The Importance of Garrity Warnings; Police Also Have Constitutional Rights. Here is How to Protect Yours.

From The Office of the General Counsel
International Union of Police Associations, AFL-CIO

It is always a good time to cover law enforcement officers' legal right concerning statements or reports under threat of discipline. This article covers the state of the law for "Garrity Warnings." This article also covers the Supreme Court's decision in Salinas v. Texas.

The Garrity case concerned an investigation into alleged ticket fixing scheme in New Jersey. The officers under investigation were given the choice of incriminating themselves or losing their jobs.

Here is what the Supreme Court said in Garrity v. New Jersey, 385 U.S. 493 (1967); "The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent. That practice, like interrogation practices we reviewed in Miranda …, is 'likely to exert such pressure upon an individual as to disable him from making a free and rational choice.' We think the statements were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary under our prior decisions."

The holding in Garrity was; "We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic."

An Appellate Court in Illinois held that use of the Garrity Warning alone was sufficient to protect the statements of officers from use by the prosecution. *People v. Smith*, 2010 WL 1374752, 926 N.E.2d 452 (Ill.App. 3 Dist. Apr 01, 2010) (NO. 3-09-0524, 3-09-0525, 3-09-0526). In the case, officers had given statements to the department regarding an incident. At the time they gave the statements they signed a Garrity Warning form that is almost identical to the Garrity Warning card used by the I.U.P.A. Each form stated

> "On February 5, 2009, * * * at Peoria Police Department, I was ordered to submit this report by Sgt. Michael Boland. I submit this report (give statement) at his order as a condition of employment. In view of possible job forfeiture, I have no alternative but to abide by this order.
>
> It is my belief and understanding that the department requires this report (statement) solely and exclusively for internal purposes and that this report (statement) will not and cannot be used against me by this department in any subsequent proceedings other than disciplinary proceedings within the confines of the department itself.
>
> For any and all other purposes, I hereby reserve my constitutional right to remain silent under the FIFTH and FOURTEENTH AMENDMENTS to the UNITED STATES CONSTITUTION and other rights prescribed by law. Further, I rely specifically upon the

> protection afforded me under the doctrines set forth in *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), and *Spevack v. Klein*, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967), should this report (statement) be used for any other purpose whatsoever."

The prosecution sought to subpoena the statements of the officers. The City opposed the subpoena, arguing the statements were protected from disclosure by Garrity. Normally in Garrity cases, officers must go through a multi step process in order to show that their statements are protected. However, the Illinois Court found that the use of the Garrity Warning alone was enough to ensure that the statement could not be used by the prosecution.

> The "Garrity Warnings," which were signed by each defendant, clearly assert that defendants were given the choice to "either forfeit their jobs or to incriminate themselves." *Garrity*, 385 U.S. at 497, 87 S.Ct. at 618, 17 L.Ed. at 565. In coming to this conclusion, we emphasize the following language: (1) "I was ordered to submit this report by Sgt. Michael Boland," (2) "I submit this report (give statement) at his order as a condition of employment," and (3) "I have no alternative but to abide by this order." While we acknowledge the reference to *"possible* job forfeiture" (emphasis added), we do not believe that these three words alone act to defeat the overall intent of the "Garrity Warnings." Instead, we find that the "Garrity Warnings," when read as a whole, reveal that defendants were faced with the option of either incriminating themselves or losing their means of livelihood. *Garrity*, 385 U.S. at 497, 87 S.Ct. at 618, 17 L.Ed. at 565. These defendants did not give their statements in an unfettered exercise of free will, but rather to avoid a clearly expressed penalty for choosing to remain silent. Statements given under such coercion cannot be sustained as voluntary. *Garrity*, 385 U.S. at 497, 87 S.Ct. at 618, 17 L.Ed. at 565. Moreover, we note that defendants expressly reserved, in all circumstances other than the internal investigation and any resulting disciplinary proceedings, their constitutional right to remain silent and any protections afforded under *Garrity*. Consequently, we find that the "Garrity Warnings" standing alone are sufficient to support the application of *Garrity* immunity.

Thus, the Garrity Warning itself prevented the use of the statement by the prosecution, and the officers did not have to go through the process of proving that they were entitled to protection under Garrity. This demonstrates the benefits of using a clear Garrity Warning when officers are investigated.

There is, however a new wrinkle to anyone's assertion of his or her Fifth Amendment Right to to avoid self-incrimination. The U.S. Supreme Court has turned the right to refrain from making a statement that may tend to incriminate an individual on its head. It allows for an inference of guilt if a suspect refuses to speak. In Salinas v. Texas No. 12–246. Argued April 17, 2013—Decided June 17, 2013 the court held the following; "Petitioner, without being placed in custody or receiving Miranda warnings, voluntarily answered some of a police officer's questions about a murder, but fell silent when asked whether ballistics testing would match his shotgun to shell casings found at the scene of the crime. At petitioner's murder trial in Texas state court, and over his objection, the prosecution used his failure to answer the question as evidence of guilt. He was convicted, and both the State Court of Appeals and Court of Criminal Appeals affirmed,

rejecting his claim that the prosecution's use of his silence in its case in chief violated the Fifth Amendment."

Thus, an officer's refusal to make a statement under Garrity could potentially be used against him or her in court. Attorney Burt Springer advised that the following language be used in conjunction with the standard Garrity advisement:

> ***As a member of the I.U.P.A., (Local ###) I have immediate access to such Legal Counsel. I have previously been advised by my Legal Counsel to make NO statement other than to advise you that I am invoking my Constitutional Rights in accordance with the Fifth (5th) and (6th) Amendments of the Bill of Rights.***
> ***This advice was given long before this moment and has nothing to do with what I do, or do not, know regarding the investigation I believe you are conducting. Additionally, in accordance with the recent U.S. Supreme Court ruling in Salinas v. Texas, 12-246 I am not remaining silent in response to your inquiry. Rather, I am offering this response to what I perceive is an investigation you are conducting.***

The I.U.P.A. has Garrity pamphlets, which include a Garrity Warning card, and we can work with I.U.P.A. locals to make customized Garrity Warning cards that incorporate the Salinas language.

If you have any questions about Garrity, or Garrity Warning cards, please contact the I.U.P.A. General Counsel's office.