

THE POLICE CONTACT: SILENCE IS GOLDEN

By Carl F. Worden

I have debated writing this article for months.

I am a strong supporter of law enforcement, and I have an extensive background in law enforcement. Even now, I have a number of conflicts which cause me great concern with how the information I am about to impart to you will be used. I do not want to enable the criminals in our society to thwart justice, but I am committed to protecting the innocent from what appears to be an explosion of police abuse. In a case like this, I choose to protect the citizens.

I will start with law enforcement contacts with regard to traffic stops for suspicion of driving under the influence of alcohol or drugs.

The Fifth Amendment of the Bill of Rights states that we are not to be forced to incriminate ourselves. The actual wording is that you cannot be "compelled" to be a witness against yourself. If you are stopped for suspicion of DUI, these are your rights, regardless of the laws of your state.

First, you are to deny having consumed any alcoholic beverages whatsoever. You are never to admit to having one or two drinks. If you admit to consuming even one drop of alcohol, you open the door to probable cause, allowing the police officer to search your vehicle for open containers. Next, you are never to submit to a field sobriety test. You are to refuse to do so. They cannot make you walk the line, balance or anything else. If arrested, you are to refuse to allow a blood or breath test, regardless of what state law requires, such as revocation of driving privileges for a period of time. That is an attempt to compel you to be a witness against yourself. Supreme Court decisions in this area are quite specific with regard to your rights as follows:

Lefkowitz v. Turley, 94 S. Ct. 316, 414 U.S. 70 (1973).

"The Fifth Amendment provides that no person shall be compelled in any criminal case to be a witness against himself. The Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding civil or criminal formal or informal, where the answers might incriminate him in future criminal proceedings."

McCarthy v. Arndstein 266 U.S. 34, 40, 45 S. Ct. 16, 17, 69 L.Ed 158 (1924), squarely held that "the privilege is not ordinarily dependent upon the nature of the proceeding in which the testimony is sought or is to be used. It applies alike to civil and criminal proceedings, wherever the answer might tend to subject to criminal responsibility him who gives it. The privilege protects a mere witness as fully as it does one who is a party defendant." *Maness v. Myers*, 95 S Ct. 584, 419 US 449 (1975). "...where the Fifth Amendment privilege against self-incrimination is Involved ... This Court has always construed its protection to ensure that an individual is not compelled to produce evidence which later may be used against him as an accused in a criminal action... The protection does not merely encompass evidence which may lead to criminal conviction, but includes information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution. *Hoffman v. United States*, 341 US. 479, 486, 71 S. Ct. 814, 818, 95 L. Ed. 1] 18 (1951). "

"In *Kastigar v. United States*, 406 U S 441, 92 S Ct. 1653, 32 LEd. 212 (1972), we recently reaffirmed the principle that the privilege against self incrimination can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. *Id.*, at 444, 92 S.Ct., at 1656;

Lefkowitz v. Turley, 414 US. 70, 77, 94 S. Ct. 316, 322, 38 L.Ed. 2d 274 (1973)...

Miranda v. Arizona, 86 S.Ct. 1602, 384 US 436 (1966).

"We have recently noted that the privilege against self-incrimination --- the essential mainstay of our adversary system-is founded on a complex of values ... To maintain a fair state individual balance, to require the government to shoulder the entire load ... to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the' evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth... In sum, the privilege is fulfilled only when the person is guaranteed the right to remain silent unless he chooses to speak in the unfettered exercise of his own will."

"...there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves."

Please also note: The above, as stated by the Supreme Court, are rights and privileges as guaranteed by the Constitution, and anyone (including judges) who knowingly violates those rights may be civilly and criminally liable under several federal statutes. Please see: United States Code, Title 18 Section 241 (Conspiracy against rights), and Section 242 (Deprivation of rights under color of law); Title 42 Section 1983 - Section 1986 (Civil Rights). Most attempts to pursue action under these laws fail, but very skilled litigators with good factual circumstances can sometimes get some satisfaction. However, if more individuals were to understand the above rights and exercise them at the appropriate times, more successful litigation could be the outcome.

Okay, you got that? You cannot be forced to provide evidence against yourself, therefore you must not allow any tests whatsoever, be it field sobriety "walking the line", or a blood or breath test. Period. If you will follow these instructions, they have no case against you and they are also barred from taking away your driving privileges under the same Supreme Court rulings.

Now to more serious matters:

If you are contacted as a possible suspect, or even a witness, in any other law enforcement investigation, you are to say nothing. You are to say nothing even when your attorney is present. You are to say nothing, regardless of evidence of your guilt as presented by the law enforcement officers. You are not to try to explain away the circumstances of the evidence they present to you. You are to say absolutely nothing. **No matter how tempted you are to try to talk your way out of the situation, you are to give them absolutely NOTHING to verify.** If they ask you if the sky is blue on a clear day, you are to say nothing. You are to give them nothing whatsoever. Whatever evidence or witness information they have, you are to say nothing. Even denying any of their allegations can be used against you in a prosecution if it is determined later that you obviously lied. You are to stay **MUTE**.

The reason for this is quite simple: The evidence the law enforcement officers have is all they must be required to work with. Don't give them anything more. The only time you should consider the option of telling your side of the story is to your attorney in privacy, or in a court of law if prosecuted.

Because you have stayed mute, giving law enforcement nothing in addition to the extrinsic evidence and witness information at hand, the burden of proof available to the district attorney is severely limited and will most often result in a dismissal of charges unless their evidence and witness input is overwhelming and compelling enough for a grand jury

to return a bill of indictment. And even if bound over for trial, the jury will be limited to consider only that evidence and witness input.

When you are given your Miranda Rights wherein you are informed that anything you say can and will be used against you, take it to heart: If you say absolutely nothing, **NOTHING** can and will be used against you in a court of law.

There are literally thousands of people behind bars today who tried to talk their way out of a law enforcement contact. Don't fall for the ploy. Law enforcement officers are trained to bluff you into making denials or statements. They will appear friendly and reasonable. They will appear willing to help resolve the matter. They will tempt you to talk about it and appear sympathetic. Don't fall for it. Say nothing. Give them nothing. Deny nothing. Give them **NOTHING**. Stick your tongue between your teeth and bite down - **HARD**. You are to be a marble statue. You do not exist. You have no past, you have no address, you have no name, you have no social security number. You are to give them nothing whatsoever to work with.