

The background of the slide features a large, semi-transparent blue seal of the Department of Justice on the left side. The seal includes the words "SEAL OF" at the top, a central figure of a Minuteman, and a star at the bottom. The right side of the slide is a solid yellow background.

Garrity and Miranda *Refresher*

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Chief Legal Counsel**

Agenda

1. Overview

- Why are we here?
- *Garrity v. New Jersey*
- *Miranda v. Arizona*

2. Test your skills - www.menti.com

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- Why are we here?



TO DISCUSS:

- The intersection between agency investigations & potential criminal investigations
- How the agency's and OIG's investigations might impact one another
- How the OIG conducts their investigations & why

The background features a large, faint watermark of the Indiana State Seal. The seal depicts a central figure holding a torch, surrounded by a circle of stars. The word "INDIANA" is arched above the figure. The entire seal is rendered in a light blue color against a dark blue background.

Garrity v. New Jersey
385 U.S. 493 (1967)

Garrity Facts

- NJ police officers allegedly involved in fixing traffic tickets.
- Before being questioned, each officer was advised that (1) answers might be used against him in a criminal proceeding, (2) that he could refuse to answer, but (3) refusing to answer would subject him to removal from office (and loss of pension benefits).
- State court convicted officers over their objections that their statements were coerced because they could lose their job by not answering.
- **U.S. Supreme Court reversed – confessions were coerced and could not be used in criminal trial**

Garrity holding

When public employees are forced to choose between cooperating with an internal investigation or losing their jobs, any statements the employees make during the investigation are compelled and, as such, are inadmissible against them in subsequent criminal proceedings.

When do *Garrity* issues arise?

- In the 7th Circuit, the threat of a penalty for remaining silent must be explicit for coercion to exist under *Garrity*.
- BUT we should still consider how to protect against *Garrity* issues.



**To protect
against a
finding of
coercion:**

- The OIG does the following:
 1. Affirmatively states our lack of decision-making authority regarding state employment status, and
 2. Avoids engaging in direct or indirect encouragement to cooperate.

When is there a threat of termination?

An employee's subjective belief that a cloud of termination loomed over him or her might be enough for a finding of coercion if the belief was reasonable.



When is a statement inadmissible?

A statement is inadmissible in a criminal proceeding if:

- A state employer tells an employee that any statements the employee makes cannot be used against him or her in any subsequent criminal proceedings, unless the statement was false OR . . .

When is a statement inadmissible?

- If an agency elicits an incriminating statement from an employee based on a threat sufficient to lead the employee to believe that he or she would lose his or her job or suffer similarly severe employment consequences by remaining silent.

When is a statement inadmissible?

- If an internal agency policy requires cooperation with the OIG, that might mean that, without countermeasures taken, incriminating statements given to the OIG would be deemed coerced under *Garrity*.

Even if *Garrity* renders a statement inadmissible in a criminal trial . . .

- The OIG may prove the facts described in the statement using evidence obtained from a source independent of the statement.
- The OIG can use the statement in an administrative or civil investigation (i.e. before the State Ethics Commission).

To avoid *Garrity* problems in a criminal case, the OIG states the following:


1. We do not have any power over his/her current job status with the agency or with any decision to discipline or terminate him/her.
2. The interview is voluntary.
3. The employee can refuse to answer any or all questions. . .

AND . . .

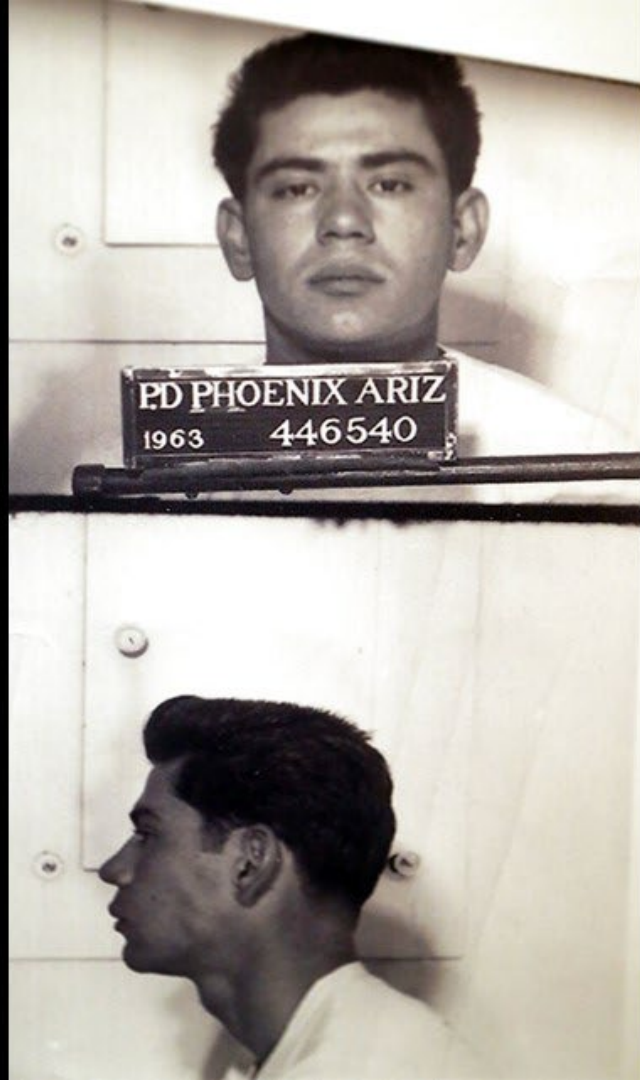
4. No disciplinary action will be taken against the employee solely for refusing to answer questions
5. Any statement the employee furnishes may be used as evidence in any future criminal proceeding or administrative ethics proceeding.
6. We are not threatening or pressuring the employee to respond to any questions.

Other steps the OIG takes to avoid *Garrity* problems:

- Ensures we have information regarding prior interviews about same allegations
 - Did employee talk with anyone from his/her agency or SPD about the same allegations?
 - If so, with whom did the employee talk and what was discussed?
 - Did the employee sign any waiver forms?

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Miranda v. Arizona
384 U.S. 436 (1966)



*Miranda v.
Arizona,*
384 U.S.
436 (1966)

- Miranda was arrested at his home and taken into custody to a police station where he was identified by the complaining witness.
- He was then interrogated by two police officers for two hours, which resulted in a signed, written confession.

HOLDING

Statements stemming from custodial interrogation of the defendant are not admissible at trial unless there are sufficient safeguards to secure the privilege against self-incrimination.

*Miranda v.
Arizona,*
384 U.S.
436 (1966)

A suspect's statement cannot be admitted into evidence in a criminal proceeding if the suspect was subject to a custodial interrogation and:

1. was not advised of certain rights,
2. did not state that he/she understood those rights and
3. did not voluntarily waive those rights prior to giving the statement.

What does that mean for us?

Miranda warnings are required when a suspect:

- 1) is in “custody” and
- 2) is subject to an “interrogation.”

What is an interrogation?

Assume that when you question a suspect, it qualifies as an interrogation.

What is custody?

- Any action of a law enforcement officer which deprives a person of his freedom of action in any significant way.
- The ultimate question is whether there is a formal arrest or a restraint of the freedom of movement of the degree associated with a formal arrest.
- Courts look at whether a reasonable person in similar circumstances would believe he or she is not free to leave.



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**How does
the OIG
avoid
creating a
custodial
situation?**

Instructs the suspect as follows:

- 1. You are not under arrest.**
- 2. Your participation in this interview is voluntary.**
- 3. You are free to end the interview and leave at any time.**
- 4. You are free to not answer any question.**

What else does the OIG do?

- Always identifies ourselves.
- Does not make any formal arrests.
- Minimizes the number of people present.
- Makes sure he/she knows he/she is free to leave.
- Seating.
- Records the interview.
- Tone of voice.

Note: If a witness requests the presence of counsel, an OIG Special Agent will stop all questioning.

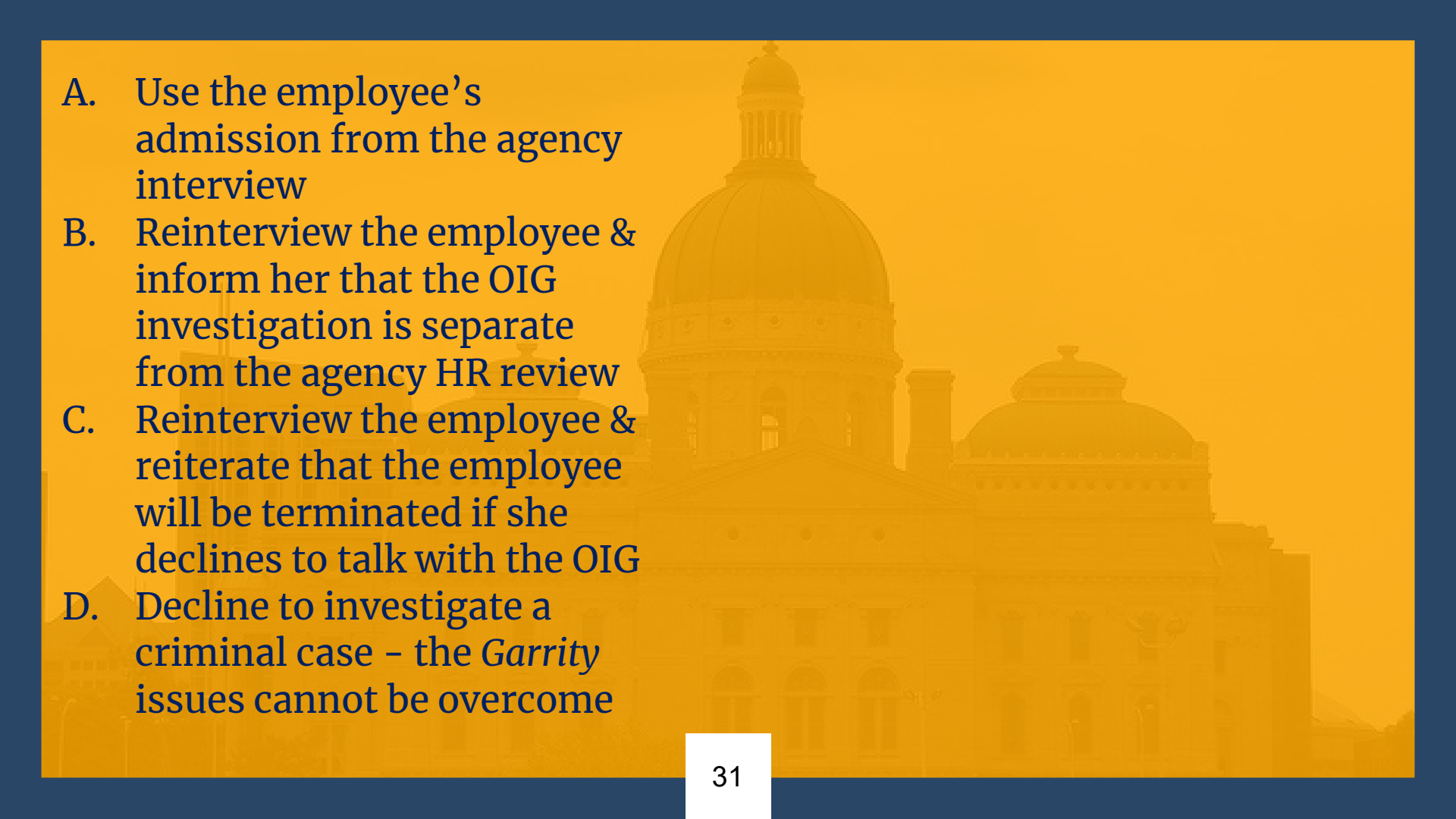


The background features a large, faint watermark of the Indiana State Seal. The seal consists of a central torch with a flame, set within a circular frame. Above the torch, the word "INDIANA" is written in an arc. The entire seal is surrounded by a ring of stars. The background is a solid blue color, and the text "Test Your Skills!" is overlaid in a bold, yellow font with a thin underline.

Test Your Skills!

GARRITY SCENARIO 1:

A state employee allegedly stole money from the office. The agency conducted an initial investigation and interviewed the employee. During the agency interview, the employee admitted to “borrowing the money” but claimed she planned to pay it back the next day. According to the agency interview notes, the agency told the employee that she had to cooperate with the agency investigation or she could be terminated for insubordination.

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- A. Use the employee's admission from the agency interview
 - B. Reinterview the employee & inform her that the OIG investigation is separate from the agency HR review
 - C. Reinterview the employee & reiterate that the employee will be terminated if she declines to talk with the OIG
 - D. Decline to investigate a criminal case - the *Garrity* issues cannot be overcome

GARRITY SCENARIO 2:

A state employee allegedly has been going to his part-time job while reporting the hours as state time. The agency has not investigated the matter, but the agency recently issued a policy requiring all employees to cooperate with all “administrative investigations.” The policy specifies that failure to cooperate with the policy may result in discipline up to or removal for failure to cooperate.

- A. Advise the employee that the OIG investigation is separate from the agency investigation
- B. Inform the employee that the interview is completely voluntary
- C. Advise the employee that the OIG has no authority to terminate him or otherwise affect his job duties
- D. All of the above

MIRANDA SCENARIO 1:

A state employee allegedly stole money from an agency account he manages. The OIG Special Agent contacted the employee, and he has agreed to meet with the Special Agent at a local Indiana State Police post. The Special Agent expects that the interview will take at least three hours and will be in a small room within the post.

- A. No – this is not an interrogation so no need to be concerned
- _____ B. No – the employee is not in custody so no worries
- C. Yes – the Special Agent should advise the employee he is free to leave &/or provide him Miranda warnings
- D. Yes – the Special Agent cannot conduct the interview without violating *Miranda*

MIRANDA SCENARIO 2:

An agency supervisor allegedly directed her supervisees to assist her in remodeling the local church where she is a member. The supervisor and supervisees assisted in the remodel during state working hours. The OIG Special Agent interviewed the supervisees, and they said this happened many times over the past year. The agency supervisor has agreed to meet with the Special Agent at the OIG office to discuss the situation.

- A. Advise her the interview is voluntary & she is free to leave at any time
- B. Offer her a snack
- C. Advise her that the OIG has no control over her job
- D. Cancel the interview
 - *Miranda* won't allow it

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THANK YOU!!