

KNOW YOUR RIGHTS! TOP TEN TAKEAWAYS

- 1) You have a right to remain silent in almost all of your confrontations with the police, whether it be in an ordinary street inquiry, a stop, or after you are placed under arrest. That doesn't mean you shouldn't talk at all. Providing truthful pedigree information will generally speed up the process. Being courteous always pays off. However, volunteering anything substantive is usually a bad idea.
- 2) The police only will inform you of your right to remain silent and your right to an attorney after you are placed under arrest. However, you can assert both those rights whenever your confrontation with a police officer begins to get worrisome. Do it courteously.
- 3) In addition to your right to remain silent, you generally have a right to be free to leave. If you haven't been subjected to a forcible detention or arrest, it's a good practice to ask the officer "am I free to leave now?" Don't hesitate to repeat it to remind the officer that he doesn't have the right to detain you. This is particularly the case when you have been stopped for a traffic infraction and the officer has finished writing out your summons. Ask him "am I free to leave now?" so that he doesn't continue to detain you while things can get more complicated.
- 4) You have a right to refuse to consent to a search of your person, your bag(s) or your car, unless the officer has the power to search incident to your arrest (or because of probable cause that your car contains contraband). Otherwise, the only way he can search your bags or your person or the trunk of your car is by your free and voluntary consent. You have a right to refuse, even though he has no duty to inform you of your right to refuse consent to search. Just remember to be courteous and firm in your refusal.
- 5) Your rights to refuse consent to search or your right to be free to leave are more limited when you are at the border, at the airport (especially an international airport), or on a common carrier. In these situations you and your bags or car can be subjected to suspicionless searches. You will have to grin and bear it.

- 6) When you are subjected to a car stop, the officer can do so for almost any reason—even under-inflated tires or the perception that your windshield is too dark. It doesn't have to be a ticketable offense, much less a crime. When the officer makes it clear that he's pulling you over, you must stop—you are not free to leave or disregard. In addition, you must present your license, registration and proof of insurance when requested. Upon even the slightest concern for the officer's safety, he can require you and your passengers to exit the car. However, under NY law, without either your free and voluntary consent or probable cause that your car contains contraband, the officer cannot search the interior of your car. Remember that.

- 7) NY law has a very strong policy against police effecting a full custodial arrest for a summons-able offense. Unlike in other states, police in NY should not be arresting you for an ordinary traffic infraction or for a violation of the open bottle law. A summons should suffice. In New York City, this strong preference for a summons now applies to low level marijuana possessions. However, smoking pot in public is not a summons-able offense. You will be arrested.

- 8) Your cellphones will likely be seized incident to your arrest, but the police cannot open up the phone for a search without a warrant. However, obtaining a warrant may not be that difficult if there is some connection between the cellphone and the crime for which you are arrested. Once the police are able to search your cellphone, don't be surprised if they search the whole phone. The same is true for your computer—if it is lawfully seized and there is some connection between the crime you are being charged with and the computer; a warrant will probably permit the police to search the whole computer. Be warned.

- 9) Anything you put on social media is largely unprotected. What you share with others carries no reasonable expectation of privacy, and so you have to be extra careful about what you post or link to on your Facebook or Twitter accounts. Even if you have privacy controls to limit who sees it. Law enforcement can look at it without probable cause or a warrant. At most they may need a subpoena.

- 10) You cannot refuse to submit to a breathalyzer test if you are arrested for DWI. A refusal will result in an automatic suspension of your license of one year, plus a substantial fine.