

Friday, June 27, 2008

**Four cops and thirty-seven postures.**

Â T'ai chi is about being as still as a mountain and powerful as a rushing river, and not about karate kicks. Â Perhaps someone(s) who has had enough of my t'ai chi blogposts is playing a joke on me. Yesterday, June 26, I drove to National Airport in Virginia (I refuse to use the former president's name in the title; it was National Airport long before he took his throne at 1600 Pennsylvania Avenue and installed people who would have had ketchup fulfill one of the vegetable servings in the daily school lunch program.Â My mission: To pickupÂ a Nipponzan Myohoji nun and another activist arriving from Japan to join the Longest Walkers.Â Ordinary this mission was not. Â The arriving flight was delayed forty minutes, so I decided to do what I often do to kill time in airports (and sometimes while waiting for the subway to return me from court in D.C. to my office), which was to practice t'ai chi. It made all the more sense to do so, because I had not practiced it yet that day, and it is more important to practice for a few minutes every day, than to skip two days and practice a full hour on the third day. Each day of t'ai chi practice is akin to inserting at least one page into an annual book that totals three hundred sixty-five pages by the end of the year. Â I found a sparsely traveled section of the arrival area, and did two rounds of the thirty-seven posture t'ai chi chuan yang style short form, as developed by t'ai chi megamaster Cheng Man Ch'ing, and as demonstrated flawlessly hereÂ by the Professor. Â Perhaps partly because I have a long way to go before doing t'ai chi even one percent as well as Cheng Man Ch'ing, and perhaps just because t'ai chi is very new to many people, I get reactions running from amusement and people lampooning my moves with pages from Karate Kid, to intrigued people -- often children -- who sometimes are willing to try practicing along with me. One day practicing in the beautiful park across from our office, a Chinese woman applauded as I did the t'ai chi form, and then showed me the results of years of her own practice of what looked like something similar to t'ai chi or another form. Â Perhaps one of the amused or stunned people contributed to the police coming up to me as follows. After practicing t'ai chi, I go to the men's room, and as I am starting my standing relief, a cop is near the entrance and says, "I want to talk with you when you're done." My initial reaction to myself is "F--kin' cop. Hassling me even as I am going about such private business." Outwardly and then inwardly, though, I return to t'ai chi harmoniousness and balance. Â After washing my hands, and leaving the men's room, the cop is standing right outside the exit, and offers his name and his hand to shake. Who in their right mind offers to shake the hand of a stranger who's just left the men's room? Poppy on Seinfeld is but one member of a huge fraternity of men who do not put their hands under the sink before leaving the men's room. The Japanese custom of bowing over handshaking begins sounding highly preferable, unless one has a bad back. Curiously, the other two, and then three, cops watching the potential t'ai chi terrorist do not offer to shake my hand, whether for hygienic, strategic or good-cop/bad-cop purposes. Â The followingÂ transpires: Â Cop: My name is officer H\_\_\_\_\_. You match the description of someone reported doing karate kicks. I just want to hear your side of the story. (Pause.) Please stand over here, so you don't block people's way. Â JK: The criminal defense lawyer in me says not to answer. My other side says maybe to do so Â Cop: It will be best for you to answer. Â JK: Am I free to leave (as I fish my business card out of my pocket to try to get him off my back, which sometimes can backfire)?Â Cop: No. You're being detained right now. Take your hands out of your pockets. You have a cellphone. (A non sequitur for fellow Zippy the Pinhead fans from a cop decidedly not wearing a muu-muu.) Â Cop (continuing): Can I see some I.D.? Â JK: No. (Fortunately,Â *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177 (2004), supports no requirement to show cops a photo identification ifÂ one is notÂ stopped while driving.)Â Cop: No? (Feigning surprise or in actual surprise.)Â JK: Here (I hand him my business card that I already had fished out, but was not required to give. Giving a cop one's photo identification makes it easier for the cop to delay the person longer by running an open warrant check and not giving the identification back right away.)Â Cop: What is your date of birth? Â JK: April 1, 1963. (I give it to him. It is already on our Martindale-Hubbell listing linked to our website listed on our business card). Â Cop No. 2 (playing the good cop role): Excuse me sir. Would you mind stepping over here? (Another choreography direction from the cops while I am not free to leave.) All we want to know is what you were doing if you are willing to tell us. Â JK: (Do I stay silent, which I tell others to do when they are suspects, or do I wear the hybrid hat of a criminal defense lawyer who stands up to cops all the time for my clients, and someone wanting to be there when my visitors arrive at the gate (how often do cops try to divide and conquer like that?)) It's the Chinese martial art of t'ai chi. I hadn't gotten around to doing it yet today. Â Cop No. 2:Â (Already nodding her head knowingly before I finish talking). I thought so. Â JK: Am I free to leave? (One of the Busted video's most essential lines.)Â Cop No. 2: Yes. Â My visitors arrive four minutes later, before I even have a chance to fish out my welcome sign, a practice that is the stuff of so many comedy scenes. Â Less than an hour later, I am in Lafayette Park across the street from the White House with my visitors, who want to chant the Odaimoku prayer for peace, and then include me for continued chanting clockwise around the president's palace. After that, I tell a veteran Lafayette Park peace demonstrator about the foregoing incident, and he seems to be looking at me like I have just fallen off the vegetable truck. I say: "You probably get hassled all the time by the Park Police like that." "All the time," he replies, regretting that this is the case. Â What lawful right did cop no. 1 have to tell me I was being detained? None. This was not a validÂ TerryÂ stop --Â Terry v. Ohio, 392 US 1 (1968) -- even though the

Terry's abortion of justice only requires reasonable suspicion to believe that criminal activity is afoot to briefly detain a suspect to ask questions (which questions need not be answered, aside from questions about identity, as addressed in *Hibel v. Sixth Judicial Dist. Court*, 542 U.S. 177 (2004)). What crime might be afoot? Disorderly conduct (the catchall darling of cops, and a part of the unholy arrest triumvirate of disorderly conduct, assault on a police officer, and resisting arrest)? Hardly, and if my actions might have been reasonably suspected as disorderly, what is the difference whether it was my "forgiven" t'ai chi or possibly unforgiven karate kicks (by the way, t'ai chi only involves one circular kick, and three slow extended kicks, as shown by Cheng Man Ch'ing here)? Was there reasonable suspicion concerning the Virginia abortion of a law of intoxicated in public, which cops seem to think gives them a freebie to search incident to arrest for such a charge? My last tippie was but a sip many moons ago. Do the Airports Authority's regulations claim to permit cops to do Terry stops without satisfying Terry. I doubt it, but plan to check. Why, then, was I stopped by a cop with three onlooking cops focused on me rather than on less petty suspected crime (perhaps this was my inadvertent gift towards my goal of decriminalizing drugs by taking the cops away from looking out for possible drug dealers)? Was it just to mollify the so-called civilian complainant? Was it an effort to take control of someone not conforming to the usual bored approach to waiting in airports? Was it a result of post-September 11 hysteria? Were some of the four cops receiving on the job training? Did it arise from the cops' failure to distinguish between the increase of people's rights as they proceed from awaiting clearance by customs and immigration authorities to going through security for arrival at the airport departing gates to being in the arrival area, as I was? Is it mimicry by cops of District of Columbia mayor Adrian Fenty's unconstitutional criminal checkpoints? Is it because cops do not want to see anybody displaying the hallmarks of lethal force (I have not come anywhere near making my t'ai chi lethal) and martial arts other than themselves? Is it a bunch of cops with too much time on their hands? Is it a bunch of cops out of touch with the truism that the police are a necessary evil that present the real risk of pulling us further into a police state rather than closer in the arms of the many civil libertarian goals championed in the Constitution and Declaration of Independence? Will I continue practicing t'ai chi in airports, empty subway platforms, outside courts, in parks, and in my own backyard? Absolutely. Join me? Jon Katz.

Posted by Jon Katz in Jon's news & views at 00:00

Jon, If I ever spot you doing ta'i chi in a park, terminal, etc. I will join you without hesitation.  
Anonymous on Jun 27 2008, 20:42

Thanks, Steve, as always for your support. Too much of the criminal justice system is more surreal today than ever. Jon  
Anonymous on Jun 30 2008, 18:46

Jon: You forgot to say "Sir." (Wink).  
I love the busted video and insist on all of my young clients watching it. One of them told me he told his friend about it, and when the cop asked to search his car, he said, No thank you, sir. And they did not get the marijane in his car.  
Last time I was in Washington, D.C., I was shocked by the security there. I felt like I was in Greece during the junta. So, congrats on your act of courage. Anna  
Anonymous on Jul 2 2008, 00:52

Hi, Anna- Thanks for visiting and commenting.

"Busted" rocks. You'll see that the first comment here is from Steve Silverman of "Busted"/Flex Your Rights. Thanks again. Jon  
Anonymous on Jul 10 2008, 20:57