



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

---

04.04.2016

---

## Truthfulness in Law Enforcement

*"Police officers...are not permitted to establish the conditions upon which they will be truthful. Rather, they must be truthful at all times."<sup>1</sup>*

Law enforcement professionals are held to a higher standard than the citizens they have sworn to protect and serve. In times when law enforcement legitimacy is being criticized and officers find themselves under a societal microscope, it is important to ensure that law enforcement professionals adhere to a strict code of truthfulness. As many already know, requiring truthfulness of officers not only comports with public policy, ethics and notions of morality, but also the law.

### What is a Lie? Setting the Standard for Untruthfulness

The Merriam-Webster dictionary defines a "lie" as a verb, meaning:

- To make an untrue statement with intent to deceive; or
- To create a false or misleading impression.

As a result, it is clear that the term "lie" means more than making a statement that is untrue. In fact, there are several categories of lies. Charles V. Ford, Ph. D., an expert on lying, proposed that there are at least five categories of lies including:<sup>2</sup> white lies; humorous lies; defensive lies; aggressive lies; and pathological lies. In certain circumstances, omissions, failing to speak up, or failing to correct a known falsehood may also be considered a lie. In addition, law enforcement is sometimes required to use false statements and untruths in order to further the apprehension, prosecution or investigation of a criminal.

The question becomes: *Are all lies subject to discipline?* The answer to this requires an examination of why police officers are precluded from being untruthful in the first place. Consider what the Massachusetts Supreme Judicial Court has said with respect to truthfulness in law enforcement:

---

<sup>1</sup> *Kinnas v. Shrewsbury*, MCSC D1-10-151 (2010).

<sup>2</sup> Charles V. Ford, *Lies! Lies!! Lies!!!: The Psychology of Deceit*, American Psychiatric Publishing, 1<sup>st</sup> Edition (June 1, 1999)



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

One of the most important police functions is to create and maintain a feeling of security in communities. To that end, it is extremely important for the police to gain and preserve the public trust, maintain public confidence in the integrity of police officers, and avoid an abuse of power by law enforcement officials.<sup>3</sup>

It seems clear that law enforcement is prohibited from engaging in untruthful conduct which breaches or violates public trust. Since all "lies" do not necessarily breach public trust and departmental policies, it is important to consider which categories of lies are generally permitted and not permitted under both public and departmental policies.

## Lies Which **Generally** Breach Public Trust and Department Policy

- ✓ **Defensive / Self-Protective Lies:** These lies usually consist of statements meant to protect or defend the speaker against an allegation.
- ✓ **Aggressive Lies:** These lies usually consist of statements which not only attempt to protect or defend the speaker, but which also attempt to deflect the accusation and implicate another. These lies may also consist of statements purposely meant to hurt, demean, or accuse another individual. This category may also include malicious lies, which are lies with bad intent and/or lies that exceed the limits of legitimacy.<sup>4</sup>
- ✓ **Pathological Lies:** These lies usually occur without any rational purpose and in some cases, the speaker may not even consciously acknowledge that he or she is lying.
- ✓ **Omissions:** These lies usually take place when an individual fails to make a true statement; remains silent about an untruth; or fails to speak up to correct an untruth.

## Lies Which **Do NOT** Generally Breach Public Trust and Department Policy

- ✓ **White Lies:** These lies are typically used to make interactions between people more comfortable. They include social lies (e.g. "You look good today.") and altruistic lies (e.g. "Nice haircut." "You'll be fine.").
- ✓ **Humorous Lies:** These lies are harmless exaggerations used to embellish a story or joke. The story or joke is what is important and not the information

<sup>3</sup> *Clancy v. McCabe*, 441 Mass. 311, 328 (2004).

<sup>4</sup> Jeff Noble, *Police Officer Truthfulness and the Brady Decision*, *The Police Chief*, Vol. 70, no. 10 (October 2003).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

conveyed. These types of lies do not include stories or jokes that have the purpose or effect of demeaning or hurting another person's reputation.

- ✓ **Lies Justified by Investigative Necessity:** These false statements or untruths are told to a suspect or person involved in a criminal investigation, as normally allowed in police investigations, used to gain entrance or further an investigation. These untruths must be told in an effort to further the apprehension, prosecution or investigation of criminals (e.g. conducting undercover operations, lying to suspects, using an unmarked cruiser).<sup>5</sup>

## The Continuum of Untruthfulness

Some Chiefs may find it easier to think of untruthfulness like a continuum or spectrum. On one end of the continuum is intentional, malicious, deceptive conduct that will take one of three forms:<sup>6</sup>

- Deceptive action in a formal setting, such as testifying in court or during an internal affairs investigation
- Failure to bring forward information involving criminal action by other officers, also known as observing the so-called "code of silence"
- Creation of false evidence that tends to implicate another in a criminal act

Naturally, any officer engaging in such untruthfulness should be terminated or permanently removed from any possible activity where the officer could be called upon to be a witness to any action.

At the other end of the continuum, however, are white lies, humorous lies and lies justified by investigative necessity. Officers engaging in such behavior are not usually subject to discipline and are excusable, if not acceptable.

In some instances, however, an officer's conduct may not be clearly on one end of the continuum or the other. It may fall into a "gray area," somewhere in the middle of the continuum. In those instances, it is contingent upon the Chief to "balance the need of the department and community to have officers that are

---

<sup>5</sup> Jeff Noble, *Police Officer Truthfulness and the Brady Decision*, *The Police Chief*, Vol. 70, no. 10 (October 2003).

<sup>6</sup> *Id.*



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

beyond reproach against the recognition that all officers are human beings and that they have human failings.”<sup>7</sup>

## Problems Posed by Untruthful Police Officers

One distinguished law enforcement legal advisor identified several problems posed by untruthful police officers. In particular, he wrote that “[e]very person involved in the criminal justice system relies on police honesty” for the following reasons:<sup>8</sup>

- ✓ Under the application of the collective knowledge doctrine, police officers rely on the validity of information provided to them by fellow officers.
- ✓ Supervisors render decisions based on information received from officers.
- ✓ According to the tenets of community policing, citizens are urged to communicate and cooperate with law enforcement officials. If they trust and respect police officers, the ability to garner their support will only be enhanced.
- ✓ Prosecutors depend on honest reports, statements, and affidavits when prosecuting criminals.
- ✓ Judges rely on honesty in evaluating warrants.
- ✓ Jurors determine guilt or innocence and often liability based on an officer’s investigation and testimony.

In addition to the fact that an officer’s untruthfulness must be disclosed in any criminal proceeding in which the officer is involved, a strong history of public policy disfavors officers who are untruthful. The Massachusetts courts and administrative agencies have cited the following public policy concerns with respect to officers who have lied:

- Inability to serve as a credible witness
  - “The duty imposed upon a police officer to be truthful is one of the most serious obligations he or she assumes, because, among other things, it

---

<sup>7</sup> Id.

<sup>8</sup> Elliot Spector, *Should police Officers Who Lie Be Terminated as a Matter of Public Policy?*, The Police Chief, Vol. LXXV, no. 4 (April 2008).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

may compromise the officer's ability to serve as a credible witness in the prosecution of a criminal case."<sup>9</sup>

- "[A] police officer that has lost his credibility can no longer effectively perform the duties of the position."<sup>10</sup>

➤ Untruthfulness constitutes conduct unbecoming

- "The [Civil Service] Commission has recognized that a police officer must be truthful at all times and that failure to do so constitutes conduct unbecoming an officer."<sup>11</sup>

➤ Law enforcement is held to a higher standard

- "The [Civil Service] Commission has stated that 'it is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.'"<sup>12</sup>
- "Specifically, there 'is a strong public policy against employing police officers who are untruthful.'"<sup>13</sup>
- "Police officers must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities."<sup>14</sup>

---

<sup>9</sup> Wosny v. Boston Police Department, MCSC G1-15-83 (2015) (citing City of Cambridge v. Civil Service Commission, 43 Mass. 300, 303 (1997) & Gallo v. City of Lynn, 23 MCSR 348 (2010)).

<sup>10</sup> Kinnas v. Shrewsbury, MCSC D1-10-151 (2010) (citing Pearson v. Whitman, 16 MCSR 46, 50 (2003)).

<sup>11</sup> Kinnas v. Shrewsbury, MCSC D1-10-151 (2010); MacHenry v. Wakefield, 7 MCSR 94 (1994).

<sup>12</sup> Kinnas v. Shrewsbury, MCSC D1-10-151 (2010) (citing Garrett v. Haverhill, 18 MCSR 381, 385 (2005)).

<sup>13</sup> Kinnas v. Shrewsbury, MCSC D1-10-151 (2010) (citing Royston v. Billerica, 19 MCSR 124, 128 (2006)).

<sup>14</sup> Police Commissioner of Boston v. Civil Service Commission, 39 Mass. App. Ct. 594, 601 (1996) (quoting Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986)).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

➤ Untruthfulness undermines police legitimacy

- “People will not trust the police—on the street or in court—unless they are confident that police officers are genuine in their determination to uphold the law...[P]olice legitimacy would be damaged severely by reports that the city continued to employ a police officer who had illegally abused his power and repeatedly lied about it under oath.”<sup>15</sup>
- ““One of the most important police functions is to create and maintain a feeling of security in communities. To that end, it is extremely important for the police to gain and preserve public trust, maintain public confidence, and avoid an abuse of power by law enforcement officials.’...’[P]olice officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens...Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel.”<sup>16</sup>

➤ Untruthfulness undermines overall success of department

- “The image presented by police personnel to the general public...also permeates other aspects of the criminal justice system and impacts its overall success.”<sup>17</sup>

➤ The Legislature imposes a higher standard on police

- “There is no dearth of positive law expressing the Legislature's strong instruction that such individuals not be entrusted with the formidable authority of police officers. General Laws c. 41, § 96A, for example, provides: ‘No person who has been convicted of any felony shall be appointed as a police officer of a city, town or district.’ See G.L. c. 268, § 1 (criminal offense of perjury...). See also G.L. c. 268, § 6A (criminalizing false police reports); G.L. c. 265, § 37 (crime for person acting under color of law to violate or interfere with constitutional rights); Commonwealth

---

<sup>15</sup> City of Boston v. Boston Police Patrolmen’s Ass’n, 443 Mass. 813, 819 (2005).

<sup>16</sup> City of Boston v. Boston Police Patrolmen’s Ass’n, SUCV2013-02627-B (2015) (citing Clancy v. McCabe, 441 Mass. 311, 328 (2004) & Attorney Gen. v. McHatton, 428 Mass. 790, 793-94 (1999)).

<sup>17</sup> City of Boston v. Boston Police Patrolmen’s Ass’n, 443 Mass. 813, 819-20 (2005) (citing Civil Serv. Comm’n of Coralville v. Johnson, 653 N.W.2d 533, 538 (Iowa 2002) & Fort Dodge v. Civil Serv. Comm’n, 562 N.W.2d 438, 440 (Iowa Ct.App.1997)).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

v. Luna, 418 Mass. 749 (1994) (affirming convictions of perjury and filing false police reports of officer on account of his false affidavit in support of search warrant); Cambridge v. Civil Serv. Comm'n, 43 Mass.App.Ct. 300 (1997) (upholding decision of personnel administrator to authorize bypass of otherwise qualified candidate for police officer position based on her prior false testimony under oath and involvement in domestic violence dispute several years prior to her eligibility for appointment).<sup>18</sup>

## The *Brady* Rule and its Progeny: Disclosing Exculpatory Evidence

It is clear that under prevailing case law, and the rules governing criminal procedure before both state and federal courts, the prosecution must disclose exculpatory information, including information which bears upon the credibility of any witness (e.g. police witnesses), to the defendant even if no specific request for that information is made. Failure to do so could result in a new trial.

Below are the applicable Supreme Court rules governing this subject matter and the development of the "Brady rule."

**Brady v. Maryland** The U.S. Supreme Court ruled that the "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution."<sup>19</sup>

**Giglio v. U.S.** The U.S. Supreme Court extended the obligation to share exculpatory information with the defendant to include information concerning the credibility of government witnesses. The Court applied the "collective knowledge doctrine" to rule that any exculpatory information known by the government will be known by all governmental agencies.<sup>20</sup>

**U.S. v. Agurs** The U.S. Supreme Court ruled that the prosecution had a duty to disclose exculpatory information even where the defendant did not specifically request it.<sup>21</sup>

<sup>18</sup> City of Boston v. Boston Police Patrolmen's Ass'n, 443 Mass. 813, 820 (2005).

<sup>19</sup> Brady v. Maryland, 373 U.S. 83, 87 (1963).

<sup>20</sup> Giglio v. United States, 405 U.S. 150 (1972).

<sup>21</sup> United States v. Agurs, 427 U.S. 97 (1976).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

## **Kyles v. Whitley**

The U.S. Supreme Court ruled that the prosecution has an affirmative “duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police,” and to disclose this information to the defendant.<sup>22</sup>

After the ruling in Kyles, the Office of the Attorney General of the United States issued a *Policy Regarding the Disclosure to Prosecutors of Potential Impeachment Information Concerning Law Enforcement Agency Witnesses*.<sup>23</sup> Under this policy, impeachment information was defined to include at least the following:

- ✓ specific instances of conduct of a witness for the purpose of attacking the witness' credibility or character for truthfulness;
- ✓ evidence in the form of opinion or reputation as to a witness' character for truthfulness;
- ✓ prior inconsistent statements; and
- ✓ information that may be used to suggest that a witness is biased.

Furthermore, the rules applicable to criminal proceedings before the Massachusetts state and federal courts require that the prosecution disclose evidence bearing on a witnesses credibility to a defendant.

For criminal proceedings in Massachusetts state courts, Rule 14 of the Massachusetts Rules of Criminal Procedure advises that

(a)(1)(A) Mandatory Discovery for the Defendant. The prosecution shall disclose to the defense, and permit the defense to discover, inspect and copy, each of the following items and information at or prior to the pretrial conference, provided it is relevant to the case and is in the possession, custody or control of the prosecutor, persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case:

...  
(iii) Any facts of an exculpatory nature.

---

<sup>22</sup> Kyles v. Whitley, 514 U.S. 419 (1995).

<sup>23</sup> *Policy Regarding the Disclosure to Prosecutors of Potential Impeachment Information Concerning Law Enforcement Agency Witnesses* (“Giglio Policy”), Office of the Attorney General (12/9/1996).



# CHIEFS' LEGAL INTEREST COLUMN

*A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE*

For criminal proceedings in Massachusetts federal courts, Local Rule 116.2 of the U.S. District Court for Massachusetts requires the government, in most instances, to automatically produce to the defendant the following exculpatory information within 28 days of arraignment:<sup>24</sup>

- information that would tend directly to negate the defendant's guilt concerning any count in the indictment or information;
- information that would cast doubt on the admissibility of evidence that the government anticipates using in its case-in-chief and that could be subject to a motion to suppress or exclude, which would, if allowed, be appealable pursuant to 18 U.S.C. § 3731;

Local Rule 116.2 of the U.S. District Court for Massachusetts also requires the government to automatically produce to the defendant the following exculpatory information no later than 21 days before trial:<sup>25</sup>

- any information that tends to cast doubt on the credibility or accuracy of any witness or evidence that the government anticipates calling or offering in its case-in-chief,
- any inconsistent statement, or a description of such a statement, made orally or in writing by any witness whom the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant;
- any statement or a description of such a statement, made orally or in writing by any person, that is inconsistent with any statement made orally or in writing by any witness the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant;
- information reflecting bias or prejudice against the defendant by any witness whom the government anticipates calling in its case-in-chief;
- information known to the government of any mental or physical impairment of any witness whom the government anticipates calling in its case-in-chief, that may cast doubt on the ability of that witness to testify accurately or truthfully at trial as to any relevant event.

---

<sup>24</sup> Local Rule 116.2(b)(1).

<sup>25</sup> Local Rule 116.2(b)(2).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

## Note on Unsubstantiated Claims

Departments must provide the prosecution with any allegations against the officer which bear upon the officer's truthfulness. This is regardless of whether the claims are unsubstantiated, not credible or the officer is exonerated. The prosecution must then go through the information and determine what must be disclosed. This is the role of the prosecution; not the individual departments.

## Note on Failure to Disclose

In both the federal and state contexts, failing to disclose impeachment evidence to a defendant in a criminal matter could result in a Brady violation and the granting of a new trial.

## Discipline for Untruthfulness

### The U.S. Supreme Court

The U.S. Supreme Court has held that "a government agency may take adverse action against an employee because the employee made false statements in response to an underlying charge of misconduct."<sup>26</sup>

### Massachusetts Applications

**Just Cause Standard** For Civil Service communities, the standard for discipline of an officer in excess of a five-day suspension is "just cause."<sup>27</sup> Even for non-Civil Service communities, collective bargaining agreements may provide that the standard for officer discipline is "just cause." The Appeals Court has previously defined "just cause" to mean a "substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service."<sup>28</sup>

---

<sup>26</sup> LaChance v. Erickson, 522 U.S. 262 (1998).

<sup>27</sup> See G.L. c. 31, § 41.

<sup>28</sup> Police Commissioner of Boston v. Civil Service Commission, 39 Mass. App. Ct. 594, 599 (1996) (quoting Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983)).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

The Civil Service Commission has a history of upholding the discipline of police officers who have been untruthful. In particular, the Commission has often upheld the discharge of police officers based upon dishonesty.<sup>29</sup>

In decisions involving untruthfulness, the Commission has many times deferred to the appointing authority's decision to discipline. In particular, the Commission has reasoned that:

- "An appointing authority is well within its rights to take disciplinary action when a police officer has 'demonstrated willingness to fudge the truth in exigent circumstances' because '[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or embarrass a fellow officer.'"<sup>30</sup>
- "Lying in a disciplinary investigation alone is grounds for termination."<sup>31</sup>
- "Untruthfulness...stands on a somewhat different footing from 'youthful indiscretion' or other misconduct when it comes to considerations of rehabilitation and, in this area especially, law enforcement agencies are entitled to a reasonable degree of discretion in determining whether or not a candidate's past untruthfulness no longer puts his credibility as a witness at risk when put to the test."<sup>32</sup>

---

<sup>29</sup> See e.g., Royston v. Billerica, 19 MCSR at 128-29 (upholding discharge of police officer who "knowingly lied to the Chief during a departmental investigation to cover up" his own misconduct); Garrett v. Haverhill, 18 MCSR at 385-86 (reasonable justification for discharge of police officer who repeatedly presented false testimony during departmental investigation of officer's misconduct); Meaney v. Woburn, 18 MCSR 129, 133-35 (discharge upheld for police officer based, in part, on officer's consistent dishonesty and "selective memory" during departmental investigation of officer's misconduct); Pearson v. Whitman, 16 MCSR at 49-50 (appointing authority's discharge of police officer who had "a problem with telling the truth" upheld); Eisenbeiser v. West Springfield, 7 MCSR 99, 104 (discharge upheld based, in part, on officer's dishonesty as his misconduct was ongoing, intentional and showed no signs of improvement).; Rizzo v. Town of Lexington, 21 MCSR 634 (2008); (discharge upheld based partially on officer's dishonesty regarding a use of force incident); Desharnias v. City of Westfield, 23 MCSR 418 (2009) (discharge upheld based primarily on officer's dishonesty about a relatively minor infraction that occurred on his shift).

<sup>30</sup> Kinnas v. Shrewsbury, MCSC D1-10-151 (2010) (citing Falmouth v. Civil Service Comm'n, 61 Mass. App. Ct. 796, 801 (2004) & Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303; rev. den., 426 Mass. 1102 (1997)).

<sup>31</sup> Id. (citing LaChance v. Erickson, 118 S. Ct. 753 (1998) & Bryson v. United States, 396 U.S. 64 (1969)).

<sup>32</sup> Wosny v. Boston Police Department, MCSC G1-15-83 (2015) (citing City of Cambridge v. Civil Service Commission, 43 Mass. 300, 303 (1997)).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

## Note on Conduct Unbecoming an Officer

The phrase "conduct unbecoming an officer" is a catchall provision in the management of law enforcement employees. The Massachusetts courts have made clear that

Police officers must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.<sup>33</sup>

The Civil Service Commission has recognized that a police officer must be truthful at all times and that failure to do so constitutes conduct unbecoming an officer.<sup>34</sup>

## Examples from the Civil Service Commission

The following cases provide examples of how the Massachusetts Civil Service Commission has handled appeals of persons disciplined for untruthfulness most recently.

**Keep in mind that each decision depends heavily on the facts and circumstances of the particular case. As a result, these decisions should be used for illustration purposes only.**

- Discharge upheld where a police sergeant was untruthful on more than one occasion during a department investigation concerning his interactions with a criminal defendant.<sup>35</sup>
- Discharge upheld where a police officer failed to file the required reports governing the use of his Taser and subsequently failed to

---

<sup>33</sup> Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986).

<sup>34</sup> MacHenry v. Wakefield, 7 MSCR 94 (1994).

<sup>35</sup> Foley v. City of North Adams (Decision), 28 MCSR 153 (2015).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

be truthful during the investigation of the incident that ensued after the suspect filed an excessive force claim.<sup>36</sup>

- Discharge upheld where a police officer had previously been disciplined for being untruthful and conduct unbecoming, and where the officer attempted to conceal from his superiors his involvement in a traffic stop that resulted in vehicle damage by investigating his own conduct and misrepresenting himself to the citizens who brought the complaint.<sup>37</sup>
- Discharge upheld where a police officer who was previously disciplined for giving confiscated marijuana to friends lied about the incidents in a deposition while under oath.<sup>38</sup>
- Discharge upheld where, among other things, a police officer failed to rebut compelling evidence of his negligent handling of property taken from a suspect and of his consistent untruthfulness.<sup>39</sup>
- Discharge upheld where a police officer filed false stolen motor vehicle reports on an automobile of a woman he was trying to seduce and arranged for her vehicle to be towed and lied about the incident to investigators.<sup>40</sup>
- Discharge upheld where a police officer accessed the Facebook account of a colleague's wife and sent offensive postings using her name, and where prior to confessing his involvement, he repeatedly denied being responsible.<sup>41</sup>
- Discharge upheld where a police officer damaged his cruiser while performing "cowboyish" spins in a salt barn with a high-school intern in the passenger seat and then untruthfully denied he had damaged the cruiser.<sup>42</sup>

---

<sup>36</sup> Pierce v. City of Attleboro (Decision), 27 MCSR 329 (2014).

<sup>37</sup> Hadis v. Town of Oxford (Decision), 27 MCSR 200 (2014).

<sup>38</sup> Freitas v. City of Somerville (Decision), 25 MCSR 259 (2012).

<sup>39</sup> Gonsalves v. Town of Falmouth (Decision), 25 MCSR 231 (2012).

<sup>40</sup> Ung v. Lowell Police Department (Decision), 24 MCSR 567 (2011).

<sup>41</sup> Kinnas v. Town of Shrewsbury (Decision), 24 MCSR 67 (2011).

<sup>42</sup> Desharnias v. City of Westfield (Decision), 23 MCSR 418 (2010).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

- Discharge upheld where a police officer conducted a late-night traffic stop involving a sole female and filed a false report in an attempt to cover up his interaction.<sup>43</sup>
- Discharge upheld where a police officer failed to file reports related to a use of force incident and lied about the incident when it was investigated.<sup>44</sup>
- Discharge upheld where a police officer who beat up a prisoner in custody, induced his fellow officers to testify on his behalf, filed false reports and lied about his conduct.<sup>45</sup>
- Discharge upheld where a police officer was rude and profane in dealing with the public and subsequently lied and filed false reports to avoid the consequences of his conduct.<sup>46</sup>
- Discharge upheld where a much disciplined police officer failed to speak the truth in court and perjured himself about probable cause issues arising from a motor vehicle stop and drug bust.<sup>47</sup>
- One-day suspension of police officer upheld where he lied in order to secure a medical appointment that did not conflict with his day off.<sup>48</sup>

## Internal Affairs Implications

Oftentimes the issue of untruthfulness arises during the course of internal affairs investigations. This is because officers are required to provide truthful answers during the course of an internal affairs investigation and cannot remain silent, unless the answer may incriminate the officer in a criminal matter.

In Garrity v. New Jersey, the U.S. Supreme Court held that that it was a violation of the Fifth Amendment to order police officers to answer questions and to use their

---

<sup>43</sup> Mozeleski v. City of Chicopee (Decision), 21 MCSR 676 (2008).

<sup>44</sup> Rizzo v. Town of Lexington (Decision), 21 MCSR 634 (2008).

<sup>45</sup> Grinham v. Town of Easton (Decision), 20 MCSR 534 (2007).

<sup>46</sup> Layne v. Town of Tewksbury (Decision), 20 MCSR 209 (2007).

<sup>47</sup> Ryan v. Needham Police Department (Decision), 20 MCSR 133 (2008).

<sup>48</sup> Stots v. Boston Police Department (Decision), 14 MCSR 13 (2001).



# CHIEFS' LEGAL INTEREST COLUMN

A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE

incriminating statements in a criminal prosecution.<sup>49</sup> One year later, the U.S. Supreme Court held in Gardner v. Broderick, that an officer could not be fired for refusing to waive his or her constitutional privilege against self-incrimination.<sup>50</sup> The Court advised, however, that it is permissible to order an officer, on threat of dismissal, "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 the use of his answers or the fruits thereof in a criminal prosecution of himself..."

The Massachusetts Supreme Judicial Court has ruled that transactional (not simply use or derivative use) immunity is required whenever a police officer is compelled to answer potentially incriminating questions.<sup>51</sup> **Transactional immunity** is generally referred to as "blanket immunity" since it protects the individual from ever being prosecuted for the underlying offense.

## Basic Refresher on Garrity

Under the *Garrity* ruling, a law enforcement officer has the right to be free from being forced to make self-incriminating statements during a disciplinary proceeding or internal affairs investigation.

*Garrity* requires that law enforcement agencies do the following with respect to interrogating law enforcement officers:

- ✓ The officer must be **ordered to answer** the questions under the threat of disciplinary action.
- ✓ The questions must be **specifically, directly and narrowly related** to the officer's duty or fitness for duty; and
- ✓ The officer must be advised that the answers to the questions will **not be used against the officer in a criminal proceeding**.

If the agency complies with these rules, then the officer must answer those questions that are properly framed in a truthful manner. Failure to do so may result in the officer being disciplined for insubordination, or untruthfulness if the officer lies.

---

<sup>49</sup> Garrity v. New Jersey, 385 U.S. 493, 87 S. Ct. 216, 17 L. Ed. 2d 562 (1967).

<sup>50</sup> Gardner v. Broderick, 392 U.S. 273, 88 S. Ct. 1913, 20 L. Ed. 2d 1082 (1968).

<sup>51</sup> Carney v. City of Springfield, 403 Mass. 604, 532 N.E. 2d 631 (1988).



# CHIEFS' LEGAL INTEREST COLUMN

*A LEGAL BULLETIN FOR MASSACHUSETTS CHIEFS OF POLICE*

Massachusetts Chiefs of Police Association, Inc.  
Office of General Counsel  
353 Providence Road  
South Grafton, Massachusetts 01560

Eric R. Atstupenas, Esquire  
Direct: (508) 375-7793  
Mobile: (508) 851-9117  
[legal@masschiefs.org](mailto:legal@masschiefs.org)