

# Bill of Rights Update

## Guest Commentary



Garry  
Lippman  
Palm Beach  
County PBA  
General Counsel

### That's One Small Leap For Florida Law, One Giant Leap For Florida Law Enforcement and Correctional Officers

Neil Armstrong's comments 40 years ago and more than 227,000 miles away from Earth were remembered recently. From that distance our planet appeared small and beautifully serene; a soft white cloud cover hiding entirely the Cold War, the carnage in Southeast Asia, and the socio-political convulsions engulfing its inhabitants below. It was a stark moment then for some perspective, revisited so long afterwards for perspective on that moment this past July. Launched suddenly so far and fast into our future then, it seems we haven't really moved all that much since, now. We take for granted that our cellular telephones operate on computer technologies more sophisticated than all of the mainframes that hurled the Apollo 11 to the Moon and back. We forget the small steps and inching progress that has gotten us to where we are. But progress is measured in small steps.

"Rights of law enforcement officers and correctional officers while under investigation" in Florida first came into being 35 years ago, in 1974, probably at about the time many of our current members did, also. Since that time, the words within the statutes establishing those "rights" from Tallahassee have had to be modified many times to stake-out and preserve the fundamental notion of due process from which they first sprung: the "right" to confront one's accuser (which includes the rights to know who is the complainant; to know what the complaint is about; to know what witnesses and evidence exist relating to the complaint, etc.). These are not foreign things thought up by bleeding-hearts with too much time on their hands, but uniquely American things; revolutionary things, much as this Nation's animating "Bill of Rights" was. Because to "revolutionize" means "to change fundamentally or completely," by definition, it is a *response* to something that is real.

So too the "rights" our members have won are responses to, and the reasoned remedies for, real and readily identifiable "wrongs" our members have experienced. Sadly, because the wrongs our members experience are peculiarly apparent to their public employment, the statutes relating to their "rights" have had to be revisited and reworded on a regular basis. Compare, for example, the Florida "Firefighters Bill of Rights" first established in 1986, the legislative history for s.112.82, F.S. reflects not one (1) amendment since then. Sure, people don't file complaints against firefighters. Involved, as I was in the representation of IAFF members years ago, I recall only one or two "investigations" during that time, personally. And that's the point of this installment.

Since at least 2001, this office has been generating amendments to ss.112.532 and 112.533, F.S. in response to the conduct of interrogations and investigations we experienced right here in Palm Beach County. The examples are many. The dizzying and demeaning duo interrogators at one agency wrought s.112.532(1)(c)'s "right" to be questioned only by "one interrogator during any one investigative interrogation." The withholding of the I.A. report from subject officers' review at another agency before pre-disciplinary meetings (rendered meaningless as a result), wrought a lawsuit, an unfavorable 4th DCA decision and, in response to that, s.112.532(4)(b)'s "right" to "a complete copy of the investigative report and supporting documents and with the opportunity to address the findings in the report . . . prior to the imposition of the disciplinary action." The unnecessarily protracted length of

investigations occasioning unnecessarily lengthy and humiliating administrative leaves and costly (but not "punitive") losses of overtime pay, wrought s.112.532(6)'s "180 days" limitations. And violation of the statutes' provisions regarding the conduct of interrogations, and the recurring omissions of exculpatory and/or mitigating information from investigative reports wrought s.112.533(1)(a)'s required verifications; the two (2) things that are supposed to be sworn to by "the person preparing the report . . . at the time the report is completed."

And yet, the work never is done. Much as that "law of physics" provides that for every action there is an equal and opposite reaction, for whatever the reason some personalities experience their duty to search for facts as a "them versus us" competition, we are too often confronted by law enforcement investigators either unwilling to follow "the law" governing their investigations, or contriving interpretations of the law licensing conduct at odds with the law's clear intent.

While s.112.534(2) provides that violation of Chap. 112, F.S. rights long has been "**official misconduct**" and a **3rd degree felony**, no different than the crimes for which some officers are selected for arrest and prosecution, we've never heard of a State Attorney prosecuting this particular species of criminal activity, and we've never heard of the FDLE's CJSTC decertifying anyone for it, either. And to the extent that s.112.534(1) has provided only *injunctive* relief against an "agency [that] fails to comply with the requirements" of the law, such "official misconduct" has remained a wrong for which there never has been any effective remedy; **until this past July 1, 2009.**

Effective July 1, 2009, our State Legislature and our

Governor have animated new provisions to ss.112.532 and 112.533, Florida Statutes that make clear what should have been clear before. For example, the recorded and/or transcribed statements from "[a]ll identifiable witnesses" required to be taken and provided to subject officers "prior to the investigative interview," now specifically includes the statements taken from others labeled "subject officer," also. Similarly, interrogations of our members with regard to conduct captured on video or audio recordings before permitting them to see and to hear what their interrogators have seen and heard, finally should be over.

Very recently a supervisor told me of specific directions received from an experienced IA "investigator," that a subordinate should be ordered *first* to answer questions about an incident, *and then* shown the video about which the sworn testimony had been elicited. Other than to preserve for oneself the malicious prerogative to additionally "find" a co-worker's career-ending "untruthfulness," I cannot begin to understand how *anyone* reasonably could consider that a legitimate investigative technique; especially when the underlying incidents involve the *recollection* of observations during those circumstances everyone's training identified as "tense, uncertain, and rapidly evolving." We all know the caselaw and we all know about those "split-second judgments" and, frankly, I'm tired, personally, of the third-hand judgments being made from a comfortable chair behind a desk, looking at a video my clients haven't been allowed to see. That kind of "investigation" could be outsourced to India, and free up more personnel for the road.

Continued on next page

*"...for whatever the reason, some personalities experience their duty to search for facts as a 'them versus us' competition..."*

The two commuters struck up a conversation on the economic situation of the country. "It's hard to collect money," said commuter A.

"How do you know?" asked commuter B. "Are you a collector?"

"No," said A. "But lots of people have tried to collect money from me lately."

The two men stood on the lonely lighthouse. Through the fog they could see a small boat making its way toward them, with a lonely occupant. Suddenly a squall lifted the craft and tossed the man into the water. They sprang into action. Hurriedly they launched their own craft and fought their way through perilous and treacherous waters to reach the man. At last, they got him aboard.

"It's a good thing you rescued me," the dripping man said gratefully. "I was coming out to see you about your income tax."