

MAINE STATE LEGISLATURE

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ALERT

DECEMBER 1975

CRIMINAL DIVISION

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



MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

All of the video-taped lectures by Professor Sanford J. Fox for the Criminal Code Education Project have now been completed. The tapes are now being duplicated and will be distributed to each District Attorney's office by the first or second week in January. The District Attorneys are in the process of preparing schedules of the times and places of classes on the Criminal Code.

To supplement the classes on the Code, the Law Enforcement Education Section is planning to devote a series of articles in ALERT to the Code. To assist us in preparing these articles, we would appreciate all comments and suggestions on areas of the Code that need explanation or emphasis.

Officers will need copies of the Maine Criminal Code both as text for the classes and as a reference when reading the ALERTs. Law enforcement agencies that have not yet picked up their copies of the Code should contact the Law Enforcement Education Section at 289-2146.

Joseph E. Brennan
JOSEPH E. BRENNAN
Attorney General

CASE SUMMARY INDEX

January 1975 — December 1975

The following index of ALERT case summaries contains entries for all the case summaries which have appeared in the ALERT since January 1975. The case summaries which appeared in ALERT between October 1970 and December 1974 may be found in the December 1974 ALERT. The index 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 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 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.

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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F § 2.6 General Instruction

Defendant, a Register of Probate, was convicted of non-aggravated assault and battery. (17 M.R.S.A. §201). Defendant first argued on appeal that the presiding justice erred in failing to give the jury a protective instruction warning it expressly against prejudice because the defendant happened to be an elected public official. The basis for defendant's argument was that widespread publicity arising at the time from the "Watergate" investigation would make all public officials suspect in the eyes of a jury. The presiding justice had instructed the jury not to "consider anything except what you have heard in this courtroom," to perform its duty "without bias or prejudice to any party," and "not (to) be governed by sympathy, prejudice or public opinion." The court held that these instructions were sufficient.

Defendant's second contention was that the sentence he received was "directly contrary to public policy as recently expressed by legislative enactments dealing with intoxication and alcoholism, and

should be set aside." Defendant argued that the Uniform Alcoholism and Intoxication Treatment Act decriminalized all criminal conduct of alcoholics and intoxicated persons. Rejecting this argument, the court held that the Act contained no language suggesting that an officer may not arrest an intoxicated person found to be in violation of a criminal statute or that it was the legislative intent to exonerate from criminal penalties those persons qualifying for treatment under the Act. *State v. Hughes*, 343 A.2d 882 (Supreme Judicial Court of Maine, September 1975).

COMMENT: At the time the Uniform Alcoholism and Intoxication Treatment Act [Act] was passed, some law enforcement officers mistakenly believed that the fact of intoxication rendered otherwise criminal conduct non-criminal. This case clearly holds that otherwise criminal conduct is not decriminalized under the Act. For a complete discussion of the Act, see the June-July 1974 ALERT.

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

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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