

# Citizen-Informer Rule Attacked In Appeal Court

The Fourth Amendment to the United States Constitution prohibits government agents from making "unreasonable" searches and seizures. In determining whether a search has been lawful the central question is usually whether the search was "reasonable." Reasonableness, of course, is a rather fluid concept but, through the years, it has usually meant this: that a policeman could not enter one's house for the purposes of searching for contraband on the basis of nothing more than an allegation by someone else that contraband was to be found there.

## Private Citizen

Paul Legard, Jr., however, was found guilty in Napa County Superior Court of possessing marijuana on evidence that was the product of just such a search. The Superior Court upheld the validity of a search warrant that was supported by an affidavit that merely recited that a "private citizen" had informed the police that Legard possessed marijuana in his home. The affidavit did not give any reasons for believing that the informer's word was reliable and a hearing established that the informer had previously supplied information to the police that had resulted in no successful arrests, that he had previously been involved in criminal activity himself, and that he had unsuccessfully attempted to persuade the police to engage him as a police informer. The Superior Court, however, ruled that the police affidavit need not show that the informer was "reliable" as long as it contained a recitation that he was a "private citizen."

## 'Citizen-Informer'

The usual rule has been that a search warrant will not issue when supported only by an informer's word unless the police can establish that the informant is "reliable." Reliability is customarily demonstrated by a showing that the informer has previously given information that proved to be true. In the last decade, however, the California courts have carved out an exception to the "reliable informer rule" that is known as the "citizen-informer rule." The citizen-informer has been distinguished from the underworld informer as a neutral citizen who has been the victim of a crime or who has witnessed the crime. Thus, for example, the police can chase after and search a purse snatcher on the word of the alleged victim of the purse snatch even though they have not, themselves, witnessed the crime. In such situations the rule makes sense because the police cannot both act expeditiously and confirm the reliability of the information they have received. Legard's case, however, is a far cry from the purse snatch situation. Legard's case involves no emergency and no hot pursuit but a deliberative and successful police attempt to

obtain a search warrant. Legard's attorney, Mrs. Barbara Clark of Vacaville, has appealed his conviction and ACLUNC has filed a friend-of-the-court brief urging the state Court of Appeal to reverse the judgment and suppress the evidence seized pursuant to the warrant.

## Emergency Situations

ACLUNC's brief, prepared by volunteer attorney Demetrios P. Agretelis of Berkeley, argues that the citizen-informer exception to the reliable informant rule is only applicable to emergency situations and never applies where a criminal defendant

is challenging an affidavit in support of a search warrant. Agretelis argues that:

"The distinction has been made because the circumstances in which the 'citizen-informer' conveys information to police require that the police act immediately without the imprimatur of a warrant. The reported crime is either in the act of taking place or it has just taken place. The informer is either the victim of the crime or witness to it. The police are either on their way to the scene of the reported crime, or they receive the information through official channels and they by chance apprehend the suspects.

"The 'citizen-informer' rule arises out of the exigencies of the situation faced by the police, and it can be likened to a parallel rule which permits the police to rely on untested information in acting immediately, where delay in order to obtain a warrant would be to frustrate and defeat sound law enforcement. It is, then, a rule which excuses the police from presenting their 'probable cause' to a magistrate and where the exigent circumstances do not exist, as in the case at bar, the rule is simply inapplicable. To invoke the 'citizen-informer' rule in support of a search warrant would be to fail to recognize its origins and the judicial rationale which supports it."

## Reliability Not Established

Agretelis also contends that even if the citizen-informer rule could be applied to search warrants the affidavit in Legard's case was constitutionally infirm. When the police attempt to get a search warrant on the strength of the word of a "reliable informant" they must set forth the reasons why they believe the informant to be reliable. A similar rule is, of course, necessary if warrants are to issue on the basis of the word of a "citizen-informer." In the Legard affidavit the police baldly stated that they got their information from a "private citizen." But everyone, including the most unreliable of informers, is a "private citizen." The police, if they are to be able to search our homes on the basis of the word of citizen-informers at all, ought to be required to set forth the reasons that led them to believe that their information was being supplied by a person unconnected with criminal elements who was "neutral" and had nothing personally to gain by providing information about his neighbors.