Take the *Garrity* Quiz

Do You Know Your Rights?

By Mark A. Porter

In the late 1950s, Edward Garrity, a police chief in a small New Jersey community, was accused of fixing traffic tickets. An assistant New Jersey attorney general investigated and told Chief Garrity that he had a choice: He could answer the investigator's questions or, pursuant to a state statute, he could be fired.

Garrity talked—and was then indicted, tried, and convicted in the New Jersey courts. In 1967, however, the U.S. Supreme Court reversed the conviction. The Court declared that no one, criminal or police officer, can be ordered to surrender the Fifth Amendment privilege against self-incrimination. The *Garrity* ruling has since had a profound impact on criminal law and labor relations.

The following year, in *Gardner* v. *Broderick,* the U.S. Supreme Court wrote the rules that we now know as the *Garrity* warnings. An officer could be ordered to give a truthful and incriminating statement, in response to "questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself."

Garrity, in other words, is *Miranda* in reverse: There is no right to remain silent. In 1968, in *People* v. *Allen,* the Michigan Court of Appeals adopted the *Garrity* rule for Michigan's law enforcement officers.

End of story, right?

Wrong.

Many prosecutors, district attorneys, and courts have always intensely disliked the *Garrity* rules. After all, what better way to obtain a criminal conviction against an officer than by the officer's own statement? The angry New Jersey Supreme Court wrote after *Garrity:* "We thought the Fifth Amendment left the option to the officer to talk or to quit."

Many state and federal judges have stood on their heads, creating tortured interpretations to proclaim that an officer's coerced statement is really "voluntary" and not covered by *Garrity.* Take this quiz and test your *Garrity* knowledge. Are you covered by *Garrity* in these examples?

1. You're called into the captain's office on short notice. The captain starts a tape recorder, tells you of a serious allegation against you, and says, "You answer me this minute, or you're gone from this department now!"

2. You're on a multi-department apprehension team, and a suspect has been injured. A supervisor from a different department conducts a formal interview with all team members. He begins your interview by carefully reading the *Garrity* warnings.

3. Your department orders that in-car cameras and microphones will be turned on at all times. Each day, you record a statement that you use the tape because you are under a direct order, but you do not surrender *Garrity.*

4. You are ordered to write a statement concerning an allegation against you that involves missing evidence. You attach a "rights" sheet to the top of the statement, clearly stating that you surrender no rights under *Garrity.*

Are you covered by *Garrity* in these examples?

No. *Garrity* does not cover you in any of these situations. Surprised? Here are the answers:

1. The *Garrity* warning must be an explicit warning to give up the Fifth Amendment. A "routine order" is not considered a *Garrity* warning.

2. The *Garrity* warnings involve a threat of discipline, up to discharge. Only your employer can discipline you, not an officer from another agency.

3. Michigan courts have ruled that all police reports and documentation kept in the normal course of business are not protected by *Garrity.*

4. Again, Michigan courts have decided that police reports and documentation kept in the normal course of business are not protected by *Garrity.*

Only the employer can invoke the *Garrity* warnings and threaten your discharge; you can not self-invoke *Garrity.*

In late 2002, several police officers in Garden City, Michigan, were involved in a fierce fire fight with a suspect who had shot and wounded a GCPD officer. The county prosecutor's office then demanded access to the *Garrity* statements. The police officers' union refused to protest the release but the GCPD chief supported them. The prosecutor promptly subpoenaed the statements, claiming that the officers were under investigation for murder. The Michigan Court of Appeals upheld the prosecutor's sub-

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poena, and ruled that any investigating agency has unlimited access and use of a *Garrity* statement, up to the time that a criminal trial starts against the officer.

The Michigan Supreme Court denied GCPD's appeal.

Concerned? You should be, and now you know why it's so important to get quality representation immediately and during the investigation stage of an allegation against you. Waiting until the prosecutor or district attorney has your *Garrity* statement and the news media is calling for a "fair trial" is too late.

If *Garrity* is destroyed by a thousand tiny blows, police and corrections departments will not be able to quickly conduct important internal investigations. And all of the officers' protections contained in many labor contracts will be rendered useless.

While other police officer associations have shrunk into the background, your State Lodge has strongly supported proposed Michigan legislation that would severely limit access to the *Garrity* statements by prosecutors, outside law enforcement agencies, and the news media. The battle had been joined and the State Lodge is in the forefront.

Tried by twelve, or fired by one? Don't allow yourself to be trapped in that corner. Call upon the FOP.

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