

## The Garrity Guarantee

By: Monte E. Hester; March 2002

Many years ago the United States Supreme Court, in Garrity v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616 (1967), held the Fourteenth Amendment prohibits use in subsequent criminal proceedings of confessions obtained under threat of removal from office. The protection extends to all, whether they are policemen or other members of body politic.

Justice Douglas delivered an opinion in that case that involved the investigation by the state of police officers who allegedly were fixing traffic tickets. There was a statute in existence that essentially said that if you refused to answer questions that relate to any investigation conducted by the state, criminal or otherwise, you could be removed from office or lose your position. The particular officers, after being advised of the existence of this rule, responded to questions. Their answers were used as evidence against them in a criminal case wherein they were convicted of conspiracy to obstruct justice.

Their conviction was reversed by the Supreme Court, which noted that the defendants, by virtue of the circumstances under which their confessions were made, found themselves “between the rock and the whirlpool.”

The case is interesting in that it post-dates Miranda. Miranda is referenced by the Court, giving some additional insight and understanding of the concept behind Miranda and the protections offered by the Constitution as it relates to incriminating statements. The reference to Miranda was a reminder of the Supreme Court’s ruling that if the conduct of the government is likely to exert such pressure upon an individual as to disable him or her from making a free and rational choice, then any statements that are made under those circumstances would not be voluntary.

The Court further indicated that the real question is whether a state, contrary to the requirement of the Fourteenth Amendment, can use the threat of discharge to secure incriminatory evidence against an employee. The Court concluded that, “policemen, like teachers and lawyers, are not relegated to a water-downed version of constitutional rights.”

This case, I think, is important to practitioners and should be used in arguments dealing with questions of whether or not a defendant’s statement has been taken in violation of Miranda, even with a waiver. The Court acknowledged that the coercion that vitiates a confes-

sion can be mental, as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.

Obviously, when you hear from your client the words, “I gave a statement because the police said if I cooperated they wouldn’t keep me in jail and I would be able to go home to my family,” or, “if you cooperate with us, you’re going to get the benefit of our cooperation,” or, “if you don’t cooperate, the judge is going to look unkindly upon you and send you to jail for a longer time,” then you’re looking at conduct that is coercive. Even if they have signed a waiver of their Miranda rights, one should seriously take on the challenge of having the statements declared to be a product of coercive conduct as defined in Garrity and Miranda.

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