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FEBRUARY 1977

ALERT

CRIMINAL DIVISION

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



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CHILD ABUSE AND NEGLECT - II

MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

Last month's issue of ALERT discussed the definition of child abuse and neglect and explained Maine laws relating to reporting requirements, custody proceedings, and possible criminal actions for abuse and neglect. This issue will examine in some detail the characteristic signs of child abuse and neglect, evidence of the "battered child syndrome," techniques of investigation, and a psychological profile of families where child abuse has occurred.

The purpose of this part of the article is to provide the law enforcement officer with as much data as possible to facilitate early detection and efficient investigation of abuse and neglect cases. I hope that, armed with this data, law enforcement officers in conjunction with Department of Human Services personnel will be better able to combat the increasing number of deaths and traumatic injuries inflicted on helpless youngsters in this state.

JOSEPH E. BRENNAN
Attorney General

ENCOUNTERING AND INVESTIGATING ABUSE AND NEGLECT SITUATIONS

Preliminary Investigation

The law enforcement officer may encounter an abuse or neglect situation under a number of different circumstances. A Human Services protective service worker may call upon the officer to accompany him or her to a home where child abuse is suspected. The case worker may anticipate a hostile reaction from the parents to his or her visit and may require personal protection. The case worker may also suspect criminal activity requiring an arrest or may simply know from past experience that a particular parent responds only to the authority of law.

In other instances the law enforcement officer may be the first to arrive on the scene of a suspected child abuse or neglect case. The police department might receive a complaint pertaining to an abused or abandoned child from neighbors, relatives, older sisters or brothers, or other sources. The law enforcement officer should also be

aware of the possibility of finding an abused or neglected child in answering a complaint which is unrelated to child abuse. For instance, the officer might discover abused or neglected children in responding to a noise complaint, a complaint about a family argument or other domestic disturbance, a truancy complaint, or a call concerning a suspected sexual assault. If the officer does encounter indications of child abuse or neglect, as discussed below, the matter should be investigated further. The interests of the child should be foremost in the officer's mind at this point, and the officer must conduct a careful and efficient preliminary inquiry into the child's condition, without unnecessarily antagonizing the parents or other adults involved and without frightening the child. It should be made clear to the parents that the officer is merely responding to a complaint and is not there to arrest anyone.

As in other crisis situations, the law enforcement officer must remain objective to the extent possible when confronting a troubled family situation, even

though such encounters are complex, emotional, and unpleasant. It is difficult for one untrained in social work to know how to handle frightened children and angry, drunk or psychologically disturbed parents. The officer should refrain, however, from making moral judgments about the parents and should look first to the welfare of the child. The law enforcement officer's visit may not necessarily lead to prosecution but instead will more often precede the visit of a social worker. Frightening or antagonizing the parents or children will only make any follow-up work by the officer or social worker more difficult.

Observations

When an officer responding to a call appears at the door of a home and observes some sign of abuse or neglect, the officer should make every attempt to obtain consent to enter the home. If indications are clear that criminal activity is taking place, the officer may have probable cause to make an arrest. If so, the safest procedure is to obtain a warrant before entering the home to arrest, unless exigent circumstances exist. The simpler and preferable course of action, however, is for the officer to calmly and politely ask to be let inside in order to discuss the complaint at hand.

The officer should note the reactions of the parents or other adults to the request for permission to enter the home. The officer should also note any explanations offered by the parent for any crying or other noteworthy behavior on the part of the child. Upon gaining entry, the officer should locate the child if the child is not in the immediate vicinity. If possible, the officer should talk with the child out of the presence of other family members about the child's physical condition. The officer should then examine the child gently for injuries, trying to calm the child, while looking for those things

which might indicate abuse, as discussed below.

After a cursory examination of the child, the officer should be able to tentatively resolve any suspicions of child abuse. If suspicion lingers, then the officer is required to make a report, in accordance with the law and procedure discussed in last month's ALERT. At this point too the officer should become more mindful of observing and noting the conditions of the home and noting any physical evidence which might aid a physician in determining the cause of an injury or which may be useful in court in either a civil or criminal proceeding. More will be said about what types of evidence to look for later in this article. Suspicions of criminal activity should also trigger constitutional considerations pertaining to admissions, confessions, and searches and seizures, which apply to all criminal cases and which are dealt with more thoroughly in the *Law Enforcement Officer's Manual*.

It may be difficult for an officer to confirm suspicions of child abuse during the initial investigation because parents often tend to protect each other when asked questions about abuse. Parents may give evasive answers because of shame, embarrassment, and fear of prosecution. Frequently the parents' version of how a child received an injury will conflict with the nature of the injury. The officer should note the parents' statements and relay these later to an examining physician, who may conclude that the injury could not have been inflicted in the manner related.

The officer should keep in mind that the initial investigation and report have a great bearing on whether or not a child will be removed from the home. As discussed in part I of this article, the standard for an emergency removal ("order of care pending hearing") is whether or not the child is living in circumstances

which "present serious, immediate and urgent danger to the child's safety or life." If these life-threatening circumstances exist, the child may be removed by court order without notice to the parents. Such an emergency might exist, for instance, when there is no one to take care of the child, when the child needs immediate medical attention which the parents won't provide, or when there is a strong possibility of substantial abuse. Otherwise a court may order protective custody only after a hearing and upon a determination that the child is living in circumstances which are seriously jeopardizing its health, welfare or morals. The investigating officer should keep these separate statutory criteria in mind in making and recording preliminary observations of the child and its surroundings.

Although in the majority of cases where a protective custody order is sought the Department of Human Services will take responsibility for filing a petition with the court, the law enforcement officer should have available such petitions for filing in emergency situations when for some reason the Department of Human Services is unable to file a petition. Petitions for protective custody and instructions for completing them may be obtained from the Department of Human Services regional offices, whose addresses are listed at the end of this article.

In anticipation of a possible criminal action, the officer should keep in mind that all observations may become important to the prosecution of a case. As in homicide cases, physical evidence is very important, since the prosecution cannot rely solely on the victim's testimony. In preparing for criminal prosecution, any information tending to demonstrate that the child's injuries were not accidental is relevant and extremely helpful. See *State v. Tomer*, 304 A.2d 80 (Supreme Judicial Court of Maine, 1973) and *State v. Silva*, 153

Me. 89, 134 A.2d 628 (Supreme Judicial Court of Maine, 1957).

The officer should carefully record all evidence of abuse or neglect, regardless of whether a civil or criminal proceeding is anticipated. The officer's notes should describe the home and indicate whether it is clean and well kept or dirty, and whether it is well-heated or drafty and cold. Any potentially dangerous conditions, such as broken glass, should be noted. Other things to note are whether the children are clean or dirty, whether they appear undernourished or poorly clothed, whether they sleep on the floor or in broken cribs or in broken beds, whether the paint on the wall is peeling, whether there are feces or rotten food in the house, whether there are open windows out of which a child could fall, whether any sharp or heavy blunt objects are present, whether there is food in the refrigerator or kitchen cupboards, whether rodents or vermin are present, and whether gas or other suspicious smells are detectable.

Whenever possible, the officer should obtain consent from the parents or other adults residing in the home to search more thoroughly for potential instruments of abuse and evidence of neglect. Otherwise, only that which is in plain view, such as things lying on the floor or on top of a wastebasket, may be noted and, under the proper circumstances, seized. Officers should refer to the *Law Enforcement Officer's Manual* for guidance in all search and seizure matters.

Interviews

The officer should talk with everyone present in the home to obtain information as to the child's habits and the habits of other household members. It is important to find out who lives in the home, who the frequent visitors are, who usually is responsible for the care of the child, and who was

present when the child was injured. The officer should record the names, ages and relationships of everyone involved. Particularly important is information pertaining to the mother, since without the mother's name and social security number it is very difficult for the Department of Human Services to track down prior reports of child abuse or neglect regarding the family.

If the child in question is old enough to talk, the officer should interview the child, taking special care to avoid intimidating the child or reinforcing existing psychological trauma. The interview should be conducted with the child alone, unless it appears that the child is unwilling to talk without a family member or babysitter present. A good approach is to ask the child general questions first about his or her play habits, school, friends, etc., in order to establish a friendly rapport. When the child appears comfortable conversing in this manner, the officer might then tactfully ask about the origin of specific injuries.

A child may have severe feelings of guilt, anxiety, shame and fear associated with his or her injuries and may be very withdrawn and apprehensive in the presence of adults. The child may also be emotionally and physically weakened from neglect or abuse and may require a great deal of support and comfort. Furthermore, in spite of any cruel treatment which may have been inflicted by the parents, a child still may maintain a genuine sense of affection and loyalty toward the parents. Consequently, the child may hesitate to say anything to an officer which might tend to harm the parents. A child is much more likely to respond to a demonstration of kindness and sensitivity than to an unfriendly or authoritarian approach.

It is important to interview the brothers and sisters, as well as the

victim, as soon as possible. Delay may result not only in the normal loss of memory but also in the parents' instructing the children not to tell the truth. If possible, the officer should find out from the child and from brothers, sisters and babysitters when the child last ate and last slept, where he or she sleeps generally, whether he or she has been left without supervision recently and, if so, for how long.

Medical Attention

If the child appears to need immediate medical attention, the officer should take the child to the hospital. The officer should ask the parents to accompany the officer and the child to the hospital, or if the parents are not at home they should be notified at the next opportunity that the child has been taken to the hospital. If the parents cannot be located, the officer should leave a note at the home telling them that a law enforcement officer has taken the child to a hospital in order to receive emergency medical care.

Once at the hospital it is important to take photographs of the child's visible injuries. Clear black and white and colored snapshots are extremely helpful, as in all assault cases, to preserve evidence of the extent and nature of injuries which are capable of healing or disappearing. If prosecution becomes necessary, it will be almost impossible to obtain a conviction without these photographs. Photographing the child's injuries should be done very carefully so as to avoid embarrassing or frightening the child. It is also important to ask for a complete x-ray examination of the child at the hospital, since abused children often have broken bones in various stages of healing that can be detected only by x-ray. Also, the possibility of sexual abuse should not be discounted, even in a very young child, and the doctor should be requested to look for any signs of sexual activity.

If the child has been abandoned, the officer should make every effort to locate the parents or guardian by talking with neighbors, relatives, landlord or other children. If it is not possible to locate the parents, the officer should request a neighbor or relative to stay with the child. If no one can be found to care for the child temporarily, and it is daytime, the officer should call the Department of Human Services for temporary shelter information. If it is nighttime, the officer should take the abandoned child to a foster home known to his department, leaving a note for the parents as to the child's whereabouts. The Kennebec County Department of Human Services toll free telephone number can be used to reach Department staff throughout the state during the nighttime. That number is 1-800-452-1999.

Further Investigation

Once the child has received any necessary emergency treatment and the Department of Human Services has been notified, the officer along with a Human Services case worker will want to conduct a thorough investigation into the child's circumstances.

All persons who have had contact with the child should be questioned. These include teachers, social workers, doctors, public health nurses, babysitters, friends, parents' spouses and housemates, landlords, neighbors and former neighbors. From interviews with these sources it should be possible to develop a profile of the child which may either support or disprove suspicions of abuse. For instance, from teachers and school records, it may be possible to find out whether the child has ever appeared at school with bruises and whether the child often appears unusually withdrawn, lethargic or anxious. From neighbors, landlord, and members of the household it should be possible to find out how long the family has resided in the area, whether the family is

presently visited by a social worker or was visited by a social worker in a previous location, and whether either of the parents is known to have a criminal record or a history of mental instability or emotional disturbance.

If the family is transient the investigator should interview former neighbors and obtain official records from municipalities where the family has resided in the past. The investigator should request from the family doctor and from all hospitals and clinics in the area information as to whether the child has been treated for suspicious injuries previously. Often in child abuse cases the parents will secure treatment for the child from a different medical facility each time an incident occurs, so as to make it difficult to trace the history of abuse. Information sought from doctors and hospitals initially may be refused on grounds of privilege or invasion of the parents' privacy. When this happens the investigator should consult with the legal staff of the Department of Human Services.

PHYSICAL INJURIES TO LOOK FOR

The Battered Child Syndrome

The term "battered child syndrome" is one often used in court cases and in the literature concerning child abuse and is a phrase with which the law enforcement officer should be familiar. "Battered child syndrome" refers to the infliction of repeated physical assaults on infants and young children, often resulting in skeletal and soft tissue injuries as well as internal bleeding and swelling. Whereas the term "child abuse" includes isolated incidents of violence to a child, the battered child syndrome refers to a series of abusive acts occurring over

a period of time. When death results from such abuse, it differs from ordinary cases of child deaths by the presence of repetitive injuries which may span a period of several months. Evidence of prior abusive acts can be relevant in establishing a parent's tendency toward violent behavior and in showing that the child's present weakened condition was caused by a pattern of abusive acts which warrant removal of the child and/or criminal prosecution. An officer investigating a child abuse or neglect situation therefore should be careful to observe any signs of old injuries or fading bruises as well as the more recent and immediate physical conditions of the child.

Evidence of Abuse and Neglect

A law enforcement officer is not expected to be a doctor; however, some familiarity with typical injuries and their symptoms will aid the officer in detecting and combatting abuse.

Burns. Burns may be inflicted by cigarettes, matches, smoke from various sources, radiator steam, a stove or oven heating unit, water heated on the stove, or scalding tap water. Small burns on the face are common signs of intentional abuse. Internal burns of the lungs, air passages and digestive tract, caused by inhaling or swallowing hot substances, are difficult to detect since there is little external evidence of these injuries. A flame burn on the buttocks will often cover a wide area; however, a burn-like mark on the buttocks in the shape of a doughnut indicates that the child was forcibly held down in a tub of hot water.

When burns are suspected, the investigator should check the temperature and timing of the hot water faucets, note the condition of the radiator, electrical wires, space heaters, stove burners and oven,

and note the presence of such things as burnt matches or cigarette butts.

Suffocation. Loss of breath may be caused by choking by the use of a cord, wire, rope or other flexible material wrapped around the neck. Such material often leaves pressure marks around the throat. Suffocation is also frequently caused by pillows, blankets, toys strung across the crib, balloons, or cellophane from sandwich bags and bread wrappers. Infants may also be suffocated by being placed too low in bean bag chairs so that their air is cut off. The investigator should check for the presence of any of the items mentioned above as possible evidence of suffocation.

Poison. Poisoning may be caused by inhaling or ingesting substances such as alcohol, paint, glue or rubber cement, pills or drugs of various kinds, gas from a stove or heating unit, fumes from an aerosol can, carbon monoxide, insect repellent, garbage, propane fuel, or pieces of plastic or cellophane. Common household products can cause poisoning just as easily as substances normally thought of as "poisons." Poisoning can also result from force-feeding a child large amounts of food or drink. The investigator should note the presence of any of the above items either around the house or in refuse areas outside the home. Vomit samples can also be helpful in determining the type of poison.

Fractures and Other Trauma. Very young children rarely sustain broken bones, since their bone tissue is too soft or "cartilaginous" to break easily. Therefore, the appearance of fractures on an x-ray is a strong indication that abuse

has occurred. Pain and swelling are indications of broken bones. A fracture in the head caused by being struck by an object will be "local" or limited in size; the fracture caused by throwing a child against a wall or other hard surface, however, will appear more like an egg shell cracked on a hard flat surface.

Multiple skin bruises of different ages concentrated in clusters on the child's body may indicate a series of previous attacks on the child. The investigating officer should look for bruises similar in shape to instruments that could have been used to inflict the injuries, such as belts, buckles, straps, lamp cords, coat hangers, knives, dishpans or baseball bats. The officer should carefully note any patterns to the abrasions since these may indicate to a doctor where the child might have sustained internal injuries and what type of instrument caused the bruises.

The investigator can tell something about the time of the injury from the color of the bruises. Recent bruises are reddish, purple, or black and blue; older bruises tend to be yellow or tan in color. A deep hit or injury, such as that caused by running into the corner of a table, will cause bleeding deep inside which will not appear as a discoloration on the skin, if at all, until long after the injury is sustained. The officer should be aware that even though an injury may not show as a bruise on the skin, it may have caused severe organ damage or internal bleeding. An injury to the side or back, for instance, can cause damage to the organs in the front part of the body even though the abdomen itself has not been struck. Internal injuries are very difficult to detect but may be indicated by blood in an infant's diaper or a child's complaint of pain in the stomach.

The officer should be alert for any unexplained, illogical, or untreated injuries which may indicate abuse. On the other hand, the officer should not jump to conclusions. Young children are normally very active and will very likely have some bruises on their legs and arms. However, when a suspicious bruise is observed, medical experts agree that the size or intensity of the injury is not necessarily indicative of the danger the child may be in. A child with relatively minor but intentionally inflicted injuries is in just as much danger as the child with serious injuries. The next beating may be the last for that child, and reporting and investigating are just as important to this child's welfare as they are to the child with very severe injuries.

WHY PARENTS ABUSE CHILDREN

There is, of course, a danger in taking a single characteristic out of context and branding a parent as a child abuser without other substantial evidence of abuse. It is also unfair and unrealistic to try to establish a stereotype of families where child abuse occurs. However, some familiarity with the causes of abuse and neglect will aid the officer in understanding and coping with this type of domestic situation.

Every parent has the potential to abuse a child at some time, because of problems and stresses that the parent just can't deal with. Most researchers conclude that child abuse and neglect are not limited to any particular socio-economic class but rather occur in a wide cross-section of the population, including those of high and low intelligence, the educated and uneducated, the rich and poor, and people of all religious and ethnic backgrounds.

Although parents are the most frequent abusers, officers should realize that other relatives of the

child, parents' boyfriends or girlfriends, babysitters, or other adults living in the household may well be involved in abusing or neglecting the child.

Abusing parents may be alcoholics and may suffer from feelings of worthlessness and depression. They are often isolated, unloved and immature people who were abused by their own parents in childhood. As a result, violence is a method they have learned to express their frustrations. Similarly, neglecting parents may suffer from drug or alcohol dependency and from feelings of inadequacy, resulting in an attitude of indifference towards the child and a desire to be rid of the demands of child rearing.

Abuse and neglect often result from a family crisis brought on by the family's economic situation, a marital break-up, a major illness, job problems, or legal problems. In these situations parents may expect from the children more than they can give. Consequently parents become frustrated with the children's inability to understand their difficulties and to help them out. Abuse and neglect may also result from the parents' lack of knowledge regarding child rearing and child development or from lack of help in caring for the children. When parents do not know what to expect from a child or do not know how to cope with the child's development or when they have no one to relieve them of the pressures of child rearing, they may take out their frustrations on the child. Child abusers are not necessarily people who have deliberately planned to injure a child, but rather people who have acted in sudden outbursts of violence or out of mistaken notions of discipline. The Department of Human Services and community organizations such as Parents Anonymous stand ready to help these parents cope with child

rearing through counseling and emergency aid.

CONCLUSION

In investigating a possible child abuse or neglect situation, the law enforcement officer plays an important role by scrupulously observing and noting the conditions of the child, the parents, and the home. A careful and complete written report is invaluable in guiding the follow-up investigator and in preserving potential evidence. A familiarity with the physical symptoms of abuse and neglect will help the officer to determine when a report to the Department of Human Services and further investigation are required. A knowledge of the common causes of abuse and neglect should help the officer understand and cope with the parents' reactions. Thoroughness on the part of the law enforcement officer in every aspect of the investigation will help prevent further injuries and save children's lives.

Department of Human Services Regional Offices:

REGION I

Cumberland & York Counties
509 Forest Avenue, Portland 04101
Tel. 774-4581 (1-800-482-7520)

REGION II

Androscoggin, Franklin & Oxford Counties
179 Lisbon Street, Lewiston 04240
Tel. 783-9151 (1-800-482-7517)

REGION III

Kennebec, Somerset, Waldo, Knox, Lincoln & Sagadahoc Counties

Capitol Shopping Center,
Western Ave., Augusta 04333
Tel. 289-2851 (1-800-452-4640)
(Kennebec County, 24 hour, 7
day a week telephone:
1-800-452-1999)

Branch Offices:

76 Madison Ave., Skowhegan
04976
Tel. 474-5551

1 Park Drive, Rockland 04841
Tel. 594-2521 (1-800-432-7802)

REGION IV

Penobscot, Piscataquis, Hancock & Washington Counties
117 Broadway, Bangor 04401
Tel. 947-0511 (1-800-432-7825)

Branch Offices:

87 Main St., Calais 04619
Tel. 454-2131

415 Water St., Ellsworth 04605
Tel. 667-5361

26 Main St., Machias 04654
Tel. 255-3366 (1-800-432-7846)

REGION V

Aroostook County
5 Mechanic St., Houlton 04730
Tel. 532-9531 (1-800-432-7338)

Branch Offices:

333 Main St., Caribou 04736
Tel. 498-8151 (1-800-432-7366)

38 Pleasant St., Fort Kent
04743
Tel. 834-3934

Department of Human Services Legal Services:

State House
Augusta, Maine 04333
Tel. 289-2226

Chief Medical Examiner for the State of Maine:

Dr. Henry Ryan
State Office Building
Augusta, Maine 04333
Tel. 289-2993

IMPORTANT RECENT DECISIONS

CONFESSIONS/SELF- INCRIMINATION:

B § 1.1 Voluntariness

B § 1.3 Miranda

B § 1.4 Arrest and Disposition

DEFENDANT'S RIGHTS:

D § 1.1 Right to Counsel-
Pretrial

Defendant was a parolee and the sole suspect in a burglary investigation. Defendant called the investigating officer in response to a note left by the investigating officer requesting to meet with him concerning an unidentified matter. For convenience sake, defendant and the officer arranged to meet at the state patrol office, located in a building containing several other state agencies and situated two blocks from defendant's residence.

At the station, the officer told defendant he was not under arrest but that he was believed to be involved in the burglary and that his truthfulness might be considered favorably in his behalf. The officer also falsely stated that defendant's fingerprints were found at the scene. Within five minutes of entering the room defendant admitted stealing the property. The officer then read the *Miranda* warnings, tape recorded defendant's confession and released defendant. Charges were later brought against defendant and he was convicted of first degree burglary. His confession proved crucial to the State's case.

The United States Supreme Court upheld the conviction. The Court found that defendant was not in custody or deprived of freedom of action at the time of the interrogation. He came voluntarily to the police station, was told he

was not under arrest, and did in fact leave without hindrance following the interview.

The Court further stated:

"Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'"

Although the lower court had found that the officer's false statement to defendant about his fingerprints contributed to a coercive environment, the U.S. Supreme Court found the officer's statement irrelevant to the question of whether or not defendant was in custody. The fact that a false statement was made therefore did not invoke the *Miranda* rule where there was no custody in the first place. *Oregon v. Mathiason*, 43 U.S.L.W. 3505 (U.S. Supreme Court, January 1977).

COMMENT: This case stands as a reminder of the fact that law enforcement officers are not required to give Miranda warnings to a person who is not in custody or deprived of freedom of action in any significant way. Furthermore, the mere fact that the questioning takes place at the station house or that the person is suspected of a crime does not automatically render the questioning custodial. However, there are no clear

guidelines for determining, as a matter of law, when a person has been deprived of freedom of action in a significant way, and a court's determination of this issue may differ from the officer's. Therefore, whenever a question arises in the officer's mind as to whether the person being questioned is in custody, in order to be certain that any statement will be admissible in court, the officer should read the Miranda warnings and secure a voluntary waiver.

SEARCH AND SEIZURE:

A § 2.1 Probable Cause: Warrant

A § 2.5 Without a Warrant

A § 2.7 Inspections

Customs agents in Miami discovered two packages destined for Massachusetts containing cocaine. Without obtaining a warrant, federal drug and Postal Service agents inserted an electronic beeper into the packages and monitored their delivery to the addressee. The agents obtained a search warrant and executed it when the beeper signal indicated that the packages had been opened. Defendant, who had been seen entering the apartment of the addressee and who dropped the packages from a window when the agents entered, was arrested, tried and convicted on federal drug charges.

On appeal defendant contested the legality of the initial search of the packages, the sufficiency of the affidavit supporting the warrant to search the apartment, and the legality of the warrantless use of the beeper.

The court affirmed the conviction. The initial warrantless search of the packages at the border was proper even though the customs officials may not have had reasonable grounds to believe the packages contained cocaine. The court stated that, at least with regard to packages rather than first class letters, the government is free

to inspect incoming mail without a reasonable suspicion of illegal activity.

Defendant argued that the affidavit supporting the warrant to search the apartment was defective because it failed to identify the affiant's sources of information. The court found the affidavit minimally adequate, stating that a common sense reading of the affidavit made clear that the unnamed sources were government agents whose information might be accorded some "presumptive reliability." The court noted, however, that the better practice would have been to provide more information concerning the sources of information.

The court further found that the warrantless use of the electronic beeper was constitutional. The court distinguished *U.S. v. Holmes*, 521 F.2d 859 (1975) which found unconstitutional the warrantless attachment of a "beeper" to a defendant's automobile. Whereas one might have a legitimate expectation of privacy with respect to an automobile or other object which he legitimately possessed, the court stated that this defendant could have no such expectation of privacy with regard to packages containing contraband which he had no right to possess. *U.S. v. Emery*, 541 F.2d 887 (1st Cir. 1976).

MAINE COURT DECISIONS

SEARCH AND SEIZURE:

A § 4.5 Informer Privilege

Defendant was convicted of breaking and entering with intent to commit larceny (17 M.R.S.A. §754) and he appealed. Prior to trial defendant filed a motion for

the disclosure of the identity of a person who had informed the police of the plan to engage in the criminal activity. In support of his motion, defendant argued that he had been entrapped into being found at the scene of the crime and that the identity of the informant was essential to the presentation of the entrapment defense. The prosecuting attorney assured the presiding justice that the informant was not a participant in the crime and would not be used as a witness at trial. The presiding justice denied the motion for disclosure. Among the arguments raised by defendant on appeal was the claim that the presiding justice erred in denying the motion.

In denying the appeal, the Law Court ruled that the justice acted properly in denying the motion for disclosure. In *Roviaro v. United States*, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed. 2d 639 (U.S. Supreme Court 1957), the Supreme Court held that where the informer was an active participant in the crime, and where his testimony "was highly relevant and might have been helpful to the defense," the informer's identity must be disclosed. The Law Court noted that in applying the holding of *Roviaro*:

"[t]he presence of the informer at the scene of the alleged crime, or his involvement in the criminal activity for which the defendant is charged, has been viewed as a significant factor in the decision to require disclosure. . . . Where, however, there is no showing that the informer was connected with the defendant's criminal conduct, but was merely conveying information to law enforcement officials, nondisclosure of his identity is justified. . . ." Slip opinion at 3.

The court ruled that although in certain cases the identity of an informer should be revealed in order to assist an accused to raise properly the issue of entrapment, the bare assertion by the defendant in this case that he was entrapped

was not sufficient to warrant disclosure of the informant's identity. The defendant failed to show that the informant did more than merely convey information to the police. In view of the defendant's failure to make such a showing, and in view of the prosecuting attorney's assurances that the informant was not involved in the crime with which the defendant was charged, the justice acted properly in denying disclosure. *State v. Brooks*, 366 A.2d 179 (Supreme Judicial Court of Maine, November 1976).

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, Room 507 - State Office Building, Augusta, Maine 04333.

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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