

Ask the Lawyer: Do I Have to Answer That?

By Mathew B. Tully

Q:

How should I respond if a superior officer asks me a question and the truth would probably get me in trouble?

A:

If a service member is suspected of committing an offense and is questioned by a superior or law enforcement officer about his or her involvement in it, the suspect should have been informed of his or her options as described in the military justice system's "Miranda/Tempia warning," including the right to remain silent and the right to counsel.

Under Rule 305 of the Military Rules of Evidence, until suspects are advised of their rights, military personnel cannot begin interrogating a suspect who is in custody. An interrogation cannot also commence if the interrogator is subjected to the Uniform Code of Military Justice and is "acting in a law enforcement capacity." This rule defines an "interrogation" as "any formal or informal questioning in which an incriminating response is sought or is a reasonable consequence of such questioning."

Under Article 31 of the Uniform Code of Military Justice, a service member cannot be forced "to incriminate himself or answer any question the answer to which may tend to incriminate him." If service members believe the answer to a question would be self-incriminating then they should invoke their right to remain silent or to counsel. Once they do this, questioning must immediately stop. This invocation, however, must be clear, according to the Navy-Marine Corps Court of Criminal Appeals. In *U.S. v. Shiloh* (1999), for example, the NMCCA said that "no particular words or actions are required to exercise one's right to remain silent, but its invocation must be unequivocal before questioning must stop."

In *Shiloh*, the court found that a Navy dental technician's statement to a Navy Criminal Investigative Service agent that "I don't have anything to say" was equivocal, especially when considering he remained seated in a room when his interrogators gave him the opportunity to leave. However, the dental technician's assertion that "I want to leave," and his subsequent departure from the room, were unequivocal.

Sometimes interrogators fail to read the Miranda/Tempia warning or ignore such unequivocal assertions and continue questioning the service member. If this happens, any statements the service member makes should not be admitted as evidence in court-martial proceedings. It is up to the accused's attorney to fight prosecutors' attempts to utilize improperly obtained incriminating statements.

For example, *U.S. v. Mitchell* (1999) involved a Navy ordnanceman who was found guilty at general court-martial of, among other things, premeditated murder. However, the U.S. Court

of Appeals for the Armed Forces set aside the finding of guilt and ordered a rehearing because of the erroneous admission of pretrial statements. In particular, CAAF took issue with a statement the ordinceman charged with premeditated murder made in response to a question asked by his chief petty officer out of "personal curiosity." The petty officer asked "Was it worth it?" and the ordinceman responded, "...it was an eye for an eye." He made this statement after he had been read his Article 31 rights and made a request in writing for counsel. Considering that the petty officer was a command representative who was questioning someone in jail and whom he knew was suspected of an offense and with whom he had no personal relationship, CAAF found the government violated the ordinceman's rights.

Service members questioned about an offense should request to consult with a military law attorney. A lawyer could advise them of their rights and ensure they do not volunteer any self-incriminating statements. If the service member has already made statements, a lawyer could explore whether interrogators violated his or her Article 31 rights.

"Great Customer Service" – C.R.

"Great customer service, thoroughly explained all aspects of my case. Thank you." - C.R.

"Cannot Thank You Enough" – R.S. and C.S.

"I cannot thank you enough for all that you did for us." - R.S. and C.S.

“Great Service” – E.S.

I want to thank you all for the great service rendered [to] myself and family. - E.S. on Client Relations Attorney Derrick Hogan

Legal Disclaimer

The results of all client matters depend on a variety of factors unique to each matter. past successes do not predict or guarantee future successes.

"High Regard" – R.E.M.

"Your firm held my best interests with high regard... I thank you for your efforts." - R.E.M.

"Prompt and Efficient" – K.B.

"Prompt and efficient in processing claim, all correspondence handled in prompt and efficient manner." – K.B.

“Impressed” – W.W.

“As a retired heavy user of attorneys, I’m impressed with your concerns and your efforts to stay in touch with your clients. Its damned good management aligned with top notch expertise.” – W.W.

“Excellent Service” – J.R.

“Excellent service, very professional, and understanding and considerate of clients needs. Attorney was very approachable and there was a very good comfort level.” – J.R.

“Professional & Informative” – J.H.

“Professional & informative... I was pleased with the handling of the case. I was treated as a person, and kept abreast of all aspects of the case. Thank you all.” – J.H.

“Thanks So Much” – J.D.

“Without your Firm, I would not have known of my claim. Thanks so much!” – J.D.

“Gets Results” – F.P.

“Most certainly – The firm gets results!” – F.P.

“Quite Satisfied” – R.W.

“I am quite satisfied with the services your office has provided.” – R.W.

“Exceptional Legal Services” – A.S.

“Your firm, Tully Rinckey, has provided and continues to provide me with prompt, keen, exceptional legal services. After the initial consult, I felt relieved that I had the representation from Tully Rinckey... I have found a new found hope with Tully Rinckey...” – A.S.

“Absolute Best” – R.H.

“My attorney was the absolute best I could ever have hoped for. A pure professional in every sense of the word. She was very mindful of my financial expenditure and still was able to represent me very well in my court case.” – R.H.

“Outstanding Service” – A.R.

“Outstanding service, true professional.” – A.R.

“Top Notch” – V.W.

“My attorney was top notch. Very pleasant and helpful.” – V.W.

“Ideal Choice” – D.H.

“My attorney knew exactly the approach to take and was the ideal choice. She was extremely responsive. She was clear, balanced, and open to our views and feelings. She made it clear she was there for us and ready to answer questions.” – D.H.

“Very Satisfied” – D.D.

“I was very satisfied with the services provided which were completed in a very timely and professional manner.” – D.D.

“Excellent” – B.M.

“Your Firm provides excellent & free service to federal workers and NG/USAR members.” – B.M.