

MAINE STATE LEGISLATURE

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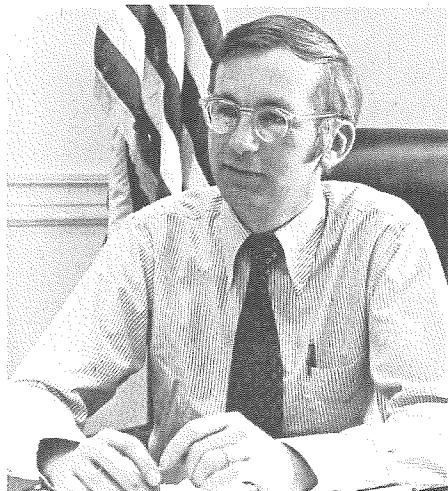
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ALERT

DECEMBER 1974

CRIMINAL DIVISION

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



MESSAGE FROM THE ATTORNEY GENERAL JON A. LUND

The entire issue of the December 1974 ALERT is devoted to an index of all the case summaries that have appeared in ALERT since it was first published in October 1970. This index should make it much easier for officers to locate appropriate case summaries when questions arise regarding a particular area of criminal law or procedure.

I am pleased to announce that the Law Enforcement Officer's Manual, prepared by the Law Enforcement Education Section, has been completed and is now ready for distribution. I believe that the Manual is one of the finest works of its kind and that it will greatly assist officers in the performance of their everyday duties and contribute significantly to the quality of training and education of all of Maine's law enforcement officers. During the next month, the Law Enforcement Education Section will be contacting state, county, and local departments to arrange for distribution of the Manuals.

Jon A. Lund
JON A. LUND
Attorney General

CASE SUMMARY INDEX

October 1970 — December 1974

The following index of ALERT case summaries is based on the Table of Contents in NEDRUD, THE CRIMINAL LAW, a monthly compilation of case summaries relating to criminal law and procedure. A copy of the NEDRUD index was inserted in the January 1974 ALERT. (Any officer who does not have a copy of the NEDRUD index may obtain one by contacting the Law Enforcement Education Section.)

The index contains entries for all the case summaries which have appeared in the ALERT since its inception in October 1970. However, the category headings which appear in this index are different from those headings which appeared in past ALERT Case Summary Indexes (see October 1972 and October 1973 ALERTs) and those headings which introduce each case summary prior to January 1974. This is because, beginning with the January 1974 ALERT, the NEDRUD headings have been used to introduce case summaries.

The index is broken down into nine general categories such as **ARREST, SEARCH AND SEIZURE; CONFESIONS / SELF-INCRIMINATION; CRIMES/OFFENSES**, etc. Each general category is then broken down into numerous subcategories. The individual entries under the subcategories consist of three lines containing the following information:

1. A brief phrase or sentence describing the nature or holding of the case. (Often this brief description will refer to the subcategory heading.)

2. The title and citation of the case along with an abbreviated designation of the jurisdiction in which the case was decided and the year in which it was decided. The Maine Supreme Judicial Court, First Circuit Court of Appeals, and U. S. Supreme Court entries are highlighted by putting **Me.**, **1st Cir.**, and **U.S.** in bold face print.

3. The month and page of the issue of ALERT in which the case summary appears. Where a case summary begins on one page and ends on another, both pages will be included. (e.g., pp. 6-7)

Two further features of this index are worthy of mention. First, the index, unlike past ALERT indexes, is not divided into two sections—Important Recent Decisions and Maine Court Decisions. Each index subcategory contains entries of cases from **both** the Maine Law Court and courts in other jurisdictions. Secondly, if a case summary has discussed two or more different holdings, the case will be indexed under **each** of the two or more NEDRUD categories appropriate for the particular holding. This is a change from past indexes, in which only one entry would be made for each case.

Finally, it should be noted that the entries within each subcategory are listed in the order in which they appeared in the ALERT Bulletins, with those appearing in the most recent ALERTs listed first. Therefore, the entries may not be in strict chronological order as to the time the decisions were rendered.

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A. ARREST, SEARCH AND SEIZURE

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Commonwealth v. Jeffries, 311 A.2d 914 (Pa. 1973)
May 1974, pp. 6-7

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U.S. v. Titus, 445 F.2d 577 (2d Cir. 1971)
January 1972, p. 3

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U.S. v. Maynard, 439 F.2d 1087 (9th Cir. 1971)
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Commonwealth v. Jeffries, 311 A.2d 914 (Pa. 1973)
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U.S. v. Walker, 294 A.2d 376 (D.C. 1972)
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Commonwealth v. Meadows, 293 A.2d 365 (Pa. 1972)

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U.S. ex rel. Richardson v. Rundle, 461 F.2d 860 (3rd Cir. 1972)

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Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed. 2d 612 (U.S. 1972)

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State v. Dougherty, 493 P.2d 1383 (Or. 1972)

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People v. Griffith, 97 Cal. Rptr. 367 (Cal. 1971)

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People v. Green, 93 Cal. Rptr. 433 (Cal. 1971)

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U.S. v. Dowling, 271 A.2d 406 (D.C. 1970)
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U.S. v. Looney, 481 F.2d 31 (5th Cir. 1973)
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State v. Dubay, 313 A.2d 908 (Me. 1974)
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U.S. v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed. 2d 427 (U.S. 1973)

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Miranda warnings unnecessary when officer asks for driver's license and destination of driver.

U.S. v. Smith, 441 F.2d 539 (9th Cir. 1971) December 1971, p. 7

Miranda warnings prior to seizure of evidence.

People v. Walker, 183 N.W. 2d 871 (Mich. 1970) June 1971, pp. 5-6

Voluntary and spontaneous statements.

Haire v. Sarver, 437 F.2d 1262 (8th Cir. 1971) June 1971, p. 5

Use of defendant's statement for impeachment where no Miranda warnings given.

Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed. 2d 1 (U.S. 1971) April 1971, p. 5

I.R.S. agents must comply with Miranda after adoption of regulation requiring compliance.

U.S. v. Leahey, 313 F. Supp. 288 (D. Mass. 1970) February 1971, p. 7

Noncustodial tax investigation.

U.S. v. Jaskiewicz, 433 F.2d 415 (3d Cir. 1970) February 1971, p. 7

Questioning by school authorities.

State v. Largo, 473 P.2d 895 (Utah 1970) December 1970, p. 5

"Reasonable man" test of custody.

U.S. v. Bekowies, 432 F.2d 8 (9th Cir. 1970) November 1970, p. 5

Admission on way to hospital after accident.

State v. Petersen, 268 A.2d 482 (Me. 1970) October 1970, p. 3

B §1.5 Youths — Incompetents

Waiver of Miranda warnings by retarded persons.

Cooper v. Griffin, 455 F.2d 1142 (5th Cir. 1972) December 1972, p. 7

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B §2.2 Hearings — Jackson v. Denno

Maine procedure relating to admissibility of confessions.

State v. Collins, 297 A.2d 620 (Me. 1972) April 1973, pp. 5-6

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Lego v. Twomey, 404 U.S. 477, 92 S.Ct. 619, 30 L.Ed. 2d 618 (U.S. 1972) July 1972, p. 4

B §2.3 Evidence — Use for Impeachment — Harmless Error

Trial judge, not jury, must decide whether corpus delicti has been established.

State v. Kelley, 308 A.2d 877 (Me. 1973) November - December 1973, pp. 8-9

Standard for determining whether corpus delicti has been established.

State v. Grant, 284 A.2d 674 (Me. 1971) February 1972, p. 6

Use of defendant's statement for impeachment where no Miranda warnings given.

Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed. 2d 1 (U.S. 1971) April 1971, p. 5

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Derivative evidence may be admissible.

Michigan v. Tucker, U.S. , 94 S.Ct. 2357, 41 L.Ed. 2d 182 (U.S. 1974) August 1974, p. 4

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State v. Shepard, 323 A.2d 587 (Me. 1974) October 1974, p. 6

Warrant for removal of bullet from defendant's body.

Bowden v. State, 510 S.W. 2d 879 (Ark. 1974)

Creamer v. State, 192 S.E. 2d 350 (Ga. 1971)

Adams v. State, 299 N.E. 2d 834 (Ind. 1973) September 1974, pp. 7-8

Compelling display of defendant's wrist.

State v. Emery, 304 A.2d 908 (Me. 1973) November - December 1973, pp. 6-7

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Test for constitutionality of pre-trial identifications.

State v. York, 324 A.2d 758 (Me. 1974) October 1974, p. 4

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State v. Barlow, 320 A.2d 895 (Me. 1974) October 1974, pp. 5-6

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State v. Rowe, 314 A.2d 407 (Me. 1974) March 1974, p. 5

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State v. Emery, 304 A.2d 908 (Me. 1973) November - December 1973, p. 7

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L.Ed. 2d 619 (U.S. 1973)
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State v. Niemszyk, 303 A.2d 105 (Me. 1973)
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Pre-arrest lineup through one-way mirror.
State v. Northup, 303 A.2d 1 (Me. 1973)
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Suggestive numbers on photos did not taint identification.
U.S. v. Counts, 471 P. 2d 422 (2d Cir. 1973)
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Showing of photographs impermissibly suggestive.
U.S. v. Gambrill, 449 F.2d 1148 (D.C. Cir. 1971)
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State v. Boyd, 294 A. 2d 459 (Me. 1972)
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State v. Levesque, 281 A.2d 570 (Me. 1971)
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People v. Williams, 478 P. 2d 942 (Cal. 1971)
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Roper v. Beto, 318 F. Supp. 662 (E.D. Tex. 1970)
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Defendant entitled to counsel at lineup.
People v. Fowler, 461 P. 2d 643 (Cal. 1970)
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Brooks v. Tennessee, 406 U.S. 605, 92 S.Ct. 1891, 32 L.Ed. 2d 358 (U.S. 1972)
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Kastigar v. U.S., 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed. 2d 212 (U.S. 1972)
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Judge's failure to inform jury of defendant's right not to take the stand.

State v. Girard, 283 A.2d 462 (Me. 1971)
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California v. Byers, 402 U.S. 424, 91 S.Ct. 1535, 29 L.Ed. 2d 9 (U.S. 1971)
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In murder trial, no evidence of provocation needed for manslaughter conviction.
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State v. Hachey, 278 A. 2d 397 (Me. 1971)
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Little v. State, 303 A. 2d 456 (Me. 1973)
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Sufficiency of indictment for breaking, entering and larceny in the daytime.
State v. Lerman, 302 A. 2d 572 (Me. 1973)
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Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed. 2d 419 (U.S. 1973)

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U.S. v. 12 200-ft. Reels of Super 8 m.m. Film, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed. 2d 500 (U.S. 1973)

U.S. v. Orito, 413 U.S. 139, 93 S.Ct. 2674, 37 L.Ed. 2d 513 (U.S. 1973)

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Watson v. State, 495 P. 2d 365 (Nev. 1972)
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Colten v. Kentucky, 407 U.S. 104, 92 S.Ct. 1953, 32 L.Ed. 2d 584 (U.S. 1972)

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State v. White, 280 A. 2d 810 (Me. 1971)
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State v. Morton, 293 A. 2d 775 (Me. 1972)
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State v. Perkins, 277 A. 2d 501 (Me. 1971)
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State v. Shepard, 323 A. 2d 587 (Me. 1974)
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State v. Roberge, 306 A. 2d 13 (Me. 1973)
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No right to consult attorney before taking blood test.

Coleman v. Commonwealth, 187 S. E. 2d 172 (Va. 1972)

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State v. Gaddis, 322 A. 2d 96 (Me. 1974)
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C §7.2 Lesser and Included Offenses — Merger

Lesser included offense of breaking, entering and larceny.

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Right to counsel at pretrial identification attaches only after initiation of adversary judicial proceedings.

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People v. Fowler, 461 P. 2d 643 (Cal. 1970) October 1970, p. 3

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When defendant has no counsel, court must closely govern conduct of prosecutor and witnesses.

Grubbs v. State, 265 N.E. 2d 40 (Ind. 1970) March 1971, p. 4

D §1.4 Incompetent — Ineffective — Preparation

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State v. Burnham, 296 A. 2d 689 (Me. 1972) February 1973, p. 7

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Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed. 2d 530 (U.S. 1972) August 1972, p. 5

Police have no right to counsel at administrative hearing on alleged brutality.

Grabinger v. Conlisk, 320 F. Supp. 1213 (N.D. Ill. 1970) December 1971, p. 7

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D §2.4 Trial: Presence — Consultation — Participation

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U.S. v. Principe, 482 F. 2d 60 (1st Cir. 1973) January 1974, p. 8

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U.S. v. Russell, 411 U.S. 423, 93 S.Ct. 1637, 36 L.Ed. 2d 366 (U.S. 1973) May 1973, pp. 1-2

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Administrative punishment for escape does not bar judicial punishment.

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E. EVIDENCE/WITNESSES

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E §1.1 Reasonable Doubt — Sufficiency — Circumstantial — Presumptions — Inferences

Sufficiency of evidence to support robbery conviction.

State v. Call, 322 A.2d 64 (Me. 1974) August 1974, pp. 5-6

Sufficiency of evidence to support larceny conviction.

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State v. Collins, 297 A. 2d 620 (Me. 1972) April 1973, pp. 5-6

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Use of defendant's statement for impeachment where no Miranda warnings given.
Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed. 2d 1 (U.S. 1971) April 1971, p. 5

E §2.2 Impeachment: Witnesses

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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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Jon A. Lund	Attorney General
Richard S. Cohen	Deputy Attorney General
	In Charge of Law Enforcement
John N. Ferdico	Director, Law Enforcement
	Education Section
Peter J. Goranites	Ass't Attorney General
Michael D. Seltzinger	Ass't Attorney General

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