



Know your rights when stopped by police

Timothy Lynch

May 15, 2017

Most people don't know how to handle themselves during a police encounter. They know they have constitutional rights, but they also know that they can get into trouble by disobeying an officer. Not knowing where the lines are drawn, the vast majority of people capitulate to whatever the police want from them.

Some officers get so accustomed to such behavior that they react angrily when someone has the temerity to invoke his rights. In a case last month in Texas, Lionel Alexander sued officer Marciano Garza for roughing him up in a hotel parking lot. Alexander said he was parking his car when Garza activated his emergency lights. When the officer asked for his license and registration, Alexander turned over his papers, but when Garza asked him about what he had been doing before the stop, Alexander declined to answer. That made Garza radio for backup.

After more officers arrived, they asked Alexander to exit his vehicle. Alexander said he did not believe he was legally required to exit, at which point the police lost all patience and got physical, pulling him out of his car and pinning him down on the pavement to put on the handcuffs. Alexander was arrested on "resisting a search," but he was released the next day, and the charge was then dropped.

Even lawyers sometimes fare no better. In 2015, Philadelphia attorney Rebecca Musarra was pulled over by New Jersey state troopers on suspicion of speeding. Musarra turned over her license and registration upon the trooper's request, but declined to answer his question, "Do you know why you're being pulled over?" Flustered by Musarra's calm assertion of her right to remain silent, troopers yelled at her and then pulled her from her car and arrested her for "obstruction." The charge was dropped, but she suffered the indignity of an arrest and a brief stay in jail.

These cases are disturbing. The Constitution is supposed to be the "law of the land," yet people can get arrested for invoking their legal rights. If such incidents happen with some frequency — and they do — it exposes a serious flaw in our legal system. Out on the streets, the police have all the power and we're at their mercy.

Even the most professional officers use tactics to get around constitutional rights. For example, they might say, "We can get a warrant to search your purse, or you can save us both some time by allowing us to search it right now." Most people are unaware that the police can exert pressure with bluffs and lies, so they will often cave. If the matter gets into court, the judge will say they "consented" to the search by not objecting and asserting their rights.

Yet as the Alexander and Musarra cases show, asserting rights is no guarantee against arrest. Some officers make false arrests and conduct illegal searches. Our rights can be vindicated only in court, meaning that when criminal charges are dropped, any associated constitutional violations will typically never be addressed by judges or juries.

Individuals with similar experiences to those of Alexander and Musarra may file civil lawsuits when there are physical injuries or serious property damage. But government lawyers typically settle such lawsuits with money from the treasury, and the officers involved rarely face discipline or other adverse consequences.

Don't be fooled by police

One way that policymakers can improve existing law and prevent this abuse of power is by requiring the police to use written consent forms. By requiring a signature before a search, there will be far less trickery because people will be reminded that they have a choice in the matter.

Some jurisdictions have had such a policy in place, but it should be in place all around the country.

Just because law enforcement have us at a serious disadvantage does not mean we should let them walk all over us. The wise course to take during police encounters is to obey commands, but to also politely and calmly decline requests. Here's the key point: Law enforcement are trained to blur that distinction. For example, they may knock on your door and say, "Let's talk." In such cases, individuals have to seek the clarification by asking, "Are you ordering me to open my door and allow a search?"

If it isn't an order, the choice is ours to make. If you give the police permission to search your home without a warrant, that's your prerogative. If you decline to give your permission, that's your prerogative also.

Our Constitution is incapable of enforcing itself. It is just words on paper unless we calmly but firmly assert our rights. Use them or lose them.

Tim Lynch directs the Cato Institute's Project on Criminal Justice and serves on the Board of Advisers for Flex Your Rights. You can follow him on Twitter [@CatoTimLynch](https://twitter.com/CatoTimLynch).