while dodging in and out of traffic."

Defendant moved to dismiss the complaint on the ground that §1252(1) was unconstitutional. The issue was reported to the Maine Law Court for its determination.

The Law Court did not reach the question of constitutionality, but instead decided the case on the basis of the sufficiency of the complaint. The court held that a complaint or indictment which attempts to charge a violation of §1251(1) by only reciting the language of the statute or its equivalent is insufficient to confer jurisdiction on the court. The complaint must state the manner of operation and the surrounding circumstances. Under Art. 1, §6 of the Maine Constitution, for a court to acquire jurisdiction, the complaint must sufficiently inform the defendant of the factual nature of the charge against him.

The court concluded that the complaint in this case was fatally defective. Merely alleging that the defendant operated his vehicle "at an excessive rate of speed while dodging in and out of traffic" without alleging the existing conditions at the time of operation did not sufficiently inform the defendant of the factual nature of the charge. The court noted that "(t)o dodge in and out of traffic is an every day occurrence to the average motorist." The complaint should also have alleged the existing conditions which made the defendant's operation careless and imprudent, such as: the specific rate of speed; the road or weather conditions; whether defendant was dodging oncoming or ongoing cars; whether defendant dodged one car or more than one car; whether traffic was congested or light. *State v. Scott,* Docket No. 1019 (Supreme Judicial Court of Maine, March 21, 1974)

COMMENT: This case indicates that when a law enforcement officer prepares a complaint for operating at a careless and imprudent rate of speed he should specify the manner of operation and all the surrounding circumstances and conditions which made the defendant's operation careless and imprudent. Facts which should be alleged include:

1. *the specific rate of speed;*
2. *the amount or type of traffic;*
3. *the surface or width of the way;*
4. *the time of day or night;*
5. *the existing weather conditions; and*
6. *the manner in which the defendant was operating his vehicle.*

IMPORTANT RECENT DECISIONS

CRIMES/OFFENSES
C §5.2 Disorderly Conduct
C §5.2 Freedom of speech

Defendant, a 69 year old employee of his son's liquor store, was walking home from work on Christmas night, 1971. The neighborhood in which the defendant was walking through was a high crime area and police had been notified of a suspicious man in the area. An officer approached the defendant and asked him if he lived in the area. The defendant did not answer, turned, and walked away. The officer twice attempted to stop the defendant but each time the defendant threw off the officer's arm and protested "I don't tell you people anything." The defendant did not run nor did he in any other way obstruct the officer. The officer arrested the defendant for disorderly conduct and defendant appealed his conviction.

The Court reversed the conviction of the defendant, saying the only reason the officer arrested the defendant was that the defendant protested the manner in which the officer was treating him. The officer "testified that he didn't charge the man with resisting because 'I didn't think it was a warranted cause' and that he arrested the petitioner for being 'loud and boisterous' and 'he annoyed me' ". Absent abusive language or fighting words, the Court said "one is not to be punished for nonprovocatingly voicing his objection to what he obviously felt was a highly questionable detention by a police officer." The defendant's speech was protected by the First Amendment and his conviction must be reversed. *Norwell v. City of Cincinnati, Ohio,* 414 U.S. 14, 94 S. Ct. 187, 38 L.Ed. 2d 170, (November 1973).

SEARCH AND SEIZURE:
A §2.6 Consent
SUPPRESSION OF EVIDENCE:
A §4.1 Hearing
EVIDENCE:
E 1.2 Hearsay

Defendant was indicted for bank robbery. He had been arrested in the front yard of a house in which he lived along with a Mrs. Graff (daughter of the lessors) and others. Although the arresting officers were aware that defendant lived in the house, they did not ask him which room he occupied or whether he would consent to a search. The

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officers were admitted to the house by Mrs. Graff and, with her consent but without a warrant, searched the house, including a bedroom which Mrs. Graff told them was jointly occupied by defendant and herself. In a closet, officers found and seized money. Defendant was granted a motion to suppress the money seized as evidence on the grounds of unlawful search and seizure, and the Government appealed.

The Court held that the consent search was valid and that the evidence should not have been suppressed. Valid consent to search may be obtained not only from the defendant but also from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected. The Court also held that there was no automatic rule against receiving the hearsay evidence of Mrs. Graff in a suppression hearing, even if the evidence would not have been admissible at trial. *U.S. v. Matlock,* 42 U.S.L.W. (U.S. Supreme Court, February 1974).

COMMENT: This case restates the generally accepted rule that officers may obtain a valid consent to search places or effects not only from the defendant, but also from persons who have common authority over or other sufficient relationship to the places or effects to be inspected. It is, however, often difficult to determine whether a person has common authority over or sufficient relationship to a place or an effect. Officers, therefore, should carefully question the person giving consent to determine whether that person is a joint occupant, common user, or has some other significant relationship to the place or effect. Also, officers should keep careful records of these questions and answers in order to refresh their memories when the legality of the search is later challenged in court or at a motion to suppress. For further guidance in obtaining consent to search from persons other than the person against whom evidence is sought, see pages 3 through 6 of the May 1972 ALERT.

SEARCH AND SEIZURE:
A §2.3 Incident to Arrest
A§2.5 Persons and Places Without a Warrant
PRISONS AND PRISONERS:
M §5

Defendant was lawfully arrested shortly after 11 p.m. on May 31, 1970 for attempting to break into a building, and was taken to jail. Shortly thereafter, law enforcement officials learned that at the scene of the breaking, paint chips had been found. The next morning police seized defendant's clothing without a warrant. Paint chips matching those at the crime scene were found and introduced in court over defendant's objection and defendant was convicted. Defendant appealed claiming an unlawful search and seizure.

The Court held that the search and seizure of defendant's clothing did not violate the Fourth Amendment. At the time defendant was jailed, the police had a right to seize his clothing and keep it in official custody. Since there was no substitute clothing available, however, the police waited until the next morning to seize defendant's clothing. The Court held that at the time of the seizure, the normal processes incident to arrest and custody had not been completed, and therefore the warrantless seizure of the clothing was legal.

Furthermore, the Court held that once a defendant is lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of his arrest may lawfully be searched and seized without a warrant, even though a substantial period of time has elapsed between the arrest and subsequent administrative processing on the one hand and the taking of the property for use as evidence on the other. *U.S. v. Edwards,* 42 U.S.L.W. 4463 (U.S. Supreme Court, March 1974).

COMMENT: The Edwards *case is an example of an exception to the general rule that searches incident to arrest must be contemporaneous with the arrest.* [*See the July 1972 ALERT at p. 3.*] *In the* Edwards *case, officers could have lawfully seized defendant's clothing incident to his arrest. It would have been unreasonable to seize defendant's clothes at the time of arrest, however, because he would have had nothing to wear.*

Once defendant had been taken to the local jail, again police could have legally seized his clothing as part of the administrative processing before jailing him. No substitute clothing was available, however, so it was reasonable for the police to delay the seizure of defendant's clothing until the next morning when substitute clothing was available.

It should be emphasized that the Edwards *case does not say that a law enforcement officer may delay a search incident to arrest of a person for as long as he wishes without justification. The officer must have a good reason for any delay in searching incident to arrest, and he should keep careful records of his reasons for delaving the search. Also, this case does not sanction all delays in searching and seizing evidence from persons after they have been incarcerated. Again, officers should be able to provide a justification for any such delay.*