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Questions and Answers

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QUESTIONS AND ANSWERS

David G. Monroe [Ed.]

Question: A reader writes: "Must a member of our armed forces be turned over to military authorities where a criminal offense has been committed by such member, or to civil authorities within whose jurisdiction the offense was committed?"

Answer:

It is a basic principle of our Federal system of government that no state, or local jurisdiction within it, has the right or the power to interfere with the Federal government in performance of functions delegated by the Constitution. Since all matters of war and national defense are within exclusive jurisdiction of the Federal government, it follows that in time of war or threatened invasion, Federal authorities rank supreme in matters concerning the arrest, trial, and punishment of members of the armed forces.

In times of peace, to the contrary, military authorities of the Federal government are strictly subservient to civil power. Such peace time relationship is deeply imbedded in our history and finds expression in a number of provisions of the Federal constitution. In peace time, state and local officials retain primary responsibility for enforcement of civil law and preservation of a well-ordered society. Such authority cannot be replaced by the Federal military except when martial law has been declared and only then when civil tribunals have ceased to function.

Added to the problems of authority in peace and wartimes are important problems of territorial jurisdiction. Ordinarily, offenses committed by members of the armed forces on military or naval reservations, forts, arsenals, and the like, are punishable only by military authorities. There is this exception: if the crime of murder or rape is committed by a member of the armed forces within such areas, civil and military courts have concurrent jurisdiction with the proviso that military authorities have a prior claim to punishment and prosecution. As regards offenses committed by a member of the armed force *outside* such areas, the Articles of War, as last revised in 1920, provide punishment under military law and require that the offender be surrendered to proper civil authorities. Thus, a single act perpetrated outside such areas may be punished by both civil and criminal authorities.—For analysis of the problem, see the monograph of the American Municipal Association entitled, "When a Soldier Breaks the Law."

Question: What is meant by the term "morale depressive" as used with reference to the police service and in what ways is it an influential factor in undermining the effectiveness of police functioning?

Answer:

The success or failure of a police department can be weighed in terms of the many forces which measure satisfaction or discontent—or in other words, those which sustain or destroy morale. A police department is not just an organ of enforcement. It is an aggregation of human beings whose performance is conditioned by situations and surroundings which promote or destroy morale. In the larger sense of the word, morale is simply a spirit which expresses itself in enthusiasm, loyalty, cooperation, devotion to duty, pride in service.

Conversely, the depressives of morale are those factors which reduce expression of such qualities. Of the many depressives, the following exert significant influences on enforcement: inadequate working quarters and equipment, levels of salaries so low that reasonable standards of living cannot be supported, lack of security in office, lack of recognition for meritorious service, irregular discipline, promotion without just con-

sideration, demerit imposed because some political favorite has been arrested or otherwise interfered with, assignment to the more desirable positions without respect to merit, and a low prestige value of the police department. In all these instances, morale or the lack of it is both a symptom and an index of the personnel situation in a department, for a sense of justice or injustice involves the fortunes of the individual and in many cases the interests of the entire department.—For a discussion of morale depressives, consult L. D. White's *Introduction to the Study of Public Administration*.

Question: Where will I find a brief discussion of the proposition that our economic order is the fundamental cause of crime?

Answer:

Many authorities have emphasized the important role which unemployment, malnutrition, housing congestion, deteriorated neighborhoods, and other economic factors play in crime. A brief and interesting discussion of the problem is Nathaniel Cantor's "The Cause of Crime," which appeared in this JOURNAL, XXIII, 1029 (March April, 1933). The author writes: "It seems to me that one cannot possibly escape the conclusion that the commission of crime rests fundamentally upon the economic foundations of American civilization." And' again, he remarks: "I believe that the *fundamental* causes of crime are to be found in the particular economic organization of our society. Directly, as in the case of unemployment and impoverishment, or indirectly as in the case of neighborhood environment and the shady and shabby enforcement of law and the consequent lack of respect on the part of the people for law and order, economic factors play the most significant role."—For bibliography concerning causes of crime, see Kulman's *Guide to Materials on Crime and Criminal Justice*, and Culver's *Bibliography of Crime and Criminal Justice*.

Question: Is a municipality liable for the negligence of its police officers, and can the wages and salaries of a police officer be garnished?

Answer:

From the maxim the "king can do no wrong," comes the common law doctrine of the immunity in tort of the state and its governmental agencies. The rule is now well settled that a municipality cannot be held liable for the negligence of its employees in the performance of governmental, as distinguished from corporate, functions. Municipalities escape from such liability on the ground that their duties are prescribed by law, that they act for the benefit of the public at large and not for the city and its inhabitants, and that though public officers are appointed and discharged by the municipality, they are not agents of the municipality but of the state.

Since policing is held to be a governmental function, immunity of the municipality for acts of its police department has been upheld almost universally. As Borchard points out in his article, "Government Liability in Tort" (34 *Yale Law Journal*, January, 1925, pp. 229-258) municipalities have been held immune from liability for such infractions as false arrest, unnecessary violence in arrest, gross neglect in shooting an innocent bystander, trespass on real estate, and similar injuries to person and property. In this connection, see also *Harper on Torts*, Sections 297-299.

With regard to garnishment of salaries and wages of policemen, the courts are by no means in accord. In general, compensation of public officers cannot be subjected to demands of creditors through process of attachment or garnishment, even in the absence of an express constitutional or statutory provision exempting them. Such an exception is based upon the principle that to allow such proceedings is against public policy as tending to injure the public service. But despite the weight of authority opposed to granting attachment and garnishment of salaries and wages of police officers, some courts have permitted garnishment of their salaries. Such was the case in *Cavender v. Herwitt*, (145 Tenn., 471, 239 S. W. 767) and *Dunkley v. Marquette*, (157 Mich., 339, 122 N. W. 126). In the latter case,

the court held that a statute authorizing garnishment of salaries or wages of a public officer is within the legislative power and does not conflict with class legislation. See Section 327, Volume 4, of *American Jurisprudence*.

Question: How are the terms "military law" and "martial law" distinguishable?

Answer:

Briefly, military law is that law which governs the soldier at peace and in war, at home and abroad. Martial law is law enforced by a military commander over civilians whenever civil authorities are unable to enforce the law or preserve peace within the jurisdictions of such commander. Berger, in his volume *Law and Customs of Riot Duty*, written some years ago, said: "An officer exercising military government is responsible only for breach of the laws and customs of war; but an officer enforcing martial law is liable for illegal acts, not only to his military superior, but to persons who may seek redress by civil action as soon as the courts are again in working order, and to criminal action instituted by civil officers under the general law of his state."

Question: How many Federal agencies are now engaged in some form of policing and what are their principal activities?

Answer:

More than 50 departments, bureaus, and agencies of the Federal government are now engaged in policing—either in an auxiliary or primary capacity. Most of their activities concerned with enforcement of penal statutes are divided among eight agencies. These employ about 7,000 persons. The Intelligence Bureau of Internal Revenue is engaged primarily with violations of the internal revenue laws; the Enforcement Division of the Alcohol Tax Unit with violations of law imposing taxes upon intoxicants. The Division of Investigation and Patrol (Bureau of Customs) is engaged in combatting smuggling and illegal exportations; the Secret Service Division with counterfeiting and forgery; the Bureau of Narcotics with violations of statutes directed at control of narcotic drugs; the post office inspectors with mail losses, mail depredations and violation of the postal laws generally; the Immigration Border Patrol with the smuggling of aliens and allied crimes. The F. B. I. exercises full police jurisdiction over all crimes which are not the immediate and special concern of other Federal police agencies. In addition to the above, some 40 or more Federal agencies carry on enforcement activities auxiliary to their regular duties. Of particular importance is the Coast Guard which has broad statutory jurisdiction in enforcing criminal laws. Other agencies are: Office of Indian Affairs, National Park Service, Veterans Administration, Public Health Service, Public Works Administration, Works Progress Administration, Securities and Exchange Commission, etc.—For a brief account of the Federal police, see Bruce Smith's *Police Systems in the United States*, pp. 205-220.

Question: A reader writes: "I understand that the Supreme Court of an eastern state has recently validated use of chemical tests to determine intoxication. Is this so?"

Answer:

The decision you have in mind is probably that of *Commonwealth v. Capalbo*, decided by the high court of Massachusetts in 1941. The case is found in 32 N. E. (2nd) 225. Facts of the case are these: One Joseph Perrotta, went into a saloon where he met James Giordano. Both had been drinking considerable quantities of beer. An argument ensued. Daughter of the defendant (Capalbo) heard the argument and informed her father. He took a loaded revolver and went to the scene of the argument. Defense contended that when the defendant told Perrotta and Giordano to go home, that Perrotta became abusive, drew a knife and lunged at

the defendant. In consequence, the defendant drew a gun and killed Perrotta. The state affirmed that the defense's contention of self defense was a fabrication. As one of the means of nullifying contention of the defense, the state introduced evidence to show that the deceased was in such a stage of intoxication that he could not have committed the threatened acts alleged. A chemist of the Boston Police Department was permitted to testify that he had taken chemical tests of the blood of the deceased; had determined the percentage of alcohol present; that the amount of alcohol would cause an average man of the deceased's age to be definitely under the influence of liquor, and "that in all probability the deceased was unsteady on his feet." The high court held admission of such evidence was not error.

Question: Inadequate legislation with respect to granting police agencies necessary authority to arrest and detain persons violating or suspected of violating the law has undoubtedly hindered progressive enforcement. Has some kind of "model" arrest act been prepared which could serve as a guide in the formulation of future legislation?

Answer:

Yes. Several years ago the Interstate Commission on Crime launched an inquiry into the legislative problems of arrest and detention. In consequence, the Commission empowered its reporter, Professor Sam Bass Warner of Harvard University, and a committee comprised of Franz U. Burkett, former Attorney General of Maine, as chairman, Eugene M. McSweeney, Commissioner of Public Safety in Massachusetts, T. Weller Smith, former Chief of the Alabama Highway Patrol, David W. Moffat, Chief Justice of the Utah Supreme Court, John Gee Clark, chairman of the California Board of Prison Terms and Paroles, Attorney General J. A. A. Burnquist of Minnesota, and Colonel B. Marvin Casteel, W. P. A. State Administrator for Missouri, to prepare such a draft. The draft was presented to the Commission at its annual meeting in Indianapolis in 1941, and was thereafter approved by the International Association of Chiefs of Police which recommended its adoption in state legislatures as a war measure. The Act will be found in Sam Bass Warner's article "The Uniform Arrest Act," which appeared in the *Virginia Law Review*, issue of January, 1942.

Question: In what respect is the fingerprint system of identification superior to the Bertillon System of identification?

Answer:

Harold J. E. Gesell in his discussion of fingerprinting (Chapter IX of Perkins' volume *Elements of Police Science*) reviews a number of reasons pointing to the superiority of fingerprinting over Bertillon's System of identification. Greater simplicity and accuracy of identification are the primary reasons advanced. More specifically, he compares the two systems as follows: (1) Fingerprinting requires the simplest kind of equipment: glass slab, roller, printer's ink. Contrarily, the Bertillon System requires employment of a variety of costly appliances and instruments. (2) Any one with a few minutes of instruction can take a good fingerprint. But in Bertillon measuring only operators who have been given extensive training in measuring bodily structures are considered competent. (3) A fingerprint tells its own story and requires only classification for interpretation. On the other hand, possibilities of error in measuring and recording the eleven types of anthropometrical data required in Bertillon measuring are infinitely greater. Since fingerprints do not change so far as patterns are concerned, fingerprint identification is available for all persons irrespective of their age. But the Bertillon System cannot be used to catalogue juveniles or persons having reached old age because of changes in the bony structure before maturity has been reached and after old age has set in. (5) Whereas no allowance for errors is needed in fingerprinting, a margin for error must be taken on the part of the operator in taking Bertillon measurements.