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Questions and Answers

QUESTIONS AND ANSWERS

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Your Editor of *Questions and Answers* in this issue experienced his usual bi-monthly trial and tribulation. The questions asked were many and in subject matter ran the gamut from "A" to "Z." In terms of their simplicity and complexity of reply, the questions leaned heavily to the latter. One of our constant question submitters desired 25 or more true and false questions suitable for a police examination in criminal law. From another came a provocative question relating to the many types of writs known as *habeas corpus*. Added to these was an interesting question concerning the right of a judge to change his original sentence imposed on an accused when that accused had violated probation. And another inquirer wished to know whether use of laundry marks has led to the identification of a criminal. And so on.

Question: 1 I would appreciate a listing of 25 or more true and false questions relating to criminal law and suitable for a patrolman's examination.
Answer:

Here is a listing. It is by no means inclusive but will give you some idea of the possibilities in this connection. Do not consider that it will suit the specific needs of your particular department. To so do, the preparer of a listing should have a first-hand knowledge of your course of instruction given in the police school, the direction and scope of your state laws and local ordinances, and the specific needs of your community.

1. Involuntary manslaughter is the intentional killing of a human being without justification or excuse and without malice. True.... False....
2. There are no common law crimes in the United States. True.... False....
3. In felonies there may be accessories while in misdemeanors all participants are principals. True.... False....
4. Intoxication is never a defense but always an excuse. True.... False....
5. "A" tries to murder "C" and in the effort shoots him and inflicts a flesh wound. "C" is taken to a hospital. It burns down that night and "C" is burned to dealth. "A" is guilty of murder. True.... False....
6. A withdrawal in good faith from an affray restores the right of self-defense. True.... False....
7. To constitute rape the woman must have resisted to the limit of capacity. True.... False....
8. Subordination of perjury is the procuring by one person of another to commit perjury. True.... False....
9. "A" sets fire to his own house and collects insurance for loss. He is properly charged with arson. True.... False....
10. Compound larceny consists of simple larceny accompanied by circumstances of aggravation. True.... False....

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11. "A" stands in State X and shoots and kills "B" standing in State Y. "A" can be tried only in State Y. True.... False....
12. It is forgery to deliberately draw a check on one's own bank knowing that the amount on deposit will not cover the check. True.... False....
13. An innocent finder, who retains the goods after learning the name of the true owner, is guilty of larceny at the instant he has knowledge. True.... False....
14. If a felon attempts to avoid arrest by flight an officer may kill him to prevent his escape if he cannot otherwise be taken. True.... False....
15. An offense is deemed to be committed in the officer's presence when his only knowledge of the offense came from hearing. True.... False....
16. When a conspirator later represents and withdraws from the plan, he is not relieved from liability if overt act has already occurred. True.... False....
17. Contributory negligence by the injured party is no defense to the wrongdoer. True.... False....
18. "A's" paid mistress refused to allow "A" to have sexual relations. "A" forced her. "A" is guilty of rape.
19. A doctor gives aid to an escaping felon, binding his wounds and feeding him until he recovers his strength. The doctor is an accessory after the fact. True.... False....
20. A man had intercourse with the daughter of his wife's sister. She had lived with him as a member of his family since shortly after her birth. He committed incest. True.... False....
21. Affray occurs where two or more persons fight in a private place. True.... False....
22. Motive is the purpose or resolve to do an act, while intent is the desire or inducement which incites a person to do an act. True.... False....
23. "A" pays a "halfwit" to go to the stable and lead out a horse for him. "A" intends to steal the horse. "A" is a principal in the second degree. True.... False....
24. Animus "furandi" means the body of the crime. True.... False....
25. When the defendant pleads insanity the burden of proof of sanity rests upon the state. True.... False....

Question 2: I have noticed that when the term habeas corpus is used, it refers to a writ issued by a judge or court of justice commanding the person to whom it is directed to bring the body of a person in his custody before that judge or some other body for a specified purpose. My question is this: is there merely one form of write known as habeas corpus or are there several by that name each designed for a specifically different purpose?

Answer:

Use of the writ *habeas corpus* forms a picturesque and important chap-

ter in the history of English and American jurisprudence and for long years has been an established remedy for the violation of personal liberty. In actuality, the term *habeas corpus* has been applied to describe a variety of writs designed for a number of specific purposes—some in the field of civil law, others in the field of criminal law. Among the earliest of the writs was one known as *habeas corpora juratorum.* As the name suggests, it was a device used by early English courts to compel court attendance of jurors. The writ was addressed to the sheriff and empowered him to command the presence of the juror on some specific date and if need be to distrain him of his land and goods as a means of requiring attendance. With respect to civil cases, several species of the writ were used. If you wished to remove the cause and also the body of the defendant from an inferior court to a superior court, the proper writ was *habeas corpus ad faciendum et recipiendum.* And simply to remove a person out of the custody of one court into that of another, the writ properly employed was the write *habeas corpus ad respondendum.*

But it is in the field of the criminal law that the habeas corpus writ has had its most lasting and beneficient influence and the one in which its questionable uses by the underworld has created most concern. Among the oldest of the *habeas corpus* writs used in the field of criminal law was the writ *habeas corpus ad deliberandum et recipiendum* which was employed in order to remove for trial a person confined in one county to the county or place where the offense was committed of which the person was accused. In similar vein was the writ *habeas corpus ad prosequendum* and was employed to remove a prisoner in order to prosecute in the proper jurisdiction. Most famous and in greatest common usage is the writ *habeas corpus ad subjiciendum.* Today, when the words *habeas corpus* are used, they are understood to refer to this age-old writ. Such writ is directed to the person detaining another and commands him to produce the body of the prisoner or person detained, with the day and cause of his caption and detention to do (*ad faciendum*), submit to (*subjiciendum*) and receive (*recipiendum*) whatever the judge or court awarding the writ shall consider in that behalf. This is the only important form of the writ *habeas corpus* now employed.

Question 3: Writes an officer: "In communications of military commanders respecting the movement of military caravans and other traffic, the term 'infiltration' is used frequently. Just what does it mean?"

Answer:

By "infiltration" is meant the dispatching of vehicles at irregular intervals—either singly or a few at a time. Prime purposes of infiltrated traffic movement are to assure secrecy of movement, disperse traffic movement that most protection from air attack can be secured, and provide maximum degree of secrecy and least profitable target for air or ordnance attack. Optimum rate to afford these objectives is five vehicles per miles, so I am informed. Proper infiltration requires the use of one or several definitely marked routs, with running speed prescribed. Normally, the rate of flow should approximate the traffic density in the area in which the movement is made and the air picture should be one of normal routine traffic.

Question 4: My question has to do with probation. Assume the following facts: "A" is arrested, tried and sentenced to several years imprisonment. Execution of sentence is suspended, however, and the

party is placed on probation by the court. Assume further that the party violates the terms of his probation and is again brought before the court. My inquiry is this: Does the original penalty imposed by the judge still hold, or can the judge impose a greater and more serious sentence upon "A" in consequence of his conduct while on probation?

Answer:

Yours is an interesting question and raises a number of provocative issues. A recent federal supreme court decision sheds light on your inquiry and to this decision I turn attention. Facts of the case (*Roberts* v *United States*) are these, briefly. In a trial before a federal district court held during the early part of 1938, the defendant, Roberts, pleaded guilty and was sentenced to pay a fine of $250 and to serve two years in a federal penitentiary. Execution of sentence was suspended by the court and the defendant was ordered released on payment of fine and was placed on a five-year probation period. Four years after the trial, the court revoked the probation and imposed a new sentence of three years—a year longer than the initial sentence. Defendant appealed and in so doing challenged the right of the court to impose the greater sentence.

Under federal law (43 Stat. 1260) a federal court may, within any time during the probation period, issue a warrant for the arrest and return of the probated person. "Thereupon," reads the section, "the court may revoke the probation or the suspension of sentence, and may impose any sentence which might originally have been imposed." Here it will be observed that three separate authorities appear to be granted the court, viz: (a) it may revoke the probation, (b) suspend the sentence, or (c) impose any sentence which might originally have been imposed. This language would apparently authorize the court to impose a more severe sentence after revocation of probation.

But such was not the interpretation given by the supreme court in the Roberts case. Mr. Justice Black in expressing the majority opinion of the court said in part: "It is clear that the power to do the first two things, revoke the probation and the suspension of sentence, is expressly granted by Section 2. It is equally clear that power to do the third, set aside the original sentence, is not expressly granted. If we find this power we must resort to inference." Such an inference did not find proper support for the court concluded that once the judge had exercised his discretion in sentencing an offender, the judge could not at later date set side the probation and increase the term of sentence.

Of significant interest, however, is the interpretation of Mr. Justice Frankfurter who delivered one of the dissenting opinions. It was his thesis that probation is an experimental device designed to serve both offender and society. Probation he deemed beneficial to the offender because it became a means of permitting persons guilty of anti-social tendencies to continue at large under appropriate safeguards. Likewise, the activities and behaviors of the person on probation could well serve as valuable aids to the court in reaching a fair and just decision. As the Justice said: "Since assessment of an appropriate punishment immediately upon conviction becomes very largely a judgment based on speculation, the function of probation is to supplant such speculative judgment by judgment based on experience." For further reference consult the case of *Roberts v. United States,* decided November 22, 1943, and reported in 88 L. ed. Adv. Ops. 68; 64 Sup. Ct. Rep. 113; U. S. Law Week 4037.

Question 5: Are there instances in which laundry marks have led to the identification of criminals?

Answer:

The crime files of police departments would doubtless disclose that laundry marks have been helpful in the solution of many crimes. Apprehension of the murderer of one Samuel Rappaport, a jewelry salesman is a prime illustration. Body of the victim was found bound and gagged lying on the beach at Long Beach, New York. Scull of the victim had been fractured by a series of brutal blows. No tell-tale evidence was found at the scene of the crime, but some distance away a bundle of blood-stained towels were located secreted in a clump of weeds. Inked in the corner of the towels was the symbol W-K-33. This laundry symbol was checked through the comprehensive laundry-mark files of the Nassau County Police at Mineola, New York. With the identification of the concern which had laundered the towels, the police then contacted officials of the company and within twenty-four hours the murderer was apprehended. For an account of the case and of the laundry-mark file system devised by Lt. Yulch of the Nassau County Police, see the December 22, 1943, issue of the *Royal Canadian Mounted Police Gazette.*

Question 6: What steps should be taken in preserving seminal stains?

Answer:

The question is indicative of the importance of exercising care in preserving and utilizing seminal evidence in cases involving rape and other sex offenses. The following precautions are suggested in consequence of conversations held with a number of police officers:

(1) Seminal evidence is perishable. Mere washing of a garment for example will destroy much of the stain, and once a stain has dried the spermatozoa break apart easily, thus reducing the possibility of identification. It is for these reasons that wearing apparel and other evidence relating to the particular sex offense should be seized at the earliest possible moment.

(2) Likewise, it is important that every effort be made to secure *all* wearing apparel and other evidence on which stains might appear, i.e., hair particles and the like. If the stain has dried, it can be located in part by sense of touch, for semen-laden fabrics have a starchy feel. If the semen is still moist it gives forth a strong characteristic odor. On dry fabrics the stain can be spotted by its color for it is slightly yellowish in hue. On colored cloth, however, the stain is almost invisible. Difficulties of locating stains requires that very careful search be made.

(3) With respect to packaging seminal evidence, the procedure employed depends on a number of factors. If the seminal stain is still fresh and moist, two procedures are employable. The patch of cloth containing the stain can be placed in a glass bottle or a test-tube. To safeguard against putrification, add a few drops of totuol or a 10% solution of formalin is the advice of Söderman and O'Connell. Saturation of the cloth with *pure* water or alcohol liquor has also been suggested. The container should be sealed with a tight fitting cork or rubber stopper and if necessary fixed with paraffin to prevent leakage. Or, as a second method, the stained area of cloth can be stretched over the top of a pan, bucket or other receptacle. Then tie string around the side of the receptacle so that the cloth will be tightly fixed. This done, place the receptacle inside another container—cardboard box, for example—and in such a

manner that the stained area cannot possible contact another surface. Where the semen is nearly dry, however, it is advisable to let it dry thoroughly before shipment to a laboratory. Drying should be done at normal room temperature.

(4) Dried semen must be handled with the utmost care. Caution should be taken not to fold the cloth in the stained area. Friction created by folding will break the spermatozoa. Nor should the cloth be rolled for shipment. Preferably, the suspected piece of clothing should be placed between two sheets of cardboard.

(5) It goes without saying that procedures in obtaining and packaging the specimen should be carefully recorded for evidentiary purposes. The record should indicate the person making the investigation, where, when and how the evidence was secured, and the manner in which the evidence was packaged. Chain of control over the specimen should be clearly identified. Consult Söderman and O'Connell's *Modern Criminal Investigation,* pp. 239-41.

Question 7: Why is it that the system of casting known as moulage has achieved such wide usage in police tactics of investigation and identification?

Answer:

There is an old proverb to the effect that nothing succeeds like success. This, fundamentally, is the answer to your question, for the moulage process appears to have certain definite attributes which have given it advantage over other casting processes—at least for particular purposes. Chief among the values of moulage are the following: (a) The agar base used in the moulage process is sufficiently liquid that it will flow into minute cracks and crevices, yet its viscosity is such that it will cling to a vertical service. (b) The compound used in the negative mould is not harmful to living or dead tissue or to most substances. (c) The moulage method accumulately reproduces the subject or object in complete three-dimension detail. This gives the reproduction a depth of perspective not accomplished by the photograph. (d) The moulage impression may be so painted as to simulate the original object to a high degree of likeness. This characteristic, combined with its three-dimensional attributes, makes it possible to secure highly realistic reproductions. (e) The positive material used in the moulage process has a sufficiently high melting point that the finished cast is not usually affected by hot weather conditions nor will it shrivel, crack or lose shape when subjected to cold weather. (f) The positive material can be easily tooled. (g) The setting time and qualities of the compound used in sufficiently strong to permit handling, yet sufficiently elastic as to permit easy removal. (h) Moulaging, while it is done best in the laboratory, can also be performed in the field when necessary. For an interesting account of moulage and of the moulage process, see the October, 1942, issue of the *Bulletin,* issued by the Bureau of Criminal Investigation, New York State Police, pp. 2-5.