

Your right to remain silent

Written by F. Clayton Tyler and Karen Mohrlant
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Most people are aware that, in certain circumstances, the police must inform you: "You have the right to remain silent." What too many people do not understand is that you have this right, whether the officer tells you about it or not. As a result, in too many criminal cases, the defendant's own words become the key to his conviction. In our practice we have seen too many cases in which the evidence we believe clinched a guilty verdict came from the defendant's own words in statements to the police, text messages, or jail phone calls.

The Miranda Warning

Most people would be surprised how often, after being advised of the right to remain silent and to be represented by an attorney, a suspect gives a voluntary statement to the police. Some people believe if they make a statement, then they will not be charged or arrested. Others believe they are smarter than the police, and that a few small lies won't hurt them. Sometimes the suspect first asks the officer whether he needs an attorney. The short answer is yes. If the police have read you your rights, you absolutely need to talk to an attorney – before you say anything to the police. Many attorneys will give a free initial consultation to discuss whether you need representation and what your options are.

Traffic Stops

Most traffic stops do not rise to the level at which a Miranda warning is required. But even though the police are not required to tell you about it, you still have the right to remain silent. While you are required to provide identifying information, you do not need to tell the officer how fast you were going, how much you had to drink, where you are coming from, or any other substantive information. You can – politely – decline to answer these questions. You can also tell the officer you would like to talk to an attorney before making any statements.

Jail Phone Calls

Jail phone calls are recorded and monitored. Too many people assume that either the police will not actually listen to their calls or will not understand them. It is very unwise to assume you can outsmart prosecutors and investigators. Police and prosecutors routinely review recorded jail calls in preparing their cases. It is understandable that if you are in custody you would want to talk to friends and family about your case. But you should save these conversations for visits with your attorney.

Statements to Others

Most people know that statements you make to your attorney are privileged and cannot be used against you. With limited exceptions, what you say to other people is not privileged and can be admitted at trial, whether you testify or not. This includes things you say to your parents, friends, cousins, and acquaintances.

In recent years, electronic statements have become a particularly useful weapon for police and prosecutors. While verbal statements are admissible, it can be difficult for the police to find and use them. On the other hand, police and prosecutors often can and do get warrants to obtain

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copies of text messages, facebook messages and posts, Instagram postings, and other social media. Even if you trust the person you send the message to, if there is an electronic record, the police very well may find it. Do not assume that the use of an alias or a disposable phone will protect you. We have seen cases in which investigators found both.

The Whole Truth

None of the above is designed to encourage or help people circumvent the law. However, all people should be aware of their rights, and understand that there are good reasons not to talk to the police if you are a suspect.

On the other hand victims are strongly encouraged to give statements to the police, and people who witness criminal activity should generally cooperate in police investigations. Additionally, under certain circumstances, a suspect may give statements in an effort to be cooperative and get consideration in return. A suspect who decides to cooperate with the police should do so with the advice and assistance of an attorney.

If you do give a statement to the police, do not embellish or exaggerate, or give statements which are misleading or incomplete. When it comes out (and you should assume it will) that your statement was less than completely honest, you lose credibility. If your statement is far enough from the truth, you could find yourself facing charges such as giving false information, obstructing justice, or aiding an offender. When in doubt, consult an attorney – you have the rights to remain silent and to be represented even if you are not a suspect.

In our system of justice, it is law enforcement's job to gather information and evidence and the prosecutor's job to prove guilt beyond a reasonable doubt. You are under no obligation to assist them in proving the case against you. Your words can be very powerful evidence against you. If you are suspected in a criminal case, one of the best things you can do for yourself is to consult an attorney before giving any of your words to the other side.



F. Clayton Tyler and Karen Mohrlant are attorneys practicing primarily criminal defense (www.fctyler.com

). F. Clayton Tyler, P.A. does represent individuals at all stages of criminal proceedings, including investigation, prosecution, appeals and expungement. F. Clayton Tyler is a certified criminal law specialist. They can be reached at 612-333-7309.