

1944

Questions and Answers

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Recommended Citation

Questions and Answers, 34 J. Crim. L. & Criminology 261 (1943-1944)

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QUESTIONS AND ANSWERS

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Under date of August 28, 1943, the War Department, the Adjutant General's Office, issued its Memorandum No. W600-74-43 titled "Coordination between Civil and Military Law Enforcement Agencies." In effect, the memorandum rescinds communication AG 014.12, MB A-M of April 18, 1941 which, until issuance of the August 28, 1943, Memorandum, served as a guide for the handling of military violators. Such is the comprehensiveness of the civil-military problem in its relation to law enforcement that this issue of *Questions and Answers* will be devoted in principal part (the first 15 questions) to description of the major rulings of this most recent pronouncement from the War Department.

Answer to the 16th question describes where outlines describing procedures for handling military violators can be obtained and comments on some of the principal features of the Indianapolis Plan. The concluding answer refers to an inquiry relating to situation of crime and delinquency in England during the present crisis.

Question 1: What over-all procedures are outlined in the War Department's August 28, 1943, Memorandum respecting the reaching of agreements between military and civil authorities concerning members of the military who violate civil law?

Answer:

The memorandum provides that each of the area service commanders are designated as agents by the War Department for purposes of entering into agreements with civil law enforcement authorities of the states included in their respective service commands for the handling of military violators accused of violating civil law. Such an agreement is designed to provide a regional flexibility to broad outlines of policy prescribed by the Adjutant General's Office, and follows the principle of agency adopted in the first communication of April 18, 1941. By virtue of the recent memorandum, agreements can be made both with reference to surrender of military members to civil authorities and the return of such members to military control when arrested by civil authorities outside the jurisdiction of military reservations.

But the tenor of the 1943 memorandum differs from that of the 1941 pronouncement in a number of respects. Principally, the 1943 memorandum emphasizes the enlarged scope of military control in war time and the secondary position of civil authorities. Thus reads the *Statement of Policy* attached to the *Memorandum*: "In view of the fact that the United States is now at war, *detention and trials by State civil authorities of members of the military service on active duty should be reduced to the minimum and resorted to only when the circumstances of the particular case make it imperative, or when such action is requested by the military authorities.*" This is the thesis of the Memorandum.

Question 2: Are military authorities in times of war *required* to surrender a member of the military accused of a crime or offense under the civil law to civil authorities for prosecution?

Answer:

Section 2, A part of the *Memorandum* is specific: In times of war a commanding officer is not required by Article of War 74, or by any other law, to surrender a member of the military service accused of a crime or offense, to civil authorities for prosecution. Such a paramount right can be waived, however, in appropriate cases. Before surrender can be made, the service commander should be notified of such action. Such is the requirement of Section 2, part b, sub-section 5.

Question 3: Have civil authorities any jurisdiction over offenses of a purely military nature?

Answer:

None. Section 2 of the *Statement of Policy* says this: "It is understood that the military authorities have exclusive jurisdiction over all purely military offenses."

Question 4: May civil authorities arrest and *detain* a member of the military service who is found driving a motor vehicle while intoxicated?

Answer:

Yes. Driving while intoxicated is one of the few specific offenses listed in the *Memorandum* or the *Statement of Policy* attached thereto which justifies the detention of military personnel. Whether or not the vehicle is government owned or privately owned makes no difference.

Question 5: A crime is committed by several persons, one being a member of the military service, the others civilians. Should the military member be tried in civil courts with his companions or tried separately by courts-martial?

Answer:

This depends upon the nature of the offense. Where an officer or an enlisted man is indicated jointly with civilians for *serious* offense, then ordinarily he should be required to stand trial with them. That is the opinion expressed in Section 2, part b, sub-section c of the *Memorandum*. But if the alleged offense is one of minor character, then the military member should be tried before court-martial.

Question 6: Do civil authorities have the right to arrest and temporarily detain members of the military service in order to prevent a breach of the peace?

Answer:

Yes. Section 2, part b, sub-section c states as follows. "The right of the civil authorities to arrest and temporarily to detain members of the military service in order to prevent breach of the peace . . . must be recognized."

Question 7: Does the *Memorandum* contain any reference to the use of habeas corpus and if so what are the conditions governing its use?

Answer:

In Section 2, part b, sub-section e, is found the frank statement that

"in no case will habeas corpus proceedings be commenced without the prior approval of the War Department." However, this statement is the concluding remark in a section relating to procedures that should be followed if civil and military authorities are unable to reach a satisfactory agreement concerning the disposition of a military person. Rather than clear the issue through habeas corpus, the recommendation of the *Memorandum* is that the matter be promptly presented to the War Department with all available information and appropriate recommendation for decision.

Question 8: In the event that a member of the military service is surrendered on request to civil authorities by the army service, must the service commander concerned be notified of such action?

Answer:

Yes. Section 2, part b, sub-section 4 requires that such action must be taken insofar as the Army Ground Forces or the Army Air Forces are concerned. Also there is another section (Section 2) which requires that before the offending member can be turned over to civil authorities, the commanding general of the appropriate service command must be informed. This is further affirmation of the principle that in time of war detention and trial of military personnel by civil authorities must be reduced to the minimum and resorted to only when the circumstances of the particular case make it imperative.

Question 9: A military member is arrested by civil authorities for an alleged violation of a traffic law. Can the civil authorities detain the military person?

Answer:

In the *Statement of Policy* attached to the August 28, 1943, memorandum appears this statement: "The alleged offender will not be detained unless the nature of the offense requires or indicates it, or unless he is drunk at the time or other considerations of public safety or public policy require such detention." Thus, in all minor violations of traffic laws, detention is not countenanced. Civil authorities, therefore, should act with exceptional reservation and if a military member is detained it must be justified on one of these grounds, viz: (1) nature of the offense is so serious as to require detention, (2) the offense is of such nature that public safety or policy requires detention, and (3) drunkenness.

Question 10: A military member commits an offense against the civil law after induction but prior to formal entry into the military service. Wherein does surrender lie?

Answer:

Section 2, part b, sub-section c simply provides: "In cases in which a member of the military service is with probable cause accused of a serious offense allegedly committed prior to his entry into the military service, sound policy requires his surrender in order that he may not otherwise escape trial altogether." The language is not clear, but in light of the fact that a person is not ordinarily subject to military law prior to the date he is

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required to serve for duty or training, it would appear that custody and trial is a civil rather than military responsibility.

Question 11: Inasmuch as the *Memorandum* emphasizes the need for employing courts-martial rather than civil courts for trial of military offenders, what justifications are advanced in the *Memorandum* for this preference?

Answer:

Justifications are several. Section 2, part b, sub-section 2 stresses these points favoring courts-martial trial: (a) trial by civil courts 'is subject to delay, (b) while the military member is beyond the authority of the military his services are of little if any value, (c) the anomalous status of the alleged offender while awaiting trial or results of appeal frequently results in embarrassment to the military establishment, (d) trials of courts-martial are prompt, and (e) the accused previous to trial is at all times available under military custody.

Question 12: Have civil authorities an exclusive control over military members for the crimes of murder and rape?

Answer:

No. So states Section 3 of the *Statement of Policy*. Jurisdiction of civil authorities is concurrent with that of the military if the offense violates both state and military law when committed in places over which the United States has not acquired exclusive jurisdiction.

Question 13: When an arrest of a military member is made by civil authorities are they required to advise the military service and if so what authorities should they advise?

Answer:

Language of the *Statement of Policy* is specific: the military authorities *will* be notified. If the commanding officer of the accused is known and is available (note both considerations) then he should be notified. Otherwise a military authority in the vicinity of the offense should be notified.

Question 14: A member of the military is being held by the police department in the city of "A". Request for his surrender to the military is made by the military. Must surrender be made?

Answer:

Section 4 of the *Statement of Policy* has this to say: "In all cases it is announced as a matter of general policy that the alleged offender will be surrendered on request to the proper military authorities."

Question 15: A chief of police writes: "Where can I secure a description of procedures which I should take in handling military violators?"

Answer:

In 1942 an agreement was entered into between the Commanding General of the Eight Corps Area (now the Service Command) and the Governors of the several states comprising that Area, viz., Texas, Oklahoma, New Mexico, Arkansas and Louisiana. By writing to the Judge Advocate

General, Washington, D. C., or to the Commanding General of the Eighth Service Command whose headquarter's address is Santa Fe Building, Dallas, Texas, copy of the agreement may possibly be secured. Then, too, a number of police departments have prepared procedural outlines for their personnel. Note, as an example, the five page mimeographed schedule of the Indianapolis Police Department, Indianapolis, Indiana, dated November 11, 1942, General Order No. 437400. While this Order ante-dates the War Department *Memorandum* of 1943, many of the procedures set forth in the Order may continue to be used. Following are some of the procedures mentioned in the Indianapolis Order:

(1) In all misdemeanors in cases involving soldiers, where a person would ordinarily be arrested and slated for court hearing, the detaining police officer when he calls for a wagon will advise the dispatcher that a soldier is involved. The dispatcher in turn will advise the appropriate military car which will take the soldier to military police headquarters in the city.

(2) Members of the armed forces held for investigation on felony charges shall be taken to the city prison, booked in the Turnkey's office but will not be slated at the Registration desk until after all reports are made and a conference for determination of trial jurisdiction has been held between responsible police and military authorities of the services involved. Where a soldier is held it is the duty of the Captain on duty in the uniformed division to see that notice of detention reaches military headquarters in the city and also the headquarters of the Provost Marshal of the district. If the offender is a sailor, commander of the naval armory must be advised and if a member of the coast guard, notice must be given to the local commandant.

(3) Service men will not be slated for a court hearing unless (a) the charge amounts to a felony or crime of such serious moral turpitude as to mark the perpetrator as unfit for military service, (b) where serious property damage has occurred in connection with the offense charged, or (c) where civilians are involved and arrested in the same transaction and detention of the service man is essential to a complete investigation. In such cases, the offender shall not be taken to trial until military authorities concerned are called into a conference to determine jurisdiction.

(4) All misdemeanors, drunken driving, traffic and minor charges will be relegated for investigation and adjudication to military naval or other appropriate authorities.

(5) Except in cases complicated by civilian involvement, serious property damage, felony charges or the need for further detective investigation, soldiers detained by police will be turned over to the military for disposition after being taken to police headquarters and booked by the non-commissioned officer in charge.

Question 16: Have crime and delinquency increased gravely in England during the present war years?

Answer:

As yet we do not have comprehensive facts upon which we can make basic comparison of the quantity of crime and delinquency during the present war years and the pre-war period in England. Conversations held with a number of students of the problem lead to the following conclusions. That the tragedies of war have found reflection in lawlessness and delin-

quency appears unquestioned and for a number of reasons. War invariably facilities old forms of lawlessness, and introduces new ones. England with her back to the wall during the first years of the war required unyielding sacrifice from her citizens in order to provide the sinews of war. Militarism, production, sacrifice and regimentation became key notes to her existence and in these one finds the roots of a measure of lawlessness which in its gravity exceeds that of the pre-war period in a number of respects.

At the very beginning of the war, there occurred a major release of many thousands of the jail and prison population in order to reduce the number of prisoners confined in danger areas. Estimates are that nearly half the prison population of England and Wales were released. Then added to this nucleus came other violators whose turning to lawlessness can be traced to wartime conditions. Evacuation, repeated and intensified when bombing began, meant new environment, uncertain living, working and schooling conditions for hundreds of thousands. Habitual restraints were broken by the new temptations which arose and the possibilities of livelihood and gain through lawless channels were intensified.

Scarcity of foodstuffs and other commodities bringing with it the need for rationing created fertile ground for the racketeer and the blackmarket specialist. The dimout and blackout of streets and highways became further aids of enormous importance to the violators—particularly bag snatchers, pickpockets, robbers and burglars. Looting soon ranked high among the pressing problems facing the police. When, to these invitations to lawlessness, there occurred a wholesale let-down in the social, educational and economic controls over children, the situation became one of more than passing seriousness. It seems clear that during the first two years or so of the war that both crime and delinquency were on a definite upgrade.

Particularly during the past two years, however, there has been a noticeable change for the better as one conversationalist related. For one thing, most children in England by now are provided with normal, whole time schooling. This was far from the case during the early years of the war when thousands of juveniles, because of mass evacuation and the difficulties of providing proper school facilities for a migratory population, were on the loose much of the time. Again, while family controls have not yet returned to a prewar status, the situation is gradually easing. Again, the police situation is much better in hand. Drain of manpower from police departments which, during the first years of the war, threatened to retard police activities to the danger point, has gradually cleared. Viewed in perspective it seems clear that lawlessness and delinquency are still more serious in scope and intensity now than before the war. But to say that this seriousness has reached aggravated proportions is not the opinion of those to whom this question was directed.