

# MAINE STATE LEGISLATURE

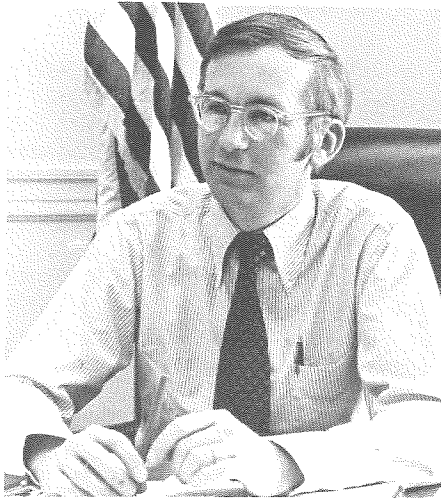
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**ALERT**

AUGUST 1974

**CRIMINAL DIVISION**FROM THE OFFICE OF  
THE ATTORNEY GENERAL  
OF THE STATE OF MAINE

**MESSAGE FROM THE  
ATTORNEY GENERAL  
JON A. LUND**

This month's and next month's issues of ALERT will be devoted to a discussion of road blocks, an effective but potentially dangerous law enforcement procedure. I encourage all law enforcement officers to familiarize themselves with the practical and legal guidelines set out in these two articles and to observe conscientiously departmental road block procedure.

I would also like to encourage criminal justice personnel to make use of the FORUM column in ALERT. The FORUM column is designed to provide answers to questions which arise in the daily experience of law enforcement officers and to advise officers on problems of general interest. I urge you to submit your inquiries to the Law Enforcement Education Section so that the ALERT, by sharing problems of general concern, can become an even more effective educational medium. The number of the Law Enforcement Education Section is 289-2146.

*Jon A. Lund*  
JON A. LUND  
Attorney General

**ROAD BLOCKS I**

Use of the road block as an enforcement technique by law enforcement officers has developed hand in hand with the development of the automobile as a principal means of travel. In certain respects the automobile has made the law enforcement officer's task of enforcing the law more difficult. The automobile provides violators of the law with a fast and effective means of escape. Similarly, it provides a fast method of transporting contraband or other seizable evidence from the jurisdiction in which it is sought. Road block procedures are designed to decrease the effectiveness of these and other evasive tactics employed by violators of the law.

This and next month's main articles in ALERT will present some of the practical and legal considerations involved in the establishment of road blocks. The practical procedures which will be discussed are intended only to supplement existing local procedures, not to replace those procedures. Officers should at all times have a thorough knowledge of departmental road block procedures. Discussion of legal considerations will include problems of arrest and search, commandeering of vehicles, and officers' liability for injuries sustained at road blocks.

**PRACTICAL CONSIDERATIONS**

A "road block" may be defined as a structure, device, or other means used by duly-authorized law enforcement officers for the purpose of controlling all traffic through a point on the highway, whereby all vehicles may be slowed or stopped. Road blocks are commonly used (1) to enforce motor vehicle laws, (2) to apprehend fleeing violators of the law, (3) to search for contraband, and (4) to make inquiries and investigations for the effective prevention of crime and enforcement of law.

A road block may or may not involve the actual, physical blocking of a highway. Because of the high speeds of vehicles on the highways, the actual blocking of a highway—whether completely or only partially (for example, the blocking of only one lane)—creates an extreme danger to innocent occupants of motor vehicles. Consequently, this type of road block should be established only (1) when the safety of the public is absolutely assured and (2) when essential to the apprehension of dangerous persons. A more commonly used and safer type of road block involves the use at the side of the highway of lights and signs, a

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squad car, or other devices, directing vehicles to reduce speed and to pull off the road.

### **Preliminary Considerations**

Although in many, if not most, situations it is headquarters which decides whether or not to establish a road block, the individual officer—especially the officer in hot pursuit—must often make this decision on his own. When contemplating whether to set up road blocks or whether to request other law enforcement agencies to cooperate by setting up road blocks, the officer should consider: (1) the time element, (2) the extent to which other law enforcement activity will be reduced, and (3) the danger created to the public.

#### *Time Element*

Vehicles involved in escape from serious crime or from custody will likely be travelling at speeds of at least a mile-a-minute (60 M.P.H.). Bearing this in mind, the officer should determine how much time will be needed to establish a road block(s) at a given point(s). For example, assuming that the officer begins his computation at the time of the commission of the crime or the escape, if a road block cannot be established within ten minutes at a location ten miles from the site of the crime or escape, there will be little point in setting up a road block. The suspect will likely have already escaped beyond the ten mile perimeter.

#### *Manpower Requirements*

To be effective, road blocks often require the immediate mobilization of a significant number of officers. This may be the case, for example, when a crime has been committed in a populated area and neither the identity of the suspect nor his exact location is known. Because many units may be needed to block the numerous avenues of escape, the establishment of the road block may result in a reduction of other law enforcement activity (that is, other officers may have to abandon those tasks they are performing at the time, in order to assist in the establishment of the road block) for

at least the duration of the block. Furthermore, the extra manpower requirements may affect not only other units within the officer's own jurisdiction, but also units within other jurisdictions. This is because vehicles travelling at high speeds are likely to travel outside the county or municipality of the officer who requests the block. Because road blocks often require the mobilization of a great number of officers—and a corresponding reduction in other law enforcement activity—they should be established only when absolutely necessary. Also, because headquarters has a greater awareness of existing manpower availability, the officer who anticipates the need for assistance should always contact headquarters and indicate the need for aid.

#### *Danger to the Public*

Since road blocks present a considerable danger to those travelling upon the highways, the officer should always weigh the need for establishing a road block against the danger created by its establishment. Because road blocks present a danger to the public, and because they involve curtailment of other law enforcement activities, requests for road blocks should be restricted to serious crimes or to the apprehension of dangerous persons.

Intradepartmental and inter-departmental planning, as well as individual training, will minimize many of the problems discussed above. A system of swift communications both within and between departments will reduce the time required to establish road blocks and prevent needless waste of manpower. Likewise, familiarity with the highways and road conditions throughout the area will ensure that road blocks are established at points which are safe, but which eliminate avenues of escape. All law enforcement officers, for their own safety at road blocks, should be well-trained to avoid injury inflicted (1) by vehicles

approaching the road block and (2) by assault from the occupants of vehicles approaching or stopped at the road block.

### **Establishing Road Blocks**

Once it is determined, either by the initiating officer or by headquarters, that a road block is warranted, the law enforcement officers involved in establishing the road block should bear in mind the following points:

#### (1) *Protect yourself*

Although there is generally little time to spare in establishing a road block, the officer must allow himself time to get out of the patrol car, especially if the patrol car is used in the block, and to take a position which affords the maximum amount of safety. If the officer does not have enough time to establish a road block with the patrol car and to obtain a safe position outside the car, he should not attempt to establish the block.

When an actual blocking of the road is necessary but the entire road cannot be blocked, the officer should leave open an "escape alley," through which the driver will most likely travel if he decides to run the road block. The officer should then assume a position, usually as far from the "escape alley" as possible, where he is least likely to be injured if the driver elects to run the block.

#### (2) *Relay all relevant information to headquarters*

The officer requesting a road block should immediately relay to headquarters all relevant information which will facilitate the establishment of the road block and the apprehension of the subject. Such information includes: a description of both the occupants of the vehicle and the vehicle itself; the nature of the crime committed or the reason why immediate apprehension is necessary; the location of the vehicle, the direction in which it is heading and the speed at which it is travelling; whether the occupants of the vehicle are armed. Likewise, officers at each road

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block location should keep headquarters informed of developments.

(3) *Eliminate avenues of escape*

The road block should be established at a point which will not permit vehicles to turn off onto another highway within the sight of the road block. Because there are fewer highways in the rural areas of the state, and therefore fewer avenues of escape, road blocks will ordinarily be more successful in those areas than in densely populated areas.

Although officers should attempt to eliminate avenues of escape, at the same time they must ensure that the road block is visible to oncoming cars for a considerable distance. This will allow the wanted vehicle sufficient opportunity to stop voluntarily.

(4) *Ensure the safety of the public*

To prevent injury to innocent travellers, warning signs should be positioned at a considerable distance before the road block. Usually a series of warnings will be required. A road block established near any road condition (hill, sharp curve, etc.) which obstructs a driver's view of the highway is extremely dangerous and warrants the placement of warning devices at even greater distances from the road block. Although the road block may not involve the actual blocking of the highway, adequate warning is still required. When the patrol car is used to block the road, the flashing light should be used. Law enforcement officers should be aware that if they are negligent in failing to provide adequate warning at a road block and injury results from their negligence, they may be liable to the injured parties in a civil action for damages.

Although each department should establish local policy regarding the placing of warning signals, the following minimum procedure, which is based upon the Montana road blocks statute and which is similar to that used in several other states, is suggested:

1. The road block should be established at a point on the highway clearly visible at a dis-

tance of not less than one hundred (100) yards in either direction.

2. At the point of the road block, a sign should be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than fifty (50) yards, in both directions, either in daytime or darkness.

3. At the same point of the road block, at least one (1) red light, which should be a flashing or intermittent beam of light, should be placed visible to the oncoming traffic, at a distance of not less than one hundred (100) yards.

4. At a distance of not less than one-quarter mile from the point of the road block, warning signs should be placed at the side of the highway, containing any wording of sufficient size and luminosity, to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern should be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

It is important to remember that the above steps are recommended as a *minimum* procedure. Greater precautions may have to be taken depending on the weather, road conditions and other factors.

If it is necessary to commandeer the vehicle of a private citizen for use at a road block, the officer should ensure that the occupants of the vehicle are removed to a position of maximum safety. (Legal authority for the commandeering of vehicles at road blocks will be discussed in next month's *ALERT*.)

(5) *Minimum of two officers*

Road blocks are among the most dangerous procedures employed by law enforcement officers. Whenever possible, for the officer's personal safety, no fewer than two men should man a road block: one to approach the vehicles and the other to cover the approach officer.

Officers should use the utmost caution when approaching each vehicle.

(6) *Pre-plan action to be taken when a vehicle turns around and seeks escape from the road block*

Headquarters or the unit coordinating the road block should announce the procedure to be followed by the officers manning the road block if a vehicle is observed turning around or otherwise changing direction to avoid the road block. Whether or not to pursue such a vehicle is an important, but oftentimes difficult, question. If the officers abandon the road block to pursue an innocent party, the wanted individual may escape through the abandoned position. On the other hand, if the officers elect to hold their position, the suspect may escape by simply turning around and proceeding in another direction.

It is impossible to lay down general guidelines for use by headquarters in all situations. The procedure which headquarters will announce in a particular case will depend upon the circumstances of the particular case. Thus, if headquarters is aware that another unit will soon arrive at a road block, it may instruct the officers already manning the block to give pursuit if a vehicle turns around and flees. In this situation, the second unit will be able to man the abandoned position.

**Contact with the Public at Road Blocks**

Innocent persons stopped at road blocks will be both irked at the delay and curious as to the reason for delay. The officer should treat all individuals with the utmost courtesy and state frankly the reason for the road block.

If the identity or description of the subject or his vehicle is known to the officer, he should relate this information to the occupants of stopped vehicles. Members of the public who are alerted to these facts may be able to provide—either then

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or later—information of value in locating the wanted person.

This concludes the discussion of the practical considerations involved in the establishment of road blocks. Next month's main article in ALERT will discuss legal considerations associated with road blocks.

*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.*

## IMPORTANT RECENT DECISIONS

### SELF-INCRIMINATION:

#### B § 1.3 *Miranda*

### SELF-INCRIMINATION:

#### B § 2.3 *Evidence, Harmless Error*

### SELF-INCRIMINATION:

#### B § 2.4 *Derivative Evidence*

Defendant was convicted of rape and appealed. After his arrest for rape, defendant was taken to the police station for interrogation. Before the questioning began, defendant was advised of his right to remain silent, and his right to counsel, but not of his right to the free appointment of counsel. (The interrogation occurred *before* the Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436 86 S.Ct. 1602, 16 L.Ed.2d 694 (U.S. Supreme Court, 1966)). During questioning, defendant told law enforcement officers that he was with a friend (Henderson) at the time of the crime. However, the officers later obtained information from Henderson incriminating defendant. Before trial, defendant made a motion to exclude

Henderson's expected testimony because defendant had revealed Henderson's identity without having received the full warnings which were required by the *Miranda* decision (which was decided *after* the interrogation of defendant, but before defendant's pre-trial motion). The motion was denied, Henderson testified, and the defendant was convicted.

The U.S. Supreme Court held that Henderson's testimony, which was derived from the interrogation of defendant, was admissible. Although the officers did not afford defendant the full measure of procedural safeguards later set forth in *Miranda*, defendant was not deprived of his privilege against self-incrimination because the statements he made during the interrogation were not involuntary or the result of improper police conduct. The conduct of the officers was proper under pre-*Miranda* legal principles and did not involve bad faith. Therefore, their failure to advise defendant of his right to appointed counsel would not justify recourse to the exclusionary rule, which is aimed at willful or negligent deprivations of an accused's rights by law enforcement personnel. Because the evidence derived from defendant's statements—namely Henderson's testimony—was not obtained by violating defendant's constitutional rights, the Court held the evidence admissible. *Michigan v. Tucker*, 42 U.S.L.W. 4887 (U.S. Supreme Court, June 10, 1974).

*COMMENT: It is important to note that Michigan v. Tucker in no way affects the duty of law enforcement officers to comply with the requirements of Miranda v. Arizona. Before an officer conducts a custodial interrogation, he must still give the accused the Miranda warnings. Michigan v. Tucker holds that where a police interrogation occurred prior to the Miranda decision and the police conduct at issue did not abridge the defendant's constitutional privilege against self-incrimination, evidence derived from the interrogation may be admitted at the defendant's trial.*

### SEARCH AND SEIZURE:

#### A § 2.1 *Probable Cause: Warrant*

### SEARCH AND SEIZURE:

#### A § 2.4 *Automobiles-Without a Warrant*

### SEARCH AND SEIZURE:

#### A § 3.5 *Delay in Search*

On July 24, 1967, law enforcement officers interviewed defendant in connection with a murder that had occurred five days earlier. At the same time, the officers observed the model and color of defendant's automobile, which they thought may have been used to push the victim's car over an embankment. On the morning of October 10, a warrant for defendant's arrest was obtained. Officers also had, at this time, probable cause to believe that defendant's automobile was used in the commission of the crime, but they did not obtain a search warrant. Defendant, who had been asked to appear at the police station on October 10 for questioning, parked his car in a nearby commercial parking lot and appeared at the station as requested. Defendant was not arrested until late afternoon, after which his car was towed to a police impoundment lot. The next day, a warrantless examination of the exterior of the car revealed that one of its tires matched the case of a tire impression made at the crime scene, and that paint samples taken from defendant's car were not different from foreign paint on the fender of the victim's car. Defendant's conviction of the murder was upheld on appeal. However, in a subsequent habeas corpus proceeding, the U.S. District Court ruled the seizure and examination of defendant's car violative of the Fourth Amendment, and the Court of Appeals affirmed.

The United States Supreme Court concluded that the warrantless examination of the exterior of defendant's car was not unreasonable under the Fourth Amendment.

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The Court held that *where probable cause exists*, a warrantless examination of the *exterior* of an automobile is not an invasion of an individual's Fourth Amendment right to privacy. The Court reasoned that an individual's expectation of privacy in an automobile is less than that expectation of privacy one has with respect to his person, his home, or his office.

The second issue confronting the Court was whether the prior impoundment of the automobile was unlawful. If it were unlawful, the subsequent examination of the automobile would have been rendered unlawful. (Note: The "impoundment" of an automobile in a situation such as this means nothing more than a *warrantless seizure* of the automobile. Consequently, Fourth Amendment standards are applicable.)

Citing *Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed. 2d 419 (U.S. Supreme Court, 1970), the Court held that the impoundment of the automobile was not unreasonable because; (1) the automobile was seized from a *public* place (rather than from *private* property) where almost anyone could have had access to it, (2) there were exigent circumstances justifying a warrantless seizure (because the car was easily accessible and because there was a great incentive for its removal in order to destroy the incriminating evidence it contained), and (3) the seizure facilitated the necessary close examination involving the use of laboratory equipment.

The Court also rejected defendant's argument that because probable cause to search had existed for some time, there were no exigent circumstances. Pointing out that there is no requirement that a warrant be obtained at the first practicable moment, the Court stated:

"Exigent circumstances with regard to vehicles are not limited to situations where probable cause is unforeseeable and arises only at the time of arrest . . . The exigency may arise at any time, and the fact that the police might

have obtained a warrant earlier does not negate the possibility of a current situation's necessitating prompt police action."

*Caldwell v. Lewis*, 42 U.S.L.W. 4928, 4932 (U.S. Supreme Court, June 17, 1974.)

## MAINE COURT DECISIONS

### CONFESSIONS/SELF-INCRIMINATION: B§ 1.3 Miranda

A camp owner noticed that his camp was afire and observed defendant proceeding along the highway. When the camp owner found defendant at the latter's home, a conversation ensued between them during which defendant admitted that he was responsible for several other fires. A number of people overheard the conversation, including a deputy sheriff who was nearby who did not participate in the conversation. Defendant was not under arrest at the time of the conversation. At defendant's trial, after the camp owner testified as to defendant's admission, the trial Justice ruled that the mere presence of a law enforcement officer at the scene of an interrogation by a layman required the immediate giving of the *Miranda* warnings. The Justice denied defendant's motion for a mistrial. Defendant was convicted of second degree arson and appealed. On appeal, defendant argued that because the deputy sheriff did not give the *Miranda* warnings the testimony was inadmissible, and because the jury was allowed to hear this testimony defendant's motion for a mistrial should have been granted.

The Maine Law Court denied the appeal, concluding that the trial Justice had erred in ruling that the deputy sheriff was required to give *Miranda* warnings. The court held that

"when a layman is interrogating a suspect who is not under arrest and who voluntarily responds, the mere presence of a non-participating police officer on the scene does not, per se, make operative the exclusionary rule."

Because the testimony as to defendant's admissions was admissible, the presiding Justice did not err in refusing to grant the motion for a mistrial. *State v. Peabody*. Docket No. 1041 (Supreme Judicial Court of Maine, May 1974).

*COMMENT: This case holds that a law enforcement officer who is present at the questioning of a suspect by a layman, but who does not participate in the questioning, is not required to give the suspect the Miranda warnings. This is because an officer is under no obligation to stop a suspect from making a voluntary statement which is not the product of police interrogation. Admissions made by the suspect to the layman in the presence of an officer will not be excluded from evidence as long as:*

1. *the questioning was done by a layman, that is, a person who is neither a law enforcement officer nor an agent of law enforcement officers.*
2. *the suspect is not under arrest at the time of the questioning.*
3. *the suspect's statement is voluntary.*
4. *the officer in no way assists or participates in the interrogation.*

### CRIMES/OFFENSES:

#### C § 2.1 Robbery

### EVIDENCE/WITNESSES:

#### E § 1.1 Sufficiency

On the night of July 21, 1972, two men drove into a service station and requested a lug wrench from the attendant so that they could repair their car. The attendant gave the two men a lug wrench and the men returned to their car. Shortly thereafter, the attendant was

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assaulted by two men, one of whom hit him with a lug wrench, his key to the cash register was taken, and the register was opened and money removed. The attendant identified the defendant as the man who borrowed the lug wrench and who subsequently had assaulted him with it.

To rebut the state's evidence, four witnesses were presented who testified that the defendant was at another place at the time of the crime. Also, the admitted accomplice testified that the defendant was not the person who had assisted him in the commission of the crime and the defendant testified to the same effect. In spite of this rebuttal testimony, the defendant was convicted of robbery, in violation of 17 M.R.S.A. §3401, and now appeals his conviction, claiming, among other things, that there was obvious error in the sufficiency of the evidence to support the verdict of guilty.

The court held that the jury could have properly found the defendant guilty of robbery from the evidence presented. In Maine, it is a well-established rule that the uncorroborated and contradicted testimony of a single robbery victim may support a guilty verdict. In this case, there was a positive identification by the victim and, even though there was a conflict in the evidence, such a conflict was to be resolved by the jury. *State v. Call*, Docket No. 1056 (Supreme Judicial Court of Maine, July 10, 1974).

#### CRIMES/OFFENSES:

##### C § 2.2 Breaking and Entering

#### CRIMES/OFFENSES:

##### C § 7.1 Parties

#### EVIDENCE/WITNESSES:

##### E § 1.1 Sufficiency

While returning from work after midnight on August 4, 1974, two officers observed three men walking down the street and decided to "take a better look." "A better look" revealed that the three men had gone to the rear of market and, while two stood by, one man was prying at the back door of the market with a crowbar. When the officers yelled at the men, "Halt, police," the man prying the door

ran across the yard and escaped. The other two men were caught by the officers but the crowbar was not recovered.

Defendants argued that the facts did not prove an essential element of the state's case, namely that the defendants either attempted to force the rear door of the market with a crowbar or commit any other act of force against the structure since they were merely standing by while the third person was prying at the door.

The Law Court held that, although the evidence did not show that the defendants themselves were prying the door with the crowbar, the defendants were nevertheless legally chargeable as principals if they were present during the commission of the act and

" . . . aided, abetted, assisted, advised or encouraged . . . (the third person) in . . . (it) . . . or . . . (were) present for such purpose to the knowledge of the perpetrator." *State v. Mower*, 317 A.2d 807, 811 (Me. 1974), quoting from *State v. Berube*, 158 Me. 433, 434, 185 A.2d 901, 902 (1962).

The facts established that the defendants could properly be charged and convicted as principals. The trial justice was correct in denying defendant's motion for a judgment of acquittal. *State v. Gaddis and Clifford*, Docket No. 1057 (Supreme Judicial Court of Maine, July 10, 1974).

#### SEARCH AND SEIZURE:

##### A§2.1 Probable Cause: Warrant

Charged with illegal possession of cannabis, cocaine and certain other controlled substances, defendants moved to suppress evidence seized pursuant to a warrant. The warrant was allegedly based upon two supporting affidavits, one titled "Affidavit and Request for Search Warrant" and the other untitled. The titled affidavit contained untainted conclusions, rather than facts and circumstances. The untitled, supplemental affidavit contained greater detail. Defendants

argued that because the warrant made no reference to the untitled, supplemental affidavit, the Law Court could evaluate the validity of the warrant only on the basis of the titled affidavit. Defendants further argued that because the titled affidavit did not state sufficient facts to supply probable cause for the issuance of a warrant, the warrant was invalid. The state argued that the two affidavits, taken together, supplied probable cause for the warrant. After the trial Justice denied defendants' motion to suppress, defendants appealed and the issue was reported to the Law Court.

The court sustained defendants' appeal, holding that the warrant was invalid. The two affidavits, taken together, may have supplied sufficient probable cause to support a warrant. However, the court had to assume that the magistrate relied upon only the titled affidavit when he issued the warrant, because the warrant contained no reference to the untitled affidavit. Thus, the court had to determine whether the titled affidavit, standing alone, provided sufficient probable cause. Because the titled affidavit contained insufficient facts and circumstances, the court held that it could not support the issuance of a warrant and that therefore the warrant was invalid. *State v. Stone*, Docket No. 1055 (Supreme Judicial Court of Maine, July 5, 1974).

## ALERT

The matter contained in this bulletin is intended for the use and information of all those involved in the criminal justice system. Nothing contained herein is to be construed as an official opinion or expression of policy by the Attorney General or any other law enforcement official of the State of Maine unless expressly so indicated.

Any change in personnel or change in address of present personnel should be reported to this office immediately.

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