

It Doesn't Have to Make Sense: It's Just the Law - Statements

"...Written statement: a VERY BAD idea!"

BY K.L. JAMISON

In 1996, an unhappy consumer attacked the City Marshal of Lancaster, Missouri with a hammer.(1) The Marshal defended himself and later vented his adrenaline to the responding Sheriff stating, "I hope the son-of-a-bitch is dead." This led to the Marshal's conviction for involuntary manslaughter and a sentence of seven years in prison.(2) The story had a happy ending, but a story four years and tens of thousands of dollars in the making, and not a story the Marshal enjoyed very much. The Marshal might have avoided the worst part of the story had he not confused his right to remain silent with the right of free speech.

In the movie, *Under Pressure*, a woman tried to explain the stalking and implied threats of a neighbor. After a disorganized and unconvincing recitation of ambiguous events she lamely concludes, "I'm not a very good story teller." Most people tell stories badly. In the aftermath of self-defense there can be a giddy stream of consciousness statement which has more to do with the effects of adrenaline than reality. The basic legal advice is "DON'T."

The first question is, "What is a statement?" In a nation which counts exotic dancing as freedom of speech, a statement is also broadly construed. In 1996, the Missouri Supreme Court ruled that a suspect's refusal to uncross his legs during questioning could be taken as a statement when later charged with murder.(3) In a separate death penalty case, the court found that the defendant had purchased a used car which sported the bumper sticker, "I'm the person your mother warned you about." At trial the prosecution argued that the fact he did not remove this bumper sticker revealed something about his character. The Missouri Supreme Court ruled that it was perfectly acceptable for the state to kill this man, in part, because of his failure to remove the bumpersticker.(4) One can imagine the effect of bumper stickers bought in jest such as, "Keep Honking, I'm Reloading." If this case does not also inspire a re-evaluation of one's T-shirt collection, nothing will.

There is also the problem of nicknames. As of this writing, a rapper who rejoices in the stage name "C-Murder" is on trial for murder. If I were asked to defend a man named "Murder" or any variation thereof, I would charge more. Massad Ayoob testified in favor of a police officer who had killed a felon nicknamed "Snake." Captain Ayoob slipped the nickname into his testimony which seems to have had an effect on the jury.



Written statement, a VERY BAD idea!

There is a cynical defense attorney saying: "Anything you say will be misquoted and used against you." In the movie, *My Cousin Vinny*, two, unfortunate Yankees are suspected of murder and during questioning are accused of shooting a clerk. One incredulously asked, "I shot the clerk?" This is taken down and read in court as a confession. Theater audiences laughed, defense attorneys smiled and nodded. There have even been cases where comments by other persons have been attributed to the defendant, and used against him; complete silence is the only bulwark against these mistakes.

The first statement is the 911 call. These calls are recorded and if the call sounds bad for the defendant, it will be played over and over again at trial. In one case, a man cocked his double-action revolver and went after a person who was shooting out windows. When he caught up with the threat he extended his revolver and in the process tripped the light single action trigger pull; arguably an accidental discharge. His 911 call records him saying that he thought he had just shot someone. The 911 operator, trained to keep him on the line and keep him talking, asked why he thought he had shot someone. The man replied, "Lady, I think I'm a pretty good shot." This callous-sounding statement took accident off the table and the man had to live or die with a self-defense case. This all important introduction to law enforcement must be planned in advance.

The first words out of the caller's mouth should be the location of the incident. If the battery then dies, or the minutes run out, or some other technological catastrophe occurs the authorities will know that something of interest is at that location, and the caller's cell phone records can prove that he or she made the call. The next statement is the caller's name. The core of the 911 call consists of three sentences:

"He tried to kill me."

"I was never so scared in my life."

"Send an ambulance."(5)

The first sentence serves to introduce the roles of the parties, the caller is the victim, the other person the attacker. Being in reasonable fear of life or limb is a prerequisite to acting in self-defense. The phrase “I was never so scared...” is to preclude the prosecutor from claiming that the citizen never said he was scared “until he talked to a lawyer.”(6) The phrase “Send an ambulance” says that the caller does not want anyone to die.

When the police arrive, they will want a more elaborate statement; this should consist only of:

1. He attacked me.
2. I will sign a complaint.
3. There is the evidence.
4. I WANT A LAWYER.



Good Advice.

This restates part of the 911 call and points out critical evidence. One cannot expect the “CSI” team to be called out to pick up every fiber and hair. If a real forensic team routinely conducted the investigations shown on television, its budget would last about a week.

The demand for a lawyer is both the best thing one can do, and a damaging statement. Anyone who is questioned by police has the right to a lawyer; this includes victims. The problem is that the police, and potential jurors, take a demand for a lawyer as evidence of something to hide. To compound the problem, the victim’s decision to remain silent and demand for a lawyer can be used against him or her in court. In the criminal system, one does not have rights, until arrested; it doesn’t have to make sense, it’s just the law. It is a left-handed fortune that people who act in self-defense are routinely arrested. It may be called something else such as “detained” or given the “Alice in Wonderland” explanation “You’re being handcuffed for your own protection.” Whenever a person is not allowed to leave, he is placed under arrest regardless of descriptive terms. If one is arrested, generations of TV shows advise us to remain silent.



Western Missouri Shooters Alliance President Sheila Stokes-Begley employs a cell phone and CZ75 compact.

If the circumstances are ambivalent, simply state a fear of being sued, and demand a lawyer to protect against frivolous litigation. Bernard Goetz was acquitted of criminal charges in the shooting of four thugs on the subway, but was sued for \$43 million and lost. Police are frequently sued by criminals and the explanation is likely to ring a bell.

Self-defense cases bring out the curious, the media in the forefront. Comments to friends will be confused and used against you, comments to family will be mistaken and used against you. Both family and friends can be subpoenaed and forced to testify against you. Comments to the media will be sensationalized and this is never good. The New York City prosecutor's office had determined not to charge Bernard Goetz, until he made unwise remarks to the news media. At some point a statement must be made. The impression is that the earlier a statement is made, the more reliable it is. In reality, the earlier a statement is made, the less reliable it is. The effects of stress will confuse the statement and even cause temporary amnesia. Inaccuracies in the initial statement will convince authorities that the survivor is both a liar and a murderer. A lawyer must be immediately engaged to organize the statement.

A lawyer is a professional storyteller. He will not tell the client how to lie, he will tell him how to tell the truth, a more complicated process than most imagine. The statement must contain facts which track the elements of self-defense. In the case of defense of home or defense of other persons, there may be other elements as well. Knowledge of the assailant's reputation for violence would certainly be relevant. The most important element to include is fear. A police statement is no place for macho posturing. One cannot use violence against another person unless in fear of life or limb. The survivor must go over every detail of why he or she was terrified, weak-kneed, pants-pissing afraid. If one does foul one's pants, a not uncommon event, make sure that goes into the statement. No matter how ineffective a storyteller the survivor might be, the jury is sure to believe that.

(1) A City Marshal is a law enforcement officer position used in Third and Fourth Class towns in Missouri.

(2) State v Beeler, 12 S.W.3d 294 (Mo. 2000) at 296.

(3) State v Kinder, 942 S.W.2d 313 (Mo en banc 1996) at 325.

(4) State v Six, 805 S.W.2d 159 (Mo. Ban. 1991) at 167.

(5) Taken from the Western Missouri Shooters Alliance “Stay Out of Jail” card, see www.WMSA.net.

(6) A claim I have heard, even when false.

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This information is for legal information purposes and does not constitute legal advice. For specific questions you should consult a qualified attorney.