

## Due Process Rights for Law Enforcement Officers

The adoption of legislation creating a "bill of rights" for law enforcement officers has long been a top priority for the Grand Lodge.

Law enforcement officers arguably have one of the toughest jobs in the nation. They alone are charged with keeping the streets and neighborhoods of this country safe from crime. Every day, police officers put their lives on the line—life and death decisions are in the job description. Because of the enormous responsibility that comes with a badge, law enforcement officers are held to a much higher standard of personal and professional conduct—as well they should be. This higher standard and increased visibility renders police officers vulnerable to false accusations from the criminal element and others in society whose sole motivation in making these allegations is to disrupt law enforcement activities.

The legal protections afforded all citizens, including suspects and convicted criminals, from illegal and improper police procedures are provided by the U.S. Constitution as well as Federal and State statutes. Moreover, most law enforcement agencies also implement a wide array of departmental procedures that govern the conduct of their officers during traditional police activities. Unfortunately, rank-and-file police officers are sometimes subjected to abusive and improper procedures and conduct on the part of the very departments or agencies they serve. In some instances, the basic rights that most citizens or employees would take for granted are either denied or simply unavailable to police officers. In a startling number of jurisdictions throughout this country, law enforcement officers have *no* procedural or administrative protections whatsoever; in fact, they can be, and frequently are, summarily dismissed from their jobs without explanation. Officers who lose their careers due to administrative or political expediency almost always find it impossible to find new employment in public safety. An officer's reputation, once tarnished by accusation, is almost impossible to restore.

The need for a minimal level of procedural protections for police officers accused of administrative wrongdoing, the gravity of the potential harm to officers created by the lack of uniform safeguards, and the patently unfair disparity in rights afforded criminal suspects *but not police officers* are compelling reasons to enact this legislation. We need legislation to create a uniform minimal level of procedural due process for police officers and codify the core holdings of the U.S. Supreme Court in two landmark decisions: *Garrity v. New Jersey* (1967) and *Gardner v. Broderick* (1968). Both cases dealt with the exercise of Fifth Amendment rights against self-incrimination by public employees (police officers in both cases) when confronted with the threat of termination. These two decisions articulated a balanced approach between the legitimate exercise of constitutional rights by police officers and those of a law enforcement agency to maintain internal discipline. Taken together, the two rulings establish that, absent the provision of immunity to the police officers for their testimony, neither the testimony nor the assertion of the constitutional privilege against self-incrimination may serve as the basis for termination of employment.

Since the Court's pronouncements in *Garrity* and *Gardner*, the rights of police officers have been anything but secure. For one thing, the lower Federal courts have frequently misunderstood and misapplied the holdings of these two seminal decisions, creating a situation in which the rulings are

consistently upheld while yielding inconsistent results. While many States have enacted statutes to address the rights of police officers, the cumulative result of these laws has been a confusing jumble with the "rights" protected sometimes dependent on either the classification or location of the officer involved. Further, some State statutes permit localities to "opt out" of the provisions guaranteeing public safety officers basic procedural protections. Federal legislation would establish a minimum level of procedural protections available while at the same time making the law on this issue unambiguous. The FOP is developing legislation, which would guarantee law enforcement officers the following basic rights:

- Law enforcement officers shall, if disciplinary action is expected, be notified of the investigation, the nature of the alleged violation, and be notified of the outcome of the investigation and the recommendations made to superiors by the investigators;
- Questioning of a law enforcement officer should be conducted for a reasonable length of time and preferably while the officer is on duty unless exigent circumstances apply;
- Questioning of the law enforcement officer should take place at the offices of those conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location;
- Law enforcement officers will be questioned by no more than two investigators, and he or she shall be informed of the name, rank and command of the officers conducting the investigation;
- Law enforcement officers under investigation are entitled to have counsel or any other individual of their choice present at the interrogation;
- Law enforcement officers cannot be threatened, harassed or promised rewards to induce the answering of any question;
- Law enforcement officers are entitled to a hearing, with notification in advance of the date, access to transcripts and other relevant documents and evidence generated by the hearing and to representation by counsel or another non-attorney representative at the hearing;
- Law enforcement officers shall have the opportunity to comment in writing on any adverse materials placed in his or her personnel file; and
- Law enforcement officers cannot be subject to retaliation for the exercise of these or any other rights under Federal, State or local law.

The legislation also establishes an effective means for the receipt, review and investigation of public complaints against law enforcement officers that is fair and equitable to all parties.

The bill does not protect the jobs of "bad cops" or officers unfit for duty. Nor does it apply to allegations of minor violations of internal departmental rules or regulations or employment-related performance of officers, thus preserving the discretion of the individual agency in disciplining its employees. This measure does not afford police officers any greater rights than those possessed by other citizens; it simply reaffirms the existence of those rights in the unique context of the law enforcement community.

***The FOP strongly supports the "State and Local Law Enforcement Discipline, Accountability and Due Process Act."***