

"A comparison of England's criminal court system with the United States"

Last year I had the opportunity to travel to London, England to observe their criminal court system for a week. This trip was put together by the California State Bar Association. As a criminal defense attorney practicing in America, it was a wonderful experience to observe three or four different English criminal courts. After several hours of observation, our group had an opportunity to visit with the judge and lawyers from that session. Below find a comparison between the two systems.

1. What standard of proof is required before a formal charge is issued to a citizen?
Very similar to the United States, the English standard for the issuance of a formal charge is "reasonable suspicion" that a crime or criminal offense has occurred.
2. Generally speaking, how is a formal charging document issued?
Again, in a procedure very similar to the United States, the police and/or the Crown's Prosecution Service are the ones who draw up and issue a formal charging document.
3. Does a defendant have the right to an attorney?
In both countries, yes.
4. When is a defendant advised of their right to an attorney, and at what stage of the proceedings is an attorney available to them?
An English citizen is advised upon their arrest and prior to being questioned by police that they have the right to an attorney. Basically, this procedure is virtually identical to the procedure in the United States as to a "Miranda" warning.
5. Does a defendant in England have the right to examine the prosecution's case file (reports, witness statements, forensic examination results, etcetera)?
Yes, and well in advance of trial.
6. Does a defendant in England have the right to a jury trial?
Yes, but not as liberally as in the United States. For a first offense, the maximum penalty that an English citizen needs to be facing must be at least six (6) months in prison before they are entitled to a jury trial. For a second offense, at least twelve (12) months in prison. Generally speaking, all misdemeanor and 30-day type offenses (such as misdemeanor DUI, etcetera), does not afford or offer the defendant the right to a jury trial. All of these type offenses are handled as bench trials before the judge.
7. Is a defendant in England presumed innocent during the course of the proceedings?
Yes.
8. What is the general makeup and conduct of a jury trial in England?
Generally, the jury is made up of twelve (12) members; however, during the course of the trial the number of active jurors can actually go down to nine (9) and the case will continue until a verdict is rendered. English law allows a 10-2 or otherwise "super

majority" verdict, a unanimous verdict is not required. By contrast, most criminal courts in the United States require a unanimous verdict.

9. Does the defendant have the right to an appeal?

Yes, but only upon an alleged error of law.

Some interesting information about appellate courts in England: Previously, all criminal appeals were referred to a specific subcommittee of the "House of Lords" for a decision. Only recently have specific appellate courts been created to handle criminal appeals. An appellate court does not have the ability to strike down or nullify a law, they can only interpret a law or make a recommendation to the Parliament that a law be rewritten. The highest appellate court in England hears appeals for England, Wales, and Northern Ireland in both civil and criminal matters. Scotland has retained their own appellate court for criminal appeals. The "Privy Council" is the final appellate court available to all British republics (example: Jamaica, Trinidad and Tobago, etcetera). The "privy council" is made up of the same judges that comprise the appellate courts. The English appellate courts very rarely sit "en banc." Depending upon the perceived importance of the matter to the general public, panels of either five (5), seven (7) or nine (9) judges will hear oral arguments and decide the case. For the most part it is a panel of three judges who hear and decide the cases. Average oral argument is around eight (8) hours per party.

10. What is the standard of proof required for a conviction in criminal court?

"Sure" is the current standard in England. Formerly it was "beyond a reasonable doubt" (as is the standard in America); but it was recently changed to "sure."

Some generally interesting points of the English criminal judicial system are:

- a. "Prior bad acts/prior convictions are admissible as proof to the current offense charged (example: an English defendant on trial for shoplifting second offense would have the first shoplifting conviction announced or published to the jury).
- b. The English judiciary embraces the concept of "shared and complete responsibility" among multiple defendants. Similar to the concept in America of "the hand of one is the hand of all." For the most part, English judges award similar sentences to any and all actors/conspirators and even those with a relatively minor role.
- c. The trial judge charges the jury on the law and the facts with the jury and prior to deliberation. Clearly, this is a major departure and difference with American courts. The English judges charge to the jury as to the facts is supposed to be a well balanced and general summary as to both sides and a review of key testimony in a long trial.
- d. English jurors are individually provided a notebook of exhibits for the trial.
- e. English defendants generally sit together and "in the doc" and not with their attorneys at the table during trial.
- f. All attorneys, judges and clerks of court wear a wig and robe during the proceedings in England.

- g. Trial judges generally withhold their rulings on evidentiary objections until after the attorneys meet and see if they can resolve the objections between themselves. Again, this is a major departure the way objections are handled in the United States. Generally, judges in England rule on evidentiary matters much less frequently than their counterparts in the United States.
- h. Jury selection is all random and neither party is allowed any challenges as to a juror except "for cause". Basically, in the English court they just "spin the wheel" and pull out the names. Jurors are only excused if there is a direct conflict and/or a very high level of "cause." English jurors can ask questions at various intervals during the trial when recognized by the court.
- i. An "unwritten" rule is that English employers pay the standard salary to employees while they are out on jury duty.
- j. Mandatory sentencing guidelines are present for most crimes in England, with the judge sentencing a defendant upon a verdict of guilty.
- k. A "solicitor" generally has all of the contact with the client, performs all the legal research and prepares legal memorandums and motions. All trial preparation is generally handled by the "solicitor". A "barrister" is the attorney who actually appears as lead counsel in court for the client. The "barrister" is hired or retained by the "solicitor" and the "solicitor" must pay the "barrister" for his services regardless of whether or not the client pays the "solicitor."
- l. In England it is very common for private attorneys to continually switch roles within the system. Again, this is a major departure from American practice. Private solicitors and barristers can be hired on a case-by-case basis by the government to serve as a prosecutor. It is very common for private attorneys in England to serve as a judge for a year or two and then return to private practice as either a solicitor or a barrister.
- m. Finally, at the conclusion of the discovery process in England, both the prosecution and the defense are mandated and required to file a joint "case statement" with the court. This document is presented to the jury and contains all points of agreement and stipulations that are present in the case. The "case statement" also outlines specifically points that are contested between the government and the defense. Neither party is allowed to vary from the agreed upon "case statement" submitted to the court prior to the start of the trial.

South Carolina DUI Lawyer Steve Sumner exclusively handles misdemeanor and felony DUI defense. He is a member the National College for DUI Defense, holds an AV-preeminent rating from Martindale-Hubbell and a "Superb" ranking with Avvo. He represents clients in Greenville, Spartanburg and Anderson counties, South Carolina. You can contact him at upstatedui.com or 864-235-3834. His office is located at 1088 N. Church Street, Greenville, SC 29601.