



keeping an eye on the big picture

By Mark A. Porter

"....No man is an island, entire of itself.. Every man is a piece of the continent, a part of the main."

— John Donne,
Mediation XVII (1624)

Mark A. Porter is a retired police officer who has been an active member of the FOP since 1973. He is currently a partner at the law firm of Alonzi, Porter, & Associates, PLLC in Pontiac.

Years ago while working the road and running radar enforcement, I remember a training film that pointed out the dangers of "tunnel vision." As the normal driver accelerates to faster and faster speeds, the focus of vision is correspondingly narrowed – down to the size of a pin-point at extremely high speeds.

Sure enough, I found that the easiest speeders to clock were those going at 40-50/mph over the speed limit. They would blow past my fully-marked car, sitting on the side of the road, and later state that they never saw me – and those statements were indeed truthful.

Likewise, as an officer, it is easy to become so focused on your day-to-day job and assignments that you get a "tunnel vision" that blocks out important legal issues that will ultimately affect you and all of the officers in your department.

It's all too easy to narrow your vision to "my community," and then to "my department," and then to "my shift," and ultimately to "my daily assignment." But like the high-speed driver who must constantly remember to keep moving right-to-left with peripheral vision, you must constantly be aware of the outside forces that impact your career and well-being.

These outside forces are usually from the legal community – and their

intrusions may appear to be "sudden." But, in fact, the law grinds slowly and with a fine edge. It takes years for legal disputes and cases to bubble upwards through the Courts and reach a final, "sudden" decision that impacts all police and corrections officers.

The movements and directions of these legal changes are more easily spotted by those who study them – which is the why your State Lodge is such an important force in your everyday life. Much like the sentinel on a watchtower, the State Lodge keeps on the lookout for trends that are affecting your career and livelihood.

In many cases, these trends start off with a single person's court case. Here are three examples of how a single individual unintentionally changed the legal course of history for all public safety officers:

Residency

A lawsuit filed by a single applicant who was rejected for a law enforcement job three years ago has now impacted all local public employees in Michigan.

At issue was how the State statute's 20-mile rule for employee residency was to be measured: in a straight line, or by "road miles?"¹

As detailed elsewhere in this magazine, your State Lodge was the only law enforcement organization to submit detailed legal briefs in support of the

applicant on this question. The FOP filed legal briefs at both the Michigan Court of Appeals and the Michigan Supreme Court, arguing that Michigan law had consistently used a "Straight-Line Rule."

In the end, the arguments of the State Lodge were endorsed by Michigan Supreme Court, which decided in favor of the Straight-Line Rule for measuring boundary distances.

The impact of this decision was immediate and profound. Some labor contracts from other organizations still contain references to "road miles" in their residency requirements. Those restrictions are now void, as a matter of law.²

In the end, one Plaintiff made legal history for all local public employees in the State. But the State Lodge realized early on that the Plaintiff "was not an island."

Compelled Statements

Here's an example of how one person can impact every law enforcement and corrections officer in the United States.

Ever heard of the Borough of Bellmawr, New Jersey? Its population today is about 11,000 – but in 1961 its Police Chief made legal history. Accused of running a scheme to fix traffic tickets, the Chief was told by the State Attorney General's office to "talk or else lose your job."

Chief Edward Garrity talked – was convicted – and still lost his job. The New Jersey appeals courts upheld the conviction in 1965. But in 1967 the U.S. Supreme Court reversed, citing the inherent violation of Garrity's 5th Amendment right to remain silent.³

End of the story? Not by any means. The term “Garrity rights” has become a nationwide legal issue in the last 15-years, as Federal and local prosecutors become more aggressive in criminally charging law enforcement personnel.

Two years ago, your State Lodge began publishing articles detailing the increasing efforts of prosecutors and courts to kill Garrity by a thousand cuts.⁴

Nationwide court case surveys show that Garrity is upheld by the Federal and State Courts in only 12-15% of the criminal cases against law enforcement officers. The remaining 85% of the officers hear their own Garrity statements read into the trial record as “confessions,” and are convicted. Sound like good odds to you?

Yet there is no greater example of individual officers getting tunnel vision than the persistent and erroneous belief that all of these anti-Garrity cases are “exceptions” to some mythical protection that – in reality – doesn't exist.

Just as Chief Edward Garrity was not an island unto himself, neither is any officer who is subjected to the Garrity warnings. Garrity is a Federal rule of criminal law, and that means that every court case in every State or Federal Court that assaults Garrity affects every single officer in the country.

Because of that fact, the State Lodge was at the front of a nearly 5-year effort to enshrine Garrity rights into a Michigan Statute, now known as Act 563.⁵ But the law will be of little value if a single department, labor organization, or officer refuses to carefully follow its requirements.

One bad legal case – based upon the indifference of a department, officer, or labor organization – can severely cripple Act 563 and its protections for every other officer in the State. There is no

greater example of how each individual officer is an integral part of the State's entire public safety population.

Excessive Force

Police cars can be used to respond to calls, transport personnel, and sometimes to forcibly stop and seize a citizen.

If it's the latter, a legal controversy can arise in the form of a lawsuit – or a criminal investigation that alleges an illegal use of deadly force. Because excessive force issues are often examined under Federal law, the officer may become the target of a Federal lawsuit. Or, the officer may be investigated as a suspect in a criminal case.⁶

In 2001, Deputy Scott of Coweta County, Georgia pursued a vehicle for traffic violations. After a considerable distance and time without effecting a stop, he requested and received permission to hit the suspect's vehicle to terminate the chase. The ramming of the suspect's car drove it off of the road where it crashed and paralyzed the driver. The driver then sued the deputy and department.

The Federal trial court and the Federal Court of Appeals issued rulings for and against Deputy Scott's liability. Because it was considered a “case of first impression,” everyone knew that it would eventually land on the doorstep of the U.S. Supreme Court.

Six years after the case first started, the Supreme Court ruled in favor of the deputy and dismissed the lawsuit. **But** the Court also cautioned that the intentional ramming of the suspect's car is a forcible “seizure” under the 4th Amendment – and a use of deadly force.

And, the Court ruled, each case will rise or fall on its own particular facts.⁷ That pronouncement, unfortunately, leaves more questions than answers for all law enforcement agencies.

Now the Federal and State courts will begin to build a “legal fence” around the outer boundaries of law enforcement vehicle pursuits. There will be detailed reviews of claims of “excessive” and “deadly” force. And in each legal review,

an individual officer will be at the center of the investigation.

Twenty-two years ago another U.S. Supreme Court case eliminated most uses of deadly force during arrests for property crimes. In both cases, the key questions are when the deadly force should be used for a seizure, and how it should be used.⁸

How long will it be before some hard and fast legal guidelines emerge? Bear in mind that the Supreme Court's Garrity decision lay dormant for nearly 25-years before Federal and State prosecutors began to aggressively attack it.

So the shaping and definition of the legal boundaries on vehicle pursuits will likewise take many years. But they will be created in the same manner as is the Garrity case law – by the court cases of those individual officers who are defendants in either criminal or civil trials.

All of these examples show how a single officer can have a profound impact on the everyday work life of all officers throughout the State and the country. So let me end with one more reminder from the long-ago past, courtesy of poet John Donne:

*therefore never send to know
for whom the bell tolls,
it tolls for thee.*

¹ *Lash – v – Traverse City, MSCt #131632, WL 2051244 (July 18, 2007)*

² *MCL 15.262(2)*

³ *State – v – Naglee, 207 A.2d 689, 44 N.J. 209; appealed as Garrity – v – New Jersey, 385 US 493 (1967)*

⁴ *The law firm proudly carries all of the State Lodge's Garrity articles on its website, www.lawfirm911.net.*

⁵ *MCL 15.391-395.*

⁶ *42 USC §1983 (civil); 18 USC §§241-242 (criminal)*

⁷ *Scott – v – Harris, 127 US 1769 (2007)*

⁸ *Tennessee – v – Garner, 471 US 1 (1985)s*