

DR. ROBERT A. VERRY

Chief of Police[^]

Licensed Private Detective, License No.9629

Certificated Freelance Paralegal

Post Office Box 47 | SBB | NJ | 08880-0047

732.302.9520

DrVerry@Verry-Shea.com | www.VerryShea.com

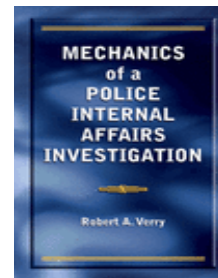
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Miranda Rights in Police Misconduct Investigations By Dr. Robert A. Verry (Chief-ret.)¹

I write about Miranda and Garrity Rights in my book, *Mechanics of Police Internal Affairs Investigation*,² in Chapter Nine. However, since its publication, internal affairs investigators have frequently researched whether (and when) Miranda Rights are required during an investigation involving a law enforcement officer. The simple, plain vanilla answer is that there's no reason to read an officer their Miranda Rights unless they are a target of a criminal investigation. Stated differently, if the subject officer is under investigation for an administrative or departmental (i.e., policy or rule violation) (hereinafter "administrative") with no suspected hint of criminality, there's likely no grounds to tell the officer s/he has a right to remain silent. In fact, just the opposite is true – during an administrative investigation, officers can be compelled to answer questions that are "narrowly, specifically, and directly"³ to his or her official duties — so long as those statements are not used against the officer in a criminal prosecution.

So, what's the difference between a Criminal Investigation and an Administrative Investigation? A criminal investigation focuses on gathering facts and evidence to prove or disprove a violation of federal and/or state criminal laws, providing sufficient support to warrant criminal charges and a subsequent prosecution. Some examples of criminal allegations against law enforcement officers include, but are not limited to, falsifying police reports, planting or tampering with evidence, intimidating witnesses, theft, excessive force, and assault. Under these types of investigations (i.e., criminal), police officers who are significantly deprived of their freedom (to leave), subject to an interrogation regarding their alleged criminal conduct, and could lead to criminal charges, arrest, and potential criminal prosecution are entitled to their Miranda Rights. Like every citizen, police officers are not entitled to water down rights. They are equally protected by the Fourth, Fifth, and Sixth Amendments, which protect everyone against unreasonable searches, self-incrimination, and the right to counsel.

On the other hand, administrative investigations are conducted by internal affairs investigators to examine alleged violations of departmental policy. These investigations can result in disciplinary action, which may include termination in egregious cases, but more commonly leads to lesser forms of departmental discipline, such as a suspension or reprimand. While in administrative

¹ This work was supported by OpenAI (comparable to Grammarly) for language, grammar, and punctuation editing and refinement.

² ISBN No. 978-1932777970

³ Gardner v. Broderick, 392 U.S. 273 (1968)

investigations, police officers are not entitled to their Miranda Rights, they are entitled to their Garrity Rights, which is named after the seminal Supreme Court decision Garrity v. New Jersey, 385 U.S. 493 (1967), nl.

nl – The Supreme Court’s decision in Garrity, established that public employees cannot be forced to choose between self-incrimination and keeping their jobs. This ruling arose from an investigation into ticket-fixing by police officers in New Jersey, where officers were compelled to answer questions under threat of termination, and their statements were later used in criminal court. The Supreme Court held that such compelled statements violated the Fifth Amendment and were inadmissible in criminal prosecutions, reinforcing that the government cannot coerce individuals by threatening their employment to obtain self-incriminating evidence. When internal affairs or another agency conducts an administrative investigation for potential policy violations or discipline, officers are not entitled to Miranda warnings. Instead, police officers receive Garrity protections, which allow investigators to compel the subject officer to answer questions under the threat of termination; however, any statements made cannot be used against them in subsequent criminal proceedings. If an officer refuses to answer, their refusal may result in disciplinary action, including termination.

A particularly complex situation arises when both administrative and criminal investigations coincide. In these cases, generally under the advice and consent of the prosecutor, the administrative investigation may proceed with compelled statements under Garrity protection, and the criminal investigation can also proceed if the investigator respects the officer's Fifth Amendment right against self-incrimination and provides Miranda warnings for any custodial interrogation. In these bifurcated investigations, investigators must carefully separate the two processes to ensure that compelled administrative statements do not taint the criminal case. While bifurcated investigations happen, they are uncommon, and except under very limited circumstances, the investigator should first close out the criminal investigation and then begin the departmental investigation.

In conclusion, Miranda rights are only required when an officer is the subject of a criminal investigation; they are not required for administrative, departmental, or policy infractions. Officers may be forced to respond to inquiries about their responsibilities during administrative investigations, if their answers are not used in criminal trials. Criminal investigations, on the other hand, concentrate on potential criminal law infractions and necessitate the reading of Miranda rights if officers are subjected to severe constraints and interrogation that may result in criminal charges. Officers maintain their Garrity Rights, which shield them from being forced to choose between their employment and self-incrimination.

Having been directly and indirectly involved in thousands of internal affairs investigations, please feel free to reach out if you have any questions.