SOME OF THE THINGS AN IMMIGRATION PATROL INSPECTOR SHOULD KNOW ABOUT HIS WORK

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I. DUTIES OF PATROL INSPECTORS and RIGHTS OF SEARCH, SEIZURE AND ARREST.

A. AS TO ALIENS

1. Classes of Cases to be Handled:

The primary functions of immigration patrol inspectors are to prevent the illegal entry of aliens, to apprehend them in the act of effecting illegal entry, and thereafter when they are in travel status. In general it is not contemplated that patrol inspectors will handle domiciled aliens, unless and until they in effect abandon domicile and are in the act of traveling when encountered by the officers.

If for any reason it is desired at any time that a patrol inspector shall arrest so-called domiciled aliens unlawfully in the United States and subject to deportation, he will be given definite instructions how to proceed. In the absence of such instructions a patrol inspector receiving information as to domiciled aliens unlawfully in the United States will report it to the Chief Patrol Inspector, who will transmit it to the appropriate immigrant inspector in charge, looking to the procurement of a Departmental warrant of arrest, which may be served by either a patrol inspector or an immigrant inspector.

For the purposes hereof a domiciled alien is defined as one who, although unlawfully in the country, has been here for some time and has established a residence.

Officers should understand that a so-called domiciled alien who leaves the country, even temporarily, is entitled to no special consideration upon his return. If apprehended in the act of effecting illegal entry, or immediately thereafter, he should be treated as any other illegal entrant, that is, taken into custody for criminal prosecution and deportation proceedings.

2. Legal Authority to Act as to Aliens:

The right to arrest aliens, with and without warrant, is to be found in the Act of February 27, 1925, (43 Stat. Page 1049), reading as follows:

> "That hereafter any employee of the Bureau of Immigration authorized so to do under regulations prescribed by the Commissioner General of Immigration with the approval of the Secretary of Labor, shall have power without warrant (1) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission of aliens, and to take such alien immediately for examination before an immigrant inspector or other official having authority to examine aliens as to their right to admission to the United States, and (2) to board and search for aliens any vessel within the territorial waters of the United States, railway car, conveyance, or vehicle, in which he believed aliens are being brought into the United States; and such employee shall have power to execute any warrant or other process issued by any officer under any law regulating the admission, exclusion, or expulsion of aliens".

The expression "entering the United States" as used therein is not to be given a narrow construction. In the case of Lew Moy et al. vs. The United States (237 Fed. 50), the Circuit Court of Appeals for the 5th Circuit held in effect that an alien was entering the United States until he reached his interior destination. It is understood that other courts have held to the same effect. In the Lew Moy case the aliens involved were taken into custody as far in the interior as Las Vegas, New Mexico.

3. Disposition to be Made of Aliens:

Aliens taken into custody as being unlawfully in the United States should be made the subject of formal deportation proceedings, but this entails a large expenditure for maintenance and detention expenses, and there has never been sufficient appropriation available to detain all arrested aliens in that manner. Most aliens will gladly avail themselves of the voluntary departure privilege rather than face a period of detention in formal deportation proceedings, when informed that they are lawfully subject to expulsion from the country. The voluntary departure privilege, however, is not to be extended to other than Mexicans except upon special authority of the District Office. In general, flagrant cases, involving prostitutes, procurers, anarchists, criminals --aliens of the worst type--and all those to be criminally prosecuted should be handled by means of Departmental warrants of arrest.

The Chief Patrol Inspectors, as well as the various immigrant inspectors in charge from time to time are apprised of the policy to be pursued--depending largely upon the amount of appropriation available--in resorting to deportation or voluntary departure proceedings, and they will keep the patrol inspectors appropriately advised. Ordinarily, however, patrol inspectors are not called upon to exercise discretion in this matter, as the aliens apprehended by them are delivered to the administrative officers for disposition.

B. AS TO OTHER THAN ALIENS

1. Cases Patrol Inspectors Expected to Handle:

Patrol Inspectors working on or near the international line are expected to seize contraband of various kinds brought into the United States in violation of the Federal Tariff Act, and to apprehend the smugglers. Such contraband consists of goods, merchandise, articles and things of any sort brought across the international line at other than a customs port of entry, and includes intoxicating liquor, animals and narcotics,-the latter being covered by a special law as well as the Federal Tariff Act.

Patrol inspectors should also make arrests and seizures in cases where the Plant Quarantine Laws are violated, by the illegal bringing in of seed, fruit, cotton, vegetables and other plants; and in cases of violations of the Neutrality Laws of the United States evidenced by the attempted passage of armed bands to Mexico, there to engage in revolutionary activities, and by the smuggling from the United States into Mexico of arms and ammunition to be used in carrying on such activities.

Officers working any distance away from the international line are likely to encounter liquor being transported within the United States; violators of the so-called Dyer Act, that is, persons driving stolen cars from one state to another; violators of the so-called White Slave Traffic Act, transporting

women or girls (whether aliens or citizens) from one state to another for an immoral purpose; and deserters from the United States Army and Navy. Arrest and seizure should be made in those cases.

The officers of this Service have received, and it is hoped, will continue to receive, assistance from other federal officers and from state, county and city officers; and it is desired that they reciprocate when opportunity presents. They should understand, however, that their first duty is that of apprehending aliens; that most of the assistance will be extended when the immigration officers, looking for aliens and alien smugglers, encounter other law violators; that under no circumstances will they neglect alien work for other work; that they are not to permit themselves to be the dupes of local officers, to do the latter's unpleasant duty and what they can and would do except for considerations of political expediency.

In assisting other officers the patrol inspectors should bear in mind that they cannot secure search warrants to enter residences in search of liquor or other smuggled or stolen goods, or smugglers or other law violators; they must make sure that the officers they accompany not only are authorized to secure proper search warrants but actually do so.

2. Legal Authority in Other Than Alien Cases:

a. Liquor Transported within the United States.

There is quoted from General Order No. 63, as follows:

"Section 26 of the National Prohibition Act provides:

'When the Commissioner, his assistant, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Wherever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof.'

"So far as the National Prohibition Act is concerned, there appears to be no question but that it is the manifest duty of an officer of the Immigration Service to seize any and all intoxicating liquors being transported contrary to law, together with the vehicle or other conveyance, and to arrest any person found engaged in such illegal transportation.

"As regards the right of search, the Supreme Court in deciding a recent case used the following language:

'On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid'".

There are numerous decisions of the federal courts in individual cases as to what constitutes lawful search and seizure under the provisions of Section 26 of the National Prohibition Act, and a fair sized volume of printed matter would be required to discuss all of them. Each Chief Patrol Inspector is expected to learn from the United States Attorney what the rulings are in the particular judicial district and then carefully instruct the officers operating therein.

Generally, where regular prohibition officers are readily available and the information is received sufficiently in advance for that purpose, it should be imparted to the prohibition officers to handle, unless the alleged law violator is known to be or is suspected of being an alien wanted for deportation or criminal prosecution for violation of any of the immigration laws.

Their alien work should so engage the officers of this Service that they will not have time for so-called "hip pocket" searches, that is, upon information that the alleged offender is carrying a small quantity of liquor for his personal use. In any event, they will not indulge in such searches unless and until they are specifically instructed to do so.

b. Cases Involving Other Than Transported Liquor.

There is no federal law specially authorizing immigration patrol inspectors to make other seizures and arrests referred to herein. In acting in that connection they do so under the generally recognized common law rights applicable to local peace officers and citizens alike. These rights insofar as applicable to our officers may be summarized as follows:

> (1) To take the necessary steps to prevent the commission of a felony; (2) To arrest without a warrant persons who commit or attempt to commit a felony (or for that matter a breach of peace) in their presence, or whom the officers have reasonable grounds to suspect of having committed a felony.

Recently a man in a nearby town, where immigration patrol inspectors are located, became intoxicated on bootleg liquor and for some time terrorized the inhabitants with a gun. Afterwards the question was asked as to the power of our officers to put a stop to such a menace. They had the same rights as a peace officer or private citizen,-to disarm the offender and place him under arrest.

3. Disposition of Defendants and Seizures in Other Than Alien Cases.

If patrol inspectors are working out of patrol headquarters they will usually convey thereto persons arrested and articles seized, or telephone to the Chief Patrol Inspector and he will decide what disposition to make of them. When the officers are not in touch with headquarters they should remember that delivery is to be made to the nearest agent of the federal bureau charged with the enforcement of the particular law violated. Violators of the Tariff Act should be delivered to customs officials; of the Dyer and White Slave Traffic and Neutrality laws to agents of the Bureau of Investigation; of the Plant Quarantine laws to representatives of the Agricultural Department; of the National Prohibition Act to prohibition agents if accessible, otherwise to

customs officers. If none of such agents is available and the officers are so located that they can immediately communicate with a representative of the U. S. Attorney's office, they should do so and be guided by the advice received. If they cannot reach the proper agent of the U. S. Attorney's office and it is not convenient for them to transport the offender, they should place him in jail and wire the said agent or U. S. Attorney's office.

If convenient, deserters should be conveyed to the nearest military authorities; otherwise the officers will telephone or telegraph such authorities.

Violators of state laws will be delivered to the nearest sheriff or other officer entitled to take possession.

II. WHEN AND TO WHAT EXTENT FORCE MAY BE EMPLOYED.

The question is presented as to the measure of force, if any, that may be employed in enforcing the laws immigration officers are specifically authorized to as well as other laws for which they must rely upon their common law rights. The statutory law and court decisions offer many fine distinctions as to excusable and justifiable homicide, some of which are confusing to attorneys and would be even more so to the average layman. For a law enforcing officer to attempt to learn these distinctions and govern his conduct by them might result in his indictment on a murder charge, without a legal defense to save him from execution or life imprisonment.

In this matter there is but one safe rule to follow:

SHOOT ONLY IN DEFENSE OF SELF OR OF A BROTHER OFFICER OR OF ANOTHER PERSON (not engaged in violating the law), WHOSE LIFE IS IMPERILED. If an officer performing a lawful act shoots under those circumstances, he need feel no apprehension as to the consequences. The rule stated is the unalterable one promulgated by our Bureau and Department, and any deviation therefrom not only would place an officer in unnecessary jeopardy but might easily detract from the good reputation enjoyed by our organization.

"Self defense" does not necessarily mean that an officer must actually wait to be fired upon before he shoots. If he has good reason to believe that he or a fellow officer is about to be attacked, and he conscientiously deems such action necessary for the safety of either, he may shoot at the person about to make the attack. Each officer must decide for himself whether such a drastic measure is necessary on any occasion.

III. CHECKING TRAFFIC.

The promiscuous checking of traffic on the public highways is not permissible and may lead to serious consequences. Vehicles should not be stopped on the public highway unless the officers know with reasonable certainty that contraband aliens or liquor is being transported thereby or that they are otherwise being used to violate the law or to transport law violators. When officers

have advance information as to such unlawful use of an automobile, but because of darkness or other reason it is difficult to identify the particular car while in motion, they will exercise ingenuity instead of attempting to hold up traffic generally. For example, one officer will station himself at a spot on the highway where there is illumination and upon identifying the car under suspicion will signal officers ahead, by flashlight or telephone as the case may be; the officers will take position in the vicinity of a federal or state horticultural checking station or at other points where cars are required to stop or are compelled to check their speed, etc., etc.

IV. DISPLAYING CONSIDERATION.

In handling aliens and others officers must be humane and considerate. When such can be avoided members of a family should not be separated; if possible, they should be arrested and deported together. Aliens should have opportunity to take their possessions with them or otherwise dispose of the same. An officer should help an arrested alien to collect wages due, or endeavor to have the employer forward the money if it is not immediately paid. Women and children must not be placed in jail except in emergent cases. Inspectors in Charge and Chief Patrol Inspectors will be notified as to exceptions, if any, to be made to this rule.

V. IMMIGRATION LAWS

A. CRIMINAL PROCEDURE

1. Provisions Pertaining to Aliens and Alien Smugglers:

Patrol inspectors should thoroughly familiarize themselves with the several provisions of the various immigration laws specifying criminal offenses. This Service furnishes two printed pamphlets embodying the laws and regulations,- one containing laws pertaining to Chinese in particular, and one containing all other laws relating to aliens generally. Any officer who has not been supplied with these pamphlets will be furnished with a copy of each upon request. For a study of the criminal provisions he is cited to the following:

General Immigration Act of February 5, 1917, Sections, 4, 5, 6, 7, 8, 10, 16 and 28.
Act of October 16, 1918, as amended by Act of June 5, 1920, (re anarchists), Section 3.
Quota Act of 1924, Sections 22 and 27.
Criminal Act of March 4, 1929, as amended, Sections 1 and 2.

Chinese Exclusion Laws
Act of May 6, 1882, as amended by Act of July 5, 1884, Sections 2, 7, 11 and 16.
Act of September 13, 1888, Sections 7, 9 and 11.
Act of May 5, 1892, Section 8.

2. Conspiracy (To violate all federal laws including the immigration laws).

Section 37 of the U. S. Criminal Code reads as follows:

"If two or more persons conspire either to commit an offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both."

It will be observed that there are two parts to this law,-one dealing with conspiracies to commit offenses against the United States, and the other with conspiracy to defraud the Government. With the second part of the law we are not so much concerned, but the importance to us of the first part cannot too strongly be emphazied, for oftentimes a conviction thereunder can be secured when the evidence will not support a prosecution for a direct violation of any particular law. For example, assuming, as some of the courts have held, that no penalty is provided for harboring and concealing under Section 8 of the Act of 1917, if a conspiracy on the part of two or more persons to harbor and conceal an alien unlawfully brought into the United States, and some act pursuant to the conspiracy, can be established, then prosecution will lie under Section 37 of the Penal Code, and the penalty will be that provided by that law.

The conspiracy statue may be invoked even though the substantive offense has not been completed, as in a conspiracy to bring aliens unlawfully into the United States, when they are not actually brought into this country. In such a prosecution it must be remembered that two important elements must be present, to wit, (1) a conspiracy, that is, an agreement or understanding between or among two or more persons to commit an unlawful act, and (2) some overt act actually done pursuant to the conspiracy.

To give the court jurisdiction, either the conspiracy must be entered into or an overt act committed within its territorial limits. The overt act need not be unlawful in itself if it is pursuant to a conspiracy to commit a violation of law. For example, a conspiracy may be made in Juarez, to bring aliens into the United States without inspection, and transport them to Chicago. That would not confer jurisdiction upon the Federal Court at El Paso, but should one of the conspirators come to El Paso and pursuant to the general understanding engage a vehicle to transport the aliens to Chicago, then it is believed that is such an overt act as would enable the Government to prosecute in the Federal Court at El Paso. The principal difficulty in such a prosecution would be to establish the alienage of the persons to be brought into the United States. That, however, is something the patrol inspectors need not worry about; once they unearth the evidence of the conspiracy and the commission of an overt act, the appropriate administrative officers, with the advice of the United States Attorneys, will consider ways and means to meet such technicalities. If additional assistance of patrol inspectors be required it will be obtained through the Chief Patrol Inspector.

3. Principals and Accessories:

Section 332 of the U. S. Criminal Code reads as follows:

"Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal".

4. Where and How Offenders to be Held and Tried:

a. Distinction between Commissioners and Federal Courts.

Every officer should know that violators of federal laws are triable in the federal rather than the state courts. Officers should learn the distinction between the procedure before U. S. Commissioners and in U. S. District Courts. A Commissioner does not try a defendant and impose punishment. It is his function to determine whether there are reasonable or probable grounds to believe the defendant committed the crime alleged and if so, to order him held for action by a federal grand jury, which will either indict or return a no bill. If indicted the defendant is brought into federal court and upon his plea of "not guilty" is entitled to a jury trial. Here, as contrasted with "reasonable" or "probable" cause before a Commissioner, the evidence must clearly establish guilt beyond a reasonable doubt to justify conviction.

b. Distinction between Indictments and Information.

In recent years by special statute the Government has handled certain misdemeanor cases by so-called "information", without presenting the facts to a grand jury. In other words, the United States Attorney draws up an information, corresponding to an indictment, and the defendant is thereupon brought into court to plead.

c. Filing Complaints; Having Peace Officers Hold on "Suspicion".

As a general proposition patrol inspectors assigned to a station remote from headquarters will be given full and detailed instructions as to the disposition to be made of persons arrested and things seized by them, and it is seldom that a patrol inspector will be called upon to observe court procedure, except as a witness, but occasionally he may have to institute criminal proceedings, as where he has an alien or alien smuggler under arrest and is threatened with habeas corpus proceedings, or for some other reason must take immediate action before he can communicate with the Chief Patrol Inspector, the U. S. Attorney's office or an administrative immigration officer. Most U. S. Commissioners will prepare the complaints. Most states have a statute authorizing peace officers to hold suspects on "suspicion" for a specified period of time--as for forty-eight hours--to give the officers opportunity to make further investigation and develop evidence, if possible, to support a specific charge. In a case of urgency, as above indicated, where a U. S. Commissioner is not available, it may be possible to have a local peace officer hold the person until other and more satisfactory arrangements can be made.

d. Jurisdiction for Trial.

As to some offenses against the immigration laws Section 25 of the Act of February 5, 1917, provides that the defendant may be tried in the judicial district where he "may be found". As to other offenses, and particularly that of illegal entry under the law of March 4, 1929, the defendant must be tried in the judicial district where illegal entry occurs. In fact it is the general rule that a criminal must be tried not only in the state but in the judicial district where the crime is committed. It is important, therefore, for arresting and investigating officers to ascertain just where the crime is committed, and then to determine within what state and judicial district the place is located,-even though the Government's attorneys might decide to prosecute elsewhere as authorized by a special statute making exception to the general rule. This is a matter for very particular inquiry when it appears that the offense is committed near the boundary line of two or more states or counties.

B. EXCLUDING PROVISIONS OF IMMIGRATION LAWS.

The main purposes of the immigration laws are to keep certain classes of aliens out of the United States; and to expel those who succeed in gaining unlawful entry as well as those whose residence for any reason becomes unlawful after entry. All other features, such as criminal prosecution, are merely incidental to the accomplishment of the main objects of the law.

The principal immigration laws are the so-called "Chinese Exclusion Acts", the General Immigration Act of February 5, 1917, the Quota Act of 1924, and the Act of March 4, 1929, as amended.

The Chinese Exclusion laws deal with a particular race of people, and while they constitute class legislation their constitutionality has been upheld on the theory that every independent country has the inherent right to say what aliens may and may not cross its boundaries.

The Immigration Act of 1917 specifies by classes the undesirables, of whatever race or nationality, who are to be denied admission to the United States. This law makes the test one of individual fitness, that is, as to physical, mental and moral character.

The Act of 1924, commonly known as the "Quota Law", applies to nations rather than individuals or races. Its purpose is to reduce the flow of immigrants each year to the number that can readily be absorbed by our population without adversely disturbing the economic situation. By this law the maximum number of immigrant aliens who may come to the United States from a quota country during any one year is fixed.

The law of March 4, 1929, is punitive in scope and was enacted to discourage violations of existing immigration laws by providing punishment for aliens whose initial entry is illegal, and more severe punishment for those who return after having been deported.

The various other immigration laws, amending or adding to the main laws, are likewise contained in the printed immigration pamphlet.

Most of the grounds for excluding aliens are stated in Section 3 of the Act of 1917. In addition thereto, officers should study the following excluding provisions:

Immigration Act of 1917, Sections 18 (last clause) and 23.
Act of February 15, 1893, re suspension of immigration from certain countries, Section 7.
Act of October 16, 1918, as amended, re anarchists, Section 1.
Act of May 10, 1920, re aliens guilty of war-time activities, Section 3.
Quota Act of 1924, Sections 13 and 17.
Act of March 4, 1929, as amended, Section 1.

Chinese Exclusion Laws as contained in the Chinese pamphlet. By virtue of various provisions of these several laws Chinese laborers are excludable, unless they are returning resident aliens granted return certificates. Chinese exempts are admissible but only upon presenting so-called "Section 6" certificates in the exact form prescribed by law; the exceptions being as to diplomatic and consular officers and the wives and minor children of Chinese merchants already in the United States. Chinese aliens must qualify under the provisions of the general immigration laws applicable to all aliens, as well as under the provisions of the special Exclusion Acts applicable only to Chinese.

C. DEPORTATION PROVISIONS OF IMMIGRATION LAWS.

By section 19 of the Immigration Act of 1917 aliens excludable at the time of entry are made deportable.

Section 19 also makes deportable aliens who enter or are found in the United States in violation of any other law. This has particular reference to Chinese. (Originally the deportation of Chinese found to be unlawfully in the country was accomplished by judicial process, that is, after a hearing before a United States Commissioner or United States District Court, as provided by the Chinese Exclusion Laws. Eventually the U. S. Supreme Court held that a Chinese alien might also be deported on Departmental warrant, pursuant to the terms of the general immigration laws, the same as other aliens. The Supreme Court subsequently modified that ruling to the extent of holding that where an arrested Chinese makes a substantial claim of American citizenship, he is entitled to a trial in court).

Other grounds of deportation are stated in Section 19, which is the principal deportation clause of the immigration laws.

Reference is made to other classes of deportation, covered by the statutes and sections indicated:

General Immigration Act of 1917, Section 34.
Act of October 16, 1918, as amended, re anarchists, Sections 2 and 3.
Act of May 10, 1920, "To Depot Undesirable Aliens", growing out of war-time activities, Section 1.
Narcotics Act of May 26, 1922, Section 2 (c).
Quota Act of 1924, Section 14.

Aliens who at the time of entry are excludable under Section 1 of the Act of March 4, 1929, as amended, are thereafter deportable under the provisions of Section 19 of the General Immigration Act of 1917.

It is seldom that a patrol inspector will have to prepare an application for Departmental warrant of arrest, but for the purpose of examining aliens and passing upon their immigration status, each and every officer should be so familiar with the various deportation charges that he can promptly prepare such an application without experiencing difficulty. Such charges are also stated in the official telographic code, a copy of which will be supplied upon request made of the Chief Patrol Inspector. This district has prepared a chart conveniently listing the various deportation charges by appropriate code words and time limitations and as soon as possible will have copies printed and distributed.

In actual practice officers will save time by endeavoring to learn, first of all, whether an alien last entered prior or subsequent to July 1, 1924, (the effective date of the so-called Quota Law); and if the latter their task is simplified since that law carries no time limitation in favor of aliens.

VI. CITIZENSHIP.

Citizenship is acquired by (1) birth in the United States; (2) naturalization; (3) naturalization of parent during minority of child; (4) United States citizenship of father when child is born abroad; (5) citizenship in foreign possession acquired by United States; (6) formerly, by marriage; and (7) formerly, as to minor child, by marriage of mother to an American citizen. It has been held that adoption of an alien child by Americans confers citizenship upon it, but while the courts have not authoritatively decided the question, the weight of opinion is to the contrary.

American citizenship is lost by (1) the commission of a recognized act of expatriation, as by taking an oath of allegiance to a foreign country; (2) prima facie, subject to proof to the contrary, when a naturalized citizen resides continuously for two years or more in the country of which he was formerly a citizen or subject, or for five years or more in some other country; (3) formerly, by termination of the marital relation when the woman--an alien at the time of marriage to an American citizen--continued to reside abroad without registering with an American Consul; (4) when an American woman marries an alien ineligible to citizenship.

It frequently happens that a person conceded to be a citizen by our laws and court decisions is claimed as a citizen by some other country. In considering his immigration status he will be treated as an American citizen unless it is shown that he has committed an act of expatriation.

An officer cannot surely determine alienage unless he is conversant with the laws having to do with the acquiring and losing of citizenship, in which connection citation is made to the following, embodied in the printed pamphlets previously referred to:

The so-called Expatriation Act of March 2, 1907.

Section 1993 of the Revised Statutes, re children born abroad.

Act of May 9, 1918, re persons in the military or naval service of other countries during the World War.

Act of September 22, 1922, re naturalization and citizenship of married women (commonly known as the "Cable Act"), as amended.

Chinese Exclusion Act of May 6, 1882, as amended, Section 14, re Chinese,- forbidding their naturalization.

VII. EVIDENCE.

A. GENERAL REMARKS.

There will be occasions when a patrol inspector must act upon his own initiative, without the advice and assistance of a senior or chief patrol inspector, indeveloping the evidence of a criminal violation of law, and when, if he should fail to act promptly, the opportunity for gathering the evidence will be lost. Suppose, for example, that patrol inspectors see a person on Cordova Island, (Mexican territory north of the Rio Grande near El Paso, Texas), coming toward the international line; they lose sight of him in the underbrush; they next see an alien of the same general appearance, on the American side of the line, but cannot swear positively that he is the same person seen by them on Mexican soil. He denies that he has been out of the United States. What further can the officers do to verify their strong suspicion to the contrary? They can carefully observe the man's shoes, noting any peculiarities, and backtrack him into Mexico. If necessary they can take one of his shoes and see if it fits any of the ground imprints. If the ground is muddy the soil containing a footprint might be carefully removed and preserved. Sometimes such evidence has proven convincing to a jury; sometimes not. It is apparent that if action is not taken immediately the damaging footprints will become obliterated.

In a case of that sort where the alleged culprit denies having been out of the country the officers should immediately ask him to explain what he is doing at that particular locality near the International Boundary Line, and at the first opportunity should reduce his statement to writing, as it is possible that after reflection he will concoct a different story about the transaction.

It is not possible to lay down a satisfactory general rule for officers to follow in developing the evidence when they are working upon their own resources. They must be governed by the circumstances of each case, and a little thought should indicate to them at least the most obvious things to be done. Assume that patrol inspectors encounter, some distance from the border, a party of aliens,-a Mexican apparently leading several Italians, away from the border and toward the interior. Upon being questioned the Mexican denies being a smuggler and claims he recently met the Italians and joined them for companionship, and they corroborate that claim. If the officers know that along the route supposedly traversed by the party there are occupied houses, it will naturally occur to them to have the aliens retrace their steps

and to make inquiries of the residents whether they previously observed the travelers; whether the Mexican was with the party; if so, whether he appeared to lead the others, and specifically what acts he did that gave the observers that impression.

Every law enforcing officer should know something about the general rules of evidence, and for the benefit of those who will study the same there are furnished extracts from a recognized authority, Clarke on Criminal Law, of the more important rules of evidence, with occasional comments by the authors of the present article.

B. RECOGNIZED RULES OF EVIDENCE.

1. Facts in Issue.

Evidence of any fact in issue is admissible. The general issue in a criminal case is formed by the accusation and the plea of not guilty. The plea of not guilty puts in issue not only every fact in the accusation which it is necessary to prove in order to secure a conviction, but it puts in issue every fact which will constitute a defense and prevent a conviction. Every such fact may therefore be shown. The facts in issue are determined in each case by the charge in the indictment and by reference to the substantive criminal law.

2. Facts Relevant to Facts in Issue.

Evidence of any fact, which, though not itself in issue, is relevant to any fact in issue, is admissible, unless it is declared inadmissible by some arbitrary rule of law or unless the fact appears to be too remote to be material under all the circumstances of the case. Evidence of a fact which is not relevant to any fact in issue is inadmissible. A fact is relevant to a fact in issue if, according to the common course of events, either taken by itself or in connection with other facts, it logically tends in any degree to render probable the existence or nonexistence of that fact.

From these rules it will be noted that evidence, though relevant, may be inadmissible or incompetent because it is immaterial, and evidence though both relevant and material, may be incompetent because some rule of law to be hereafter stated declares it so. "Relevancy", "materiality", and "compentency" are not synonymous terms, though often used as synonymous both in the text books and by judges.

Any fact is relevant to a fact in issue if it logically tends in any degree to show the existence or nonexistence of that fact. It is necessary, however, that the fact shall tend materially, in view of the circumstances, to show the existence or nonexistence of the fact in issue. In other words, evidence to be admissible, must be both relevant and material. Unless the admissibility of evidence is settled by some arbitrary rule of law or by controlling precedent, it is to be determined by reason in each particular case. The test is this: Does the fact offered in evidence, under all of the circumstances of the particular case, according to the common course of events, logically and materially tend, when taken either by itself or in connection with other facts, to show the existence or nonexistence of a fact in issue?

If it does, then it is relevant and material. Having ascertained the relevancy and materiality of the evidence, we must next see whether there is any rule of law rendering it incompetent. The defendant's bad character may tend to render probable the fact that he committed the crime under investigation, and so may the fact that he committed a similar crime a year before, and so may the fact that, a week after the crime was committed, a third person was heard to say that he saw the defendant commit it; but rules of law declare this evidence inadmissible. It is relevant, but incompetent. These rules will be presently stated and explained.

In a prosecution for homicide, a witness may testify that he saw the defendant kill the deceased. This is admissible, because it is DIRECT EVIDENCE of a fact in issue. Evidence that the defendant was near the scene of the crime shortly before or shortly after it was committed would be admissible, not as evidence of a fact in issue, because the defendant's presence there before or after the crime is not in issue, but as evidence of a fact relevant to the fact that the defendant killed the deceased, which is a fact in issue. It tends to render the fact probable. For the same reason, it might be shown that before the homicide the defendant had threatened to kill the deceased; that after the homicide he had blood on his clothes, or had in his possession property which the deceased had on his person just before he was killed; that there were tracks near the place corresponding to the shape of defendant's shoes; that a piece of gun wadding was found near the place (the deceased having been killed with a gun), and was like the wadding afterwards found in one barrel of the defendant's gun, the other barrel having been discharged; or that the defendant and his alleged accomplice practice shooting at a mark before the homicide.

On a prosecution for homicide, where the defendant sets up self-defense, it may be shown that the defendant had previously threatened the deceased, or that the deceased had threatened the defendant, as tending to show which of them began the encounter. And on the question whether the defendant had reasonable grounds to believe that his life was in danger at the hands of the deceased it may be shown that the deceased, to the defendant's knowledge, was in the habit of carrying weapons and was a violent and dangerous man. On the other hand, where, on indictment for murder, the defendant contends that he was an officer, and killed the deceased in overcoming his resistance to the execution of a lawful warrant of arrest, the state cannot show that the deceased was not guilty of the offense for which it was sought to arrest him, for the fact of his innocence is irrelevant. So, on indictment for murder said to have resulted from the hostile relations of certain clans, it was held not competent to show other murders committed by such clans nor the fact armed men were employed to protect the county seat against invasion from them. And, on an indictment for murder a witness was not allowed to testify that he heard a gun fired about a mile from where the deceased was killed.

3. Facts Necessary to Explain or Introduce Relevant Facts:

a. Admissible Facts.

Facts are admissible: (a) If necessary to be known to explain or introduce a fact in issue, or relevant to the issue. (b) If they support or rebut an inference suggested by any such fact. (c) If they tend to establish or

disprove the identity of any thing or person whose identity is in issue, or is relevant to the issue. (d) If they fix the time or place at which any such fact happened. (e) If they show the relation of the parties by whom any such fact was transacted. (f) If they afford an opportunity for its occurrence or transaction. (g) If they are necessary to be known in order to show the relevancy of other facts.

b. Motive.

Any fact that shows a motive to commit the crime charged is admissible. Any fact that supplies a motive for commission of the act charged by the defendant tends to render probable the fact that he did commit it, and is therefore relevant.

c. Preparation for Act.

Any fact which shows preparation by the defendant for the act charged is admissible. Evidence tending to show that the defendant made preparations to commit the act charged is relevant, for it tends to render probable the fact that he did commit it. Thus, the fact that the defendant, before the commission of the crime procured or possessed the instruments, or instruments like those, with which the crime was committed, may be shown.

d. Subsequent Conduct or Condition of Defendant.

Any conduct or condition of the defendant subsequent to the act charged, apparently influenced or caused by the doing of the act, and any act done in consequence of it, by or by the authority of the defendant, may be shown. But self-serving acts cannot be shown by the defendant. The fact that the defendant, after the alleged crime, caused circumstances to exist tending to give to the facts of the case an appearance favorable to himself; that he destroyed or concealed things or papers which might criminate him, or prevented the presence, or procured the absence, of persons who might have been witnesses, or suborned persons to give false testimony; or that he fled or concealed himself or otherwise attempted to escape, or resisted arrest, or made false statements as to his movements at or about the time of the crime, or as to other material facts, or after the crime had possession of the fruits of the crime, or his attempt to dispose of it, may be shown against him.

The defendant cannot show self-serving acts before or subsequent to the crime, for this would permit him to make evidence for himself. Thus, on indictment for murder, the defendant cannot show that he went to the house of deceased and offered to wait on him, or that he offered to surrender himself. Silence of the defendant when charged with a crime is elsewhere considered.

4. Statements Accompanying Acts:

Whenever any act may be proved, statements accompanying and explaining that act, made by or to the person doing it, may be proved, if they are necessary to understand it.

5. Statements in the Presence of Defendant:

When the defendant's conduct is in issue, or is relevant to the issue, statements made in his presence and hearing, by which his conduct is likely to be affected, are admissible. If a statement made in the hearing of a person is

such that, if false, he would naturally deny it, his silence and acquiescence tend to show that the facts stated are true. So, if a person is accused of a crime, and does not deny it, or if he allows a statement imputing a crime to him to go unanswered, the statement and his conduct, including his silence if he does not answer, or his reply if he does, may be shown on his prosecution for the crime. The statement must have been in his hearing, and must have been understood by him; and it must have been such a statement, and made under such circumstances, that he could and should have replied,-or his silence cannot be regarded as raising any inference against him. Some courts hold that a person when under arrest is not called upon to deny charges, and that his silence when accused under such circumstances, cannot be used against him. Of course, it is always open for him to explain his silence and rebut the inference arising from it.

6. Res Gestae (Things Done; Transactions; Essential Circumstances Surrounding the Subject):

Every fact which is part of the same transaction as the facts in issue is to be deemed relevant to the facts in issue, although it may not be actually in issue, and although if it were not part of the same transaction it might be excluded as evidence of another crime, or as hearsay. Facts which are thus a part of the same transaction are said to be admissible as part of the res gestae. Ordinarily, declarations are inadmissible as hearsay, but declarations which form part of the res gestae are admissible. Thus, on indictment for burglary, the complaining witness may testify that she gave the alarm, and told a police officer the direction she thought the burglar had taken in leaving the house. And, on indictment for robbery, descriptions of the offender given by eyewitnesses immediately after the robbery have been admitted as part of the res gestae.

7. Other Crimes:

Evidence of another crime than that charged is only admissible in the following cases; (a) Where it falls within one of the rules heretofore stated, it is admissible. (b) Where it shows the existence at the time of the crime charged of any intention, knowledge, good or bad faith, malice, or other state of mind, the existence of which is in issue or is relevant to the issue. But other crimes cannot be proved merely in order to show that the defendant was likely to commit the crime charged. (c) When there is a question whether the act charged was intentional or accidental, the fact that such act formed part of a series of similar occurrences, in each of which the defendant was concerned, is admissible. This is called the proof of facts showing a system.

8. Acts and Declarations of Conspirators:

When two or more persons conspire to commit any offense, everything said, done, or written, by one of them in the execution or furtherance of their common purpose is admissible as against each of them. But statements by one conspirator as to measures taken, or acts done, in the execution or furtherance of such common purpose, are not admissible as such against any of the others unless made in their presence. So a confession made by one conspirator after the conspiracy was ended is not admissible against another, when not made in his presence.

NOTE: When one defendant has confessed and others have not, it would be well to have him repeat the confession in the presence of the other defendants and then ask them what they have to say about his allegations involving them.

9. Hearsay Evidence:

a. Definition.

Hearsay evidence is the testimony given by a witness who relates, not what he knows personally but what others have told him, or what he has heard said by others, and is admissible only in exceptional cases.

b. Declarations of Persons Other Than Defendant.

Declarations by persons other than the defendant cannot be proved, (a) Unless they are part of the res gestae, or (b) Unless they are admissible as dying declarations, or (c) Unless they are admissible as declarations by authority of the defendant, or (d) Unless they are admissible as evidence given in a former proceeding.

It is only in very exceptional cases that the declarations of a third person can be shown. To prove the facts, the person himself must be called as a witness to testify as to the facts. Thus it is error in a criminal case to admit the cry of a third person, "There he goes!" referring to the defendant, when the officer went out to arrest him, since, if the person making the declaration saw the defendant, he should be placed on the stand to testify to that fact. So on an indictment for larceny it is not competent to prove statements of the owner of the property to the officer who made the arrest.

c. Self-Accusing Declarations of Third Persons.

Under this rule the defendant cannot prove self-accusing declarations or confessions of third persons to show that they, and not he, committed the crime charged. And it makes no difference that the person making the declaration has since escaped or died.

d. Res Gestae.

There is an exception to this rule where the declaration forms a part of the res gestae. Thus, on a prosecution for murder committed while resisting arrest, a remark of a bystander to an officer that "there is the man that did it" was held admissible on this ground. And on a prosecution for murder, declarations made by the deceased during the affray in which he was killed, though not dying declarations, are admissible as part of the res gestae.

e. Dying Declarations:

In prosecutions for homicide, a statement made by the deceased as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is admissible, if it appears to the satisfaction of the judge that when the statement was made the deceased was in actual danger of death, and had given up all hope of recovery. The deceased must have been competent as a witness and the facts stated must be such that he could have testified to them.

10. Admissions and Declarations by Defendant:

Declarations made by the defendant, or by a third person by his authority, if relevant, are admissible against him, but they are not admissible in his favor.

11. Confessions:

a. Definition.

A confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed the crime, and is admissible against him, if voluntary.

b. When Confession is Voluntary:

NO CONFESSION IS DEEMED VOLUNTARY WITHIN THIS RULE if it was caused by any inducement, threat, or promise proceeding from a person in authority, and having reference to the charge against the accused, whether addressed to him directly or brought to his knowledge indirectly, and if such inducement, threat, or promise gave the accused reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him.

c. When Not Voluntary.

A CONFESSION IS NOT INVOLUNTARY merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceeding, or by inducement held out by a person not in authority.

d. Obtained by Deception.

A confession obtained from a defendant, if otherwise competent, is not rendered inadmissible because obtained by deception, or while he is intoxicated, or under promise of secrecy.

e. Officers Not to Make Promises:

The courts discountenance the practice of officers making promises of immunity or leniency to offenders in consideration of their confessions or of assistance rendered or to be rendered the officers. No such promise should ever be made by an officer of this Service except upon advice of the prosecuting attorney.

f. Form of Confession.

While the testimony of officers as to what a defendant voluntarily told them is admissible, the most convincing thing in that connection is a written or typewritten confession, signed by the defendant. There is a wide variance between the requirements of the federal and state courts for the admissibility of such a document. For instance, under the Texas state laws a defendant must be notified that the statement is to be voluntary and that it will be used against him but not for him; it must be witnessed by two persons other than officers, etc.

Most of the defendants arrested by patrol inspectors will be tried in the federal courts. Where it appears likely that a defendant will be tried in a state court the officers should immediately get in touch with a prosecuting attorney of the state and be guided by his advice as to the form of the written confession.

For general purposes have the document show when and where made, the identity of the person asking the questions, of the witnesses, and of the interpreter if one be used; when transcribed read the statement to the defendant (and insert a notation that such has been done); have him sign it in the presence of two witnesses if they are available; if he cannot sign his name then he should sign it by mark. While it is understood that it is not necessary to notify a defendant, to be tried in federal court, that the confession must be voluntary, the officer or officers securing it nevertheless must be prepared to testify to the qualifying question whether it was obtained by force, threats, coercion, or promises of reward or immunity. Therefore it might be well for the written or typewritten confession to show on its face that it is voluntarily made without the use of force, threats, coercion, or promises of reward or immunity.

12. Opinion Evidence.

The fact that a person is of opinion that a fact in issue, or relevant to the issue, does or does not exist, is admissible only in exceptional cases. A witness will not generally be allowed to state that he THINKS or is of OPINION that such and such a fact is or is not true. He must testify to the fact, and not state his opinion. Thus, on a prosecution for murder, a witness cannot be asked whether there was anything in the looks of things in the room where the body was found that would indicate that a scuffle had taken place there. He can only state how the room looked and let the jury draw the inference.

13. Expert Testimony.

Where there is a question as to any point of science or art, the opinions upon that point of persons specially skilled in any such matter may be given. The words "science or art" in this rule include all subjects on which a course of special study or experience is necessary to the formation of an opinion.

14. Character Testimony.

Evidence of the character of a person is admissible in the following cases: (a) The fact that the defendant has a good character may be shown; but the state cannot show that he has a bad character unless his character itself is a fact in issue, or unless evidence has been given that he has a good character, in which case evidence that he has a bad character is admissible. (b) The character of the deceased as a violent and dangerous man may be shown in prosecutions for homicide, on the question whether the defendant acted in self-defense. The term "character" as used in the rules above stated, means "reputation", as distinguished from "disposition". Evidence can be given only of general reputation, and not of particular acts by which reputation or disposition is shown.

15. Seizure of Documentary Evidence:

When making a lawful arrest the officers may seize from the person of the defendant or from the immediate premises, as being incidental to the arrest, papers or documents or other articles apparently used in committing the crime, or the fruit of the crime, or that may be used as evidence, or that may be the means of effecting escape or committing violence.

16. Conduct of Witnesses:

Oftentimes officers prejudice the Government's or state's case by their demeanor as witnesses,-their biased attitude giving the impression that they are "persecuting" instead of prosecuting the defendant. Officers should give their testimony in a calm, cool, dispassionate way; should fairly and truthfully state only what they know, without "coloring" their evidence, without exaggeration, and without attempting to state an inference or conclusion as a fact; and should never permit an attorney to "badger" them into a display of feeling against a defendant. They should maintain their equanimity, whatever the provocation. When the individual officers are constantly fair and impartial in their official acts the organization gains an enviable reputation for fairness that possesses manifold advantages. Consider the instance previously discussed where the officers saw aliens or smugglers on Mexican soil, lost sight of them because of underbrush, and next saw them on the American side of the International Line, without being able to say they were the same except from general appearance. In a real case of that sort the officers testified to the actual facts and the jury, realizing that the officers could have testified without successful contradiction that they had not at any time lost sight of the defendants, returned a verdict of guilty although the evidence as a whole was rather weak. Naturally we desire to secure convictions in proper cases but we do not want to make a record of any sort at the expense of honor or reputation.

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