

Truth or Consequences: The Impact of Untruthfulness in Law Enforcement

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A group of individuals gather before an austere government official, their right hands raised as they repeat in unison an Oath of Office that typically contains the phrase: "I do solemnly swear." When the oath is finished, the individuals will have completed their transformation from civilian status to that of sworn law enforcement professionals. The new officers will be congratulated by their family members, their friends, agency command staff members, and various government officials. For most, it is truly a momentous occasion that marks the embarkation of a challenging and rewarding career.

From this point forward, the actions of the newly appointed officers will be evaluated and scrutinized by training officers, supervisors, prosecutors, defense attorneys, members of the media, and most importantly - by the public they have sworn to protect and serve. As law enforcement professionals, these individuals have been entrusted with a tremendous responsibility granted to them by their appointing authority. They must perform their duties within prescribed legal parameters, with the highest degree of ethical and moral conviction. They must be able to successfully navigate through a multitude of ethical dilemmas. A failure in this endeavor could result in a violation of an individual's civil rights in the form of an unlawful arrest, an excessive application of force, an unlawful seizure of property, or in the most extreme case, the unlawful taking of human life.

The Oath of Office is not the only time a law enforcement officer will have to raise his or her right hand. There will be countless opportunities for the law enforcement officer to take an oath or affirmation that he or she will testify truthfully. These occasions include: State Attorney Investigations; defense depositions; courtroom testimony; preparing arrest warrants and search warrants; and in all probability, the law enforcement officer will have to swear to the truthfulness of his or her testimony during an internal administrative investigation, either as a witness officer or the subject of a misconduct complaint.

Perhaps one of the more difficult ethical dilemmas a police officer may have to face during his or her career is the requirement to testify truthfully during an administrative (internal

affairs) investigation-for doing so may result in an admission of misconduct that could lead to disciplinary action against the officer, or perhaps a co-worker whom the officer must testify against. Regardless of the situation or circumstance, a law enforcement professional must testify truthfully, without embellishing the facts. Compromising the truth can cause irreparable damage to an officer's credibility as a witness. One instance of untruthfulness can mar an officer's integrity and could destroy the public's confidence in an agency's ability to fairly and impartially provide police service to the community. A law enforcement officer caught being untruthful could be a career-ending event tantamount to an athlete sustaining an injury for which there can be no successful rehabilitation. According to Carl Milazzo, Esq. (2000), "Police officers are in an occupation unlike any other because they testify under oath as a job requirement, and they testify frequently. Thus, once character and credibility has been destroyed, the officer is tainted forever." (p.3)¹

Throughout the course of several decades, the U.S. Supreme Court has ruled on several landmark cases that have established definitive guidelines regarding an officer's testimony during administrative investigations. In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the U. S. Supreme Court held that an officer's compelled testimony, obtained under threat of removal from office, could not be used against the officer during subsequent criminal proceedings.² One year later, in *Gardner v. Broderick*, 392 U.S. 273 (1968) the U.S. Supreme Court determined that had the officer "refused to answer questions specifically, directly, and narrowly related to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, *Garrity v. New Jersey*, supra, the privilege against self-incrimination would not have been a bar to his dismissal." (p.728)³ In essence, these two cases established the principle that an officer can be compelled to answer questions during an administrative interrogation. However, the officer does not have to give up his or her Fifth Amendment right against self incrimination; therefore, any compelled statements or evidence obtained during the administrative interrogation cannot be used against the officer in a subsequent criminal prosecution. If the officer refuses to testify, or claims the privilege against self-incrimination, the officer can be subject to disciplinary action including termination of employment.

In 1998, in the case of *Lachance v. Erickson*, 522 U.S. 262, the U.S. Supreme Court ruled that lying during an internal affairs investigation justifies termination. "Our legal system provides methods for challenging the Government's right to ask questions-lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood." (p.3)⁴

In *U.S. v. Veal, et al.* the U.S. Court of Appeals for the Eleventh Circuit held that an officer's untruthful testimony during an administrative investigation is an independent criminal act that is not covered under the protections of *Garrity*⁵. The officer's untruthful statements can result in future prosecutions for such crimes as perjury, or obstruction of justice, separate from the original misconduct under investigation. An officer's misleading statements to state or local investigators may also lead to federal prosecutions under 18 USC 1001 if the matter under investigation could potentially result in the officer being prosecuted for a violation of federal law.⁶ For example, an excessive force or unlawful arrest complaint

against an officer can potentially lead to the officer facing federal criminal prosecution for the deprivation of an individual's civil rights under title 18 USC 242.⁷ The deprivation of an individual's civil rights may also subject the officer to a federal civil action under 42 USC 1983.⁸

Furthermore, if an officer provides false or misleading information to state or local investigators, the officer could be subject to federal prosecution under 18 USC 1512 (b) (3) if the false statements could be transferred to federal authorities conducting a subsequent investigation⁹.

An officer lying during an official proceeding, such as an internal administrative investigation, could be subject to state criminal sanctions for untruthful statements. Florida State Statute §837.02, perjury during an official proceeding, is a third-degree felony which, whether prosecuted or not, could result in the Criminal Justice Standards and Training Commission suspending or revoking an officer's state law enforcement certification pursuant to Florida Administrative Code 11B-27.0011 (4).¹⁰

The State of Florida's Criminal Justice Standards and Training Commission (CJSTC) has prescribed Ethical Standards of Conduct for Florida law enforcement officers that have been delineated into eight principles. Under Principle Two, Rule 2.3, police officers shall truthfully, completely and impartially report, testify, and present evidence, including exculpatory evidence, in all matters of an official nature.¹¹ A violation of the Ethical Standards of Conduct could subject the officer to state decertification proceedings by the CJSTC, pursuant to Florida Administrative Code 11B-27.0011.¹²

According to CJSTC statistics for January through December 2002, the most frequent violation presented to the CJSTC for revocation or relinquishment of an officer's state law enforcement certification was False Statements (20) and Perjury (7).¹³ Similarly, January through December 2003 CJSTC statistics indicate (18) False Statement Offenses and (17) Perjury Offenses.¹⁴

In 1997, the National Institute of Ethics (NIE) compiled The National Law Enforcement Officer's Research Project which revealed that False Statements/Reports (19.2%) ranks at the top of the ten most frequent offenses for which a law enforcement officer is decertified.¹⁵ Without a state law enforcement officer certification, a police officer will be unable to perform the duties required of his or her office and will most likely face termination of employment.

Untruthfulness by a law enforcement officer can result in many types of sanctions against the individual involved, both administrative and criminal. Moreover, it ruins an officer's reputation and career and can damage a law enforcement agency's ability to maintain public trust and confidence, which is a crucial component of law enforcement's mission today, especially with the future personnel recruitment and retention challenges facing agency administrators.

Law enforcement administrators should be cognizant of the negative impact an untruthful

officer could have on an agency, especially as an impeachable witness during a criminal trial. Truthfulness must be touted as a core organizational value and administrators should adopt stringent policies mandating truthfulness by their employees and should terminate the employment of officers found to be untruthful. In addition to termination of employment, the agency should actively support the revocation of a law enforcement officer's certification if he or she is found to be untruthful in the performance of official duties.

According to Dr. Neal Trautman, Executive Director for the National Institute of Ethics, law enforcement's greatest training and leadership need is ethics.¹⁶ Therefore, agency administrators must be committed to maintaining organizational integrity by providing effective ethics training, especially to sworn personnel. Supervisory staff must serve as positive role models to reinforce and reward sound ethical decision making by subordinates. Moreover, ethical violations by department personnel, particularly untruthfulness, must be handled in a timely manner through the administrative investigation process, in accordance with departmental policies, state and local laws, and collective bargaining agreements, where applicable. Whenever an ethics violation concerning untruthfulness is sustained, the employee involved should be disciplined accordingly, including termination and decertification.

The fundamental cornerstone of ethical policing is truthfulness under all conditions. The personal and professional integrity of the law enforcement practitioner is the mortar that holds that cornerstone in place-and it must never be compromised.

Endnotes:

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