

Executive Director's Interpretation of Garrity:

Legal Principle

In **Garrity v. New Jersey**, 385 U.S. 493 (1967), the United States Supreme Court held that statements obtained from a public employee under the express or implied threat of job loss are **compelled** within the meaning of the **Fifth Amendment**. Such statements, and any evidence derived from them, are inadmissible in a subsequent criminal prosecution.

The Court reasoned that compelling an employee to choose between **self-incrimination** and **loss of public employment** imposes an unconstitutional condition on the exercise of the privilege against self-incrimination.

Trigger for Garrity Protection

- Applies to *public employees* questioned in the course of their official duties.
- Protection arises when an employee is **ordered to answer questions** under threat of job-related discipline or termination.
- The coercion may be **explicit** or **implicit**

Nature of Immunity

- Provides **use and derivative-use immunity** in criminal proceedings: the statement itself and any investigative leads obtained from it cannot be used by prosecutors.
- Does **not** grant transactional immunity; the employee may still be prosecuted if the government can prove its case with evidence wholly independent of the compelled statement (*Kastigar v. United States*, 406 U.S. 441 (1972)).

Limitations

- Garrity DOES NOT prohibit use of compelled statements in **administrative or disciplinary proceedings**.
- Does not apply if the interview is **voluntary** and the employee is free to decline without penalty.

Operational Guidelines for Oversight and Internal Investigations

Determine Investigative Track

- **Administrative / Compelled:** Provide written assurance that the employee's statements will not be used in a criminal case; require truthful responses; advise that refusal to answer **shall** result in discipline.
- **Criminal / Voluntary:**
- An in-depth explanation is not provided here because neither the Board nor PCOB staff are permitted to conduct criminal investigations. However, if during the course of an administrative investigation of personnel it becomes evident that there is the potential for a criminal element to the investigation:
 - I. The interview and investigation will **cease immediately**.
 - II. A **written notification** will be made to both the **Chief of Police** and the **Commonwealth's Attorney**.
 - III. The **administrative component** of the investigation will **not proceed** until:
 - The criminal matter has been **adjudicated** in the appropriate court; **or**
 - A **letter from the Commonwealth's Attorney** has been received with a finding of **no criminality** or a statement that they are **declining criminal prosecution**.

Maintain Separation

- Establish a "**taint wall**" between administrative investigators and criminal investigators to prevent the transfer of Garrity-protected information.

Document the Warning

- Precisely record the form of the warning, the authority under which compulsion was issued, and the employee's acknowledgment.

Supporting Case Law

- **Garrity v. New Jersey** (1967) – Compelled statements under threat of job loss are inadmissible in criminal prosecution.
- **Gardner v. Broderick**, 392 U.S. 273 (1968); **and**
- **Uniformed Sanitation Men Association, Inc. v. Commissioner** of Sanitation City of New York, 392 U.S. 280 (1968) – Employees cannot be terminated for invoking the Fifth Amendment absent immunity assurances.
- **Kastigar v. United States**, 406 U.S. 441 (1972) – Government bears the burden of proving independent sources when prosecuting after granting use and derivative-use immunity.

Legal Basis for Compelling Statements

- **Garrity immunity** attaches whenever a *public employer* (or its *authorized agent*) demands answers under threat of job-related discipline or termination.
- The “employer” in this context is **the government entity** - here, the City of Charlottesville. **Garrity protections apply to all public sector employees, sworn or civilian.**
- If, theoretically, the City’s **Police Civilian Oversight Board (PCOB)** is empowered by Virginia Code, ordinance, charter, or policy to require officer cooperation in administrative investigations, they are acting as agents of the employer for Garrity purposes.
- The fact that the interviewer is a **civilian** does not limit Garrity’s application; what matters is **the authority to compel** in an *official capacity*.

Bottom line

Non-sworn civilian staff can absolutely issue Garrity warnings and require an officer to answer with the same legal effect as if the order came from a sworn member of the police department.

Garrity Is Triggered by Government Authority - Not Pay Status

- *Garrity v. New Jersey* does **not** require that the person compelling the statement be a paid employee of the government.
- What matters is:
 1. **The source of the authority to compel** (statute, ordinance, charter, or delegation from the public employer), and
 2. Whether the demand is being made in an **official governmental capacity** with the power to impose (or recommend) employment consequences.
- If the **volunteer board** is established by the City Council ***and*** vested with investigatory powers ***and*** the authority to compel cooperation under threat of discipline, then Garrity applies in the same way as if the compulsion came from a city employee.

Relevant Case Law

While there's no Supreme Court decision squarely on "volunteer oversight boards," several cases support the principle that **any authorized government agent** - not just a sworn officer or paid employee can trigger Garrity immunity:

- **Garrity v. New Jersey**, 385 U.S. 493 (1967)
The compulsion came from the State Attorney General's investigators, acting under official authority. The Court's focus was on *the coercive power of the State as employer*, not the employment status of the questioner.
- **Uniformed Sanitation Men Association v. Commissioner of Sanitation City of New York**, 392 U.S. 280 (1968)
Civil service commissioners (not sworn law enforcement) compelled testimony. The Court recognized their administrative compulsion as state action triggering Fifth Amendment protections.
- **Lefkowitz v. Turley**, 414 U.S. 70 (1973)
Independent contractors doing public work were compelled by state officials to give statements; the Court treated the compulsion as state action despite the questioners not being criminal investigators.
- **McKinley v. City of Mansfield**, 404 F.3d 418 (6th Cir. 2005)
The court emphasized that Garrity applies when statements are compelled by **anyone acting under color of governmental authority** in an employment context.

The theme across these cases: The key factor is governmental authority to demand answers under threat of job consequences - not whether the interviewer is sworn, paid, or in law enforcement.

Practical Application in Charlottesville

- If Virginia Code (§9.1-601) and the Charlottesville ordinance **explicitly authorizes** the PCOB to conduct compelled administrative interviews of police officers, and that authority is backed by potential disciplinary consequences through the City's chain of command, then Garrity applies.
- Even with authority, it is best practice to have the **Garrity warning delivered by someone with formal delegated authority** (often the oversight director / investigator) to avoid later disputes over whether the order was valid.

Bottom Line

Yes, volunteer board members *can* compel testimony and issue Garrity warnings **if** the Virginia Code **and** the City ordinance or other formal delegation explicitly grants them that authority, and the threat of discipline for non-cooperation is real and enforceable. The case law focuses on the **state action** and **power to compel** not the pay status of the person asking the questions.

The ordinance prohibits the Board from compelling statements from police department personnel. This restriction is a significant barrier to the Board's ability to conduct meaningful investigations.

- **There is no legal precedent** to support denying either the Board or staff the ability to compel statements, if *Garrity* protections are provided (*Garrity v. New Jersey*, 385 U.S. 493 (1967)) which protect officers from their compelled statements being used in criminal proceedings.
- Other applicable case law, such as *Kalkines v. United States*, 473 F.2d 1391 (Ct. Cl. 1973), further supports that compelled administrative interviews can be conducted without violating constitutional rights when proper advisements are given.

***Issue Statement**

Virginia is a Dillon Rule state, which means that local governments and their subdivisions may exercise **only** those powers expressly granted by the General Assembly. Because compelled testimony during personnel investigations **is NOT expressly granted in state law (§9.1-601)**, there is a strong argument that the City may lack the authority to confer that power on the Board or staff absent enabling legislation.

Recommendation

The citizens of Charlottesville, as well as the PCOB itself, could petition the Virginia General Assembly to amend state law to **expressly grant** local oversight bodies the authority to compel statements during administrative investigations of personnel. This would clarify the authority to compel and ensure such compulsion is enforceable and constitutionally sound.