

WATERGUARD TRAINING CENTRE

Framework of a talk by a Senior Investigation Officer on the English Judiciary system, including notes on Procedure in dealing with offenders, Reports, Conduct of Witnesses, and Co-operation with the Investigation Branch.

(1) OUTLINE OF THE SCOPE OF THE ENGLISH CRIMINAL COURTS, showing the position of the Magistrates' and other courts used for Customs and Excise cases.

(a) The High Court of Parliament

The highest Court of the Realm. Its jurisdiction is exercised by the House of Lords.

(b) The Court of Criminal Appeal

Deals with appeals from Quarter Sessions, Assizes or the Central Criminal Court (old Bailey).

(c) The High Court

The King's Bench Division (which includes the Assizes and also the Divisional Court) deals with certain types of cases as a Court of First Instance. It has, in addition, certain supervisory duties. It also functions, (excepting at Assizes), as a court of appeal. The Central Criminal Court (known as the Old Bailey) is a branch of the High Court and is also the Assize Court for Middlesex and London. The Old Bailey does not deal with appeals. See (d) below with reference to Customs and Excise cases sent for trial.

(d) Quarter Sessions.

(i) General County Sessions, held in each County once a quarter and

(ii) Borough Sessions held in many Boroughs and exempting them from the jurisdiction of the General County Sessions. The Judge of the Borough Sessions is a Recorder. He is a barrister with not less than five years' standing and he is appointed by the Crown. Quarter Sessions hear appeals from courts of summary jurisdiction; they also deal with certain of the less serious offences including Customs and Excise cases where the defendant exercises his right to be tried by a Judge and Jury. It should be noted that in such cases the Magistrate in the lower Court may determine whether to send Customs and Excise cases for trial to the Old Bailey, the Assizes or the Quarter Sessions.

(e) Petty Sessions (Magistrates' Courts)

Have jurisdiction to deal summarily with minor criminal offences but if the offence is punishable on first conviction with more than three months' imprisonment the accused may (with certain exceptions) claim trial by jury. These Courts may also deal with certain indictable offences if the Accused consents. Stipendiary Magistrates preside over these courts in the larger cities, otherwise there are two or more unpaid Justices of the Peace excepting in the City of London where the Lord Mayor or an Alderman may sit alone. Justices of Peace are appointed by the Crown on the recommendation of the Lord Lieutenant of the County concerned or the Lord Chancellor.

(2) DEALING WITH OFFENDERS

(a) Remember that everything said may have to be repeated in a Court of Law; keep this point constant in mind.

(b) An Officer is empowered to ask questions about imported goods but a person is not obliged to give an answer which may incriminate him. Any statement by an offender must be made voluntarily; if otherwise the statement would not be admissible as evidence and there would be danger of criticism from the Bench.

(c) Make adequate, properly dated notes in an official notebook and make notes at the time, or as soon afterwards as practicable.

(d) Be polite yet firm and keep to the issue in question. Do not allow an interview to develop into an argument and do not answer hypothetical questions.

(e) If the offender is a woman be extra careful. Be punctilious in extending the courtesies usually given to a member of her sex, give her no chance to lose her temper and keep the interview short.

(f) In recounting evidence to your superior officer in the presence of the offender, state the facts simply and concisely. It is not unnatural to feel a sense of triumph if you have made a good seizure, but you must not show such feelings.

(g) If you are present when the P.O. or C.P.O. conclude the business with the offender, watch and listen. You will probably have to do it yourself one day. If you accompany your superior officer to the police station to charge an offender, take careful note of all that goes on; the experience will stand you in good stead later on.

(3) REPORTS

(a) Use simple, direct English; avoid hackneyed expressions and journalese.

(b) Say what you did on each occasion. Dates and names of those present are important.

(c) Remember that you are reporting evidence. There should be no supposition and no fancy.

(d) Avoid the impersonal style. The solicitor must know who did particular things. It is wrong to say - "The offender was asked...." so and so. If you asked him the question then say so; if it was someone else, then give that person's name. Generally speaking it is better to use the offender's name rather than to describe him as "the offender".

(4) OUTLINE OF PROCEDURE IN PETTY SESSIONAL COURTS.

(a) Defendant is called and stands in front of the dock.

(b) Representatives of the prosecution and the defence announce their respective interests in the case.

(c) The Clerk of the Court reads the charge and asks the defendant (in appropriate cases) if he wishes his case to go to another court for trial by a judge and jury or if he wishes to be dealt with summarily by the magistrates. (There is the right to go for trial in all offences under Section 186 of the Customs Consolidation Act, 1876, but it is unusual for defendants to take this course in Waterguard cases).

(d) If the defendant elects to be dealt with summarily, the Clerk asks him if he pleads guilty or not guilty.

(e) If the plea is "guilty", witnesses may remain in court. The prosecutor outlines the case and usually calls no evidence unless the Magistrate or the defence requests it. The defendant's previous record is to be stated. The defendant or his legal representative then addresses the Court in mitigation and the Magistrate announces the sentence.

(f) If the plea is "not guilty", all witnesses must leave the Court unless they are given specific authority to remain. The prosecutor outlines the facts of the case and then calls his witnesses to prove them. The witnesses may be cross-examined and then re-examined.

Defendant may call witnesses and he may give evidence himself, in which case he may be cross-examined. The defendant or his representative may then make a speech in defence. (The rules as to order of speeches vary according to whether the defendant calls witnesses as to fact or is legally represented). The Magistrate either discharges the defendant or convicts him. If he convicts him, then defendant's previous record is stated and the Magistrate passes sentence.

(5) CONDUCT OF WITNESSES IN COURT.

(a) General

Bring seizures into Court quietly and set them out effectively. See that you or some other member of the Department keeps an eye on them. When the case is called, the defendant will be asked if he pleads guilty or not guilty. If the plea is "guilty" you may stay in Court. If the plea is "not guilty" you should leave the Court and wait outside until you are called, unless you receive specific authority to remain. There should be no conversation between witnesses who have given evidence and those who have not. (This means that in a contested case which is adjourned say for lunch, those who have given evidence should keep away from those who have not. The defence may challenge a witness at the resumed hearing and suggest that he has agreed his evidence with a previous witness).

When in Court, avoid:

- (i) Talking
- (ii) Walking about noisily
- (iii) Moving between Magistrate and defendant
- (iv) Associating with defendant or friends.

(b) Giving evidence

- (i) Stand erect in the witness box.
- (ii) Take the oath and state your full name and official address.
- (iii) Speak clearly and slowly and address all your remarks to the magistrate.
- (iv) The prosecutor will take you through your evidence; if you can give your evidence without being prompted, so much the better.
- (v) Do not call the Magistrate "Your Worship" at every verse end. An occasional "Sir" is quite correct.
- (vi) Dates are most important. Start your evidence by giving date and place of the occurrence, e.g. "On the 4th March, 1946 at St. Katherine's Dock, London, I saw the defendant "X" leaving the s/s "Y"."
- (vii) Use sober, restrained, simple language.
- (viii) Your evidence must be related to the subject of the charge and the facts in relation thereto which must be proved or disproved. With few exceptions, evidence must be first hand. Generally speaking you must have heard the words said by the defendant or by someone else in the presence and hearing of the defendant. "What the girl told the soldier" is not evidence.

- (ix) Statements made by the defendant are admissible in evidence only if they are made voluntarily and without threat, promise or inducement.
- (x) In most courts no objection will be raised to a witness referring to notes made at the time. If the notes are in a proper book and in proper date sequence it is difficult for the defence to challenge them. Bear in mind that the legal representative of the defendant and the Magistrate may ask to see your notebook.
- (xi) Do not produce a copy of your official report. You will probably be criticised. Your evidence should be from memory refreshed if necessary by notes made at the time.
- (xii) The purpose of cross-examination is to dispute the accuracy, truth or completeness of evidence given. Defending Counsel may have been given untrue instructions by his client and may consequently attack your evidence but do not allow yourself to become upset or angry. Think before you speak and then answer slowly and deliberately. Address all your remarks to the Magistrate.
- (xiii) It is not your job to "get the defendant down". Your duty is to give evidence as to fact and you must be impartial and fair.

(6) CO-OPERATION WITH THE INVESTIGATION BRANCH

- (a) The Investigation Branch is concerned with goods which have evaded the Waterguard control.
- (b) If you receive information of such goods, pass it to your superior officer for transmission to the Investigation Branch if such action is warranted.
- (c) If, when dealing with a Waterguard detection you have reason to think that other goods may have been smuggled successfully, (and particularly if the offender is a trader and the goods of his trade are involved), report full particulars to your superior officer with a view to getting in touch with the Investigation Branch at once.
- (d) In most cases SPEED is of the greatest importance - e.g. woman in model hat trade dealt with at Dover; I.B. informed by telephone and Officers are at her place of business in London in time to see her immediately on arrival from Dover.
- (e) Bear in mind that a detection at the port may be only a small part of a series of evasions. It is understandable that you should be interested in your own detection but you should see the matter in perspective and do all you can to ensure full co-operation within the Department so that the offender may be dealt with in respect of all and not merely part of his misdeeds.