

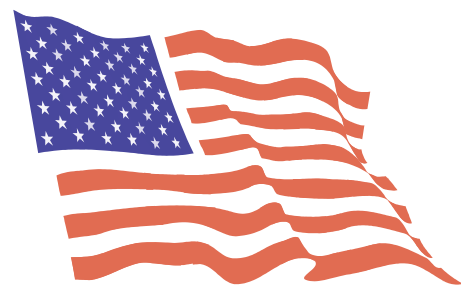


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Law Enforcement Journal

GARRITY ISSUE

SPRING 2005



Garrity Right: Protection and Prohibition Triggered by Compulsion ***Why employers and labor unions get it wrong***

By **FRANK A. GUIDO**
POAM General Counsel

A recent article, *Take the Garrity Quiz, Do You Know Your Rights?*, which appeared in the Winter 2004-2005 edition of *The Peace Officer*, a publication of the Fraternal Order of Police, has raised concern amongst POAM members who have been confronted by employer representatives touting the article as a vindication of their interpretation of *Garrity*.

At the request of POAM, a memorandum, consisting of a detailed legal opinion, was prepared analyzing the article and exposing its erroneous

conclusions. The legal opinion is reproduced here in its entirety:

MEMORANDUM

I. Introduction

Having reviewed the article, *Take the Garrity Quiz, Do You Know Your Rights?*, it is my legal opinion that reliance should not be placed on the conclusions reached, as they misrepresent rights emanating from *Garrity* and its progeny. The entire POAM membership and, in fact, the entire law enforcement community, should be warned that many of the conclusions within the article are incorrect, conse-

quently a risk exists that short-sighted employer representatives may attempt to use the inaccurate representations against the interest and rights of our law enforcement brethren.

To properly expose the author's misunderstanding, requires a thorough analysis of the *Garrity* decision and subsequent United States Supreme Court decisions, which are referred to as the progeny of *Garrity*. For purpose of this legal opinion, where reference to *Garrity* is made, it specifically means *Garrity* and its progeny.

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POAM Adds Additional Research Analyst

By **ED WRIGHT**
POAM Correspondent

Police Officers Association of Michigan Research Analyst John Barr doesn't hesitate when he's asked to offer the best advice he'd give to members of a law enforcement union who are about to begin contract negotiations.

"It's always better to negotiate than go to arbitration," emphasized Barr, who served over 30 years on the Executive Board of the Detroit Police Officer's Association. "When you go to arbitration, there's a 50/50 chance you're not going to get what you want. There is a lot of uncertainty involved. But when you negotiate a contract, you may not get everything you want, but at least you know what you're getting. There are no surprises."

Barr, who joined the POAM staff in March of 2004, knows first-hand how frustrating arbitration rulings can be for law enforcement unions.

"In my 35 years with the DPOA, we negotiated just one contract," Barr revealed. "The rest went to arbitration. We tried to negotiate, but it wasn't easy. One of the best things about working for the POAM has been that I've been able to see that negotiations still work."

POAM President Jim Tignanelli said Barr has strengthened the association's already impressive roster of law enforcement professionals.

"John Barr brings more than 30 years of experience to our office," Tignanelli said. "He has been accurately described as a 'detail man' and it shows with his work product. Being prepared for negotiations, mediations, or arbitrations has become more important than ever. Having thorough and effective exhibits prepared in our office helps business agents do an even better job. John's addition to a research department which is

capably headed by Marv Dudzinski helps the POAM be even more prepared than the employer."

Barr's long and distinguished law enforcement career began in 1963 when he served a two-year stint as a Detroit P.D. cadet. Following a close to two-year career as a police officer with the Kalamazoo Police Department, Barr was hired by the Detroit P.D. in April of 1969.

He retired from Detroit in January of 2004 with 35 years' worth of stellar accomplishments — both in law enforcement and labor negotiations. He was the DPOA's alternate steward from 1971-1980, the chief steward from 1981-1984, an Executive Board member from 1985-1986 and a full-time DPOA staff member from 1986 until his retirement.

"When I was full-time with the DPOA, I did a lot of work with grievance procedures — from the initial grievances up to and including arbitration," said Barr. "On average, I worked on about 225 grievances each year."

Barr was on the DPOA bargaining committee for six contracts, including two as the DPOA Act 312

panelist. He wrote much of the language for the contracts and served as a trainer for all of the incoming stewards during his tenure with the DPOA.

Barr said joining the POAM staff following his retirement from law enforcement was a natural progression for him.

"This is a great job for me and I'm happy to be here," said Barr. "It's a great atmosphere to work in. I like working with Marv (Dudzinski) and all of the business agents and other staff members here. It is a very, very professional staff of people. With my experience and the services that POAM provides its members, it's a perfect job for me."

Barr's primary responsibility is researching comparable contract information that is used by POAM business agents during the contract-negotiation process.

"I conduct research for both economic and non-economic factors for the business agents," Barr said. "The POAM has an extensive file of past contracts, both for member groups and non-member groups, so it's just a matter of compiling all of the information."

"This job is tremendously interesting for me. When I was with Detroit, we worked with pretty much the same contract year in and year out. In this job, it's interesting to see all of the different contracts out there. I'm already at the point where I can look at a contract and know if something doesn't look right. If I have a question about something, I go to Marv and he'll give me the answer right away."

Barr, who enjoys traveling, has six children and 10 grandchildren, all of whom live in the metropolitan Detroit area.

"I'm fortunate that none of them have moved out of the state, so I live within an hour of all of them," said Barr, who resides in Rochester Hills.



John Barr brings his extensive experience to POAM.

Signed and Sealed

Agreements gain vital benefits for POAM members

Summaries and highlights of recently completed local contract negotiations and 312 arbitrations



Negotiated

Garden City POA

Duration – 10/1/2003 through 9/30/2005

Police Officers and Dispatchers

Wage Increases:

2003	1%
2004	3%

Benefits vested after 10 years of employment

Weapons proficiency pay increased to \$675

Clothing allowance increase to \$975

Employee co-pays were increased to \$5/generic \$10/brand name

Local Presidents Randy Lorenzetti and Nancy Kiselica were assisted by POAM Business Agent Bob Wines.

Negotiated

South Haven POA

Duration – 7/1/2004 through 12/31/2007

Wage increases:

2004	2.5 %
2005	2.5%
2006	2.5%
2007	2.5%

Changed from traditional sick leave to paid time off.

Reduced contribution to MERS in both classifications based on a funding level of 120%. Unit may request a one time pension re-opener if funding level remains 120%.

Local President William Daggett was assisted by Business Agent Jim DeVries.

Act 312 Award

Romulus POA

Duration – 7/1/2002 through 6/30/2006

Wage increases:

2002	0% in lieu of \$1,450 signing bonus
2003	2.0%
2004	2.5%
2005	3.0%

Employees pension contribution was raised from 2.5% to 5%, multiplier was raised

Officers can purchase up to 3 years of past police service to enhance pension.

Shift differential increased .75 cents per hour on afternoons and \$1/hr midnights.

Prescription co-pay increased from \$5/\$10 to \$10/\$20.

Dispatchers increased from 71% of patrol pay to 80%.

Top pay at the end of contract – police officer \$55,408; dispatcher \$43,312.

The arbitrator was Eugene Lumberg; negotiating committee consisted of Glenn White, Rick St. Andre, Terry Palewski, Jaime Garcia and Steve Littleton. 312 conducted by Kenneth E. Grabowski, Marv Dudinski and John Barr.

Act 312 Award

Pittsfield Township POA

Duration – 12/31/2002 through 12/31/2006

Wage increases for years 2003, 2004 and 2005.

\$500 for new hires

\$2500 step 1

\$3000 step 2

\$3,500 step 3

\$4,000 step 4

\$4,600 step 5

3% wage increase for 2006

One new holiday starting in 2005 with 2 ½ times pay for all hours worked.

Increase in longevity pay for new hires and increases from \$250 to \$500 at 5 years and an increase from \$500 to \$1,000 at 10 years.

Increases in special assignment pay over top wage

Detective Bureau \$1.25 per hour

Court Officer \$1.00 per hour

Domestic Violence Officer \$1.00 per hour

Improvements in optical benefits and clothing allowance

Drug rider increased from \$10 to \$20

Pension improvement from B2 to B3

Local negotiating committee included James Wickman, Aaron Childs and Gary Hanselman and were assisted by Business Agent Tom Griffith, Marv Dudinski and Bill Birdseye. Arbitrator was George Roumell Jr.



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- Mid-States Coalition of Police Officers

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More Signed and Sealeds on page 35



From the President's Desk

by Jim Tignanelli

Garrity also defines differences in unions

Those of you who have visited the POAM office in Redford have probably also seen my “shrine” to the late Dale Earnhardt. I held him in very high regard but am certain that, were he still alive, he would praise his team for his success. Regardless of what you might do in life, none of us can do it alone. While we are responsible for our actions, our success always depends on those persons that we surround ourselves with.

Working together with our lobbyists in Lansing and Washington D.C., has caused the POAM to be an effective voice in the creation, modification, or protection of rights for our members. Developing a team at the POAM, which includes a group of very effective business agents, office staff, attorneys and executive board, has led to our membership rolls nearly tripling in the past ten years.

I find it flattering when other labor organizations do mailings that refer to the POAM as the “largest” or the “biggest” in the state. I find it odd when they follow that with a statement that claims that smaller is better. But then, what else could they say? Apparently it is better to have part-time attorneys on retainer who spend part of their day dealing OUIL cases for persons you may have arrested than to have full-time attorneys employed by your labor organization as your representative. Should the cost of an attorney effect your right to be professionally represented? I say “NO”.

Could it be desperation that causes these other organizations to risk your representation—your statutory rights—in an effort to discredit the POAM? They are losing all the arguments. Unfortunately, when they lose, they risk diluting those rights you hold so dearly.

I hold no ill feelings for the FOP and consider some of its leaders to be friends. Many POAM members (myself included) have also been members of the FOP. It's a social organization that allows current and retired officers and their families an opportunity to gather. Their participation as a labor representative in this state is very limited, however. Unfortunately, many see them as an outpost for information as it regards police officers, deputies, and corrections officers. You can understand my dismay when a copy of their newsletter which included a “*Garrity* Quiz” was forwarded to me.

The quiz I refer to states “only the employer can invoke the *Garrity* warnings; you can not self-invoke *Garrity*.” This is not simply misleading.....this is totally false. The person hired to author this article claims to be on your side but sounds more likely to be someone hired by your employer. Some of the smaller labor organizations in this state have been making similarly outrageous statements as it regards *Garrity* in a half-hearted attempt to discredit the POAM. We can handle a little sand kicked our way, but this opinion.....while totally erroneous..... may create some difficult situations for you if not responded to immediately.

In an effort to get the truth out—once again—our general counsel, Frank Guido, has prepared a rather comprehensive piece for this edition of the Journal. In addition to the Journal, please review our website, POAM.net, when you are able as it has even more *Garrity* details on it. Our seminar on June 1 in Grand Rapids will include a presentation by our legal staff as well. Please try to attend. You need to know what is accurate. You are the first line out there. Be safe.

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Vice President's Viewpoint

by **Wayne Beerbower**

St. John Foundation founded by local officer after loss

My column for this issue of the *Law Enforcement Journal* is written with a heavy heart. Last summer on May 27th my friend Evan Warsecke's four-year-old son accidentally shot himself with Evan's off-duty weapon while he was supposed to be in bed.

Evan was downstairs with several Grand Traverse County officers watching a sports event. The gun was hidden on the top of a tall armoire in the master bedroom when Evan Jr. snuck into the bedroom and climbed up to find the gun.

It's hard to believe that something good could come from this tragedy. But that is exactly what has happened. Evan worked with me at the Farmington Hills Police Department for several years before being hired by Grand Traverse County. Subsequently, the Traverse City police department hired him and he had worked there for a short time prior to the accident.

The outpouring of support from the community, Traverse City PD, Grand Traverse County Sheriff's Department, Farmington Hills PD (and many others) that followed young Evan's death convinced Evan and his wife Laura that they needed to do something for other families who are suffering.

They established the St. John Foundation (honoring Evan Jr.'s patron Saint)

as a way to heal their loss and memorialize his passing. Having received so much support, both financially and emotionally, they avoided bankruptcy and the disintegration of their family (they have five other children). Now they want to help other families who lose a child or need help for medical conditions involving children.

Evan and I recently spoke about the foundation and I offered to help publicize it through the POAM, which had already made a contribution to this worthy organization. The St. John Foundation is already helping families in the Traverse City area, but the Warseckes want to offer assistance to any police officer and family who suffer the death, illness or injury of a child. The Foundation will assist our membership with financial matters such as lost income, funeral expenses, medical treatment and food.

I hope that no one else will experience the tragedy that the Warseckes went through but if you do, the St. John Foundation will be there for you.

To seek the resources of the Foundation call the toll free number 1-866-803-0085 or go online to <http://stjohnfoundation.com>.

New Partnership Delivers Valuable Benefits to Members Brought to you by the Police Officers Association of Michigan

The POAM is pleased to announce a new partnership with Security Benefit Group (SBG) and Retirement Plan Advisors to provide members three exciting employee benefit programs. Under this endorsement SBG will provide the POAM Member Healthcare Reimbursement Account (HRA) Program, 457 Deferred Compensation Program, and 401(a) Defined Contribution Program. Retirement Plan Advisors has been selected to provide on-site service, financial education, and investment advice to participants for all three programs.

What is a Healthcare Reimbursement Account?

One of the biggest issues facing our members today is paying for health insurance and related medical expenses such as prescription drugs during retirement. With medical costs rising two to three times faster than inflation, more members are facing the reality of approaching retirement age without enough dollars to cover their medical expenses.

As a result, more and more employees who are eligible to retire are "job-locked"; they simply cannot afford to retire because of rising healthcare costs.

To address this growing concern, we are introducing the POAM Healthcare Reimbursement Account (HRA). Our HRA program allows you to accumulate dollars to help cover the cost of healthcare in retirement (separation of service) for you, your spouse and your eligible dependents.

Because contributions are made on a pre-tax basis, your healthcare savings are *not* subject to Federal and State income or employment taxes. That immediate tax savings helps you accumulate more dollars to fund health insurance and medical expenses in retirement.

In order to qualify for the tax savings, IRS regulations require all members of your group participate in the program and be subject to the same contribution formula(s).



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There are many potential sources of contributions. In addition to ongoing contributions, a group may elect to contribute dollars from unused sick, vacation, or compensatory time. Contributed on a regular basis, these dollars can grow to a meaningful account balance at retirement.

The examples below are hypothetical illustrations of accumulations over time using different contribution sources. Calculations are based on an annual salary of \$36,000 with all contributions invested at an assumed rate of return of 8%. Actual investment results will vary.

Contribution Sources	5 years	10 years	20 years
1 day of unused vacation, sick or compensatory time deposited at year end	\$874	\$2,159	\$6,820
\$600 annual contribution deposited per paycheck	\$3,968	\$9,803	\$30,695
Annual sick leave buy-back of 6 days deposited at year end	\$5,246	\$12,954	\$40,922
At retirement contribution of accumulated unused benefits (sick, vacation or comp. time)	Varies by retiree - could be \$20,000 or more.		

Once you separate service, depending on the contribution formula, you may withdraw funds from the HRA for health insurance premiums, including long-term care insurance, and/or qualifying medical expenses not covered by your medical, dental or vision plans. Additionally, unused benefits are rolled over from year to year for future expenses.

What's the Next Step?

Representatives from Retirement Plan Advisors will contact each group to explain how the HRA, as well as the other endorsed programs, can benefit you. Please take time to meet with them to learn about these important programs. Meanwhile, for more information call Retirement Plan Advisors at (734) 421-2212 or email: POAMHRA@retirementplanadvisors.com.

If your group has a contract opening this year and is currently responsible for all or a part of your retiree health insurance premium, please contact Retirement Plan Advisors today!



The Treasurer's Ledger

by William Birdseye

New members need to attend annual convention

As membership in POAM continues to spiral (35 new groups and 1000 new members in 2004 alone) we hope that these professionals, and especially their local leadership, experience the camaraderie, acknowledgment and good times that await them at our Annual Convention in Grand Rapids on June 1st - 3rd.

Wednesday is slated as a seminar date, one of at least two POAM sponsored educational events held every year. This year's topics will include information on the POAM VEBA (medical retirement account), a presentation by the Michigan Employees Retirement System (MERS) and an extensive session on *Garrity* rights. There has been a ton of misinformation disseminated by other so-called police unions on this subject and your General Counsel, Frank A. Guido, who is the leading expert on this issue will conduct a symposium on the topic.

Delegates have a choice on Wednesday night. Ken Grabowski has secured the finest steak house in the city to host a first-class cigar party. If you are not into puffing stogies and sipping liqueurs, you better be signed up for the POAM Poker Run. You will be walking the beat in the Grand Rapids pub district collecting cards and making your best poker hand in the hopes of taking a chunk of the large kitty.

Another tough decision on Thursday. Fishing or golf. Big "kings" on Lake Michigan or the plush fairways and greens at Saskatoon Golf Club. We will reassemble Thursday night for a cocktail party complete with live entertainment, raffles and other special features. You will have the opportunity to meet vendors offering special deals to law enforcement officers, and dignitaries which typically include prosecutors, state reps, senators, judges and members of the Michigan Supreme Court. None of us will ever forget the special visit last year by Vice President Dick Cheney.

On Friday we will take care of some POAM business and move on to honoring our Police Officers of the Year. This is an emotional and uplifting ceremony that will make every law enforcement officer proud of their chosen profession. The convention concludes with a delicious dinner early Friday evening.

New members already have been the beneficiaries of improved services and resources provided by POAM. I am here to tell you that you have not had the complete "POAM experience" until you join your brother and sister officers at the Annual Convention. Complete details are available in this edition of the *LEJ* or call the POAM office at (313) 937-9000.

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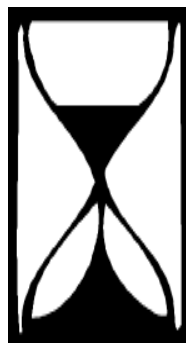
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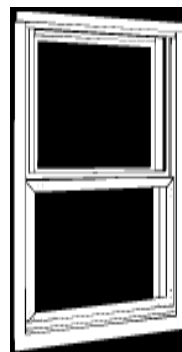


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Secretary's Notepad

by Marv Dudzinski

Officers live and die in patrol cars

When I hear of a Michigan police officer being killed in the line of duty, I try to remember how that particular officer lived his or her life, rather than the circumstances surrounding their death. Are they survived by a spouse, children and their parents? How long did they work at their department and what were their duties and/or special accomplishments?

Upon recently hearing of the death of Sgt. Michael Scarbrough of the Wayne County Airport Authority, an interesting fact struck me. All six Michigan police officers killed in 2004, and the last nine in a row, died from injuries sustained while they sat in their cruisers. The most troubling of these recent incidents were the deaths of Mark Sawyers, Jennifer Fettig and Matthew Bowens, who were ambushed and murdered while performing a routine task in their vehicles.

While shooting deaths of law enforcement officers have actually declined by 36% over the past three decades, the number of officers killed in auto accidents for the same period rose by 40%. We have known for years that the most dangerous thing about traffic stops is being hit by another

unrelated driver, especially in the late evening and early morning hours. In 2002, two Wisconsin police officers were deliberately struck in their parked patrol car at 70 mph and died instantly. There are now more officers killed in traffic related accidents than in shootings.

I bring this to your attention to remind all of you not to become complacent in the tasks you perform every day. Sitting in your parked vehicle can be just as dangerous as being involved in a high-speed pursuit.

I have been informed that at least one company is interested in producing a product that acts as an umbrella for parked police cars, warning the officer of movement within 50 to 75 feet and in a 360° circle. The Executive Board of POAM encourages the government and private sector manufacturers to work together to develop new technology that protects police officers in a stationary or moving patrol car.

We extend our deepest sympathies to the families of officers lost in the line of duty. As always, POAM will be present in Washington, D.C., at the National Law Enforcement Officers Memorial to provide support, mourn the families' sacrifices, and honor their loved ones' contributions to our communities.



Captain Dave DeForest (POAM member - Cadillac Command)
has been fishing Lake Michigan for salmon and trout since 1973. The "Enforcer" is a true 29-foot Silverton Fly Bridge cruiser equipped with the latest in electronics and safety.

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- Waive your current carrier's co-pay;
- Provide free cleanings and adjustments;
- Repair breakages occurring in the line of duty at no charge; and
- Provide a one-year breakage protection warranty;

OPTION 2 — Members without current vision coverage:

SVS VISION STORE LOCATIONS WILL:

- Discount your total out-of-pocket sales amount;
- In addition to any current advertised pricing;
- Provide free cleanings and adjustments;
- Repair breakages occurring in the line of duty at no charge; and
- Provide a one-year breakage protection warranty.

OPTION 3 — SVS VISION CARE PROGRAM

SVS VISION CARE PROGRAM (AVAILABLE TO POAM MEMBERS AND THEIR DEPENDENTS AT ANY SVS STORE LOCATION), FOR A MINIMAL ANNUAL FEE OF \$29 PER MEMBER AND \$20 PER DEPENDENT, SVS WILL PROVIDE:

- Vision testing examination by a doctor of optometry;
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- 25 percent off our retail price on lenses, coatings, and tints;
- 30 percent to 65 percent off our retail price for contact lenses, depending on the type of contact lenses;
- 20 percent off our retail price for contact solutions.

30 Michigan Locations to serve POAM members



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- Allen Park (313) 382-0100
- Brighton (810) 227-2376
- Detroit (Mack) (313) 240-7551
- Detroit (W. Warren) (313) 240-7551
- Flint (Lapeer Rd.) (810) 742-6733
- Flint (S. Linden Rd.) (810) 230-9300
- Fraser (810) 293-4198
- Garden City (734) 458-5181
- G. Rapids (Plainfield) (616) 364-4099
- G. Rapids (28th St.) (616) 245-6300
- Imlay City (810) 721-9411
- Kentwood (616) 538-6511
- Lake Orion (248) 693-8666
- Lansing (517) 421-2844

- Livonia (734) 421-2844
- Marine City (810) 765-3509
- Marysville (810) 364-5520
- Monroe (734) 243-0960
- Mt. Clemens (810) 468-7612
- Oak Park (248) 399-1556
- Saginaw (517) 791-1044
- Shelby Twp. (810) 247-2652
- St. Clair Shores (810) 778-7542
- Sterling Heights (810) 979-6260
- Taylor (734) 287-3311
- Trenton (734) 675-8197
- Walker (616) 363-9831
- Waterford (248) 666-4020
- Ypsilanti (734) 572-8822

The annual subscription rate for this plan will be \$29 per each POAM member and \$20 per each dependent.

For more information, contact your nearest SVS location (see the list above).

FRESH BLOOD BRINGS NEW LIFE

to Walled Lake Police and Dispatchers

By ED JACQUES
LEJ Editor

Fourteen months into expired contract negotiations and two weeks into his newly elected position on the Executive Board, Walled Lake Police and Dispatchers President Paul Shakinas was a very frustrated man. He had just sat through his first negotiation meeting, which was no more than his union representative dropping a list of demands on city officials and the typical “we’ll get back to you” response from the administration. Shakinas had heard that previous discussions between Michigan Associations of Police and the City had gone cold, but now he could see that negotiations were unnecessarily heading into binding arbitration.

Before the new Executive Board’s election, members were uninformed about the progress or lack thereof in their negotiations. They were also afraid to file grievances or talk to the administration and their supervisors. Michigan Association of Police (MAP), without consulting membership, began talking to select council members about their perceived problems. This move had clearly hampered the Walled Lake Police and Dispatchers Association from making any progress toward settlement.

Paul Shakinas knew all of the issues and players involved, took the advice of two trusted people in the department and called POAM to talk with Ken Grabowski and me about switching affiliation immediately. Walled Lake Officer Cal Rix, who served 29 years in Oak Park had been encouraging previous leaders to make that contact for the last four years. But, the bottom line is that this was a gutsy call under the circumstances, one that I’ve seen seasoned leaders shy away from. Grabowski was impressed after meeting Officer Shakinas. “This kid is going to get things done,” remarked Ken.

Shakinas made another smart move. He enlisted the support of his Vice-President Anthony Noble to encourage fellow members to keep an open mind about switching unions and assist the group in researching the quality of POAM services. Noble, a respected and vocal officer was the Alternate Steward under MAP, but was allowed little or no involvement in any contract negotiations or grievance procedures.

Within nine weeks, POAM won a resounding victory over MAP, the local association drafted a set of by-laws and contract negotiations were started again. POAM assigned Thomas Funke to be the group’s Business Agent with the mandate that old wounds be healed before new negotiations begin. Funke would be assisted by Shakinas and Noble.

“The difference in the tone and context in our first meeting was like night and day,” commented Paul Shakinas. Anthony Noble added, “the discussions were open and friendly and the spirit of cooperation made a welcome visit to everyone in the room.” The City and Union dropped non-essential issues in the hope that both sides could make up for lost time. After all, twelve hour shifts were now being discussed, even though the previous union could never develop a schedule to accommodate both parties. To the City’s credit, they had always been willing to look at 12 hour shifts as long as they weren’t a financial hardship and especially if they helped lift officers’ morale. City Attorney Gary King and Business Agent Tom Funke hatched an idea that put the last pieces of the puzzle together. The last shift before an officer’s long break and the first shift back would be 10 hours long.

Although MERS was discussed in previous negotiations with MAP, no agreement was made on proportionate funding. In the end, employees got the B-4 (2.5% multiplier) with a significant wage increase over what the city offered MAP.

But the most rewarding aspect of the new contract provided for complete retro-active pay. MAP representatives had threatened Shakinas and Noble that the group would lose that if they switched unions. “Ken Grabowski told me that would be their ploy to try and scare us into staying” said Shakinas. “I agreed with Ken that the administration did not intend to penalize us or take advantage of our situation.

Within three months of certification, POAM, the city and the Walled Lake Police and Dispatchers Association had reached an amiable agreement. Ratification was 100%. Business Agent Tom Funke played a significant role but wanted to acknowledge the dedication of everyone else involved. “Paul Shakinas and Anthony Noble worked very hard on this contract and I loved their enthusiasm and zeal through the difficult times. Jerry Walker is the Director of Public Safety and City Manager of Walled Lake and was a key player in every meeting. He has a ton of responsibilities, so I really appreciated his availability and urgency in negotiating a fair deal.” Director Walker complimented Funke on his work ethic and reasonableness. “Tom always came to meetings prepared and with an open mind,” said Walker. “He’s easy to talk to, and that really helped move the process along.”

Paul Shakinas is pleased with the current representation POAM is providing, but thrilled with a bright, new sense of unity that has followed in the wake of changing unions. “When contract talks started two years ago, only three officers and no dispatchers attended the meeting to outline our issues. Almost everyone came to the ratification meeting and we now have an Executive Board made up of five members. We have made a commitment to become more active in department and community issues that have an impact on our careers.”

In typical old-timer’s language Cal Rix emphasized “People should have listened to me sooner.”

The Walled Lake Police and Dispatchers Association Executive Board consists of: Paul Shakinas, President; Anthony Noble, Vice-President; Tiffany Sapelak, Secretary; Cal Rix, Treasurer and Tom Beegle, Sergeant-At-Arms.



L to R: Paul Shakinas, Director of Public Safety
Jerry Walker and Anthony Noble.

McKEOWN PUT TO PASTURE

By ED JACQUES
LEJ Editor

Embattled Mount Clemens Police Chief L.J. McKeown submitted his resignation on January 12, 2005, capping a stormy two-year tenure. His reign was marked by numerous controversies and confrontations with his police officers, citizens and POAM executives. Ex-chief McKeown faced criticism for his attitude and policies – including his demand for acknowledgement of his presence whenever he walked into a room.

McKeown’s arrogance was a key ingredient in being named POAM’s “Horse’s Ass” for 2003. The award is given annually to the police administrator who purposely violates contract language while initiating policies that deteriorate a department’s morale. In 2003, neighboring police officers and POAM members chipped in to rent a plane which circled the annual Mt. Clemens concert and fireworks display with a simple message – “Save Mt. Clemens - Fire the Police Chief.” This action told the citizens that there was a real problem



brewing in the department and only Chief McKeown could solve it by leaving. Eventually, commission members got the facts and any support for McKeown fizzled.

McKeown joins two other previous “Horse’s Ass” recipients who are currently decommissioned. Oak Park Public Safety Director Robert Siefert retired shortly after receiving his honor and the inaugural winner, James B. Golden (Saginaw Police Chief) left the city under pressure to take a job at the Philadelphia International Airport. Golden was fired in 2004 for hiring a stripper for an important security job at the facility. 2004 winner, Genesee County Sheriff Bob Pickell, is the sole survivor and has entrenched himself in the job by winning re-election last year.

Who is the 2005 POAM Horse’s Ass? It is anyone’s guess as there is no runaway candidate as of the time of this publication. Tradition mandates that the honoree be exposed at the POAM convention where their full size poster will be added to our “Wall of Shame.”

Flint Township Police Department builds new digs

BY ED WRIGHT

POAM Special Correspondent

From night to day.

That's how veteran Flint Township Police Officer Jeff Hovey described the transition the department made when it moved from its former 3,000-square-foot, cramped facility to its current building, a gleaming \$4.5 million structure that gives the 37-member workforce 11 times more space in which to do their often stressful, always demanding job.

It's also 100 times more employee-friendly, judging by Hovey's glowing assessment.

"There is no comparison to the old place," Hovey said. "There are a lot of residential homes in this area that are bigger than the old facility – and we had over 40 people working in it. We have eight holding cells now for prisoners (compared to one in the old building). We have a security system in place when people move from room to room. We have a secure satellite port where we can drop off prisoners. We have a workout room. The list goes on and on."

Unfortunately, there was a greater cost attached to the new facility than the \$4.5 price tag. On Feb. 1, four Flint Township police officers were laid off – the direct results of a threat the Flint Township Board of Commissioners made a year earlier when the building opened.

"They tried to strong-arm us by telling us that if we didn't change our health insurance, we would lose four officers," Hovey said. "Well, on Feb. 1, four officers were laid off, and there is talk it is going to be more. The township board here is very hard to work with. In fact, as long as I've been here (19 years), we've never negotiated a contract; we've always had to go to arbitration."

"Morale really increased when we moved into the new building, but the it's gone down again since the lay-offs."

Hovey said Flint Township residents' reaction to the new facility has been "hot and cold."

"The people who knew what the situation was in our old building thought it was about time we got something bigger," he said. "But there are other people who

think it's too big. They call it the 'Taj Majal.' What they don't understand is that no tax dollars were used for this project. Three million came from bonds and the rest came from the township's Central Business Authority."

The facility sits on a hill, approximately four miles off I-69 in

Flint Township. Visitors are greeted by a spacious lobby that has display cases on its side walls and the reception station on the back wall.

Among the impressive features of the facility are:

- A community room that is used by employees as well as residents, who can reserve it for meetings;

- Eight holding cells, which are monitored by a series of state-of-the-art cameras and an officer;

- A forensics lab that is equipped with an extensive set of investigative tools. "In the old building, the 'lab' was out in a garage and there was no heat or air conditioning," said Hovey, who is the department's forensics officer.

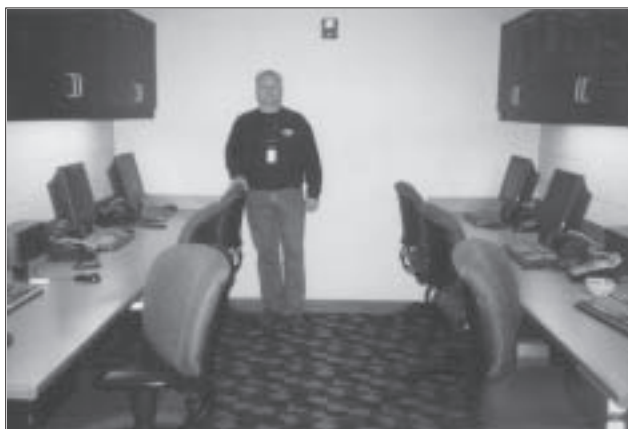


Flint Township was long overdue for a new building, and the structure and layout is impressive.

- A roll-call room that sits adjacent to a computer room, which is equipped with six new computers on which officers can write their reports. "Before, we had to wait in line to get on a computer," Hovey said. "Now, there is never a wait."

- A workout room that is equipped with close to \$35,000 worth of weights and cardiovascular equipment. "Everything in here was funded with grant money," Hovey said. "One of our lieutenants, Robert Battinkoff, did all of the work to get the money for the equipment."

- Finally, a roomy locker-room area that has shower stalls and a locker for every officer. "Before, we used lockers in a school across the street from the building," Hovey said, with a smile.



Flint Township POA President Jeff Hovey stands in the state of the art report writing room.



The roll call room doubles as a training and meeting site.



The department has its own workout facility to relieve stress before or after a shift.



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Retirement Plan Advisors and Security Benefit Group to Administer New POAM Programs

POAM is excited about the professionalism and support of these companies and our ability to incorporate the VEBA into existing contracts.

On April 1, 2004 POAM introduced its Member Healthcare Reimbursement (VEBA) Account Program, POAM Member Deferred Compensation Program and the POAM Member Defined Contribution Plan.

The announcement came after an extensive nationwide

search for a provider that specialized in customized programs and service for public employees. The search led them to America's heartland and Security Benefit Group in Topeka, Kansas. SBG Executives from all over the Midwest came to the POAM headquarters and impressed Bill Birdseye and Jim Tignanelli with their knowledge, commitment and products that fit many of our member's needs.

Finding the perfect company to provide on-site program support, education and financial advice to participants was as easy as looking in our own backyard. Mark Mitchell, a retired Livonia police officer, is a Regional Director for Retirement Plan Advisors in South Lyon, Michigan. Mitchell specializes in servicing the public employee sector and currently advises some existing POAM units. Members have been impressed with his expertise and his personalized service.

At the Executive Board meeting in March, representatives from SBG and RPA conducted a training seminar for all Business Agents on the benefits of the POAM Member Healthcare Reimbursement (VEBA) Account Program for employees and employers alike. POAM is excited about the professionalism and support of these two companies and our ability to incorporate this benefit into existing contracts.

Representatives from SBG and RPA have purchased exhibitor space at the 2005 convention to meet personally with members and explain these new POAM products. **Please see article on page 4.**

SVS Vision Gives Special Treatment to POAM Members

The Police Officers Association of Michigan has forged a strong relationship with SVS Vision, a highly respected vision care provider that has diligently served patients throughout Michigan since 1974. SVS Vision, which is a union company, has 30 convenient locations in the state to readily serve POAM members.

Years ago, the Executive Board researched and heard a number of proposals from eye-care companies. For a number of reasons they were most impressed with SVS Vision. Besides designing special programs and pricing for members and their families, Doug Zalecki of SVS has forged a strong personal relationship with POAM. SVS vision is a regular advertiser in the Law Enforcement Journal and exhibitor at our annual convention.

Director of Member Services, Ed Jacques, is trying to develop more of these type of relationships with our vendors. "It's a two way street," says Jacques. "They've made a financial commitment to POAM and we have to return that favor when shopping for a product or a service." **See page 8 for special deals from SVS.**

Huntington Bank Has a Special Tie to POAM

Huntington Bank and POAM teamed up to sponsor the first ever POAM Child Safety ID Day at all their metro Detroit branches on November 20, 2004. Linda Obrec, Vice President and Regional Marketing Manager of Huntington Bank and wife of POAM member Scott (Dearborn Heights Command) was instrumental in organizing every detail associated with the event. Linda has promised special offers to POAM members as Huntington Bank becomes a "preferred vendor." Thanks again Linda and we'll see you in Grand Rapids.

Dave Bray of Huntington Bank is our featured writer of this edition's Financial Page which appears on page 32.

Old Friend Starts New Program

Ron De Maagd, former Assistant Southfield City Manager and long time pal of the POAM Executive Board has landed at Victory Home Loans. Ron approved some very good contracts for our local POA and Command units and will continue that personal involvement with all POAM members. **See ad on back cover.**

KENNEDY AGENCY builds trust with POAM members

By ED JACQUES
LEJ Editor

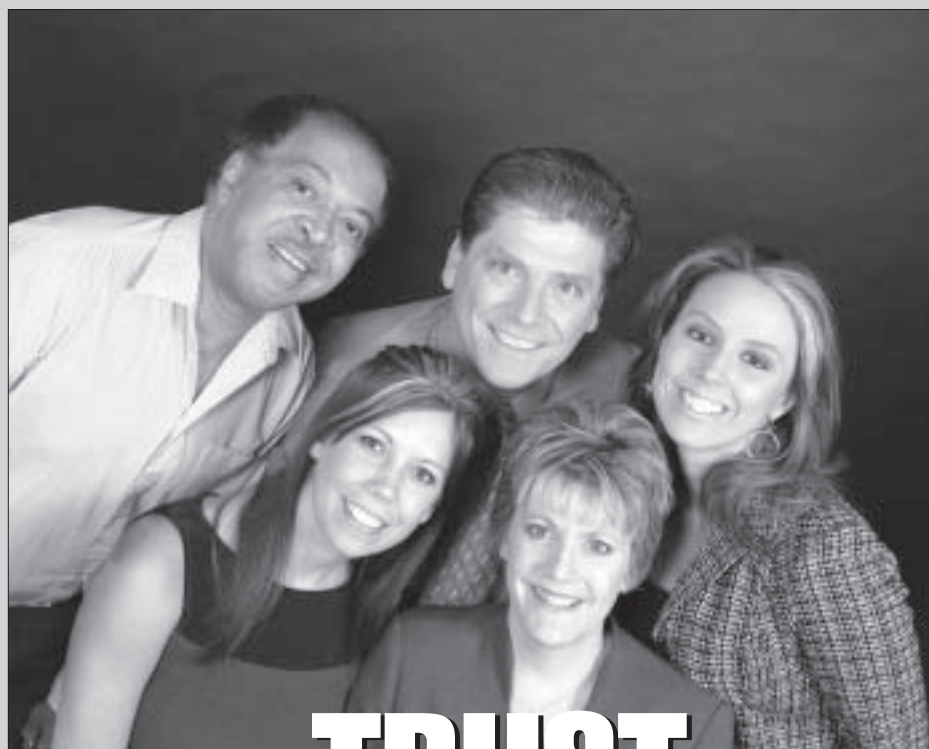
When Lisa Kennedy and Vivette Bowling from Nationwide Insurance visited the POAM office last year to develop a special program for POAM members, I was encouraged with their plan to partner with our organization. But actions speak louder than words.

One year later I couldn't be more proud of our affiliation and very appreciative of what they have contributed to our Association and the services provided to our members. Besides the special discounts to POAM members, the Kennedy Agency and Nationwide Insurance have been regular advertisers in the *Law Enforcement Journal* and exhibitors at the Annual Convention. They have also donated prizes and become sponsors at many POAM special events.

I have spoken to many of our members in Western Wayne County that have taken advantage of the special rates and personalized service of Lisa, Susan Towne and the agency's entire staff. The feedback we have been receiving is that these folks care about your needs and are willing to spend the necessary time to make sure your family is protected.

"Trust is a big issue with police officers," states Lisa. "I know we are establishing it with POAM members because we're starting to get referrals." Susan Towne wants to remind police officers of a fact they learned in training. "Life comes at us fast and we need to be prepared for the unexpected. "We're here to help."

Members can receive neighborly service and friendly pricing no matter where they live in Michigan. The Lisa Kennedy Agency's telephone number is (734) 414-9902.



TRUST
a big issue

Heroism may cost the county

Deputies running into fire could be a safety violation

By AMALIE NASH

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A state agency is investigating whether workplace safety regulations were violated when three Washtenaw County Sheriff's deputies rushed into a burning apartment building last fall and pulled residents to safety.

Sheriff Daniel Minzey said he was shocked to learn that someone had filed an anonymous complaint with the Michigan Occupational Safety and Health Administration after his three deputies received two awards for efforts labeled as heroic and life-saving.

"I'm proud of them," Minzey said. "They faced a dangerous situation and had to make a decision. They decided to do something to try to save a life. Now they're being investigated as if they did something wrong."

The Sheriff's Department could face sanctions, including fines, if MIOSHA finds the deputies' actions violated safety rules. The complaint, which was served to the Sheriff's Department on Jan. 11, alleges that the department allowed and suggested that its employees enter a fire without protective equipment and breathing apparatuses. The complaint also says "this has happened several times at the department."

Sheriff's Cmdr. Dave Egeler said he has strong reason to believe the complaint was filed by someone associated with the Ypsilanti Township Fire Department. A captain and union official at the Fire Department denied it was anyone within that department.

John Brennan, division director for general industry and safety and health at MIOSHA, confirmed that an investigation was occurring but said he could not release further details until the probe is complete. He said he did not know who filed the complaint.

MIOSHA could levy citations or fines if officials determine that state workplace safety rules were violated, Brennan said. The fire being investigated occurred Nov. 17 at Golfside Apartments in Ypsilanti Township. When Deputies Eugene Rush, Doug Ballou and Derek Wiese arrived several minutes ahead of the fire department, they ran into the burning building and helped a 68-year-old woman out before going back in a second time and pulling a despondent man out. The deputies were treated at a local hospital for smoke inhalation. Wiese also suffered a back injury from carrying the man out, officials said. They were wearing their sheriff's uniforms, and deputies do not have firefighting gear, officials said.

The deputies were publicly recognized by the Ypsilanti Township Board of Trustees and the Law Enforcement and Industrial Security Association of Washtenaw County, Minzey said. MIOSHA investigators have interviewed the deputies and others at the scene, but

they do not sanction individuals - just employers, officials said.

Rush said Monday that he would do the same thing if faced with a similar situation today. He strongly disputed the allegation that the Sheriff's Department suggested or encouraged any employees to go into burning buildings.

"Everyone has a job that they have to do, and MIOSHA is no different," Rush said. "No one told me or suggested to me that I go into a burning building without the proper equipment, and that allegation is in poor taste. There was not much time, and we had to react, and the outcome was great. We make judgment calls each time we step into the uniform."

Minzey said his department does not have a policy concerning when or whether deputies can enter fires or other hazardous situations. He said it would be impossible to cover every circumstance with a written policy.

"I don't want a policy to stand in the way of saving a life," Minzey said. "We're trusting that they are the only ones who can make those split-second decisions. (MIOSHA) is welcome to come in and review what they did."

Although the Golfside incident is the only one currently being looked at, MIOSHA investigators also have brought up past incidents where sheriff's deputies entered burning buildings and a collapsed trench, Egeler said. Deputies kicked in doors and windows of a mobile home in an attempt to save two people inside an Ypsilanti Township mobile home a year ago, but both residents died. A deputy jumped into a trench in December after a construction worker became trapped under a mound of dirt in Ypsilanti Township.

Ypsilanti Township Fire Capt. Brad Johnson, a union trustee, said the union did not file the MIOSHA complaint, and there had not been any talk of anyone within the department filing a complaint. He said he had no idea who would have filed a complaint.

"We don't set the policy of how they react in an emergency," Johnson said. "Anytime anyone goes into a smoky building, it's dangerous, but they did what they thought they had to do to save lives. It's not for us to second-guess."



L to R: Eric Wiese, Eugene Rush and Derek Ballou



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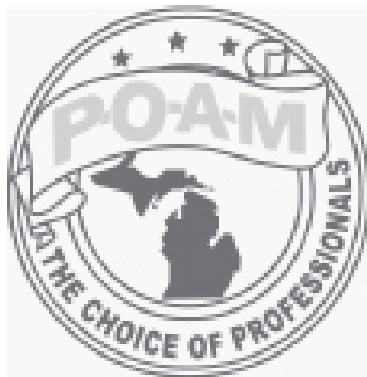
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By Laurie A. Reinacher,
M.A., L.P.C., DAPA
Executive Director/
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Thin Blue Line of
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It's your day off and you take the time to go ice fishing! After being on the ice for several hours, you

hear frantic activity and screaming outside your ice shanty. A man riding his snowmobile has broken through the ice. Another well-meaning rescuer has also fallen into the freezing water while attempting to save the snowmobiler. Both men are struggling to survive due to the heavy clothing and freezing temperatures.

This near tragic incident had a great ending for the persons rescued. However, for the **off duty** law enforcement officer who saved both of the potential drowning victims, luck was not on his side. During the rescue efforts he felt an immediate excruciating and debilitating pain race through his back and into his buttocks, resulting in four major surgeries to correct the injuries. This heroic and life saving deportment has resulted in more than a two-year nightmare that bedevils Hamtramck Police Officer Christopher Garon.

Imagine as a law enforcement officer when you take the "oath of office" which is an acceptance of responsibility to protect, serve and defend the community in which you serve, if your department directed you too only utilize your skills, education and training when on duty, and only within your jurisdiction. If a law enforcement officer followed these directives, the aforementioned two drowning men possibly would not have been saved, as it was off duty and outside the jurisdiction of this officer. Hamtramck Police Department did just that. Following this heroic action, Officer Christopher Garon was denied workman's compensation and medical coverage for his off duty actions.

The above incident raises the question of an officer performing law enforcement actions off duty, if it is known that a department or municipality is not going to support their trained actions and natural instincts through the provision of financial and medical benefits and possible occupational jeopardy.

Further consider that following an off duty police action which results in an injury requiring multiple surgeries if the department and the municipality are denying medical coverage due to the injury or injuries being off duty and out of jurisdiction, would you as an officer still have performed the police action knowing that you are jeopardizing your career, financial security, family security and physical health?

The City of Hamtramck has an Oath of Office and Law Enforcement Code of Ethics that are the guiding principles for all law enforcement officers to live their lives by, whether officially on duty or off duty. The

City of Hamtramck stood firm on their position to deny Workman's Compensation benefits and all medical bills and expenditures to Officer Garon for his honorable actions while off duty. The Thin Blue Line of Michigan worked with Officer Garon and the Hamtramck Police Officers Association to engage knowledgeable and professional legal counsel, as the City of Hamtramck continued to maintain an unreasonable position on this matter.

The Thin Blue Line of Michigan continued its assistance to Officer Garon in this land mark case preparing, testifying and working closely with legal counsel to impact a favorable resolution for Officer Garon and all brethren in law enforcement. Anything short of a positive decision and settlement would send a devastating shockwave throughout Michigan's law enforcement community as it relates to off duty law Judgement day for Officer Garon begins nearly two years from his date of injury and heroic act on January 10, 2005 in front of the Honorable Andrew G. Sloss, Magistrate for the Worker's Compensation Bureau. Testimonies from Officer Garon, Isaiah MacKinnon and Scott Reinacher of the Thin Blue Line of Michigan were offered in support of Christopher Garon.

Testimony by two witnesses on behalf of the City of Hamtramck's should be of the utmost interest to the readers of this article. The true test of some persons ethics is their ability to stand for what is right no matter what the consequences of their actions or decisions. This was not the result of the testimonies of Chiefs Lawrence Hall or James Doyle.

Lawrence Hall, Chief of Police of the City of Southgate, an instructor at Madonna College and currently teaching a class in **Police Ethics** reviewed the facts surrounding the Garon case and offered his testimony as follows: (Statements are a summarization of the transcribed testimony of Lawrence Hall from the written opinion of the hearing). **"There is nothing in the collective bargaining agreement or in department regulations that would have required that Police Garon to of acted in the life saving actions taken."** Further, Lawrence Hall stated when a police officer is off duty and outside of his jurisdiction, that she or he has no powers, obligations or responsibilities other than those of a private citizen. That the learned training in a police academy imposes no special obligation on a person. Additionally, Hall stated if Officer Garon had chosen to not get involved, he would not have been subject to any sanction under the rules, regulations and/or collective bargaining agreement of the City of Hamtramck Police Department.

Further, Lawrence Hall stated he would not sanction any of his police officers for acts of omission while off

duty and out of his jurisdiction. (Be advised Southgate Police Officers). Hypothetically, if one of his police officers, off duty, stood idly by during an armed robbery of a mini mart outside of their jurisdiction that resulted in an injury to an innocent bystander, that Chief Hall would not impose any discipline. **Hall further stated, a police officer has no special obligation to intervene when off duty and out of their jurisdiction.**

Along comes the testimony of a long term employee, Hamtramck Police Chief James Doyle, employed in all capacities of the police department since 1976. In conclusion of testimony, Chief Doyle testifies that Office Garon was not acting as a police officer for the City of Hamtramck Police Department when he rescued the men on Lake St. Clair. That nothing contained within the collective bargaining agreement or within the rules and regulations of the Hamtramck Police Department would require Officer Garon to act.

It was further stated, that the Law Enforcement Code of Ethics and Law Enforcement Cannons of Ethics was never adopted as policy by the Hamtramck Police Department. Officers who are off duty and outside the city limits have no greater powers or duties than ordinary citizens. Nothing in the police academy training would require a Hamtramck Police Officer to get involved in an incident 3/4 of a mile offshore on Lake St. Clair while off duty.

After hearing the evidence and researching case law, Magistrate Andrew G. Sloss concluded and found **as fact: that Officer Christopher Garon did sustain a work related personal injury in the course and scope of his employment for the City of Hamtramck on January 19, 2003, when he injured his back rescuing two men who had fallen through the ice on Lake St. Clair. As a general rule, we expect our police officers to instinctively run in the direction of situations that the rest of us in the general public instinctively run away from. It is the common law of this State that they are considered to be in the course and scope of their role as police officers when they do so.**

Magistrate Sloss hereby ordered the City of Hamtramck to pay the lost wages with interest to Police Officer Christopher Garon for the period of February 5, 2003 through January 10, 2005 and to continue paying until further ordered.

It was further ordered that the City of Hamtramck be responsible for reasonable and necessary medical expenses related to the injury.

Special thanks go to Officer Christopher Garon, legal counsel and the membership of the Thin Blue Line of Michigan for their continuous financial support to allow this two-year case to be brought to justice.



On Duty or Off Duty "Oath of Office?"

2005 Calendar of Events

The 3rd Annual 5K Run/Walk "Run From The Law" will be held on April 16th, 2005

The 5th Annual "Blessing of the Bikes" in Hell will be held on May 15th, 2005

The 2nd Annual, 5K "Runnin' With The Law" Grand Rapids Foot Pursuit will be held on May 21st, 2005

The "EYE RIDE - Motorcycle Benefit Journey" will be held on June 12th, 2005

The 8th Annual PEACE OFFICERS' MOTORCYCLE BENEFIT RIDE will be held on June 26th, 2005

The 5TH ANNUAL "RIDE TO REMEMBER" will be held on July 24th, 2005

The 4th Annual "Upper Peninsula Law Enforcement Motorcycle Benefit Ride" will be held on August 6th, 2005

The 5th Annual "A Call to Duty Memorial Motorcycle Benefit Ride" will be held on September 11, 2005

The 3rd Annual "Challenge at the Creek" will be held on August 13th, 2005

The 10th Annual "Michigan State Police Fall Color Run" will be held on September 24, 2005

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Garrity Right, cont. from cover

II. Analysis of *Garrity* and its Progeny

In *Garrity v New Jersey*, 385 US 493 (1967), the U.S. Supreme Court addressed a law enforcement officer's dilemma of having to choose between maintaining employment versus exercise of the Fifth Amendment privilege against self-incrimination. In *Garrity*, police officers were interrogated about an alleged conspiracy to fix traffic tickets. The officers were warned their answers might be used against them in a criminal proceeding, they had the right to remain silent, but if they asserted the right, they would be subject to termination. The officers answered questions and the information provided was used against them in subsequent criminal proceedings on conspiracy to obstruct the administration of traffic laws. The officers were convicted. The U.S. Supreme Court reversed the convictions, finding a Fifth Amendment violation, stating that "the choice imposed on petitioners was one between self-incrimination or job forfeiture." *Garrity*, 385 at 496.

The Fifth Amendment to the United States Constitution provides, in relevant part:

No person ... shall be compelled in any criminal case to be a witness against himself ... (Emphasis supplied).

The Fifth Amendment privilege, therefore, includes the "right to remain silent," as well as immunity from use in a criminal proceeding of information which is compelled by government. *Lefkowitz v Turley*, 414 US 70 (1973) [citing *Kastigar v United States*, 406 US 441 (1972)]. The Fifth Amendment privilege is applicable to the states through the Fourteenth Amendment. *Malloy v Hogan*, 378 US 1 (1964). The Fifth Amendment privilege against self-incrimination, therefore, protects an individual from being forced to give information which may later be utilized against him in a criminal proceeding. *Kastigar*, 406 US at 444. The Court in *Garrity*, 385 US at 497, also stated:

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.

The Court further remarked at 498:

Where the choice is "between the rock and whirlpool," duress is inherent in deciding to "waive" one or the other.

The Court in *Garrity* made it clear that the Fifth Amendment privilege is never forfeited by accepting public employment as a law enforcement officer, stating at 499-500:

Our 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.

We held in *Slochower v Board of Education*, 350 US 551, that a public school teacher could not be discharged merely because he had invoked the Fifth Amendment privilege against self-incrimination when questioned ...

We conclude that policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights. (emphasis supplied).

In conclusion, the Court in *Garrity* at 500, stated:

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, that it extends to all, whether they are policemen or other members of our body politic.

In another case issued the same day as *Garrity*, the Court continued the *Garrity* analysis, stating that an individual cannot enjoy the constitutionally-guaranteed, unfettered exercise of the right to remain silent, if there may be a penalty for asserting that right, *Spevak v Klein*, 385 US 511 (1967).

The reverse situation, or flip side to *Garrity*, is where an officer, under threat of discipline, is compelled to give information, and at the same time is compelled to waive the immunity of the privilege, yet refuses to give information and by not giving up the privilege, is thereafter disciplined. The U.S. Supreme Court addressed this reverse scenario in *Gardner v Broderick*, 392 US 273 (1968).

In *Gardner*, a police officer was subpoenaed to testify before a Grand Jury investigating police corruption and bribery stemming from illegal gambling. The officer was advised that if he did not waive his right to remain silent by signing a waiver of immunity from use of information given in response to questions, he would be discharged. Unlike *Garrity*, in which the threat of discharge led to the officer making a statement, in *Gardner* the officer asserted his Fifth Amendment privilege against compelled self-incrimination and refused to waive that immunity and, therefore, refused to make any statement, which resulted in discharge. The Court concluded that a "chilling effect" on constitutional rights existed, reasoning that an unsuccessful attempt to coerce is just as unconstitutional as a successful one. *Gardner*, 392 US at 279. The Court held that disciplining an officer for asserting the privilege against compelled self-incrimination is just as much a Fifth Amendment violation as coercing the officer into making a statement under threat of dismissal, and then using the statement against the officer in a criminal proceeding. The Court in *Gardner* additionally stated at 277-278:

It is true that *Garrity* related to the attempted use of compelled testimony. It did not involve the precise question which is presented here: namely, whether a State may discharge an officer for refusing to waive a right which the constitution guarantees to him.

... He was discharged from office, not for failure to answer relevant questions about his official duties, but for refusal to waive a constitutional right. He was dismissed for failure to relinquish the protections of the privilege against self-incrimination ... He was dismissed solely for his refusal to waive the immunity to which he is entitled if he is required to testify despite his constitutional privilege.

The United States Supreme Court then provided language which has long since become the guidepost in internal affairs investigations of law enforcement officers relative to *Garrity* rights, stating, Id at 278:

If appellant, a policeman, has refused to answer questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to use of his answers, or the fruits thereof in a criminal prosecution of himself, *Garrity v State of New Jersey*, supra, the privilege against self-incrimination would not have been a bar to his dismissal. (emphasis supplied).

This statement by the Court made clear that where a public employer seeks information, it may order it under threat of discipline, so long as the information

sought is specific, direct, and narrowly related to performance of official duties and the individual is not compelled to waive the immunity of the privilege "with respect to use of his answers or the fruits thereof in a criminal prosecution of himself." As such, the Court in *Gardner* declared that if a waiver is compelled and a refusal to speak occurs, termination for refusal to waive the immunity is constitutionally defective, whereas if the waiver is not compelled and refusal to speak occurs, termination for such refusal to answer questions (assuming they are specific, direct and narrowly related to performance of official duties) will not be deemed constitutionally defective.

In stirring language, the Court in *Gardner* concluded, Id at 279:

In any event, the mandate of the great privilege against self-incrimination does not tolerate the attempt, regardless of its ultimate effectiveness, to coerce a waiver of the immunity it confers on penalty of the loss of employment. (emphasis supplied).

Subsequent to *Garrity* and *Gardner*, the U.S. Supreme Court in *Lefkowitz v Turley*, 414 US 70, 84 (1973) (herein referred to as "*Lefkowitz I*") stated:

... the State must recognize what our cases hold: that answers elicited upon the threat of the loss of employment are compelled and inadmissible in evidence, hence, if answers are to be required in such circumstances, states must offer to the witness whatever immunity is required to supplant the privilege and may not insist that the employee ... waive such immunity. (emphasis supplied).

The Court's emphasis that the "state must recognize what our cases hold" was a clear message that *Garrity* and its progeny are to be adhered to and not thwarted by argument that government's operational interests supersede the employee's constitutional right. As emphasized by the Court, balancing of those interests is afforded so that government can obtain information, yet the individual is protected by the immunity of the privilege, with respect to use of that information against the individual in a criminal proceeding.

The Fifth Amendment right is not a self-executing mechanism. *Maness v Meyers*, 419 US 449 (1975) [quoting *Kastigar v United States*, 406 US 441 (1972)]. This means that an officer must invoke the privilege of the Fifth Amendment, as the privilege does not automatically attach. The Federal District Court, Eastern District of Michigan, has acknowledged this requirement in the October 24, 2001 Consent Judgment, issued by then Chief United States District Court Judge, Lawrence P. Zatkoff, in an action brought by the POAM against the Livingston County Sheriff to clarify *Garrity* rights. The Court, in paragraph 1g of the Consent Judgment, stated:

The Sixth Circuit has specifically held that the privilege is not self-executing and that the person claiming the privilege must affirmatively assert it. *Morgan v City of Columbus*, No. 92-4086, 1993, US APP LEXIS 25698 at 17-18 (6th Cir, October 1, 1993). (emphasis supplied).

Note: the jurisdiction of the Sixth Circuit includes Michigan.

It is equally significant to recognize that assertion of the privilege is applicable "to every means of government information gathering." *Selective Service System v Minnesota Public Interest Research Group*,

continued on next page



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468 US 841 (1984). As stated by the Supreme Court in *Maness*, "... it is very clear that the coverage of the Fifth Amendment is not to be determined by the nature of the proceeding in which it is asserted. The Fifth Amendment applies to all proceedings ... it applies to interrogation by police officers out of court. It applies across the board." *Maness*, 419 US at 493-494. These holdings, therefore, recognize that the privilege of the Fifth Amendment may be asserted in any information gathering setting, be it a statement, report or answer to questions. (See also, paragraph 2a of the Consent Judgment in *POAM v Livingston County Sheriff*.)

Three years after *Lefkowitz I*, the Supreme Court decided *Lefkowitz v Cunningham*, 431 US 801 (1977) (hereinafter referred to as "*Lefkowitz II*"). In this decision, the Supreme Court stated:

The government has compelling interest in maintaining an honest police force and civil service, but this court did not permit those interests to justify infringement of Fifth Amendment rights in *Garrity*, *Gardner*, and *Sanitation Men*, where alternative methods of promoting State aims were no more apparent than here.

Lefkowitz II at 808. The Supreme Court then remarked that the critical concern of constitutional infringement is the act of compulsion as opposed to the level of the penalty, stating:

It is true, as appellant points out, that our earlier cases were concerned with penalties having a substantial economic impact. The touchstone of the Fifth Amendment is compulsion, and direct sanctions and imprisonment are not the only penalties capable of forcing the self-incrimination which the amendment forbids (emphasis supplied).

Lefkowitz II, 431 US at 806.

Where employers and even some labor unions commit error in their application of *Garrity*, is the failure to understand the significance of **compulsion**, as well as the failure to recognize the distinction between what *Garrity* **protects** and what *Garrity* **prohibits**. These errors are manifested by an impermissible mixing of the components of **protection** and **prohibition**. While the two components under *Garrity* are mutually exclusive, they share a common link which triggers the constitutional **protection** or constitutional **prohibition**, being **compulsion**.

The *Garrity* **protection** arises, meaning that an officer has the right to assert the Fifth Amendment privilege to protect information given from use against the officer in a criminal proceeding, when **compulsion** exists. **Compulsion is present when the employer has ordered production of information under threat of discipline**. Once compulsion occurs, the officer has the right to invoke the Fifth Amendment.

The *Garrity* **prohibition** also arises when **compulsion** occurs. **Compulsion in this context is different, as it is determined by whether the employer has ordered an officer, under threat of discipline, to waive (compelled to give up) assertion of the Fifth Amendment**. This compulsion triggers two prohibited results. First, if the officer involuntarily waives assertion of the Fifth Amendment and produces an unprotected statement, report or answers to questions, then the information given will be subject to suppression in a criminal proceeding if the officer is charged with a criminal offense. In addition, if the

information is actually used against the officer in a criminal case, any conviction which occurs will be overturned (this is what happened in the *Garrity* case). Second, if the officer refuses to waive assertion of the Fifth Amendment and the Employer issues discipline due to such refusal, then the discipline imposed will be set aside by an arbitrator or court (this is what happened in the *Gardner* case).

III. Summary of the Garrity Right

[Editor's note: On page 31 of the LEJ, the Garrity right summary is also reproduced in a clip and save format. If you have a bulletin board, it is recommended that the Garrity right summary be affixed to the board as a quick reference guide.]

The legal conclusions which are derived from *Garrity* and its progeny as to Fifth Amendment rights of law enforcement officers are summarized as follows:

Garrity Right

1. Definition of the right:

A. When an officer is compelled (ordered under threat of discipline) to produce information (statement, report or answer to questions), the information produced is protected from use against the officer in a criminal proceeding, if the officer invokes the protection of the Fifth Amendment. The employer is prohibited from compelling (ordering under threat of discipline) the officer to waive assertion of the protection of the Fifth Amendment. The information may only be used against the officer in an internal proceeding.

B. The *Garrity* right must be interpreted as consisting of two principles, **protection for an officer** and **prohibition against an employer**. Both principles are triggered when **compulsion** occurs.

2. Compulsion triggers protection for an officer:

A. Compulsion: An employer orders an officer, under threat of discipline, to produce a statement, report or answers to questions.

B. Protection: When compulsion occurs, an officer has the constitutional right to assert the protection of the Fifth Amendment privilege against self-incrimination, to protect the information produced from use against the officer in a criminal proceeding (paragraph 2a, Federal Court Consent Judgment - *POAM v Livingston County Sheriff*, October 24, 2001).

note: When an officer invokes the protection of the Fifth Amendment, the employer may only refuse acceptance of the information provided if it rescinds the order made under threat of discipline to produce the information, thereby removing the trigger of compulsion. Without an order and threat of discipline existing, the officer is at liberty to refuse production of information, as no employment sanction may attach.

note: If an officer wants to protect a statement, report or answers to questions and the employer's representative is without authority to issue an order under threat of discipline, the officer retains the right to invoke the Fifth Amendment and to remain silent, until such time as compulsion occurs (someone who is empowered with authority orders production of information under threat of discipline).

3. Compulsion triggers prohibition against an employer:

A. Compulsion: An employer orders an officer, under threat of discipline, to waive (give up) assertion of the privilege.

B. Prohibition: The employer is prohibited from this form of compulsion as it cannot order an officer, under threat of discipline, to waive the immunity (protection) of the asserted Fifth Amendment privilege against self-incrimination with respect to a submitted statement, report or answers to questions (paragraph 2e, Federal Court Consent Judgment - *POAM v Livingston County Sheriff*, October 24, 2001).

C. Result of prohibition:

first result: If an employer orders a report, statement or answers to questions under threat of discipline and the officer's attempt to invoke the Fifth Amendment protection under *Garrity* is met by an employer threat of discipline if the officer does not waive (compelled to give up) assertion of the *Garrity* protection, then the information given by the officer as a result of the compelled waiver is deemed obtained in violation of the Fifth Amendment privilege against self-incrimination. The compulsion in this situation triggers the *Garrity* prohibition, resulting in suppression of the information or overturning of a conviction in the event of a criminal proceeding against the officer (*Garrity* holding).

second result: If an employer orders a report, statement or answer to questions under threat of discipline and the officer asserts and refuses to waive assertion of the *Garrity* protection, despite an employer threat and/or subsequent imposition of discipline for such refusal to waive the *Garrity* protection, then adverse personnel action (for example: suspension, demotion or discharge) is deemed a constitutional violation, due to the chilling effect upon the Fifth Amendment privilege (*Gardner* holding). The compulsion in this situation triggers the *Garrity* prohibition, resulting in the discipline being overturned. As a result of the constitutional violation, just cause for discipline would not exist. As a side note, this is similar to the circumstance which existed in the *POAM v Livingston County Sheriff* federal lawsuit which resulted in the Consent Judgment for POAM. The collateral arbitration decision applied the federal court decision and determined that just cause for discipline did not exist, therefore, the employer's issuance of a suspension and transfer due to the officer's assertion of the *Garrity* protection and his refusal to waive the protection, was overturned.

4. Garrity Warning:

If an officer is compelled to give information (order and threat of discipline to give information) but is not compelled to waive assertion of the *Garrity* protection (no order and threat of discipline to waive assertion of *Garrity*), and the officer thereafter refuses to answer questions specifically, directly, and narrowly related to official duties, any adverse personnel action taken against the officer is not unconstitutional.

note: This is the so-called *Garrity* warning. In this situation, the employer recognizes the *Garrity* protection may be asserted such that information produced cannot be used against the officer in a criminal proceeding but only in an internal proceeding, however, the officer refuses to give information. Discipline in this situation, absent other legitimate reasons, is not an unconstitutional act on the part of the employer.

5. Employer's control versus Officer's right:

An employer controls whether compulsion occurs which triggers the protection for the officer and the



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prohibition against the employer. The invoking or asserting of the *Garrity* protection, however, is exclusively reserved for the affected officer, not the employer. The *Garrity* protection must be invoked by the officer to be effective, as the Fifth Amendment is not self-executing.

IV. Analysis of the Article

Having discussed *Garrity* and its progeny, I will now analyze the author's four questions and answers. The article, after discussing a brief history of *Garrity* and several other decisions, poses several questions to test the readers understanding of the application of *Garrity*. The author then answers the questions, concluding that *Garrity* does not protect the individual in any of the four questions presented. Because the questions posed have minimal factual development, the author's legal conclusions are neither instructive nor beneficial to the law enforcement community. As a result, I will address each question posed, with further factual development, to determine proper application of *Garrity*.

The first question states:

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!"

The author, in answer to the first question, concludes that *Garrity* does not protect the officer, stating:

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

The answer given reflects a fundamental misunderstanding of the application of *Garrity*. The author not only has failed to understand that the precursor to existence of the *Garrity* right is whether compulsion exists, but the author has also erroneously mixed the components of protection and prohibition. The author assumes that because a *Garrity* prohibition issue did not arise (employer did not compel waiver of the assertion of the Fifth Amendment right), that the *Garrity* protection (officer's right to assert the protection that the statement cannot be used against the officer in a criminal proceeding due to compulsion) does not exist. This is an impermissible mixing of the two mutually exclusive components.

Under the facts of the first question as posed by the author, the *Garrity* protection exists if the employee, in response to the captain's statements, asserted the Fifth Amendment protection, since compulsion triggers assertion of the protection due to the captain's order to provide information and the threat of discipline ("You're gone from this department now!"). As a result, in answer to the first question, it is improper for the author to state that because the *Garrity* prohibition was not at issue (that is, no compelled waiver of assertion of the privilege), that automatically no *Garrity* protection existed. If, however, the author intended the facts to reflect that after the compulsion by the captain, that the officer did not assert the *Garrity* protection, then the proper answer to the question is that by such failure to invoke his Fifth Amendment right, the information given is not protected under *Garrity*. The author's answer, however, does not reach that logical conclusion, instead, it only deals with the component of the *Garrity* prohibition, which is an irrelevant

consideration, given the absence of facts establishing that the captain was compelling (ordering under threat of discipline) waiver of the *Garrity* protection.

The author's answer to the first question contains several additional errors. Any order, whether characterized as "routine" or not, to give information, made in conjunction with a threat of discipline, constitutes compulsion, which triggers the *Garrity* protection, allowing the officer to invoke the Fifth Amendment, thereby protecting the compelled information from use against the officer in a criminal proceeding. What is significant, therefore, is not the existence of a routine order or one of more stringent directive but, instead, the compulsion which exists (order plus threat of discipline) which gives rise to the *Garrity* right.

If the author's first question and answer are an attempt to distinguish between an "express" threat of discipline versus an "implied" threat of discipline, the author is addressing circumstances present in *U.S. v Indorato*, 628 F2d 711 (1st Cir, 1980). In *Indorato*, a police officer was convicted of conspiracy to commit an offense against the United States, theft of property and perjury. During the investigation, he responded to questions. The statements were then used against him at his criminal trial and he was convicted. On appeal, the defendant claimed violation of the Fifth Amendment by use of the statements against him, citing *Garrity*. The First Circuit held that only an implied, not overt or express, threat of dismissal existed for refusal to obey an order of the supervisor. As a result, the Defendant's statements were admissible as he was not subjected to an overt threat, nor did he even assert the privilege. See also: *People v Jobson*, 205 Mich App 708 (1994) (police officer not threatened with discharge when responding to investigatory questions); *People v Coutu*, 235 Mich App 695 (1999) (relying on *Indorato*, threat of discharge was only "implied" when responses were given during departmental investigation); and *People v Wyngaard*, 462 Mich 659 (2000) (prison inmate not threatened with penalty for refusal to speak; statements made do not violate the Fifth Amendment privilege). Because the facts of the author's first question are so deficient, a determination of implied versus express threat issues is of little significance. In any event, *Indorato*, as held by the Federal District Court, Eastern District of Michigan in *POAM v Livingston County Sheriff*, is limited to its own facts. (Federal Court, July 11, 2001, ruling on motions for summary judgment).

Based on the aforesaid, the answer given to the first question, as posed by the article, provides no guidance to law enforcement in determining application of *Garrity*.

The second question posed in the article states as follows: You're on a multi-department apprehension team, and the 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.

The author to the article, states in answer to the second question: The *Garrity* warnings involve a threat of discipline, up to discharge. Only your employer can discipline you, not an officer from another agency.

While the answer to the second question is somewhat accurate, it fails to properly instruct law enforcement officers as to how to handle the situation

posed. Only an employer, or those acting under delegated authority of an employer, can create the compulsion necessary for an officer to invoke the *Garrity* protection. More significant, however, is that officers working in a multi-department setting cannot be compelled to provide information from individuals, regardless of rank, who have no employment, supervisory or management, authority over the officer. Since it is presumed the inquiry in the second question is not a criminal investigation, there is not even a necessity to assert the Fifth Amendment, as the officer may simply refuse to answer any questions, as no disciplinary employment sanction can be imposed or sustained.

The third question posed states:

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*.

The author's answer to the third question states:

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

The author has given an answer that does not address the question and is, for many reasons, misleading. The question is so factually deficient that a broad answer as to whether a *Garrity* right is at hand is not instructive. If, in fact, the department order of in-car cameras and microphones includes a direct representation to officers that they will be subjected to discipline for failure to comply with such orders, then the author's broad answer that no *Garrity* right exists is incorrect, to the extent of any statements made (but not the physical actions engaged in which are visually recorded). The author's answer that "all police reports and documentation kept in the normal course of business are not protected by *Garrity*," is only correct if what is meant by the term "normal course of business" is that such report did not arise from a direct order under threat of discipline, such that an absence of compulsion exists. If the report or statement is compelled, then it is most certainly protected by *Garrity* if the officer asserts the Fifth Amendment privilege.

It is at this juncture that "protected by *Garrity*" as referenced by the author's answer should be discussed. The author appears to be confusing "release" of a *Garrity* statement to third parties with "use" of a *Garrity* statement against an officer in a criminal proceeding. As a matter of law, a *Garrity* statement can be released through discovery in a civil proceeding or request of a prosecutor. *Garrity* does not protect release of a statement to a third party, instead it protects against use of the statement against the officer in a criminal proceeding. This is another critical distinction which the author does not identify nor apparently recognize. This lack of understanding, unfortunately, also forms the underpinning to the legal action in the "Garden City" matter referenced in the article. POAM predicted and cautioned, prior to filing of the lawsuit in Garden City, that it would foster confusion as to the *Garrity* right, especially since rights under *Garrity* had already been clearly set forth in the Federal Court decision in *POAM v Livingston County*.

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The fourth and last question posed states: 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*.

The author's answer to question four states:

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 cannot self-invoke *Garrity*.

The answer to the fourth question is patently incorrect, assuming the order to write the statement was made under threat of discipline. If the order included the threat of discipline, compulsion exists, triggering the officer's right to assert the *Garrity* protection.

The author's answer is also misleading as it implies that the *Garrity* right can only be invoked by an employer. While it is correct to assert that an employer controls whether compulsion (order and threat of discipline) occurs, once compulsion does exist, the employee has the right to invoke the *Garrity* protection, not the employer. This is mandated, as previously indicated, in Michigan (Sixth Circuit), as the Fifth Amendment is not self-executing and must be asserted by the person desiring the protection, not by a third party employer.

In addition, the context in which the author refers to a *Garrity* "warning" is misleading. The so-called *Garrity* "warning" is the stated recognition by the employer that it cannot compel an officer to waive assertion of the Fifth Amendment right and that the compelled information given by the officer cannot be used against him in a criminal proceeding, only in an internal departmental matter. The misleading aspect of the author's use of the term "warning," is the false impression that giving of a "warning" is tantamount to the employer having control over the actual invoking of the *Garrity* protection. The term "warning" is not interchangeable with the constitutional right to assert or "invoke" the protection which *Garrity* affords under the Fifth Amendment, which is reserved exclusively to the officer, not the employer. It is this confusion of terms and concepts which has caused some employers to misconstrue application of the *Garrity* right.

Without debating semantics, therefore, the employer only controls *Garrity* to the extent it decides, in the first instance, that the order to produce a statement or report or to answer questions, is combined with a threat of discipline for failing to comply. Once the employer goes down the path of compulsion, it has triggered the right of the officer to assert the protection of the Fifth Amendment as set forth in *Garrity*. It matters little, therefore, to debate if the employee or employer has the right to invoke *Garrity*. What is significant is if compulsion exists, thereby affording the officer the right to assert the protection of the Fifth Amendment privilege to any information given and prohibiting the employer from compelling waiver of the asserted protection.

V. POAM's Leadership Role in *Garrity* Right Issues

After addressing the four questions, the article continues with a discussion of an incident involving the Garden City Police Department. POAM's membership and all interested parties are directed to the POAM web

site, "poam.net," for a thorough discussion of the Garden City matter and the unfortunate actions of several misguided labor organizations and the danger their equally misguided litigation has brought to the *Garrity* right issue.

It is fortunate that POAM has taken the leadership role in clarifying and fortifying the *Garrity* right in the Federal Court decision in *POAM v Livingston County Sheriff*, the substance of which can also be found on the POAM web site.

POAM, as part of its comprehensive service to its membership, conducts both seminars and in-service training to instruct the membership when and how to assert the *Garrity* protection, using the form recommended by POAM. This form requires identification of the supervisor who has the authority to create the compulsion allowing the officer to invoke the *Garrity* protection. Our local representatives are instructed to clarify with a supervisor that the affected officer is being ordered to submit information and that the failure to do so will result in discipline up to and including discharge. Upon that procedure being followed, the existence of such compulsion triggers the right to invoke the *Garrity* protection. If the employer, through its supervisory personnel, does not order the report, statement or answer to questions under threat of discipline, then the *Garrity* right will not be present. In that situation, however, the officer will not be at risk of discipline if a refusal to give a statement, report or answer to questions occurs, due to the absence of a specific order and threat. If the officer gives information, however, it will be deemed voluntary and may be used in an internal as well as criminal proceeding.

It is difficult to comprehend that the article has been written in support of the law enforcement community. To the contrary, the article reads as a management oriented propaganda piece giving a slanted interpretation of *Garrity* which, to the credit of even the vast majority of public employers, is not an accepted interpretation. Representations by the author which suggest that "only the employer can invoke ... *Garrity*" and that officers "cannot self-invoke *Garrity*" are misleading, at best. While it is true that an officer cannot simply assert the protection of *Garrity* absent compulsion by the employer, the statement remains misleading, as it fails to state the equally obvious standard that an officer has the right to invoke the *Garrity* protection (as the Fifth Amendment is not self-executing) when compulsion exists.

The article is, in several respects, a mirror image of the incorrect position taken by a few public employers who claim that even after they have ordered a statement under threat of discipline, only they can invoke *Garrity*, not the employee. This is, quite simply, incorrect. It flies in the face of the Constitution, *Garrity* and its progeny, as well as basic logic. It is the same tortured approach which was attempted by the Livingston County Sheriff, resulting in the federal court action in which POAM obtained the first Consent Judgment in the state delineating not only rights under *Garrity* (**The components of protection and prohibition triggered by compulsion**), but also the actual procedure to be followed.

Paragraph 2 a through f of the Consent Judgment, which can be found on the POAM web site, specify the

exact step-by-step procedure to invoke *Garrity*. The procedure codifies POAM's own language found on its membership card which should be attached to a compelled statement or report.

VI. Conclusion

The article serves little purpose other than to draw a clear distinction between those labor organizations, who for self-serving purposes, paint a dire picture of *Garrity* to insulate themselves from scrutiny for failing to fight for the protection *Garrity* affords, and those organizations, such as POAM, who have been at the forefront of protecting and enhancing the *Garrity* right. While the article makes a laudable statement concerning proposed legislation, it misses the more important point of instructing law enforcement officers how to protect themselves in the here and now. Every law enforcement officer, whether POAM member or not, should keep a copy of the Consent Judgment from the Federal Court, as it delineates the scope of the *Garrity* right and how to properly put it into effect.

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Frank Guido

Editor's Note: We have conveniently placed Mr. Guido's analysis in the center four pages of this publication so anyone can simply pull them out for filing and/or future use. Please refer to page 31 of this edition for Mr. Guido's Quick Reference Guide and summary that we encourage you to cut out and post on your union bulletin board.

POAM attorneys Frank Guido, Martha Champine, George Mertz and Douglas Gutscher will be conducting a thorough and interactive seminar on this subject June 1st. The seminar is in conjunction with our annual convention at the Amway Grand Hotel in Grand Rapids and will give everyone a clear understanding of when to exert their Fifth Amendment privileges. Call the POAM office for more details or additional copies of this article.



H.R. 218 Raises Questions for Retirees

By **JIM DeVRIES**
MCOLES Commission Chair

Last July, the Law Enforcement Officers Safety Act of 2004 became law. Commonly referred to as H.R. 218, this federal legislation provides a legal framework for active and retired law enforcement officers to carry firearms throughout the country. Since its enactment, there has been a great deal of confusion as to how the Act should be implemented. MCOLES has received numerous inquiries and comments.

Most of the uncertainty with regard to H. R. 218 revolves around retirees. Stated succinctly, H. R. 218 cannot be accessed by retirees in Michigan, or in many other states, absent a state standard for training and qualification of **active duty law enforcement officers** to carry firearms. Aside from the fact that Michigan does not have a statewide firearm qualification standard for active duty officers, no state agency has yet been designated to implement and administer H.R. 218. Moreover, neither MCOLES nor any other state agency possesses the authority to train and qualify retirees or to set fees associated with such activity, as suggested by H. R. 218. The Commission made this known to the Senate and House leadership and to the Office of the Governor October 22, 2004.

In January, the Commission moved to impanel an advisory committee, composed of various components of law enforcement leadership, for the purpose of proactively exploring the issues associated with implementation of this law in Michigan. Central among



Jim DeVries

the challenges the committee faces is the proposal of a viable state standard for training and qualification of active duty officers to carry firearms. A critical part of this initiative will consist of the group's assessment of

various options that might be incorporated in such a standard.

The H.R. 218 Advisory Committee conducted its initial meeting on February 24, 2005. A total of twenty committee members were present, some of whom will be serving in the capacity of subject matter expert. A significant amount of time was devoted to educating the group to ensure that all of the participants possessed a solid understanding of H. R. 218 and the related MCOLES issues. This entailed considerable discussion. By the conclusion of the meeting, the participants agreed to seek the development of options, by subject matter experts, for the panel's consideration in proposing a standard for the training and qualification of active duty law enforcement officers to carry firearms. Concurrent with that effort, the Commission will work with the legislature to enact law that will enable this initiative to move forward when the development work is completed.

Given that any formal action relative to this matter holds potential for impact on every Michigan law enforcement officer, for every Michigan law enforcement agency, and for every retired law enforcement officer residing in Michigan, the Commission is proceeding cautiously. In the interim, we appreciate your patience.

Notice: On March 8, 2005, the Commission went on record opposing proposed budget cuts that threaten to impair PA 302 supported training. Information updates on this issue will be posted at www.mcoles.org as they become available.

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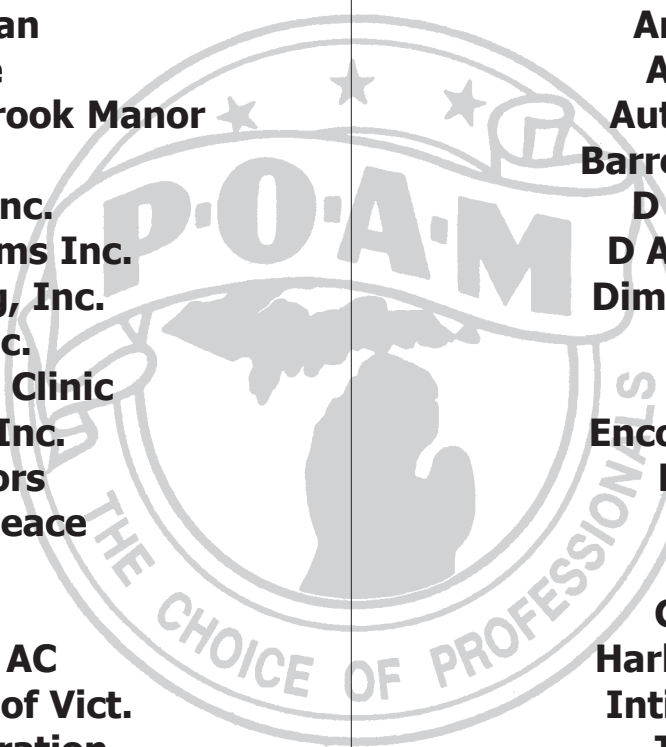
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Important Notice on Re-Employment of MERS Retirees

On May 12, 2004, the Retirement Board revised Plan section 31(1), removing the \$15,000 annual earnings limit (to age 65) for a retiree who goes back to work for the same MERS employer. This amendment did not in any way change the legal requirement that an employee shall fully terminate MERS employment so as to be eligible to receive a pension from MERS. On September 15, 2004, each municipality received an Employer Bulletin update on the subject of re-employment of retired MERS employees. That update referred to the employer as regulating the terms and conditions of employment (or reemployment), adding that the terms and conditions of MERS participation, and the accruing and payment of benefits is controlled by the Plan Document and the tax-qualification requirements of the Internal Revenue Code. The Important Comment was added to sections 10 and 31 to promote a better understanding among employers and employees of the MERS requirement that an employee must have a complete and bona fide termination of employment in order to receive a pension benefit.

Important Comment:

As a continuing condition of MERS tax-qualified "governmental plan" status under Section 401 (a) of the Internal Revenue Code, MERS Plan Document Section 55(1) provides: "The Retirement Board intends that the retirement system be a qualified pension plan under section 401 of the Internal Revenue Code and that the trust be an exempt organization under section

501 of the Internal Revenue Code. The Retirement Board shall administer the retirement system to fulfill this intent" A retirant is a person who has had a "bona fide termination of employment in which the employer/employee relationship is completely severed" (IRS Information Letter 2000-0245 (September 6, 2000); Revenue Ruling 74-254, 1974-1 CB 91); and where the person is currently receiving an accrued pension benefit payment immediately. Accordingly, to clearly show 'complete severance,' the employer should establish a minimum period following termination of employment of not less than 30 days before any formal actions necessary for new employment to occur. Where there has been a bona fide severance of employment for at least 30 days, payment of a pension benefit during new employment is consistent with Plan Section 55(1). Where there is no bona fide termination of employment of at least 30 days before hiring, payment of a pension benefit would not be consistent with Section 55(1), and, could imperil MERS qualified plan status and the rehired individual's receipt of benefits while reemployed subject to suspension by MERS. See also Michigan Attorney General Opinion #7167 (December 29, 2004). Source: MERS Legal Department February 2, 2005.

To view the important comment, please visit our Web site at: <http://www.mersofmich.com/legal.html>. Click on Plan Document link and then on Section 10 and 31.

Frequently Asked Questions

Regarding MERS Retiree Earnings Limit

Question 1: After a 30 day waiting period (after bona fide termination) can the "re-hire" continue to collect his full MFRS pension up to \$15,000 annual earnings? Over \$15,000 annual earnings?

Answer: After the 30-day period following full termination of employment, a re-hire has no earnings limits on his/her salary.

MERS requires that there be a genuine separation of employment (a bona fide retirement); hence the requirement of a minimum 30-day waiting period (after retirement date) before anyone can return to the same employer for work. Other than these limitations, the rehiring policy is at the discretion of the employer.

Question 2: Where a "re-hire" will be in a fulltime position, does the plan document require him/her to be a MFRS member like all other full-time employees?

Answer: If the re-hire is receiving a retirement check from MERS and returns to employment with the same employer from whom they retired, Section 31(1) specifies they may not be a MERS member (even though they may work with other non-retired active MERS members). A second retirement from the same MERS employer is not allowed.

Question 3: If an employee retires and later returns to the employment of the County, do they re-establish a contribution program with MFRS or not? If they return as a part time employee that is covered by the union contract which says they must contribute x% to MFRS, are they required to do so?

Answer: When a MERS retiree returns to service for the same employer, member contributions may not be collected or remitted to MERS, as the person may not participate in MERS.

The same is true for either part-time or full-time employment status. MERS no longer restricts the amount of money earned on reemployment, but there must be a true severance from employment (a minimum of 30 days) before returning to work.

Question 4: What is the potential penalty if an employer engages in a strategy to allow a member to collect retirement benefits while still employed?

Answer: As noted in the Important Comment, Federal tax law provides that an employee must terminate employment prior to a plan beginning pension distributions. If the employee has not fully (and completely) terminated employment, then the employer plan will not be a tax-qualified plan. MERS is a tax-qualified, agent multiple employer plan and trust, and in that context, IRS enforcement could mean that the participating municipality or court that violated this rule could be terminated from participation in the plan, and the present pre-tax employee contributions and tax-deferred benefit accruals for all employees at that employer would become fully taxable now.

Question 5: Why does MERS "care" about this issue?

Answer: Although the hire and rehire decision is a discretionary act with the employer, AMERS as Trustee and Plan Administrator wants participating municipalities and courts to be fully aware of the law. It is MERS responsibility to operate the plan in accordance with Internal Revenue Code requirements and benefit laws for the benefit of plan participants.

The 2005 MERS seminars are as follows:

May 10, 2005 at 6:30 p.m.
June 14, 2005 at 9:30 a.m.
July 12, 2005 at 9:30 a.m.
August 9, 2005 at 9:30 a.m.
October 11, 2005 at 6:30 p.m.
November 8, 2005 at 9:30 a.m.



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Life After Police Work

By **BARRY SHERMAN**

It is never too early to start thinking about life after your retirement. With most officers retiring in their forties to early fifties, you have many productive years ahead. Continuing your education is an excellent way to equip yourself with the tools necessary to market yourself once you leave the only profession you have known for the last 25 years or more.

Many excellent undergraduate and graduate degree programs in the area can help you achieve this goal. Two law enforcement professionals who had the foresight to follow this path were Lt. Jim Ridener, from Westland P.D., and retired Garden City Police Chief Dave Harvey, who was recently appointed as the City Manager of Garden City. Dave earned his Bachelors degree from Madonna University in Criminal Justice while with his department, and then to diversify his education and marketability he earned his Masters in Public Administration from the University of Michigan. Equipped with these degrees, he worked his way up the ranks to become chief of his organization. Upon retiring Dave became Chief of the Wayne County Airport Police. His education was obviously an asset in gaining this position. During his first year at the airport, an opportunity surfaced and knocked at Dave's door. The City Manager of Garden City was retiring and Dave, with his advanced degree in public administration and knowledge of the city, was a perfect fit for the position. He was hired and began running the day-to-day operations of the city he once policed.

I recently asked City Manager Harvey how his degrees assisted him in obtaining two successful careers and he replied, "Both my degrees opened my mind to other opinions. The technical skills I gained, in budgeting, project management, and personnel issues, and all the criminal justice classes were a great asset. The associations and knowledge gained through my fellow student and instructor contacts have remained invaluable."

Jim Ridener, who is presently the Officer in Charge of the Westland Police Detective Bureau, is a recent graduate of a Masters degree program that was introduced at Madonna University in 2000. The Master of Science in Business Administration in Criminal Justice Leadership Studies combines a traditional business degree with a concentration in Criminal Justice Leadership. It is designed to provide the skills for advancement while seeking promotion. In addition, it is a marketable business degree post retirement. Jim, who recently graduated with this degree, spoke very highly of

the curriculum. When I asked Jim why he decided on the Madonna degree he stated it was due to the versatility of the MSBA. He went on to say, "I have opened several career pathways once I retire. I could teach in the management arena of criminal justice. I could look for an upper management job in another police department or government. Or I could look for a management position in the private sector."

Both of these individuals prepared themselves for life after police work. They accomplished this with tuition reimbursement programs through their employers. When I sat on promotional orals boards, I would always look at what the officers accomplished to better themselves to handle their new positions and education was always a high priority with me. I was amazed at the number of officers who came from departments with negotiated tuition reimbursement programs and did not take advantage of this opportunity. Jim Ridener pointed out to me that his two degrees, worth approximately \$30,000, were possible through benefits that the POAM secured for members of his bargaining unit. This is a benefit that continues to pay you as you advance on the job, change jobs, or retire.

Every semester officers come to see me because they are considering finishing their degree after taking several years off from school. The first question they ask is "How long will it take me to finish?" Once I explain how they may be eligible for considerable college credit for attending the police academy and prior learning experience from on-the-job assignments, they can see a light at the end of the tunnel. The most common parting comment I hear upon graduation is: "I am glad I did it."

Take the time to call the criminal justice advisor at the college or university you would consider attending and set up an appointment to discuss the programs and credits that are available to you. It will be time well spent, considering it can benefit you in the years ahead.



Barry Sherman retired from the Livonia Police Department as a Lieutenant after 28 years of service. He was a member of the POAM and is a past president of the Livonia Lieutenants and Sergeants Association. He earned his B.A. Degree from Madonna University and his M.A. in Criminal Justice from the University Of Detroit. Barry taught part time at area colleges and universities while employed with Livonia. Upon his retirement he accepted a full time position with Madonna University where he is an Asst. Professor and Chairperson of the Criminal Justice Department. He is member of the Criminal Justice Advisory Boards for Livonia Public Schools and Henry Ford Community College. You can reach him at 734-432-5546.

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For further information on programs and prior learning/academy credit contact
Barry Sherman, Department Chairperson at 734-432-5546 or
toll free at 1-800-852-4951 x 5546, bsherman@madonna.edu.



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Officer Survival: The Best Peace Officers are Warriors

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The past few weeks have been very difficult for law enforcement officers. Violent acts against officers appear to be growing with recent incidents involving multiple murders. Canadian law enforcement recently grieved the deaths of four Mounties that were killed while investigating a marijuana grow operation run by a known “cop hater” with a violent past. The perpetrator gunned down the four officers with a rifle as they approached. The national Memorial Day and service attended by 15,000 people was very emotional with community leaders exclaiming the fallen heroes’ quest for a ‘Canada where all Canadians live in safety and peace’. The memorial tribute to the fallen officers was a living acknowledgement of the nation’s thanks to its law enforcement warriors. Law enforcement can learn from these officers the importance of keeping our communities safe and peaceful.

The term “warrior” used to describe peace officers is often debated. It is important to note that safety and peace of citizens is the objective of the police officer. Most citizens are never arrested and it is safe to say most do not harm others. However, experience and many studies have exhibited that a few cause most disturbances and crime. The prominent question is how law enforcement deals with the 5% or so that are violently aggressive towards citizens and authority. Although very little actual law enforcement time is spent dealing with violent attacks, it is the officers’ responsibility to be ready to respond and alleviate threats to the citizenry. Consider that we call soldiers warriors although historically the average soldier spends only a very small if any amount of time actually armed in public.

As law enforcement reflects on the recent police murders thought should be given to the weapons officers have in controlling violent persons. Weapons arm you in your preparation and engagement of predators. Officer understanding (knowledge) of the law enforcement role and its parts “arms” officers for future violence. The basic philosophy of “officer survival” is paramount because officers recognize that when in conflict against the violent criminal his/ her survival is



LEJ
Contributing
Editor



About the author

Aaron J. Westrick, Ph.D. is an Associate Professor of Criminal Justice and the Director of the Institute for Public Safety at Lake Superior State University. He is also the Vice President of Paraclete Armor and Equipment. Dr. Westrick has been associated with the POAM since 1981. He has served as an expert witness in the areas of “use of force” and body armor. Lake Superior State University-906 635-6203/ Office Phone Fax 231 582-1563 or www.westrickphd.com

all that keeps the predator from preying on others. Like other battles, street violence may lead to death. Basic strategies utilizing and interpreting dynamic intelligence (information), space (time and distance) and equipment are important life savers. Officers must learn all they can about possible adversaries, be confident and competent of their tactical skills and know their equipment is going to work when needed. They must also know they can perform “up to” the combat tasks they will encounter. While some officers will function for years without having to counter an active violent act, all must be ready. To paraphrase Col. Grossman (U.S. Army Ranger/ noted psychologist “warrior” trainer), “when the day comes for you to counter the violence (“pull the trigger”) and you fail too... all that you have lived and trained for means nothing.” Grossman’s message is a strong, but an honest message to those who wear a shield from rural to urban beats.

Tactical consideration should be given to all law enforcement operations. Tactical basics of surprise, speed and superior force are used to minimize violence and maximize officer survival recognizing the “survival” strategies and philosophy. When it is time to act in the face of ongoing violence; it must be done with speed, surprise and unflinching force. This is the code and ethos of the warrior.

Law enforcement officers need not hide their status as the thin line between violence and peace. When the “few” who will hurt others come “knocking at the door,”

only law enforcement stands in the way. That too is the code of the warrior. If law enforcement is not ready to use force to put a stop to harm and death immediately in our society; who is going too? There must be “warrior” preparations by peace officers for these rare yet inevitable acts.

Law Enforcement Officers pray for peace on all levels while building competence and confidence in their role as protectors of citizens.

Equipment Update:

As indicated in the above article confidence is important to countering violent action in law enforcement operations. It is important that the equipment officers’ use is best with flawless “street” performance records. Officers should research and examine reports of equipment failure in the field. Recently, a major body armor company has come under scrutiny because of questionable street performance contributing to the death of an officer. Detailed information regarding armor failures and subsequent investigations are available on-line through Attorney General Web-sites from Arizona, Minnesota and others. Competent officers arm themselves with knowledge. Knowledge of equipment performance instills confidence. Do your “homework,” be aware of corporate marketing spin. Investigate (that is what cops do)! Support police equipment companies that exhibit the honor that you do in your profession.

Consultant/Expert Witness/ Officer Advocate

AARON J. WESTRICK, Ph.D.
Professor/Director/Author/Cop
Lake Superior State University



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A TIME FOR HEALING

By ED JACQUES
LEJ Editor



Police Officer
Gary Davis



Police Officer
Jennifer Timathy-Ann
Fetting



Police Officer
Matthew Bowens

It was an ugly start to what would be a difficult year as it relates to line of duty deaths of Michigan police officers. Detroit Police Officers Matthew Bowens and Jennifer Fetting were shot and killed on February 16, 2004, while conducting a routine traffic stop at 2:00 a.m. Both officers were sitting in their patrol car calling in license plate information on the stopped vehicle when the suspect exited his vehicle and opened fire with a .40 caliber handgun, striking Officer Fetting five times and Officer Bowens three times. Bowens managed to exit the cruiser and return fire before calling for assistance and checking on his partner. The perpetrator reappeared and shot Matthew six more times, completing the assassination of two young and upcoming Detroit police officers who joined the department trying to make a difference. The incident led to a petition drive by Officer Bowens father, James, to mandate the death penalty in Michigan for any criminal convicted of murdering a police officer. Mr. Bowens was invited by the POAM Executive Board to address the delegates at the Annual Convention to drum up support for the signature drive. The initiative eventually failed to receive the necessary support of registered voters.

Clinton County Deputy Sheriff Perry Fillmore and Otsego County Deputy Sheriff John Gunsell both lost their lives in automobile accidents while responding to requests to assist fellow officers. Gunsell was a seasoned veteran with fifteen years of service with the Caseville Police Department before hiring on with Otsego County five years ago. John is survived by his four children. Fillmore was a popular and respected officer with eight years experience in Clinton County. Perry is survived by his wife.

Twelve-year Bloomfield Township Police Officer Gary Davis was killed by a commonly used and effective weapon - a car driven by a drunk. Officer Davis had just arrested a driver suspected of DUI and was in the process of transporting the suspect to the police station when his patrol car was struck by a vehicle operated by another drunk driver. The suspect that caused the accident had previously been convicted of operating a motor vehicle while intoxicated. Officer Gary Davis died instantly and is survived by his wife.

Sterling Heights Police Officer Mark Sawyer's end of watch on June 5th is possibly the most troubling murder of

a police officer in the United States during 2004. Officer Sawyers had just finished investigating a traffic accident and had parked his patrol car in a parking lot to write his report. A vehicle pulled up next to his cruiser and the perpetrator opened fire with a shotgun, fatally injuring Sawyers. He fulfilled his motive by stealing Officer Sawyers service weapon and fled in the famed "Red Camaro." Almost two months later the suspect was located in Jacksonville, Florida after being featured on the television show "America's Most Wanted." As a SWAT team of local deputies and U.S. Marshals stormed the house, the murderer committed suicide. It was poetic justice that Mark's gun eventually killed the suspect. Mark had recently joined the Sterling Heights force after serving three years in the Detroit Police Department. Officer Sawyers is survived by his wife and child.

It is not surprising that we lose some brave heroes as they try to back-up fellow officers or protect the public and we all know how dangerous and unprotected we are against drunk drivers. Assassination of law enforcement officers and the inappropriate justice administered after the crime are impossible for any of us to comprehend.

We need to put our arms around each other and surround the surviving family. As we ensure their healing, ours begins. A significant event that enhances this process is when these colleagues' names are inscribed in granite at the National Law Enforcement Officers Memorial in Washington, D.C. during Police Week.

POAM has always been active at the ceremonies but last year added our own event to further the healing and salute the legacy of Michigan's Finest. Any Michigan police officer or family member is invited to join us on Saturday, May 14th at the Old Glory Bar-B-Que on "M" Street in Georgetown for some good food and the beverage of your choice - all compliments of POAM. The get-together starts at noon and we'll be there all afternoon to greet guests, listen to stories and toast our never forgotten friends. If you are in the Judicial Square area, look for the van with POAM signs on both sides as we will gladly shuttle you to and from the restaurant. Whether you are a POAM member or not, we hope you accept our invitation and can share some time with your fellow comrades.



Deputy Sheriff
John Gunsell



Deputy Sheriff
Perry Fillmore



Police Officer
Mark Sawyers

In Memoriam

Sergeant Michael Scarbrough

Wayne County Airport Authority Police Department

End of Watch: Wednesday, February 9, 2005

Sergeant Scarbrough was killed in an automobile accident on I-94 near Wayne Road during a period of snow and icy conditions.

Affectionately nicknamed "Scrappy" Mike enlisted in the United States Marine Corps before coming to work for the Airport Police seventeen years ago. Sergeant Scarbrough served as a field training officer, was a member of the mountain bike unit, SWAT Team, as well as supervising the K-9 team and bomb squad.

Michael is survived by his wife, daughter and twin sons.



Police Officer
Michael Scarbrough

The Federal Report

Overtime Rules Exempt Public Safety

By DENNIS MCGRANN
March 15, 2005

The 109th Congress convened in late January and has been consumed with fiscal matters ever since. The primary issues of debate in Washington have been proposed changes to Social Security and the expanding federal budget deficit. On Social Security, neither side has put forth many, if any, details on their proposed changes to the system, making passage of any legislation on the issue uncertain. Meanwhile, the Administration and Congress are making other important choices on the federal budget deficit that will impact police officers in Michigan and across the country.

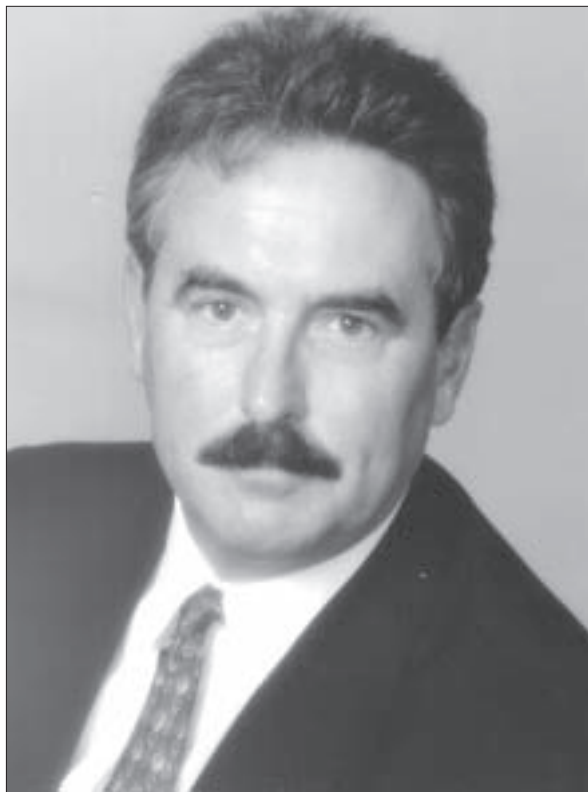
The federal budget deficit is currently at an all time high, and in order to keep its campaign pledge to cut the budget deficit in half in five years, the Administration is proposing to cut all domestic spending by 1% and freeze it until 2010. Some programs are targeted for more significant cuts, and federal programs to provide assistance to local law enforcement jurisdictions are slated to take a major hit. Last year Congress slashed funding for the Byrne Grant program, so named for New York City Police Officer Edward Byrne who was murdered by drug dealers, which funds local and state efforts to target serious offenders who traffic in controlled substances. The Administration's budget proposes to eliminate the Byrne program, along with the Local Law Enforcement Block grant, Juvenile Justice Program, and Public Safety Officers Benefits programs. The proposal would consolidate these grants in a new, single program, but the overall level of funding for these activities would be cut significantly.

Also in peril is the Community Oriented Policing Services (COPS) program, which provides grants to local police departments to hire officers and purchase communications and technology equipment. The budget proposes to eliminate funding for technology grants within the COPS program. Meanwhile, the COPS hiring program, which was funded at nearly \$1 billion a few years ago and at \$118 billion just two years ago, was funded at \$10 million last year and would be reduced to just \$7 million under the proposed budget.

The POAM understands the pressing need to make tough decisions in order to reel in record federal budget deficits. However, the federal government should not cause law enforcement officers to suffer disproportionately from the federal shortfall. Fortunately, the annual budget process is just beginning in Congress, and the POAM will remain active in the fight on Capitol Hill to ensure that America's law enforcement officers get the support they need and deserve.

Also of interest to some is the debate taking place in Congress to overhaul the distribution of Department of Homeland Security first responder grants. Senator Susan Collins (R-Maine), Chair of the Senate Homeland Security and Governmental Affairs Committee, has proposed legislation that would alter the current formula, which has lead to smaller states getting a larger share of the pie, per capita, than larger states. Her bill aims to change the formula to put more resources into areas considered higher terror threats, a key recommendation of the September 11th Commission. Michigan Senator Carl Levin is a senior member of the Committee, which will determine the details and outcome of this proposal.

Finally, the Senate has confirmed President Bush's selections to head the Justice and Homeland Security Departments. After a contentious confirmation hearing, the Senate confirmed Alberto Gonzales for Attorney General. Gonzales served as Texas Secretary of State under then-Governor Bush, who later appointed Gonzales to the Texas Supreme Court. During President Bush's first term, Gonzales served as the White House counsel. Also, earlier this month the Senate confirmed Michael Chertoff to succeed Tom Ridge as Secretary of the Department Homeland Security. Chertoff had been a justice on the United States Court of Appeals for the Third Circuit. Prior to joining the bench he worked in the Bush administration as Assistant Attorney General in the U.S. Department of Justice Criminal Division from 2001-03. In that capacity he helped develop the USA Patriot Act anti-terrorist law.



Dennis McGrann

2005 Presidential Inauguration

Jim Tignanelli (left) and Ken Grabowski (right) bump into an old friend at the festivities, Tommy Dayfield (center) with Brownstown Township Command.



Grabowski and Tignanelli were dressed appropriately for the inauguration (not shown: two pairs of snake skin cowboy boots and big belt buckles).



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CONVENTION INFORMATION

By ED JACQUES

LEJ Editor

Editor's note:

Forms have already been mailed for all convention events but they are also available by calling the POAM office at **313-937-9000**.

PUT POAM SEMINAR ON YOUR AGENDA

Did you pass the FOP *Garrity* quiz or attend the recent MAPO conference on this subject? If you did, you better attend the POAM seminar on June 1 (10:00 a.m., Amway Grand Hotel) because you're dead wrong on most of those issues and misapplication of the *Garrity* right could cost you or your members their job *or worse!*

POAM General Counsel Frank Guido and Assistant General Counsel Martha Champine, George Mertz and Doug Gutscher will conduct a thorough and interactive session that will give you a clear understanding of when your members should assert their Fifth Amendment privilege.

Michigan Employees Retirement System and Retirement Plan Advisors will also be there to talk about medical benefits and the POAM Medical Savings Account (VEBA).

If you or any member of your group is not able to attend this seminar, call Ed Jacques at the POAM office and I will gladly forward you the handout materials.



LET'S GO FISHING!

Tired of chasing that little white ball across the fairway and over the green? Then sit back and relax on a Lake Michigan charter boat and let the fish come to you. Big "kings" and big fun can be had by all. Entry fee into the POAM Fishing Derby is \$60 (cheap).

Trophy and cash prizes will be awarded to participating teams and individuals. Our bus leaves the Amway Grand Hotel at 6:00 a.m. sharp for Grand Haven's Chinook Pier (30 minute ride). You will be back in your hotel bed by 1:00 p.m. so you can rest up for Thursday night's festivities.

FORE!!!

Not sure of your sea legs? All land lovers are encouraged to tear up the Saskatoon Golf Club with over 200 of their closest friends on Thursday June 2nd. Entrance fee is \$50 per person and that includes lunch and six (6) beverages of choice. Team prizes will be awarded as well as individual acknowledgment for longest drive and closest to the pin. Shotgun start at 8:30 a.m. As always count on warm weather as well as some cool giveaways to all participants compliments of POAM.

Cigar Smoke Will Be A First-Class Event

Ken Grabowski is a veteran of the cigar party circuit and has organized more than a few on behalf of POAM.

Grabowski has promised even the most discriminating cigar lovers an event that will be unparalleled in the history of POAM puffs and will be the envy of any blue-blooded connoisseur.

The setting is the downstairs lounge and wine cellar of Grand Rapids finest restaurant, the Chop House. There are the traditional big leather chairs and couches facing a cozy fireplace, surrounded by racks of fine wines and private meeting rooms. You cannot imagine a more intimate setting for good friends to sip aged liqueurs, nibble on delicacies and enjoy a quality cigar.

Gourmet food and premium beverages will be served and a sport coat is required. The cost of participating in this top of the line party is \$60 and worth every penny. "We wanted to make the party a little more exclusive this year," said Ken Grabowski. "I know it's not cheap, but I promise you no one will be disappointed."



AMWAY GRAND PLAZA

Welcome

all POAM delegates to Grand Rapids

Thank you

for your service to Michigan communities

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let our staff know how we can make
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*Happy Hour prices
for POAM members!*



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**Happy hour prices for
POAM members.**

POAM POKER RUN

Last year's poker run helped introduce members to the many bars surrounding the Amway Grand Hotel in downtown Grand Rapids. We have identified the most popular ones and asked a couple new pubs if they would assist us in conducting another poker run for the 2005 convention. Their response was a resounding YES!

Here's how it works. Members pay an entrance fee of \$10 and receive a complimentary gift. (You're already ahead on this deal.) You will then proceed to the designated establishments and when you show a special pass while ordering a beverage, you will receive a sealed envelope that contains a single playing card. Collect one envelope from each stop and proceed back to Z's Bar and Restaurant, where registration began earlier in the evening. Your sealed envelopes will be collected, and when everyone returns, we will play a big game of "Showdown."

Every dollar collected as an entry fee will be thrown into the pot and 40% will be awarded to the best poker hand, 30% to second best, 20% for third place, and 10% to the fourth best poker hand.

Sounds like a pretty sweet deal, doesn't it? Contact the POAM office to save your spot. Registration is limited so act now.

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QUICK REFERENCE GUIDE

TO THE *GARRITY* RIGHT *Clip and save*



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by FRANK A. GUIDO
POAM General Counsel

1. Definition of the right:

A. When an officer is compelled (ordered under threat of discipline) to produce information (statement, report or answer to questions), the information produced is protected from use against the officer in a criminal proceeding, if the officer invokes the protection of the Fifth Amendment. The employer is prohibited from compelling (ordering under threat of discipline) the officer to waive assertion of the protection of the Fifth Amendment. The information may only be used against the officer in an internal proceeding.

B. The *Garrity* right must be interpreted as consisting of two principles, **protection for an officer** and **prohibition against an employer**. Both principles are triggered when **compulsion** occurs.

2. Compulsion triggers protection for an officer:

A. Compulsion: An employer orders an officer, under threat of discipline, to produce a statement, report or answers to questions.

B. Protection: When compulsion occurs, an officer has the constitutional right to assert the protection of the Fifth Amendment privilege against self-incrimination, to protect the information produced from use against the officer in a criminal proceeding (paragraph 2a, Federal Court Consent Judgment - *POAM v Livingston County Sheriff*, October 24, 2001).

note: When an officer invokes the protection of the Fifth Amendment, the employer may only refuse acceptance of the information provided if it rescinds the order made under threat of discipline to produce the information, thereby removing the trigger of compulsion. Without an order and threat of discipline existing, the officer is at liberty to refuse production of information, as no employment sanction may attach.

note: If an officer wants to protect a statement, report or answers to questions and the employer's representative is without authority to issue an order under threat of discipline, the officer retains the right to invoke the Fifth Amendment and to remain silent, until such time as compulsion occurs (someone who is empowered with authority orders production of information under threat of discipline).

3. Compulsion triggers prohibition against an employer:

A. Compulsion: An employer orders an officer, under threat of discipline, to waive (give up) assertion of the privilege.

B. Prohibition: The employer is prohibited from this form of compulsion as it cannot order an officer, under threat of discipline, to waive the immunity (protection) of the asserted Fifth Amendment privilege against self-incrimination with respect to a submitted statement, report or answers to questions (paragraph 2e, Federal Court Consent Judgment - *POAM v Livingston County Sheriff*, October 24, 2001).

C. Result of prohibition:

first result: If an employer orders a report, statement or answers to questions under threat of discipline and the officer's attempt to invoke the Fifth Amendment protection under *Garrity* is met by an employer threat of discipline if the officer does not waive (compelled to give up) assertion of the *Garrity* protection, then the information given by the officer as a result of the compelled waiver is deemed obtained in violation of the Fifth Amendment privilege against self-incrimination. The compulsion in this situation triggers the *Garrity* prohibition, resulting in suppression of the information or overturning of a conviction in the event of a criminal proceeding against the officer (*Garrity* holding).

second result: If an employer orders a report, statement or answer to questions under threat of discipline and the officer asserts and refuses to waive assertion of the *Garrity* protection, despite an employer threat and/or subsequent imposition of discipline for such refusal to waive the *Garrity* protection, then adverse personnel action (for example: suspension, demotion or discharge) is deemed a constitutional violation, due to the chilling effect upon the Fifth Amendment privilege (*Gardner* holding). The compulsion in this situation triggers the *Garrity* prohibition, resulting in the discipline being overturned. As a result of the constitutional violation, just cause for discipline would not exist. As a side note, this is similar to the circumstance which existed in the *POAM v Livingston County Sheriff* federal lawsuit which resulted in the Consent Judgment for POAM. The collateral arbitration decision applied the federal court decision and determined that just cause for discipline did not exist, therefore, the employer's issuance of a suspension and transfer due to the officer's assertion of the *Garrity* protection and his refusal to waive the protection, was overturned.

4. Garrity Warning:

If an officer is compelled to give information (order and threat of discipline to give information) but is not compelled to waive assertion of the *Garrity* protection (no order and threat of discipline to waive assertion of *Garrity*), and the officer thereafter refuses to answer questions specifically, directly, and narrowly related to official duties, any adverse personnel action taken against the officer is not unconstitutional.

note: This is the so-called *Garrity* warning. In this situation, the employer recognizes the *Garrity* protection may be asserted such that information produced cannot be used against the officer in a criminal proceeding but only in an internal proceeding, however, the officer refuses to give information. Discipline in this situation, absent other legitimate reasons, is not an unconstitutional act on the part of the employer.

5. Employer's control versus Officer's right:

An employer controls whether compulsion occurs which triggers the protection for the officer and the prohibition against the employer. The invoking or asserting of the *Garrity* protection, however, is exclusively reserved for the affected officer, not the employer. The *Garrity* protection must be invoked by the officer to be effective, as the Fifth Amendment is not self-executing.

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The Second Life of Police Officers and Supervisors

By DAVE BRAY

Consumer Loan Specialist, Huntington National Bank

Hopefully you use your leave time engaged in business ventures or projects to enhance the value of current assets like your home. Our police customers tell us that, after the daily challenges of police life, they prefer to be their own boss during their free time. So, some officers own and operate their own small business as a way to grow their net worth.

Police personnel who are able to have a business interest outside their departments are engaged in everything from acting as subcontractors for skilled trades such as plumbers, carpenters and electricians to small business owners of trucking, security, cleaning, and other service companies. Other strategies we see are partnerships in retail establishments, investment groups and engagements as sales representative for products or services.

As a police officer or supervisor, it's important to establish your second business interest in enough time before retirement day arrives or that early retirement offer is made. You should plan now for an easy transition into your second career. Nobody should have to start over with the help wanted ads. Unless you plan on entering into another relationship as someone else's employee, you'll probably need to secure start up funds for your business venture. You may need the funds to pay for everything from tools to franchise rights. So, what's your likely funding options?

Innovative new funding strategies are making it easier to finance the things you want to do, like start a new business. Low interest rates allow you to gain access to more dollars. Here's the common ways for individuals who own homes to raise dollars:

Home Refinancing

Shop around and see how your interest rate compares to what is currently available. Obviously, lowering your interest rate or extending the length of your mortgage will free up funds.

The new interest-only mortgages provide the flexibility of allowing small monthly payments with the option of paying more when revenues are higher to build equity. There are also no income, no asset mortgages where almost all of the home value can be mortgaged based on the individual's credit score.

If there is a very low interest rate on your first mortgage, sometimes a second mortgage is more advantageous. For smaller dollar requirements, a home equity loan or credit line may be the best financial option.

The difference between a home equity loan and a home equity line.

Cashing in on the equity you've established in your home is another source of funding. The equity amount you have in your home is the difference between the amount you owe on your mortgage and the appraised value of your home.

For a home equity loan, the entire amount you are approved for is given to you up front and then you pay it back in monthly payments. A home equity line is a credit amount available to use whenever you choose through a checkbook or a gold card. The minimum monthly payment on an equity line is the amount of the interest only. Funds from an equity loan or line can be used for just about anything you want or need.

Other loan options that don't involve a home are loans where other collateral is used to secure the loan such as cash, certificate of deposit or stock secured loans. Some people just like to keep their cash so they use it to borrow money instead of spending it.

Until businesses are mature and well-established in a stable industry, it is difficult to get financing in the company's name alone. Most small business are financed through the owner's personal credit and assets.

From a financial point of view, you really do need to consult with your personal banker to examine how long you should continue to work for the department beyond your optional retirement time. Depending on your own specific situation, retiring as early as you can and moving onto a second career may provide all the benefits you need plus another income. Unlike most Americans, your peak earning years may be after retirement from your primary career!

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More Garrity Concerns

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March 14, 2005

Mr. James Tignanelli
Police Officers Association of Michigan
27056 Joy Road
Livonia, MI 48239-1949

Dear Mr. Tignanelli:

Please accept this letter of thanks on behalf of the Walled Lake Police Officer & Dispatch Association (WLPDA) as we have recently settled our union contract that has been expired since June 30, 2003. This contract settlement is a direct result of the efforts of Mr. Tom Funke, who is currently our business agent.

When our association entered into contract negotiations, the Michigan Association of Police (MAP) represented our group. Union negotiations were stagnant as a direct result of animosity felt by our union representative towards management. This animosity created a slow and arduous process under which we had labored for over a year. The decision was made to make a break from MAP and after looking around we believed that POAM would offer the most professional service around.

Enter the picture comes POAM business agent Tom Funke. Tom is both personable and professional and helped to create a calm and stable negotiating environment for both the City and the Union. We were able to conclude our negotiations after four short meetings and both the City and our members were satisfied with the agreement. Through the assistance of POAM, our group also established the WLPDA which has created a feeling of solidarity amongst our members that has never before been realized.

Please express our thanks and appreciation to Agent Tom Funke for his hard work and guidance in leading our group to an amicable settlement. We would also like to thank POAM for your support and services and we are looking forward to a long and successful relationship.

Sincerely,

Paul Shakinis
President

Anthony Noble
Vice President

John Brazaski Retires

Dear President Tignanelli,

I am retiring from the Benzie County Sheriff Office. I was the President of our local Command Officer's Union, and before that President of our local Police Officers Union. I have belonged to the Police Officers Association of Michigan since 1981. Mr. Pat Spidell is our Business Agent, representing the Police Officer's Association of Michigan, and has been since I joined your Association. Pat is always there when I need him. Because of him, and your Association, our local Union has come a long way to better working conditions and pay.

When in negotiations for a new contract, or working out a grievance, whatever the issue, the knowledge Pat brings to the table is invaluable. I just wanted you to know what a professional and knowledgeable Business Agent Pat is. His dedication to his position, and the way he conducts business, reflects highly on your Association. Because of Pat, I would strongly recommend the Police Officers Association of Michigan to anyone and everyone.

Sincerely Yours,

John Brazaski, Retired.



POLICE OFFICERS ASSOCIATION OF MICHIGAN



27056 Joy Road • Redford, MI 48239-1949

March 8, 2005

Telephone (313) 937-9000
FAX (313) 937-9165
Voice Mail Extension

Scott Atkinson, President
Taylor Police Officers Association
1670 E. Hurd
Monroe, MI 48161

Re: Garrity Rights

Dear Mr. Atkinson:

You have requested a legal opinion concerning a recent article entitled, Take the Garrity Quiz, Do You Know Your Rights?, written by Mark A. Porter, a private attorney, who apparently is, or was, labor counsel to the Michigan State Police Troopers Association. The referenced article appeared in the Winter 2004-2005 edition of The Peace Officer, a publication of the Fraternal Order of Police.

Due to the length of the legal opinion, it is presented in memorandum form, as attached hereto. Should there be any questions regarding the aforesaid, please contact the undersigned.

Sincerely,

Frank A. Guido
General Counsel

From the President:

POLICE OFFICERS ASSOCIATION OF MICHIGAN

27056 Joy Road • Redford, MI 48239-1949
(313) 937-9000 • FAX (313) 937-9165

December 14, 2004

Timothy L. Holston, District Director
Altria Corporate Services, Inc.
400 Technecenter Dr., Ste. #302
Milford, OH 45150

Dear Mr. Holston:

Please accept my sincere appreciation to both you and Altria Corporate Services, Inc., for your generous donation to our scholarship fund. The donation will allow us to provide needed funds to deserving young people all across Michigan.

The program has been in place for some four years now and has been greatly received by a long list of young people. Our funds are limited and your contribution to that fund will be very helpful. I will be certain to include mention of your generosity in our publication and on our website (www.POAM.net).

Thanks again for your help.

Sincerely,

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

James A. Tignanelli
President

Scholarship Award Winner

Dear Mr. Tignanelli:

As per your request, I am proud to send you my senior picture as a recipient of a POAM scholarship. I appreciate your donation and especially the job your members do every day.

Sincerely,
Corey Borisch
Livonia, MI 48152

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Signed and Sealed

Agreements gain vital benefits for POAM members

Summaries and highlights of recently completed local contract negotiations and 312 arbitrations



Act 312 Award Inkster Command

Duration – 7/1/2001 through 6/30/2004

Wage increases:

2001	3%
2002	3%
2003	0%
2004	1.5%

Initiated COLA on pension

Increase two personal days per year

Increase in dental reimbursement

Increase in prescription co-pay
from \$5.00 to \$10.00

Negotiating committee consisted of Tom Diaz
and Greg Hill and were assisted by POAM Business Agent Wayne Beerbower.

The arbitrator was Bernard Klein.

Negotiated Carrollton Twp. POA

Duration – 4/1/2004 through 3/31/2008

Wage and pension package improvements:

2004	2.0%
2005	2.5%
2006	2.8%
2007	3.1%
2008	4.0%

MERS B3 (2.25% multiplier)

FAC based on highest earnings for 5 consecutive years

Prescription co-pay of \$5.00 and \$10.00 with \$5.00 mail in

Township agrees to pay 50% of fitness club membership

Life insurance increase to \$50,000

Additional holiday pay and jury duty day

Military Service Selective Act of 1948 language inserted in contract

Negotiations were conducted by Cindy Luberdia with assistance from POAM Business Agent Thomas Funke.

Negotiated Walled Lake Police and Dispatch

Duration – 7/1/2003 through 6/30/2007

Wage increases:

2003	2% last 6 months
2004	2% 1 st 6 months, 2% 2 nd 6 months
2005	2% 1 st 6 months, 2% 2 nd 6 months
2006	2% 1 st 6 months, 2% 2 nd 6 months
2007	2% 1 st 6 months

Pension improvement from MERS B3 to B4

12 hour shifts will be implemented on a 1-year trial basis

Co-pays were increased from \$5/10 to \$10/40 with a \$20 reimbursement

Complete retro-active pay

Negotiated by President Paul Shakinas, Vice President Anthony Noble and assisted by POAM Business Agent Thomas Funke.

Negotiated Southfield Dispatch

Duration – 7/1/2003 through 6/30/2005

Wage increases:

2003	2.5%
2004	2.25%

Eliminated employees .5% pension contribution beginning 1/1/2005

Pension multiplier increased from 2.25% to 2.5%

Dental coverage raised to \$2000 annually

Regular retirement when age and service=82 years

Drug co-pay increased to \$5.00 generic/\$10 brand name

1 ½ hours per week comp time to be used by local board for union business

President Debbie Rice was assisted by POAM Business Agent Bob Wines.

Negotiated Jackson County

Duration – 1/1/2005 through 1/1/2006

Wage increase of 2% the first year with a wage re-opener in the second year

Increase in life insurance from \$25,000 to \$30,000 and retiree health from \$12,500 to \$15,000

Eliminated current sick time to paid time off

Clarified language on vacation time off and holiday compensation

Changed from traditional BC and BS insurance to the county's individual benefit plan to purchase health care coverage based on a set dollar amount and coverage needs

Eliminated longevity for new hires

Local bargaining team consisted of David Ritz, Ron Rose, David Thomas, Tim Schlundt, Mike O'Keefe and were assisted by POAM Business Agent Jim DeVries.

Negotiated Pleasant Ridge POA

Duration – 7/1/2002 through 6/30/2005

Wage increases:

2002	2.5%
2003	2.5%
2004	3.0%

Top patrol base pay at the end of contract is \$50,425

Health care opt out increased from \$1500 to \$3000

Holidays – 14 days in comp bank on January 1st of each year. If officer works the holiday an additional 1½ x for all hours worked.

Pleasant Ridge Sergeants

All of the above plus the following increases in sergeant differential

0 – 1 years	5%
1 – 3 years	7%
3 – 5 years	10%
5 – 10 years	12%
10 – 15 years	14%

Negotiating committees consisted of Michael Guzik and Robert Kaukazewski assisted by Business Agent Bob Wines.

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SIGNED and SEALED Page 2, 35	Convention DATES and EVENTS Page 29,30	CLIP & SAVE Info. on <i>Garrity</i> RIGHT Page 31
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