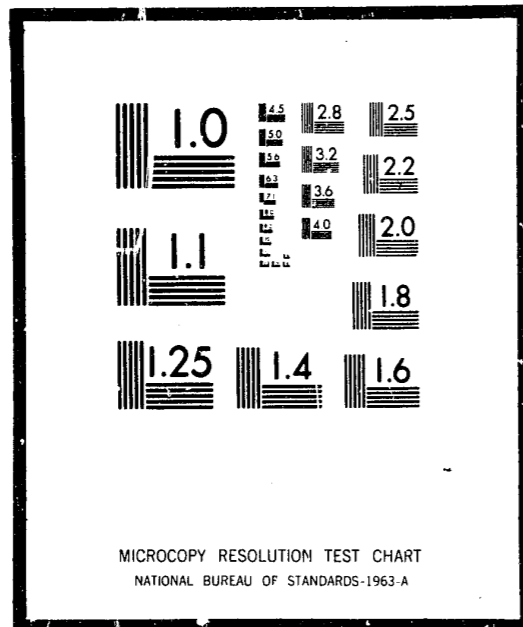


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SOUTH CAROLINA LAW ENFORCEMENT ETV TRAINING PROGRAM

DUTIES AND RESPONSIBILITIES OF MAGISTRATES

PART III

Prepared by SOUTH CAROLINA LAW ENFORCEMENT DIVISION in cooperation with SOUTH CAROLINA EDUCATIONAL TELEVISION NETWORK

South Carolina LAW ENFORCEMENT - ~~LEGAL~~ ^{Educational Television} TRAINING PROGRAM -
DUTIES AND RESPONSIBILITIES OF MAGISTRATES,

PART III 3



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Sponsored by:

South Carolina Law Enforcement Division

In co-operation with

South Carolina Educational Television Network

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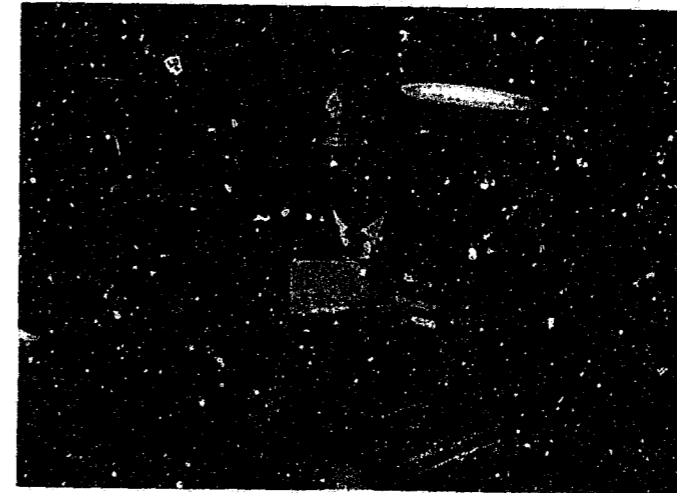
South Carolina Governor Robert E. McNair
South Carolina Sheriffs' Association
South Carolina Law Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina F.B.I. National Academy Associates
South Carolina Southern Police Institute Associates

PROGRAM OBJECTIVE:

This material will present many of the duties, obligations and responsibilities of the office of magistrate in the State of South Carolina.

LECTURE OUTLINE:

1. WHAT IS THE MAGISTRATE'S OR RECORDER'S RESPONSIBILITY TO AN INDIVIDUAL APPEARING BEFORE HIM FOR A JURY TRIAL OR FOR ENTERING A GUILTY PLEA?



A. The magistrate must be satisfied that the accused understands the charge.

B. The magistrate must be satisfied that the accused understands the sentence which may be imposed.

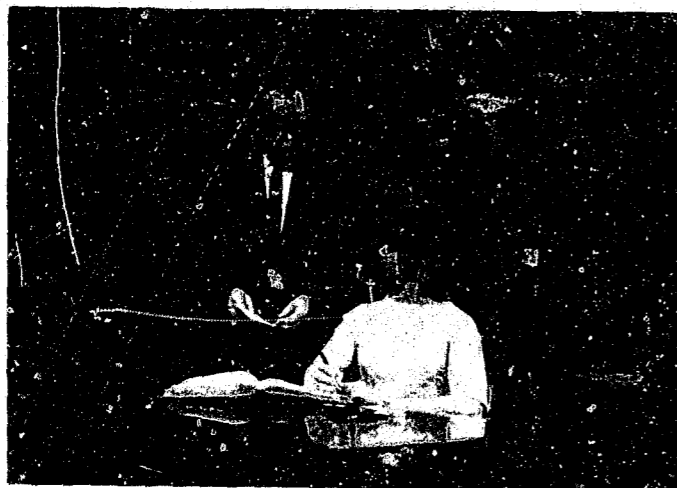
C. The magistrate must be satisfied that the person accused upon entering a guilty plea feels that he is actually guilty.

D. The magistrate must be sure that the accused understands he has the right to a jury trial if he so desires.

(1) The magistrate should be sure the accused understands that the magistrate can hear the facts if a trial by a jury is waived.

NOTE: Although the United States Supreme Court has held that any defendant who does not have the money to pay a lawyer is entitled to have one appointed by the court to represent him free of charge, it has not been held as yet that this rule will apply in a magistrate's court. It is the opinion of many lawyers that a distinction will be made with regard to traffic courts and other like courts. They are concerned only with minor crimes. It appears at this time that magistrates and recorders have no legal responsibility to see that lawyers are appointed to represent indigent defendants in their courts at the present time.

2. UNDER THE LAW, WHAT RECORDS MUST A MAGISTRATE MAINTAIN?



A. All magistrates must maintain a criminal book.

(1) All warrants issued should be recorded to include:

(a) Disposition, including fine.

(b) A summary on all the proceedings on each individual case.

B. All magistrates must maintain a civil book.

(1) To include a summary of all proceedings.

NOTE: Both of the above referred to books must be available for inspection by the circuit solicitor at all times or by the county auditor or by private auditors hired by the county to check its finances. These books are the original records of the magistrate's court just as an indictment and other like records are permanent and recorded in the office of the County Clerk of Court.

OBSERVATION: It should be noted that there are special provisions for additional records to be kept by magistrates in certain counties.

3. WHAT RECORDS SHOULD A MAGISTRATE KEEP AS A MATTER OF GOOD PRACTICE AND EFFICIENCY?

A. All executed warrants, both search and arrest, should be part of a permanent record which should also include summons issued by the highway patrol and the Wildlife Department.

NOTE: It is suggested that signed copies of all warrants issued be kept and that the original warrant be returned to the magistrate after its execution.

OBSERVATION: In view of recent court decisions, it is most important that signed copies of arrest warrants and search warrants be available for proof in general sessions and Federal Courts. More and more convictions are being set aside by courts of appeal upon claims by defendants that search warrants were not based upon legally sufficient affidavits. If warrants are missing and if no signed copies are available, it is not possible for the solicitor to prove that the warrant was legal.

4. IS THERE ANY REQUIREMENT THAT MAGISTRATES KEEP INVENTORY RECORDS OF ITEMS SEIZED IN CONNECTION WITH THE EXECUTION OF A SEARCH WARRANT?

A. Yes. (Pursuant to 1966 Act of the South Carolina Legislature.)

(1) South Carolina law now requires that any person executing a search warrant for things used in commission of a crime or for illegal drugs, make a list or inventory of the things seized.

OBSERVATION: For the magistrate's own protection, he should see that such a list is made and he should keep a signed original as part of his permanent records.

5. DOES A HIGHWAY PATROL SUMMONS AND A WILDLIFE SUMMONS UNDER ANY CONDITION HAVE THE FORCE AND EFFECT OF A WARRANT?

A. Yes.

(1) In those cases where the summons is served as a courtesy summons and in cases in which cash bond is accepted by the officer and the accused is not taken before the magistrate or put in jail.

(2) If the accused is taken before a magistrate or jailed, an arrest warrant must be issued based on the summons.

6. IS IT LEGAL TO ISSUE A CONTEMPT OF COURT WARRANT FOR AN INDIVIDUAL WHO DOES NOT SHOW UP AFTER HAVING BEEN GIVEN A SUMMONS FOR A VIOLATION BY A LOCAL OFFICER?

A. No.

(1) A warrant must first be issued based on the information contained in the summons and thereafter served. The summons issued by a city officer does not carry the authority of an arrest warrant as it does with the highway patrol and Wildlife as referred to in Question 5.

NOTE: There is no lawful authority for a bench warrant to be issued for a contempt of court based on a traffic citation (summons) issued by a local police officer.

7. DOES AN ACCUSED HAVE THE RIGHT TO HAVE A WITNESS APPEAR FOR HIM AT A PRELIMINARY HEARING OR A TRIAL BEFORE A MAGISTRATE OR RECORDER?



A. Yes, at a trial (provided that the magistrate has good reason to believe the desired witness can produce pertinent testimony to give in behalf of the accused).

(1) The magistrate must use the same mechanics to get the witnesses for the accused as for the prosecution (of course, providing that the desired witness does not live in excess of 20 miles from the magistrate's place of court).

NOTE 1: At a preliminary hearing the accused does not have the right to present his side of the case and therefore would not have the right to have the magistrate subpoena a witness for him.

NOTE 2: If a recorder has the same power as the magistrate, he must do the same thing to get a witness into court as would the magistrate.

NOTE 3: There is no provision under South Carolina law for paying a witness in magistrates' courts.

8. IS THERE ANY PAYMENT TO A JUROR FOR MILEAGE FOR HIS APPEARANCE IN A MAGISTRATE'S COURT?

A. Yes. (Civil cases only.)

(1) The rate of pay for mileage is the same for a juror in a magistrate's court as is set in circuit courts, and this amount varies from county to county.

9. WHAT MUST A MAGISTRATE DO WITH FINES COLLECTED IN HIS COURT?

A. The fines must be placed in the hands of the county treasurer, and in the case of a recorder the fines must be placed in the hands of the city treasurer.

10. WHAT IS THE PROCEDURE BY A MAGISTRATE REGARDING THE MANNER OF HANDLING A PRELIMINARY HEARING?

A. A preliminary hearing must be granted; however, the demand for same must be in writing at least 10 days before the next term of general sessions court in the respective county that has jurisdiction.

(1) If such demand is not made at least 10 days before the court is to begin, no preliminary hearing is required by law as a prerequisite to grand jury action.

B. If proper demand for preliminary hearing is made at least 10 days before the beginning of the general sessions court, no indictment may be returned by a grand jury until such hearing has been held.

(1) If the demand for the preliminary hearing comes at a time after the 10th day before the court convenes, the circuit solicitor may proceed with the case as if no demand for a hearing had been made.

NOTE: The purpose of a preliminary hearing is for the magistrate to determine whether or not the state has enough evidence against the accused (defendant) to convince the magistrate that he is probably (not possibly) guilty of the charge set out in the warrant. If a magistrate should find that probable cause does not exist, the defendant should be discharged.

OBSERVATION: Only the state may present witnesses at a preliminary hearing. The defendant individually or through his attorney may cross-examine the state's witnesses and may present any argument to the court.

11. SHOULD THE TESTIMONY AT A MAGISTRATE'S HEARING BE RECORDED?

A. Yes.

(1) A summary of the testimony and other details as to what took place at the hearing should be recorded by the magistrate and this summary in writing with all other papers in the case should be filed with the County Clerk of Court within 15 days after the hearing and should at no time be later than the 1st day of the next session of the circuit court in the respective jurisdiction.

12. WHAT ARE THE DEFENDANT'S RIGHTS REGARDING THE PRESENTATION OF HIS SIDE OF THE CASE AT A PRELIMINARY HEARING?

A. Neither the defendant nor his attorney has the right to present any evidence on his side of the case at the hearing.

(1) The state's witnesses may be cross-examined.

(2) An argument may be presented in his behalf either by himself or through his attorney.

13. WHAT BASIC KNOWLEDGE SHOULD A MAGISTRATE HAVE REGARDING RULES OF EVIDENCE?

A. No testimony from a witness or any evidence should be allowed to be presented in the case unless this evidence bears directly on the guilt or innocence of the person charged.

B. A witness can testify only to things he knows first hand and never to something that came from someone else.

14. WHAT SHOULD BE INCLUDED IN A MAGISTRATE'S CHARGE TO A JURY IN THE TRIAL OF A CASE IN HIS COURT IN WHICH HE PRESIDED?

A. The statute should be read to the jury first.

B. An explanation of the statute in his own words.

C. Any typewritten charges prepared by the attorney may be read to the jury if the magistrate believes that these charges are pertinent. (The magistrate is not required by law to include in his charge to the jury any suggestions by the lawyers; this is discretionary.)

15. IS IT PROPER FOR THE STATE TO ELECT BETWEEN SEVERAL COUNTS WHICH HAVE BEEN INCORPORATED IN A WARRANT?

A. Yes.

(1) If the facts alleged by the state, that is, those things of which the defendant is accused in the warrant arise out of the same act may legally considered to be two or more crimes, the state must be required by the magistrate to elect the one crime that it will try to prove in the charge.

EXAMPLE 1: A warrant charging both speeding and reckless driving would not be proper because both charges depend essentially upon proof of the same act, and the state would be required to strike one of the charges.

EXAMPLE 2: Charges of speeding and driving without a license may be included in one warrant because they are entirely separate offenses, one having nothing to do with the other.

16. IS IT PROPER TO INTRODUCE A CRIMINAL RECORD OR COMMENTS ON THE CHARACTER AND/OR REPUTATION OF THE ACCUSED IN A COURT TRIAL?

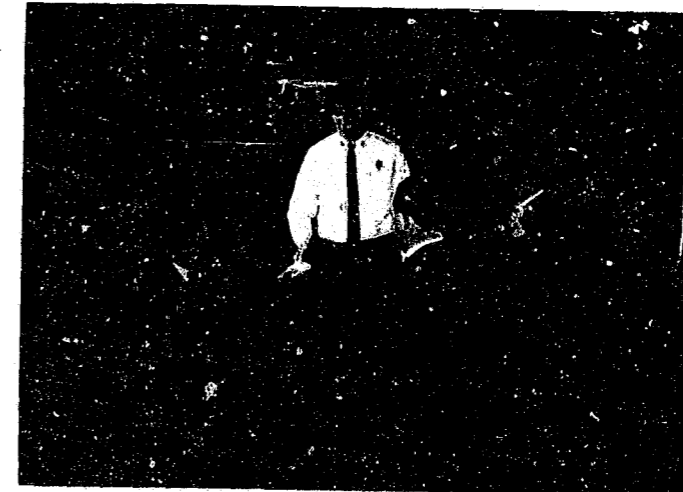
A. No.

(1) The past criminal record of the defendant, his character or reputation should not enter into a trial.

NOTE 1: The accused is being tried on the case at hand, and it is presumed that he has squared himself with society for past crimes.

NOTE 2: In a trial if the defendant himself gives evidence as to his reputation, then evidence as to his bad reputation can be introduced as evidence.

17. ONCE AN INDIVIDUAL HAS EITHER BEEN FOUND GUILTY OR ENTERED A GUILTY PLEA, IS IT THEN PERMISSIBLE FOR A CRIMINAL RECORD, OR CHARACTER OR REPUTATION TO BE CALLED TO THE ATTENTION OF THE MAGISTRATE PRIOR TO SENTENCE?



A. Yes. A prior criminal record, character or reputation should be considered by the judge before he determines a sentence.

18. CAN A DEFENDANT BE TRIED IN HIS ABSENCE?

A. Yes.

(1) If a defendant has had proper notice of the time and place of trial and does not appear, he may be tried in his absence without a jury and this case can not be reopened.

19. DOES A MAGISTRATE HAVE THE POWER AND OBLIGATION TO SET A BOND?

A. Yes, and the duty as well, even in cases beyond his jurisdiction to try, such as grand larceny or housebreaking.

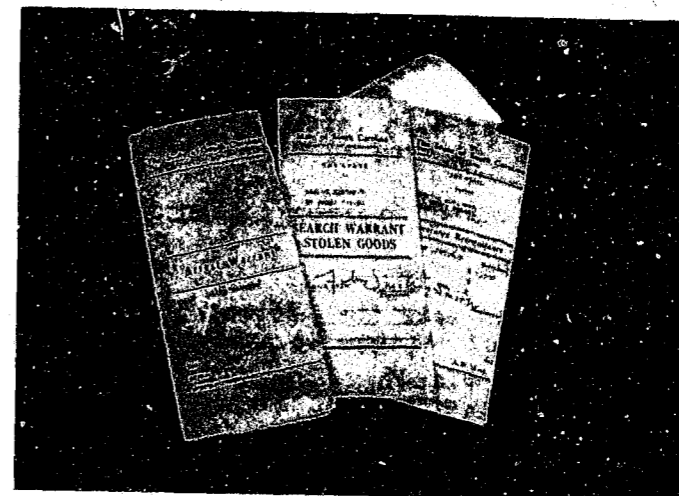
(1) The bond must be reasonable.

(2) The return date of the bond must have the date of the next term of general sessions court.

NOTE: After the accused has reported to general sessions court, any subsequent setting of bond rests with the circuit court and not the magistrate.

OBSERVATION: With respect to crimes for which the punishment may be death or life imprisonment, the magistrate is prohibited from setting bonds. (Only circuit judges or members of the Supreme Court may release a defendant on bond who may be subject to death or life imprisonment).

20. WHAT ARE THE REQUIREMENTS REGARDING THE DISPOSITION OF THE BOND PAPERS BY THE MAGISTRATE?



A. Except where otherwise specifically provided by a special law in specified counties, bond papers should be filed with the Clerk of Court at least 10 days before the next term of general sessions court.

NOTE: The circuit court must have all written material in the case including warrant and bond in order that the circuit solicitor can make proper legal steps to estreat the bond if the defendant does not appear.

21. ONCE A FINE HAS BEEN PAID OR A SENTENCE SERVED, CAN THE DEFENDANT THROUGH HIS ATTORNEY REOPEN THE CASE?

A. No, the Supreme Court of South Carolina has said that after a fine has been paid or a sentence served, the matter is absolutely and finally ended. The case may not be reopened and a new trial granted or a judgment set aside. (Of course, this is providing that the magistrate or recorder had proper jurisdiction in the case.)

22. WHAT ARE KEY POINTS THAT A MAGISTRATE OR RECORDER SHOULD BE COGNIZANT OF BEFORE ISSUING A SEARCH WARRANT?

A. Affidavits must contain enough information so that the magistrate can determine for himself whether or not a warrant should be issued. (Warrants based on information and belief alone are worthless.)

(1) Illustrations:

(a) What facts make the officer believe, that illegal liquor is at a certain place?

(b) If the affidavit is based on information from an informer, information as to what he saw, when he saw it, how long he has been known to the officer to whom he furnished the information and, whether or not the information furnished in the past proved to be reliable.

23. WHAT JURISDICTION AND AUTHORITY DOES A MAGISTRATE'S CONSTABLE HAVE?

A. Magistrates' constables have the power to execute writs and processes issued by the magistrate in his territorial jurisdiction.

NOTE: The magistrate's constable does not have the same authority as do general police officers such as city police or deputy sheriffs.

24. WHAT ARE THE SALARIES OF MAGISTRATES' CONSTABLES?

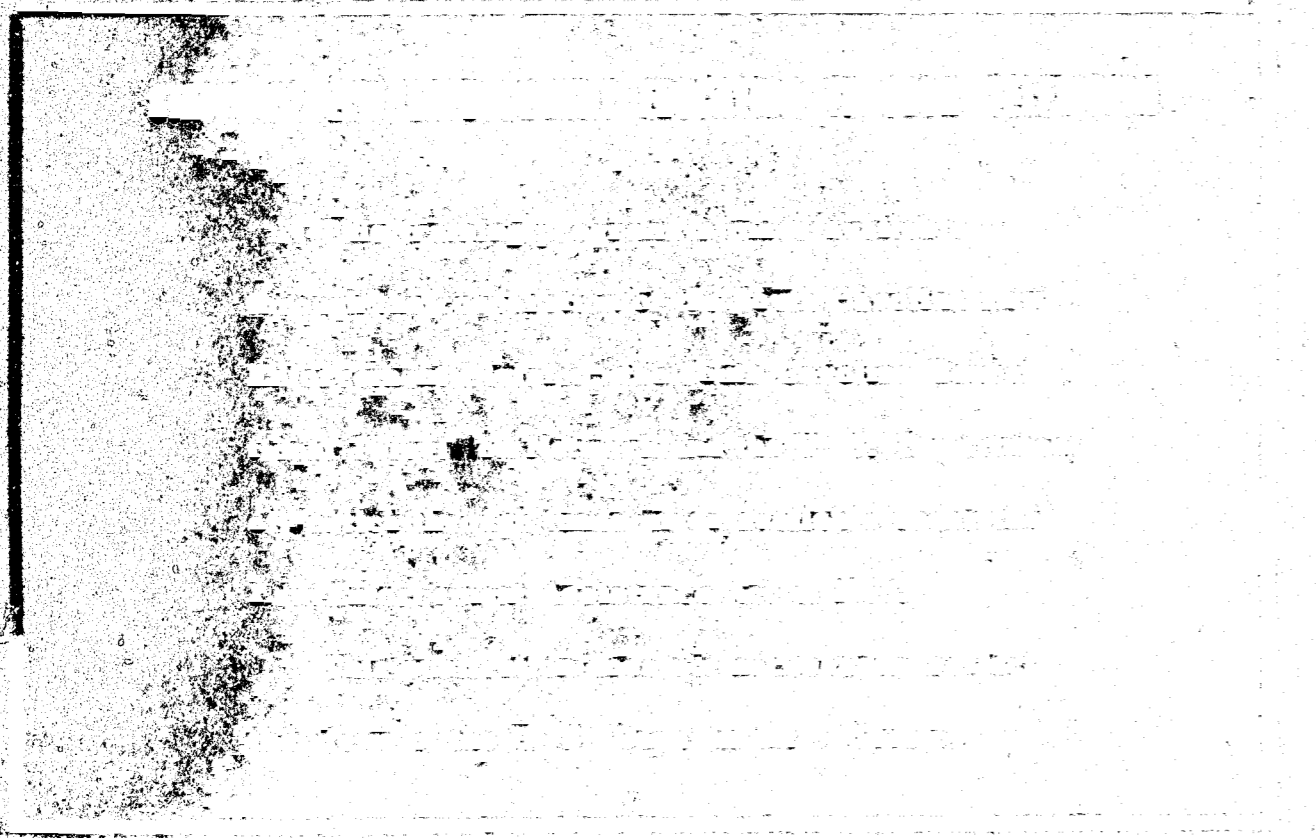
A. They vary from county to county and are based on the provisions of the respective county supply bill.

25. WHAT AUTHORITY DOES THE GOVERNOR OF THIS STATE HAVE TO REMOVE A MAGISTRATE FROM HIS OFFICE?

A. Magistrates may be removed from office by the Governor for misconduct, neglect of duty or physical or mental incapacity.

NOTE: Magistrates are appointed by the Governor and not elected.

(1) Before removal as opposed to suspension, the magistrate is entitled to notice and a hearing on the charges against him and is permitted full opportunity to defend himself against the charges.



END