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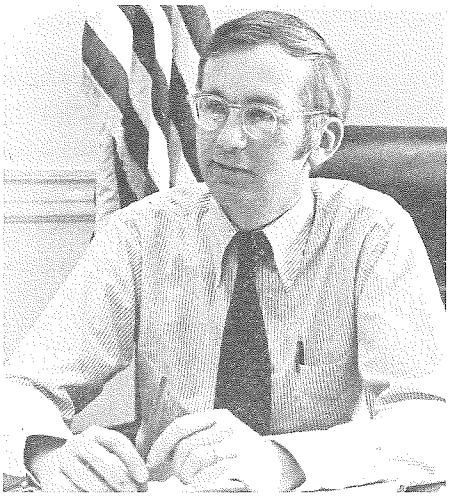
ALERT

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 ALERT features the first of two articles on the related search and seizure doctrines of open fields and abandonment. The second article will appear in the January 1975 ALERT. The December 1974 ALERT will be devoted entirely to an index of all the cases summarized in ALERT since its inception in October 1970.

The FORUM column of this issue of ALERT discusses the use of blue lights on private vehicles. We have received several inquiries regarding this topic from law enforcement personnel throughout the state.

The second item in this month's FORUM column is a list of recent additions to the Law Enforcement Education Section library. We request that officers wishing to borrow books from the library for use in their work designate each book specifically by using the full citation to the book as it appears in ALERT.

Jon A. Lund

JON A. LUND
Attorney General

OPEN FIELDS

To open the discussion of the "open fields" exception to the search warrant requirement, it is helpful to refer to the Fourth Amendment to the U.S. Constitution. The Fourth Amendment guarantees "the right of the people to be secure in their persons, *houses*, papers, and effects, against unreasonable searches and seizures . . ." (emphasis supplied) U.S.C.A. Const. Amend. IV. The word "houses" is italicized because the meaning of open fields depends upon court interpretation of the word "houses." The leading case distinguishing "open fields" from "houses" under the Fourth Amendment is *Hester v. U.S.*, 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898 (1924).

HESTER V. U.S.

In the case of *Hester v. U.S.*, revenue officers, acting on information, went to the house of Hester's father. As they approached, they saw one Henderson drive up to the house. The officers concealed themselves and observed Hester come out of the house and hand Henderson a quart bottle. An alarm was given. Hester went to a nearby car and removed a gallon jug, and he and Henderson fled across an open field. One of the officers pursued, firing his pistol. Henderson threw away his bottle, and Hester dropped his jug, which broke, but retained about one quart of its contents. A broken jar, still containing some of its contents, was found outside the house. The officers examined the jug, the jar, and the bottle and determined that they contained illicitly distilled whiskey. The officers had neither a search warrant nor an arrest warrant.

The defendant was convicted of concealing distilled spirits, and contended on appeal that the testimony of the two officers was inadmissible because their actions constituted an illegal search and seizure. The Court said:

> "It is obvious that even if there had been a trespass, the above testimony was not obtained by an illegal search or seizure. The defendant's own acts, and those of his associates, disclosed the jug, the jar and the bottle—and there was no seizure in the sense of the law when the officers examined the contents of each after it had been abandoned . . .
>
> "The only shadow of a ground for bringing up the case is drawn from the hypothesis that the examination of the vessels took place upon Hester's father's land. As to that, it is enough to say that, apart from the justification, the special protection accorded by the Fourth Amendment to the people in their "persons, houses, papers, and effects," is not extended to the *open fields*. The distinction between the latter and the house is as old as the common law."

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(emphasis supplied) 265 U.S. at 58-59, 44 S.Ct. at 446, 68 L.Ed. at 900.

The *Hester* decision has been heavily criticized but has been applied and interpreted by many courts and remains in effect today. The *Hester* case itself is not very helpful to the law enforcement officer, but the decisions of other courts following it have expanded upon and clarified its holdings. The remainder of this article will be devoted to setting out guidelines for the law enforcement officer on the search and seizure of open fields.

OPEN FIELDS DOCTRINE

The open fields doctrine has been simply and clearly stated by the U.S. Supreme Court in the *Hester* case:

> "(T)he special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers and effects,' is not extended to the open fields." 265 U.S. at 59, 44 S. Ct. at 446, 68 L.Ed. at 900.

The open fields doctrine is very important to the law enforcement officer because it allows him to search for and seize evidence in the open fields without a warrant, probable cause, or any other legal justification. Even if the officer trespasses on the land of another while searching the open fields, the evidence he seizes will not be inadmissible for that reason. Furthermore, the officer himself will not be held liable for trespass in a civil suit if the trespass was required in the performance of his duties. *Giacona v. U.S.*, 257 F.2d 450, 456 (5th Circuit Court of Appeals, 1958).

The problem for the law enforcement officer lies in determining where the area protected by the Fourth Amendment ends and the open fields begin. In order to make this determination, the officer must look to the meaning given by the courts to the word "houses" in the Fourth Amendment.

Houses

The word "houses" in the Fourth Amendment has been given a very broad meaning by the courts. Courts have held that the Fourth Amendment protects people in their homes, whether owned, rented, or leased. The term "houses" has also been held to include any quarters in which a person is staying or living, whether permanently or temporarily. Examples of other protected living quarters are hotel and motel rooms, apartments, rooming and boarding house rooms, and even hospital rooms. Furthermore, the protection of the Fourth Amendment is not restricted to places of residence, but extends to places of business also. *U.S. v. Botsch,* 364 F.2d 542, 547 (2nd Circuit of Appeals, 1966). The protection extended to places of business is limited, however, to those areas or sections which are not open to the public. As one court has said:

> "(A) private business whose doors are open to the general public is also to be considered open to entry by the police for any proper purpose not violative of the owner's constitutional rights—e.g., patronizing the place or surveying it to promote law and order or to suppress a breach of the peace." *State v. LaDuca,* (New Jersey Superior Court, 1965).

For purposes of convenience, the word "house" will be used in the remainder of this article to refer to either residential or commercial premises covered by the Fourth Amendment.

Courts have also extended the meaning of "houses" under the Fourth Amendment to include the "ground and buildings immediately surrounding a dwelling." *Rozencrantz v. U.S.,* 356 F.2d 310, 313 (1st Circuit Court of Appeals, 1966). This area is commonly known as the "curtilage." The concept of curtilage is vital to the open fields doctrine because the open fields are considered to be all the space that is not contained within the curtilage. There are no clear cut rules to assist the law enforcement officer in determining the extent of the curtilage. Each case is decided by the courts on its own particular facts and circumstances. We turn now to a discussion of the facts and circumstances which courts rely on in determining the extent of the curtilage.

Determination of Curtilage

In order to determine whether property to be searched falls within the curtilage of a house (as house is defined under the Fourth Amendment), the law enforcement officer must consider many factors. As one court has said,

> "Whether the place to be searched is within the curtilage is to be determined from the facts, including its proximity or annexation to the dwelling, its inclusion within the general enclosure surrounding the dwelling and its use and enjoyment as an adjunct to the domestic economy of the family." *Care v. U.S.,* 231 F.2d 22, 25 (10th Circuit Court of Appeals, 1956).

We will consider a variety of court decisions to clarify the meaning of this quote and to provide more specific guidelines for the law enforcement officer.

Residential Yard

Courts differ in opinion as to whether the residential yard is within the curtilage. In one case, law enforcement officers investigating a robbery obtained a search warrant to search defendant's premises. The officers searched the residence and an outbuilding and finally found a shotgun in the front yard, eight to ten feet from the street. The warrant was later held to be invalid. The court held that the front yard was within the curtilage of defendant's house and was subject to the same constitutional protection as the house itself. Since the officers' only justification for being on the premises was an invalid search warrant, the search was illegal. *State v. Buchanan,* 432 S.W. 2d 342 (Supreme Court of Missouri, 1968).

In another case, however, the court held that entry into a residential yard, even if a trespass, and the observation of that which was open to view was not prohibited by the Fourth Amendment. An

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officer had received information that defendant was growing marijuana under a fig tree outside his residence. The officer went to defendant's residence to investigate. The premises were described by the court as a house that faced the street, with a driveway that ran along the east of the house and terminated in a garage at the rear and east of the house. Defendant's residence was attached to the rear of the garage. The fig tree was about twenty feet from the defendant's door. The officer observed marijuana plants growing in a keg near the base of the tree, partially covered by the leaves and limbs of the tree.

In finding the seizure of the plants legal, the court said:

> "(t)hey were located a scant 20 feet from defendant's door to which presumably delivery men and others came, and the front house, as well as defendant's house, apparently had access to the yard. Under the circumstances it does not appear that defendant exhibited a subjective expectation of privacy as to the plants. Furthermore, any such expectation would have been unreasonable. *People v. Bradley,* 81 Cal. Rptr. 457, 459 (Supreme Court of California, 1969).

The main difference between these two cases appears to be that the defendant's yard in the *Bradley* case was semipublic in nature, because residents of the front house, delivery men, and others had access to it. Apparently, the defendant's yard in the *Buchanan* case did not allow such access. Judging by the different approaches taken by the courts in these two cases, it would be difficult to say definitely whether the residential yard is or is not to be considered part of the curtilage. The safest procedure for the law enforcement officer is to treat the residential yard of a house as part of the curtilage unless there are clear indications that the person residing in the house had no reasonable expectation of privacy in the yard. More importantly, since there will always be considerable doubt as to whether the residential yard falls within the curtilage, the officer should obtain a warrant for searches of this area when possible.

Fences

If the area immediately surrounding the house is enclosed by a fence, the area within the fence is usually considered part of the curtilage. In a case illustrating this point, law enforcement officers investigating a murder learned that the defendant had been seen target shooting in a field outside his farm some time before the murder. The officers obtained a search warrant (which was later held invalid), went to the farm, and found spent bullets and shell casings outside a fence and about 250 feet from the dwelling house. The bullets and casings were used as evidence in convicting the defendant.

The court held that the search and seizure without a valid warrant was legal because it was conducted in the open fields, outside the curtilage. The court said:

> "The evidence discloses that the area around the dwelling and outbuildings habitually used and necessary and convenient for family purposes was enclosed by a substantial fence. When such fence is erected it ordinarily defines the curtilage, particularly in a rural area." *Patler v. Commonwealth,* 177 S.E. 2d 618, 620 (Supreme Court of Appeals of Virginia, 1970).

Family Use

Another factor which officers should consider in determining the extent of the curtilage is the use of the area for family purposes in connection with the dwelling. As one court has said, "curtilage has been held to include . . . such place as is necessary and convenient to a dwelling, and is habitually used for family purposes, . . ." *U.S. v. Potts,* 297 F.2d 68, 69 (6th Circuit Court of Appeals, 1961).

In the *Patler* case, discussed above under *Fences,* the defendant claimed that the field outside the fence was part of the curtilage because it was used for family picnics, was regularly mowed, and the children played there. The court found that the family picnics were infrequent and that one would expect a non-grazing field to be regularly mowed. The evidence was therefore "insufficient to establish the necessity, convenience and habitual use for family purposes which would be required in order to extend the curtilage to include the field." 177 S.E. 2d at 621.

Of course, it is often impossible for an officer to know if and to what extent a part of a person's premises is used for family purposes. Nevertheless, the officer can sometimes obtain this information by observation or by asking questions. Again, when there is doubt in the officer's mind whether the place to be searched is in the open fields, he should obtain a warrant.

Multiple Occupancy Dwellings

Multiple occupancy dwellings are treated somewhat differently from single occupancy dwellings for purposes of determining the extent of the curtilage. Some courts have held that the shared areas of multiple occupancy buildings, such as common corridors, passageways, and yards, are not entitled to the protection of the Fourth Amendment, because many people have access to them. Nevertheless, there are many different types of multiple occupancy dwellings and courts will look to all the facts and circumstances in defining the curtilage. In an illustrative case, two law enforcement officers who had information that narcotics were being sold on defendant's premises were observing defendant's behavior at his residence in a four-unit apartment building. Over a 45-minute period, the officers observed several people enter defendant's apartment, and each time defendant would go into his backyard and remove a shaving kit from beneath some rubbish under a tree. One of the officers then went into the backyard and seized the shaving kit while the other officer arrested defendant. Chemical analysis revealed that the shaving kit contained heroin.

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The government argued that the defendant's backyard was an area common to or shared with other tenants and should not be entitled to the protection usually afforded the curtilage of a purely private residence. The court held, however, that the backyard was a protected area and that the seizure and search of the shaving kit was illegal.

> "The backyard of Fixel's home was not a common passageway normally used by the building's tenants for gaining access to the apartments . . . Nor is the backyard an area open as a corridor to salesmen or other businessmen who might approach the tenants in the course of their trade . . . This apartment was Fixel's home, he lived there and the backyard of the building was completely removed from the street and surrounded by a chain link fence . . . While the enjoyment of his backyard is not as exclusive as the backyard of a purely private residence, this area is not as public or shared as the corridors, yards or other common areas of a large apartment complex or motel. Contemporary concepts of living such as multi-unit dwellings must not dilute Fixel's right to privacy any more than is absolutely required. We believe that the backyard area of Fixel's home is sufficiently removed and private in character that he could reasonably expect privacy." *Fixel v. Wainwright,* 492 F.2d 480, 484 (Fifth Circuit Court of Appeals, 1974).

Courts have also held that porches and fire escapes outside a person's apartment or unit in a multiple occupancy dwelling fall within the curtilage of the apartment or unit. As one court reasoned:

> "Unlike public halls or stairs which are public areas used in common by tenants and their guests or others lawfully on the property, a fire escape in a non-fireproof building is required outside of each apartment as a secondary means of egress for the occupants of that apartment. While it is true that in the event of fire, others might have occasion to lawfully pass over the fire escape of another, this would be the only time that one might be lawfully on the fire escape of another." *People v. Terrell,* 277 N.Y.S. 2d 926, 933 (Supreme Court of New York, 1967).

Garages

Garages are usually held to be part of the curtilage, especially if they are near or attached to the dwelling house and used in connection with it. Therefore, in a case in which a garage and a house were surrounded on three sides by a fence and the garage was close to the house, 50 to 75 feet from the street, the garage was held to be within the curtilage. *Commonwealth v. Murphy,* 233 N.E. 2d 5 (Supreme Judicial Court of Massachusetts, 1968). A garage not used by its owner in connection with his residence, however, was held to be not within the curtilage. *People v. Swanberg,* 255 N.Y.S. 2d 267 (Supreme Court of New York, 1964). Also, a garage used in connection with a multi-unit dwelling was held to be within the curtilage, because it was used in common by many tenants of the dwelling. *People v. Terry,* 77 Cal. Rptr. 460 (Supreme Court of California, 1969).

Other Outbuildings

In determining whether outbuildings are part of the curtilage, courts consider such factors as distance from the dwelling house, presence or absence of a fence, and family use of the building. A barn was held to be within the curtilage where there was a driveway between the dwelling and the barn, tracks of vehicles and footprints were visible in the snow leading to both house and barn, and there were no separating barriers. *Rosencranz v. U.S.,* 356 F.2d 310 (1st Circuit Court of Appeals, 1966). In another case, a barn was held to be within the curtilage even though it was surrounded by a fence and separated from the house by a private driveway. The barn was 70 to 80 yards from the house, and there was a gap in the fence allowing entrance into the barnyard from the private driveway in front of the house. *Walker v. U.S.,* 225 F.2d 447 (5th Circuit Court of Appeals, 1955). A whiskey still located 250 yards from the back of a house on open land was held to be in the open fields, however. *Atwell v. U.S.,* 414 F.2d 136 (5th Circuit Court of Appeals, 1969). And a concrete outbuilding which was located only 150 to 180 feet from the nearest residence was held to be outside the curtilage of the residence, because it was separated by a fence and a gate. *Brock v. U.S.,* 256 F.2d 55 (5th Circuit Court of Appeals, 1958).

Other outbuildings such as sheds, chicken houses, and smokehouses have been held to be within the curtilage depending on various factors. Very few definite guidelines for the law enforcement officer can be obtained from the cases in this area. It is strongly suggested that the officer obtain a warrant before searching the outbuilding if he has any doubt whether the outbuilding is within the curtilage or in the open fields.

Unoccupied Tracts

An unoccupied, uncultivated, remote tract of land is almost always held to be outside the curtilage and in the open fields. An example is a case in which police, investigating a shooting incident, obtained admissions from the defendant that he had left two guns in a vacant wooded area which he owned. The area was about one half mile from the scene of the shooting incident and was remote from human habitation. The police searched the area without a warrant and found the guns. The court held that the search was not constitutionally unreasonable because the area was an open field. *People v. La Rosa,* 267 N.Y.S. 2d 235 (Supreme Court of New York, 1966).

A harder question is presented when the area searched is not completely vacant but is being used as a building lot. Law enforcement officers had received a complaint that lumber, sacks of cement, and a cart had been stolen. Investigation led the officers to suspect the defendant. They went to de-

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fendant's property, where he was laying the foundation for a house, searched it without a warrant, and found some of the stolen items.

The court held that the area searched came within the category of open fields, even though a house was in the process of construction on it.

> "If the lot had been left completely untouched, there could be no doubt that it would fall within the ruling of the *Hester* case. That a large quantity of building material has been brought upon the lot and a foundation for a house dug out, or even completely laid, does not change the nature of the place. Not even the broad policy of protection against 'invasion of "the sanctity of a man's home and the privacies of life",' . . . is infringed by what took place here. Defendant's constitutional rights were not violated." *People v. Grundeis,* 108 N.E. 2d 483, 487 (Supreme Court of Illinois, 1952).

Reasonable Expectation of Privacy

In determining the legality of the search in many of the cases discussed above, courts have considered whether the person owning the premises had a reasonable expectation of privacy in the area searched. In this sense, reasonable expectation of privacy could be considered just another one of the facts and circumstances used to determine the extent of the curtilage. Since the U.S. Supreme Court decision in *Katz v. U.S.,* 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 576 (1967), however, a person's reasonable expectation of privacy has taken on a whole new meaning and importance in the law of search and seizure. In the *Katz* case, a landmark opinion involving electronic eavesdropping, the U.S. Supreme Court stated that "the Fourth Amendment protects people, not places." 389 U.S. at 351, 88 S.Ct. at 511, 19 L.Ed. 2d at 582. A later court decision has said that *Katz*

> "shifts the focus of the Fourth Amendment from 'protected areas' to the individual's expectations of privacy. Whether the government's activity is considered a 'search' depends upon whether the individual's reasonable expectations of privacy are disturbed." *Davis v. U.S.,* 413 F.2d 1226 (5th Circuit Court of Appeals, 1969).

Although not all courts have taken the view that expectation of privacy is the primary factor to be considered in search and seizure cases, there appears to be a trend in that direction. The trend is particularly evident in cases in which the concepts of curtilage and open fields are difficult to apply. An example is a case in which law enforcement officers of the Forest Service were investigating the unauthorized cutting and removal of Christmas trees from Government lands. In connection with the investigation, the officers cut off the top portion of some stumps on the Government lands and attempted to match them with some trees stockpiled behind a motel. The stockpile was located about 20 to 35 feet from the motel and about 5 feet from a parking area used by personnel and patrons of the motel. The defendant operated and lived at the motel. The officers made several matches of stump cuts with trees, and the defendant was convicted of stealing the trees.

On appeal, the court held that the search and seizure was illegal because the officers had no warrant and the stockpile of trees was located within the curtilage of defendant's abode. The court applied the traditional tests for curtilage based upon proximity to the dwelling and inclusion within the general enclosure surrounding the dwelling.

The court went on, however, to further discuss the concepts of curtilage and privacy. Because the court's language indicates a growing trend in the law, it is quoted at length here.

> "We wish to add, however, that it seems to us a more appropriate test in determining if a search and seizure adjacent to a house is constitutionally forbidden is whether it constitutes an intrusion upon what the resident seeks to preserve as private even in an area which, although adjacent to his home, is accessible to the public . . .
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> "The 'curtilage' test is predicated upon a common law concept which has no historical relevancy to the Fourth Amendment guaranty. In *Jones v. U.S.,* 362 U.S. 257, 266, 80 S.Ct. 725, 733, 4 L.Ed. 2d 697, the Supreme Court warned, in connection with another search and seizure problem, that:
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> > '(I)t is unnecessary and ill-advised to import into the law surrounding the constitutional right to be free from unreasonable searches and seizures subtle distinctions, developed and refined by the common law in evolving the body of private property law * * *.'
>
> "If the determination of such questions is made to turn upon the degree of privacy a resident is seeking to preserve as shown by the facts of the particular case, rather than upon a resort to the ancient concept of curtilage, attention will be more effectively focused on the basic interest which the Fourth Amendment was designed to protect. As the Supreme Court recently said in *Camara v. Municipal Court of City and County of San Francisco,* 387 U.S. 523, 528, 87 S.Ct. 1727, 1730, 18 L.Ed. 2d 930:
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> > 'The basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.' "
>
> *Wattenburg v. U.S.,* 388 F.2d 853, 857-58 (9th Circuit Court of Appeals, 1968).

The court also found the search and seizure of the Christmas trees illegal under the "reasonable expectation of privacy" test.

The "reasonable expectation of privacy" test may be difficult for the law enforcement officer to apply, because it involves determin-

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ing a person's state of mind. It is suggested that in order to determine whether a place may be legally searched without a warrant, the law enforcement officer apply the above-discussed traditional tests for determining the extent of the curtilage. In addition, however, the officer should put himself in the position of a person owning property, and ask himself if he would reasonably expect to be free from governmental intrusion in the particular area of the property to be searched. If the officer has any doubt whether or not a person is seeking to preserve his privacy in the area to be searched, the officer should obtain a warrant.

Open Fields, Plain View, and Observations Into Constitutionally Protected Areas

The open fields and plain view doctrines are often confused by law enforcement officers. The "plain view doctrine" states that if a law enforcement officer, as the result of a prior *valid* intrusion into a constitutionally protected area, is in a position in which he has a legal right to be, he may lawfully seize items of evidence lying in his plain view. (See the June-July 1973 and August 1973 ALERTS on Plain View.) The "open fields doctrine" differs from the plain view doctrine in that a law enforcement officer does not have to concern himself with the validity of his prior intrusion into a constitutionally protected area. If the officer is outside the curtilage of a house, in the open fields, he is not in a constitutionally protected area. In the open fields, therefore, the officer may not only seize items which are open to his view, but he may search for items hidden from his view and seize them. Furthermore, the officer, from a vantage point in the open fields, may make observations into constitutionally protected areas to detect criminal activity or criminal evidence. Such observations may be used as a basis for probable cause to make an arrest or to obtain a search warrant. An example is a case in which law enforcement officers obtained a search warrant on the basis of observations of illicit whiskey containers from a vantage point in the open fields. The court in that case said:

> "(I)t is of no significance that the objects of the agents' observations was within the curtilage, so long as the observations were made from without the curtilage. The protection of the Fourth Amendment extends only to the curtilage, and observations made from without the curtilage thus do not violate the Amendment whether made from an open field belonging to the defendant or from the public street." *U.S.v. Sims,* 202 F. Supp. 65 (U.S. District Court, Eastern District of Tennessee, 1962).

In this type of situation, however, the officer may *not enter* into the constitutionally protected area to make a warrantless seizure of the items he has observed or to conduct a warrantless search for other items, unless the situation falls within the *Carroll doctrine.* (See the November 1970 ALERT on *Search and Seizure of Vehicles Without a Warrant.*)

In recent cases involving observations into constitutionally protected areas, courts have begun emphasizing the reasonable expectation of privacy of the person whose premises or activities are being observed by law enforcement officers. An example is a case in which a narcotics officer was investigating a tip about heroin dealing. He went to the place where the dealing was said to be taking place. It was a single family dwelling, 70 feet from the sidewalk, with access from the west. There were no doorways or defined pathways on the east side of the house, and a strip of land covered with grass and dirt separated the east side of the house from the driveway of the apartment next door. The officer went to the east side of the house, peeked through a two-inch gap under the partially drawn shade of a closed window, and observed indications of criminal activity.

The court held that the officer's observations constituted an illegal search. The court initially analyzed the problem in terms of whether the officer was standing upon a part of the property surrounding the house that had been opened, expressly or impliedly, to public use. Under the facts, the officer was found to have made his observations from a position in which he had no right to be. Since neither a warrant nor one of the established exceptions to the warrant requirement justified the intrusion, it was unlawful.

The court went on, however, to discuss the officer's actions at length, in terms of the defendant's reasonable expectation of privacy:

> "(T)he generic *Katz* rule permits the resident of a house to rely justifiably upon the privacy of the surrounding areas as a protection from the peering of the officer unless such residence is 'exposed' to that intrusion by the existence of public pathways or other invitations to the public to enter upon the property. This justifiable reliance on the privacy of the property surrounding one's residence thus leads to the *particular* rule that searches conducted without a warrant from such parts of the property *always* are unconstitutional unless an exception to the warrant requirement applies . . .
>
> "Pursuant to the principles of *Katz*, therefore, we do not rest our analysis exclusively upon such abstractions as 'trespass' or 'constitiutionally protected areas' or upon the physical differences between a telephone booth and the land surrounding a residence; we do, however, look to the conduct of people in regard to these elements. Taking into account the nature of the area surrounding a private residence, we ask whether that area has been opened to public use; if so, the occupant cannot claim he expected privacy from all observations of the officer who stands upon that ground; if not, the occupant does deserve that privacy. Since the eavesdropping officer in the case before us stood upon private property and since such property exhibited no invitation to public use, we find that the officer violated petitioner Lorenzana's expectations of privacy,

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and hence, his constitutional rights." *Lorenzana v. Superior Court of Los Angeles County,* 511 P.2d 33, 42 (Supreme Court of California, 1973).

SUMMARY

A law enforcement officer may search for and seize items of evidence lying in the open fields, without probable cause, warrant, or other legal justification, without violating the Fourth Amendment. An officer may also legally make observations into constitutionally protected areas in order to detect criminal activity or evidence, from a vantage point in the open fields. The open fields are the portions of a persons premises lying outside the curtilage of his home or business. Whether or not a piece of land or building falls within the curtilage can be determined by considering the following factors:

1. Inclusion within the residential yard;
2. Enclosure by a fence;
3. Use in connection with the dwelling for family purposes;
4. Distance or remoteness from main dwelling; and
5. Use or invitation to use by the public.

Since the 1967 U.S. Supreme Court decision in *U.S. v. Katz,* which held that "the Fourth Amendment protects people, not places," courts have increasingly analyzed the legality of warrantless searches in terms of the defendant's reasonable expectation of privacy, in addition to the concepts of curtilage and open fields. Law enforcement officers, therefore, must be careful to avoid warrantless intrusions not only into the curtilage of a person's home or business, but also into any area which the person reasonably seeks to preserve as private.

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.

Question: May a law enforcement officer equip his own private vehicle with a blue police beam light for use in enforcing the law?

Discussion: The statute governing the use of blue police beam lights is 29 M.R.S.A. §1368, which reads in part:

> There shall not be used on or in connection with any motor vehicle a red or blue light, the beam from which is visible to the front of said vehicle, except that emergency vehicles, so called, may display lights which emit a red or blue beam to the front thereof only under the following classifications:
>
> * * *
>
> **2. Police Department vehicles.** Lights used on police department vehicles and on motor vehicles operated by chiefs of police, state fire inspectors, inland fisheries and game wardens, sea and shore fisheries wardens, Baxter State Park rangers, sheriffs and deputy sheriffs shall emit a blue beam of light.

This statute means that the *only* law enforcement officers who may use a blue police beam light on *private vehicles* are:

1. Chiefs of police;
2. State fire inspectors;
3. Inland fisheries and game wardens;
4. Sea and shore fisheries wardens;
5. Baxter State Park rangers;
6. Sheriffs;
7. Deputy sheriffs.

All other law enforcement officers, whether full or part time, are forbidden to do so. Law enforcement officers may, however, use *police department vehicles* equipped with police blue beam lights.

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

American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (2nd Ed. 1968).

Defines and classifies all types of mental disorders.

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Blalock, *Civil Liability of Law Enforcement Officers* (1973).
Discusses civil court procedure and civil liability of officers and their supervisors, prison guards, and private police. Suggests guidelines for departmental procedures.

Chilimidos, *Auto Theft Investigation* (1971).
Manual designed to familiarize officers with the problem of auto theft, investigative techniques and the laws applicable to auto theft.

Csida & Csida, *Rape* (1974).
Deals with all aspects of rape: who are the rapists and why do they rape; self-protection for women; what's being done by government and private organizations.

Denfield, *Streetwise Criminology* (1974).
Compilation of articles written by "criminals and quasi-criminals," giving an inside view of criminal experience.

Fatteh, *Handbook of Forensic Pathology* (1973).
Discussion of diseases and injuries encountered by pathologists and law enforcement officers involved in medico-legal investigations. Contains sections on collecting of toxicological samples.

Fisher & Reeder, *Vehicle Traffic Law* (1974).
Comprehensive discussion of the different types of motor vehicle offenses.

Gardner & Manian, *Principles and Cases of the Law of Arrest, Search and Seizure* (1974).
Text to aid the officer determine his authority and to provide him with guidelines in the areas of arrest, search and seizure.

Graham, *The Use of X-Ray Techniques in Forsenic Investigations* (1973).
Introduces officers to the many uses of X-rays in forensic investigations.

Horgan, *Criminal Investigation:* (1974).
Designed as a textbook, covers all aspects of criminal investigation.

Kaplan, *Criminal Justice: Introductory Cases and Materials* (1973).
Comprehensive discussion of the operation of the criminal justice system.

Kobetz, *The Police Role and Juvenile Delinquency* (1971).
Offers policy guidelines for police-juvenile operations and discusses nature of delinquency problem.

Le Donne, *Summary of Court Decisions Relating to the Provision of Library Services in Correctional Institutions* (1973).
List of case summaries relating to provision of library services to inmates of correctional institutions.

Moenssens, Moses & Inbau, *Scientific Evidence in Criminal Cases* (1973).
Subjects treated include: firearms, microanalysis, documents, photographs, voice identification, polygraph, and speed detection.

National District Attorneys Association, *Juvenile Law and Procedure* (1973).
Pamphlet presenting a brief history of the Juvenile Courts and outlining recent trends in the area of juvenile rights.

San Luis, *Office and Office Building Security* (1973).
Recommends procedures for the protection of office buildings, equipment, and personnel against theft, assault, bombs, burglary, embezzlement, fire, and espionage.

Stuckey, *Evidence for the Law Enforcement Officer* (2nd ed. 1974).
Thorough discussion of the rules of evidence, emphasizing areas of special interest to officers.

U.S. Dept. of Justice, *Crime Scene Search and Physical Evidence Handbook* (1974).
Describes procedures for searching and photographing scene of crime, collecting evidence, etc.

U.S. Dept. of Justice, *Police Crime Analysis Unit Handbook* (1973).
Identifies ways in which departments can establish crime analysis processes to fit their own particular needs.

U.S. Dept. of Justice, *Methadone Treatment Manual* (1973).
Manual to assist those involved in setting up methadone treatment center. Description of methadone treatment.

Wall, *Eye-Witness Identification in Criminal Cases* (1965).
Discusses problems involved with this type of evidence, analyzes law enforcement practices which contribute to problems, and suggests how identification procedures can be improved.

Webber, *Handbook for Law Enforcement Wives* (1974).
Compilation of articles written by and for officers' wives and dealing with the problems they face.

Weis, *Diversion of the Public Inebriate from the Criminal Justice System* (1973).
Practical suggestions for dealing with the public inebriate in ways other than through the criminal justice system.

Wisconsin Dept. of Justice, *Criminal Investigation and Physical Evidence Handbook* (1973).
Describes proper methods for collecting and preserving different types of physical evidence.

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.

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