

The Middletown Press

Norm Pattis: Opt in favor of self-preservation and comply

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July 20, 2016

Radley Balko means well. I am sure of it. He's a popular blogger with a platform at The Washington Post, an editor of Reason magazine and a recipient of some of the Koch brothers' largesse by way of the limousine-libertarian Cato Institute.

But he's no lawyer — he is a journalist with an undergraduate degree in political science — and I worry that his prognostications on the law are going to get some folks killed.

Balko took aim this week at Waterbury Police Chief Vernon Riddick Jr. The chief spoke to a crowd of 200 people at the Mount Olive A.M.E. Zion Church in Waterbury. According to Balko, who appears to have relied on a press clipping for his blog-fodder, most of the members of the crowd were African-American. Balko doesn't mention that Riddick too is a person of color.

What did the chief tell the crowd? When a police officer stops your car, demands entry into your home or asks to search you or your vehicle, comply with the officer's command. Bring your complaints against an officer to authorities after the event if you think the officer violated your rights by conducting the search.

"This is just incredible," Balko writes.

Is it?

Balko continues: "[T]his is a police chief who, in a town hall meeting spurred by a rash of shootings both by and of police officers, is asking that citizens submit without question if an officer requests to search a vehicle, home or person. In the interest of "cooperation," he's asking a black audience to give up their Fourth Amendment rights, Balko writes.

Doesn't the Fourth Amendment give us the right to be free from unreasonable searches and seizures? What good is that right if we can't assert it when police violate it?

Balko is right about the Fourth Amendment, and he is also right to be wary of police officers. He is wrong, deadly and dangerously wrong, about Riddick's asking persons of color, or anyone else, to give up their Fourth Amendment rights.

Balko wrote a great book not long ago called “Rise of the Warrior Cop: The Militarization of America’s Police Forces.” Bottom line? A republic founded amid fears of a standing army is now patrolled daily by the equivalent of such an army. Police have too much power, they are armed like an occupying force, we are losing liberties, and even our lives, as a result.

All that is true.

But suppose you are stopped outside a local restaurant tonight by a police officer who demands to search you. Suppose further the officer has no legal justification or excuse for the search. What should you do?

You can, of course, refuse to cooperate.

The officer will then have a choice to make. He or she can walk away, concluding that a confrontation isn’t worth the trouble. But the officer can also choose to overcome your resistance by means of the use of force, even deadly force, depending on what sort of resistance you offer.

A person arrested does not have the right to resist an arrest, even an unlawful arrest. Offering such resistance is itself a crime.

The place to challenge the decision of a police officer to conduct a search or to perform an arrest is a courtroom, not the streets.

One of the most dangerous encounters an officer has is with a motorist stopped for a minor infraction. There is no telling who is sitting behind the wheel of the idling car — does the person have an outstanding warrant? Are they violent?

That’s ridiculous, you say. I wouldn’t try to hurt a policeman.

Question: How is the officer supposed to know that?

A sadly common pattern in traffic stops is the motorist injured, sometimes shot and killed, by an officer when the motorist refuses to obey the officer’s command to show their hands. Too quick a reach for the glove compartment, beneath the seat or even between the seats can get you killed.

I am from time to time stopped while driving and unlawfully talking on a cell phone, a habit I am working hard to break.

The last time that happened, I sat feet planted on the floor, staring straight ahead, with both hands on the steering wheel, in plain view.

“License and registration?” the officer asked.

“May I reach into the glove compartment to get them?” I asked. I felt like a complete toady.

I am not moving a muscle without permission when an armed officer is standing an arm's length from me. It's just too easy to misread my movements and see dangerous intent. I am, after all, a suspicious-looking old man, with shoulder-length hair.

I was ticketed and sent on my way. I saved anything I had to say for myself for the courtroom.

The law gives you the right to speak out against an unlawful arrest as the arrest is taking place. But while your lips are moving, the rest of you must comply with the officer's command. Balko is wrong to suggest that compliance is a sacrifice of principle.

Balko almost gets that by the end of his recent blog post.

“[T]o verbally refuse a request to search is an exercise of one's rights. It isn't a provocation. That Riddick and other police officials seem to see it as the latter is telling — and a big problem,” he wrote.

I am not sure that is fair to Riddick. The chief told people to comply with the officer's commands, not to agree that the commands were lawfully given. Go ahead and object, if you must, to the officer's command, but tender compliance with your actions. And if the distinction between words and deeds is too difficult to parse, opt in favor of self-preservation and comply.

Experienced criminal defense and civil rights lawyers know all too well that judges give the benefit of the doubt to police officers when officers use force against a person offering physical resistance. That's because the streets are mean and confusing places, unlike the safety of the cubicle from which Balko writes his blog.